

# Herald&Review

## **Judges rein in parts of Illinois stalking law as unconstitutional, while victims' advocates worry that women are more vulnerable**

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While working at a Dunkin' Donuts in downtown Chicago, a woman burst into tears after reading text messages from her ex-boyfriend.

One message stated, "Oh good, I have three knives. Let's see who I can kill in your house, hon." The man wrote that he was at the woman's workplace, and urged her to come to his house, unless she or her father wanted "problems."

More chilling, the man also sent a photo of a knife wrapped in aluminum foil in his waistband, with the text below, "Yes, my love."

The woman filed a police report that the man was sending her threatening messages. A state trooper told the woman to text the man to ask him to come to her workplace. When he arrived, police arrested him and found he was carrying the knife.

That scene, recounted in court records, led the man, Wilson Morocho, 33, of Chicago, to be convicted of aggravated stalking, and sentenced to four years in prison. But an appellate court this summer reversed part of the man's conviction and ordered him to be resentenced.

The unanimous court decision, and a prior Illinois Supreme Court case, found parts of the state stalking law unconstitutional. While the rulings may seem to split hairs -- dismissing threats that cause emotional distress, but allowing charges based on threats that cause a safety concern -- they have raised concerns that victims may have a harder time getting protection under the law.

The precedent-setting findings reflect a belief among some judges and defense attorneys that the law, after being expanded repeatedly over the years, has become too far-reaching. The debate has prompted the intervention of the American Civil Liberties Union and the libertarian Cato Institute, seeking to narrow the law, and is being addressed in a pending state Supreme Court case.

At issue is whether making it a crime to threaten someone infringes on freedom of speech by forbidding common and legal warnings, such as threats to fire or divorce someone.

Victim advocates say that threats often lie at the heart of stalking cases. Vickie Smith, the executive director of the Illinois Coalition Against Domestic Violence, said stalking can be difficult to prove because it can involve subtle, intimate interactions, and threats may be hard for

outsiders to appreciate. Flowers left on a doorstep or notes left on a car can seem innocent, she said, but may be threatening when left by an angry ex-boyfriend or husband.

“This could put more of a burden on survivors who are experiencing stalking by being able to prove this is actually happening to them,” Smith said.

She noted that Congress in recent years provided additional funding to counter domestic violence, including some \$21 million administered by her organization.

Still, the problem persists, and only a small number of arrests are made compared to the number of stalking incidents reported. Though police made only 106 arrests for stalking statewide last year, the number of stalking cases reported by victims to domestic violence agencies has increased slightly in recent years, to nearly 4,900 in 2018, according to the Illinois Criminal Justice Information Authority. In addition, after several years of declines, a new state report found that there have been recent increases in domestic violence offenses and orders of protection.

In Cook County, however, the number of stalking cases prosecuted has decreased in recent years. State’s Attorney Kim Foxx’s office reported that it has handled 116 cases and prosecuted 49 in nearly three years in office, compared with 215 cases and 188 prosecutions in the preceding three years. The conviction rate has gone up to 90% under Foxx, compared to 79% under her predecessor, Anita Alvarez.

“We remain committed to protecting and seeking justice for women,” a state’s attorney spokeswoman wrote. “The rulings have not affected our work; we continue to file stalking charges and prosecute this offense under the remaining provisions of the statute when appropriate to do so.”

The Illinois stalking law was passed in 1992 after a series of tragedies in which women were murdered or attacked by ex-boyfriends or husbands. It was amended a year later to address concerns that it might not be constitutional, and was upheld in court.

The law originally defined stalking as threatening a victim with bodily harm and following or surveillance of a victim at least twice.

Since then, the law has been broadened repeatedly. In 2010, the state Supreme Court wrote, lawmakers “greatly expanded” the definition of stalking, and again in 2012, when the crime was defined to include when a person threatens a specific person two or more times, and knows or should know the threats would cause a reasonable person to suffer emotional distress.

But in the Morocho case, the Illinois Appellate Court ruled that section of the law, in other circumstances, criminalizes innocent conduct. The court explained, “Threats are a perfectly ordinary means by which we induce others to undertake positive or corrective action.” As examples, the court cited a coach threatening players with benching if they do not play defense, parents threatening children with no dessert if they misbehave, or a lender who threatens foreclosure for failure to pay a mortgage.

“That is the area of law we felt was suspect, simply a threat without any violence,” said Assistant Appellate Defender Brian Josias, who handled the case.

In contrast to such common everyday threats, a “true threat,” a serious, specific statement to harm someone, is not protected speech, the U.S. Supreme Court has ruled. So such threats that would place reasonable people in fear of their safety still constitute part of stalking.

The appellate court rejected the argument that Morocho went to the victim’s workplace, stating that police had “lured” him there through her invitation. The woman had also accused Morocho of raping her at knifepoint and bruising her arm four days before his arrest. The trial judge acquitted him of those charges, stating that because of their on-again, off-again relationship, there was reasonable doubt as to whether the sex was consensual.

Similarly, in the case of Walter Relerford, the state Supreme Court struck down part of the law that made it a crime to simply communicate to or about a person.

In 2011, court records show, Relerford worked as an intern for gospel radio station Inspiration 1390 AM in Chicago. He applied for a job at the station, but was turned down.

He contacted a female employee at the station repeatedly, asking if he could intern at the station again. The station’s owner, Clear Channel Media and Entertainment, decided that Relerford was no longer welcome at the station, and told employees not to respond to him.

In 2012, Relerford came into the studio unannounced. The woman and another employee escorted Relerford out. The woman said the incident made her nervous and scared.

Around the same general time, according to the court ruling, Relerford posted a lengthy diatribe on Facebook, in which he stated, “This is a (expletive deleted) order. If my (expletive) gets shut down by any and everyone who does, dies. You got till Friday at 5:00 p.m. to find some type of job for me with Clear Channel Chicago, maybe a board op or something. If you don’t, Saturday is going to be the worst day of your life.”

He also demanded sex with the staff member.

The trial judge found Relerford guilty of stalking and sentenced him to six years in prison.

But the state Supreme Court reversed the convictions, ruling that mere unwanted communications that cause emotional distress could make it illegal to engage in political speech, or to call for a boycott of a business. It stated that the terms of the entire section of the law criminalizing threats “impermissibly infringe on the right to free speech.”

As for the Facebook post, the court ruled it was “vulgar and intrusive,” but did not convey a threat against the DJ.

This month, the Supreme Court considered another case involving similar issues. In a 2014 case in McLean County, Marshall Ashley was convicted of stalking a woman and sentenced to a year and a half in prison.

The woman's mother testified that Ashley called her daughter on the phone and threatened to kill her and sent her a photo of a gun. Along with a series of threatening texts, the appellate court ruled that those statements constituted "true threats," and upheld the conviction.

The appellate defender's office has appealed, again arguing that the statute is too broad.

By overriding the prior requirement that stalking requires a threat to commit a violent crime, the legislature made crimes out of protected speech that has little to do with stalking, Assistant Appellate Defender Jonathan Yeasting argued. The court could act to further limit threats from the stalking law.

"We'd still have a strong stalking law on the books," Yeasting said, "but we don't need a law that lets the state go after anyone anytime for a threat."

Advocates warned that victims must be protected from threats before they lead to an attack.

"It worries me," said Stephanie Love-Patterson, executive director of Connections for Abused Women and their Children in Chicago. "We know those threats can turn into action quite quickly. Are we to wait until there is some violent explosion to take a victim's fear seriously?"