STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 14, 2002
v	No. 228728 Washtenaw Circuit Court
RAYMOND WESLEY MARSHALL, Defendant-Appellant.	LC No. 99-013229-FH

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

The jury convicted defendant of one count of aggravated stalking, MCL 750.411i, and the judge sentenced defendant to three years and four months' to five years' imprisonment. He appeals as of right, and we affirm.

Defendant contends that he is entitled to either reversal of his conviction or an evidentiary hearing based on his claim of entrapment. Because defendant failed to raise the issue below, we review defendant's entrapment issue for plain error. To prevail, defendant must prove that the error was plain and affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The defense of entrapment is a question of law for the trial court, *People v Jones*, 203 Mich App 384, 386; 513 NW2d 175 (1994), which we review de novo. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Regarding the underlying facts, the trial court must typically "make specific findings regarding entrapment, and we review its findings under the clearly erroneous standard." *People v Connolly*, 232 Mich App 425, 429; 591 NW2d 340 (1999).

Defendant may prevail on an entrapment defense if he proves either that: "(1) the police engaged in impermissible conduct that would induce a law-abiding person to commit a crime in similar circumstances, or (2) the police engaged in conduct so reprehensible that it cannot be tolerated." *Connolly, supra* at 429. Defendant says that the police conduct here is intolerably reprehensible. We disagree.

Here, defendant had already been convicted on two counts of domestic violence against the victim. As part of his sentence, he was allowed to go to California on a "one-way" ticket. In addition, the victim obtained a personal protection order ("PPO") against defendant that

prohibited him from contacting her by telephone or in person. Defendant was served with the PPO before leaving for California. Nevertheless, the evidence established that, notwithstanding specific court orders to the contrary, defendant contacted the victim by telephone within a day or two of arriving in California.

Defendant and the victim continued to talk on the telephone regularly, although the victim described the telephone contact as nonconsensual because she talked with him out of fear. The length of some of the telephone communications suggests that at least some were consensual, as were the several telephone calls placed by the victim to the defendant. However, on March 10, 1999, defendant called the victim twenty-five times, all but four lasting for only one minute. Later that day, less than a month after the court orders were entered, defendant boarded a bus to return to Michigan—which was contrary to defendant's domestic violence sentencing order. In addition, defendant called the victim every few hours during his trip. Defendant did not obey the victim's request that he not return to Michigan.

When defendant was approximately "half way" to Michigan, he began to have second thoughts; however, the victim's testimony established that he called her a few hours later, still continuing his bus trip to Michigan. The evidence also established that the victim eventually stopped trying to dissuade defendant from returning to Michigan, at the request of police officers monitoring her residence for her protection. Defendant contends that this police conduct constituted entrapment.

We believe that the record fairly established that defendant was well on his way to Michigan when the purported police misconduct occurred. In addition, defendant had already ignored the victim's requests that he not return to Michigan; thus, we are not persuaded that the victim had much control over defendant's actions. Moreover, the record established that defendant had already violated the personal protection order. As such, the police actions may have been motivated by their desire to arrest him, rather than to encourage him to further violate the court orders. We are not willing to rule that the police may not pursue the arrest of an individual who can be charged with a crime, but is outside the jurisdiction. To the contrary, good police work would seem to require that the police get the offender into the jurisdiction so that he may be properly brought to justice.

In addition, to whatever extent, if any, the victim's frequent contact with defendant may have "lured" him back to Michigan, there was absolutely no evidence suggesting that the police were involved. Rather, the police only became involved when defendant was "half way" to Michigan, and then only to protect the victim from defendant. Accordingly, we are not persuaded that the facts introduced at trial established that the police conduct was "intolerably reprehensible" or that, as a matter of law, the police entrapped defendant. *Connolly, supra* at 429. Consequently, we conclude that defendant may not avoid forfeiture of this issue. *Carines, supra* at 763-764.

For "preservation purposes," defendant also contends that he will be entitled to reversal of his conviction if the aggravated stalking statute is deemed unconstitutional by the federal judiciary.[1] In *Staley v Jones*, 239 F3d 769 (CA 6, 2001), the Sixth Circuit reversed a federal

[1] Michigan courts have already rejected a challenge to the constitutionality of the stalking (continued…)

district court decision construing Michigan's stalking statutes as unconstitutionally vague and overbroad was reversed. Defendant cites this issue primarily because the Sixth Circuit was considering the *Staley* defendant's request for a rehearing en banc. This request was denied, and, to date, the United States Supreme Court has not granted certiorari. Consequently, defendant's aggravated stalking conviction remains valid.

Affirmed.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Jessica R. Cooper

(…continued)

statutes based on vagueness and overbreadth. *People v White*, 212 Mich App 298, 313-314; 536 NW2d 876 (1995).