

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

LINDA ANN COOK,

Defendant-Appellant.

UNPUBLISHED

September 28, 2001

No. 221558

Macomb Circuit Court

LC No. 98-003493-FH

Before: Cavanagh, P.J., and Markey and Cooper, JJ.

PER CURIAM.

Defendant appeals by right from an order convicting her of stalking, MCL 750.411h, and sentencing her to one year of probation, with the first seventy-four days served in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, a participant in a meditation class facilitated by Catherine Greene, contacted Greene, expressing her love for Greene. Greene told defendant she was not interested in a relationship with defendant and told defendant that she needed to leave her alone. Greene began receiving mail from defendant. The mail consisted of various poems and messages. Greene perceived the content of the materials as threats and became frightened. Eventually, she obtained a personal protection order (PPO) against defendant. Defendant sent one additional letter to Greene after being served with the PPO. Defendant was charged with aggravated stalking, MCL 750.411i. Greene testified that she was frightened and felt terrorized. Defendant testified that her conduct was innocent and she thought that Greene was playing games with her. The trial court, sitting without a jury, found defendant guilty of stalking, MCL 750.411h.

Defendant challenges her conviction, arguing that the stalking statute is overbroad. As explained in *People v White*, 212 Mich App 298, 310; 536 NW2d 876 (1995)¹, the stalking

¹ We note that in *Staley v Jones*, 108 Fed Supp 2d 777 (WD Mich, 2000), the Federal district court rejected *White* and held that the stalking statute was unconstitutionally overbroad. *Staley* has since been reversed in *Staley v Jones*, 239 F3d 769, 793 (CA6, 2001), where the Sixth Circuit Court ruled that the state court's determination in *White* that the Michigan stalking statute is not vague or overbroad was not contrary to, or an unreasonable interpretation of, federal law as it existed at that time. Any reliance by instant defendant on the *Staley* opinion is misplaced.

statute, MCL 750.411h, addresses a wilful pattern of conduct that would cause a reasonable person to feel terrorized, threatened or harassed and would cause a reasonable person in the victim's position to suffer emotional distress. The defendant's contact must be without the victim's consent or in disregard of the victim's desire to discontinue contact. *Id.* The statute does not preclude constitutionally protected activity or conduct that has a legitimate purpose. *Id.* It cannot be applied to entirely innocent conduct. *Id.* at 311.

Here, after Green asked defendant to leave her alone, defendant began sending messages and poems to Greene. The content of these communications can be construed as threats, and Greene testified that she felt terrorized and frightened and that she suffered emotional distress. Defendant has failed to explain how these communications were constitutionally protected. She argues that the statute should not be applied to a case where a person is pursuing, with good intentions, the object of her romantic interest. While defendant may characterize her conduct as innocent, the trial court found that it met that covered by the statute. It found that her conduct (1) was wilful, repeated and unconsented contact (2) that would cause a reasonable person to feel terrorized, frightened or threatened and (3) actually caused Greene to feel terrorized, frightened or threatened. The conduct in this case falls within that proscribed by the statute. Defendant has failed to demonstrate that the statute is overbroad.

We affirm.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Jessica R. Cooper