

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT CHARLES HACKNEY,

Defendant-Appellant.

UNPUBLISHED

May 17, 1996

No. 187872

LC No. 95-137904 FH

Before: Michael J. Kelly, P.J., and Bandstra and S.B. Miller,* JJ.

PER CURIAM.

Defendant was convicted on his conditional plea, pursuant to MCR 6.302(C)(2), of aggravated stalking, MCL 750.4211; MSA 28.643(g) on June 2, 1995. The plea was a *Cobbs*-type (*People v Cobbs* 443 Mich 276; 505 NW2d 208 (1983)) with the expectation that defendant was to serve no more than one year in jail. On June 16, 1995, defendant was sentenced to six months, with work release, in the county jail and five years probation by the Oakland Circuit Court. Defendant appeals as of right.

Defendant claims the stalking statute is vague, overbroad, shifted the burden of proof to the defendant and is unconstitutional. Defendant raised the issue of the constitutionality of the statute in his motion to quash the information, which was denied by the trial court in an opinion and order of May 12, 1995.

The constitutional issues raised by defendant in this appeal have been examined and rejected by this Court in *People v White*, 212 Mich App 298; 536 NW2d 876 (1995) and *People v Ballantyne*, 212 Mich App 628; 538 NW2d 106 (1995)

Defendant claims that he is convicted for leaving messages on a telephone answering machine. A search of the record of the preliminary examination does not disclose that any conversation recorded on the answering machine was played back by the victim. The only reference to the answering machine

* Circuit judge, sitting on the Court of Appeals by assignment.

in the testimony was that when the calls started the victim turned the bell down on the telephone and the volume on the answering machine. The only testimony relative to the answering machine was that the victim could hear the machine click when calls were received. The defendant did not raise this issue in his motion to quash the information of April 5, 1995, and raised the issue for the first time on appeal. This issue was not preserved.

Affirmed.

/s/ Michael J. Kelly
/s/ Richard A. Bandstra
/s/ Stephen B. Miller