

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY LEE GRAY,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 191078

Calhoun Circuit Court

LC No. 95-76 FH

Before: Gage, P.J., and Reilly and Hoekstra, JJ.

MEMORANDUM.

After being placed on probation following his guilty plea to attempted aggravated stalking, defendant was contemporaneously charged with a new criminal offense of aggravated stalking of the same victim, and with violating probation both by making a telephone call to the victim and threatening her, a violation of one of the special conditions of his probation, and by engaging in threatening or intimidating behavior or other antisocial conduct during contact with Cedric Harris of the Central Diagnostic & Referral Agency. A preliminary examination in 10th District Court on the new charge of aggravated stalking resulted in a dismissal for lack of probable cause, according to defense counsel, who failed to fulfill a promise to provide this Court with a transcript of that examination.

Accepting those representations as true, this Court is asked to rule that the probation violation charges should have been dismissed on the basis of collateral or crossover estoppel. This case is being decided without oral argument pursuant to MCR 7.214(E).

For collateral or crossover estoppel to apply, the same factual and legal issues must necessarily have been decided in the prior proceedings as a matter essential to the judgment. *People v Gates*, 434 Mich 146; 452 NW2d 627 (1990).

Here, the district judge might well have concluded that defendant's act of telephoning the victim and uttering the single word, "Boom!" before hanging up did not constitute of itself the offense of aggravated stalking, without necessarily determining that defendant either did not make the call or that the call was not, explicitly or by implication, a threat to the victim. And clearly nothing concerning defendant's conduct *vis-a-vis* Cedric Harris was addressed at preliminary examination. Therefore,

neither form of estoppel barred the circuit court from adjudicating the probation violation charges on the merits, and the adjudication that defendant is guilty of probation violation, and resulting sentence, are therefore affirmed.

Affirmed.

/s/ Hilda R. Gage

/s/ Maureen Pulte Reilly

/s/ Joel P. Hoekstra