No. 121094

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Appellate Court
	)	of Illinois, First District.
	)	No. 1-13-2531
Plaintiff-Appellant,	)	
	)	There on Appeal from the
v.	)	Circuit Court of
	)	Cook County, Illinois,
WALTER RELERFORD,	)	No. 12 CR 8636
	)	
	)	The Honorable
Defendanat-Appellee.	)	William G. Lacy,
	)	Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
GARSON S. FISCHER
Assistant Attorneys General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601-3218
(312) 814-2566
gfischer@atg.state.il.us

Attorneys for Plaintiff-Appellant
People of the State of Illinois

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NATURE OF THE CASE

Defendant Walter Relerford was charged with two counts of stalking, 720 ILCS 5/12-7.3(a)(1) & (a)(2), and two counts of cyberstalking, 720 ILCS 5/12-7.5(a)(1) & (a)(2), for his conduct directed at Sonya Blakey. C19-22.[1] Defendant was convicted on all four counts and sentenced to six years in prison for stalking, 720 ILCS 5/12-7.3(a)(2). SC2.

Defendant appealed, and the First District reversed defendant's conviction and sentence, holding that sections (a)(1) and (a)(2) of both the stalking and cyberstalking statutes were unconstitutional under the Due Process Clause of the Fourteenth Amendment. *People v. Relerford*, 2016 IL App (1st) 132532, ¶¶ 22-33.

ISSUE PRESENTED

In 2009, the General Assembly amended the stalking statute, repealing the requirement that a defendant have the actual "intent to place [the victim] in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint," *see* 720 ILCS 5/12-7.3(a) (1992), and replacing it with the current version, which eschewed an intentional-threat-based definition of stalking. The amendment was designed to ensure that the statute encompassed all behavior relevant to the government's interest in preventing stalking, in light of the myriad ways in which the Internet and other modern technology have empowered stalkers to cause their victims distress. The issue presented here is whether the stalking and cyberstalking statutes comport with the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they do not criminalize a significant amount of conduct wholly unrelated to the legislature's purpose in enacting them.

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[1] "C_" denotes the common law record; "SC_" denotes the supplemental common law record; "R_" denotes the report of proceedings.

JURISDICTION

The People timely filed a petition to appeal as a matter of right because the appellate court declared an Illinois statute unconstitutional. Accordingly, this Court has jurisdiction pursuant to Supreme Court Rules 302, 317, 603, and 612(b).

RELEVANT SECTIONS OF THE CRIMINAL CODE OF 2012

5/12-7.3. Stalking.

(a) A person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to:

(1) fear for his or her safety or the safety of a third person; or

(2) suffer other emotional distress.

* * *

(c) Definitions. For purposes of this Section:

(1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications.

* * *

(3) "Emotional distress" means significant mental suffering, anxiety or alarm.

* * *

(8) "Reasonable person" means a person in the victim's situation.

720 ILCS 5/12-7.3 (2012).

5/12-7.5. Cyberstalking.

(a) A person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to:

(1) fear for his or her safety or the safety of a third person; or

(2) suffer other emotional distress.

* * *

(c) For purposes of this Section:

(1) "Course of conduct" means 2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. The incarceration in a penal institution of a person who commits the course of conduct is not a bar to prosecution under this Section.

* * *

(3) "Emotional distress" means significant mental suffering, anxiety or alarm.

* * *

(6) "Reasonable person" means a person in the victim's situation.

720 ILCS 5/12-7.5 (2012).

STATEMENT OF FACTS

The People charged defendant with two counts of stalking, 720 ILCS 5/12-7.3(a)(1) & (a)(2), and two counts of cyberstalking, 720 ILCS 5/12-7.5(a)(1) & (a)(2), for his harassing conduct towards Sonya Blakey. C19-22. Blakey worked at Clear Channel Media in Chicago, where she managed a gospel radio station, Inspiration 1390; she was also an on-air

personality for 1390 and V103, two of several stations with studios in Clear Channel's Chicago offices. RM9-10. In the summer of 2011, defendant was an intern at Clear Channel. RM10-11, M44, M55, M64, M84. After his internship ended, he applied for a position as a board operator there. RM12, M56. Blakey and Derrick Brown, the program director for V103, interviewed defendant, but did not offer him the job. RM12-13, M66.

Undeterred, defendant emailed and called Blakey and other station employees asking about job or internship opportunities. RM13, M56-57, M65, M67. Blakey's co-worker Chris Kelly began forwarding these emails to Human Resources because they contained strong language and seemed "a little overzealous." RM45. When defendant's contact with Blakey continued into January of 2012, Clear Channel management directed Blakey to notify Human Resources of any further communication she received from defendant. RM15-16. Clear Channel directed Blakey not to respond to any emails or phone calls from defendant, and determined that defendant should not be permitted to enter the radio station. RM18, M67. In March of 2012, Blakey saw defendant outside of Clear Channel's Michigan Avenue offices one day as she was leaving work; defendant was standing with a group of men and waved to Blakey as she left. RM16-17. Blakey said the encounter left her "kind of shocked" and "a little scared." RM17. She did not stop or return defendant's greeting because "it was in my best interest to leave as quickly as possible." *Id.*

Shortly thereafter, on the afternoon of April 4, 2012, Blakey was on-air on 1390 when defendant walked into the studio. RM19-20, M98. The studio was located on the 27th floor of 233 North Michigan Avenue; to gain entry one must either be buzzed in or have a company key card. RM20. Defendant was not invited, and Blakey was not expecting him. *Id.* Blakey testified that defendant's unexpected appearance while she was on-air left her

feeling "very nervous, very startled, shocked, scared" and "violated." RM21. Blakey put her show on "automation" and went down the hall to join Kelly, who was trying to contact a manager for assistance. RM21-22. Kelly testified she was "astonished" to see defendant in the building because he was not "supposed" to be there. RM47. His presence made her feel "very, very nervous." *Id.* Kelly also testified that Blakey appeared to be "panicked." RM48. Blakey and Kelly escorted defendant from the building. RM23, M48. Following that incident, defendant emailed Blakey apologizing and saying "that he just wants to be in radio." RM23.

After that incident, Brown contacted defendant to determine how he gained entry to the building. RM68. Defendant admitted coming to the building on April 4th, and said he lied to security to get into the building, telling them that he had an appointment with Blakey. RM69. Brown told defendant he was no longer allowed in the building. *Id.*

After that conversation, co-worker Amelia Lane, who was one of defendant's Facebook "friends", alerted Brown to messages that defendant was posting on Facebook regarding Clear Channel and Blakey. RM69, M88. One of these posts threatened Clear Channel:

> [T]his is a motherfucking order: If my shit 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. That's a motherfucking order, bitch, ass, punk. Send it through 100 shundulah jobo ho 1 (phonetic).

RM73-74, M91. Another post made threatening demands for Blakey to engage in sexual activities with defendant:

> [T]he order: If Sonya's vagina is not in my mouth by next Friday, bury the entire Michigan State football team from 1993. That's the order. Send it through. One hundred.

RM74, M92. A third post described Blakey as "wonderful and addictive to be around":

> Just like the folks at Clear Channel think I want to come back to get close to Sonya, I mean, don't get me wrong, who wouldn't want to be close to her? She's wonderful and addictive to be around. The truth of the matter is, since I was 10, I've always wanted to work for WGCI, and that was before it was called Clear Channel.

RM75, M93. A fourth post expressed defendant's desire to have sex with Blakey, "How am I gay? I want to fuck Sonya. There's nothing gay about that." RM75, M93. Finally, a fifth post professed defendant's love for Blakey, mentioned Blakey's husband Randall by name, and expressed defendant's concern about an apparent plot to attack Clear Channel's offices:

> I still love you, Sonya. Who gives a shit about that other shit? I'm a man before anything. I'm not afraid of anyone. Life is bullshit anyway. I wonder what will happen when I'm dead and gone. I wonder will they just move on to the next person and treat them the same way they are treating me.
>
> I know everything and I'm still not mad. I'm definitely worried about you, though; especially since these Chinese people talking about killing everyone on the 27th and 28th floor of Clear Channel. That's fucked up.
>
> I'll ride for you, Sonya. But these Chinese people don't fuck around. I think I'm going to need to ask Randall for some army weapons to fuck with them. I got your back.
>
> But if the shit gets rough, you better scratch, bite, kick or do something.

RM77-78, M95-96. Defendant denied writing the posts and claimed that his Facebook account had been hacked, though he admitted writing messages posted minutes or seconds before and after the posts in question. RN14, N36. Also, the Facebook posts were sent from a computer at the Motel 8 in Elk Grove, Illinois, where defendant was living at the time. RN7, N9, N22.

Because of the fear these posts engendered, Blakey took time off from work, RM29, and did not return to work until after defendant was arrested, RM30.

Defendant testified on his own behalf. He admitted to writing numerous emails and calling the station two or three times a week, but claimed, "I never meant any harm behind me e-mailing and calling. I was just inquiring about another internship with the company." RN33-34. He added, "I admit I was maybe over persistent because I've been wanting to work for this company all my life." RN33. He also testified that when Blakey saw him outside Clear Channel he was merely shopping at the CVS across the street, something which he did frequently because of its proximity to Harold Washington College, where he was enrolled. RN29-30. He denied ever receiving any communication from Clear Channel directing him not to email, call, or be on the premises of Clear Channel. RN34.

Defendant was convicted and sentenced under the stalking statute, 720 ILCS 5/12-7.3(a)(2), to six years in prison and four years of mandatory supervised release. RN67, Q15. Defendant appealed, arguing that the stalking and cyberstalking statutes were unconstitutional under both the First Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Relerford*, 2016 IL App (1st) 132532, ¶ 16. The First District held that the United States Supreme Court's decision in *Elonis v. United States*, 575 U.S. ___, 135 S. Ct. 2001 (2015), compelled it to hold that

sections (a)(1) and (a)(2) of both the stalking and cyberstalking statutes unconstitutional under the Due Process Clause of the Fourteenth Amendment.[2] *Id.* at ¶¶ 22-33.

ARGUMENT

I. Standard of Review

Issues involving the constitutionality of a statute are reviewed *de novo*. *People v. Sharp*e, 216 Ill. 2d 481, 486-87 (2005). "A court must construe a statute so as to affirm its constitutionality, if reasonably possible." *In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008); *see also People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290-91 (2003); *People v. Greco*, 204 Ill. 2d 400, 406 (2003); *People v. Machow*, 193 Ill. 2d 413, 418 (2000). If a statute's "construction is doubtful, the doubt will be resolved in favor of the validity of the law attacked." *People v. Fisher*, 184 Ill. 2d 441, 448 (1998) (internal quotations omitted).

II. The Stalking and Cyberstalking Statutes Do Not Violate the Due Process Clause of the Fourteenth Amendment Because They Do Not Criminalize a Significant Amount of Conduct Wholly Unrelated to the Legislature's Purpose in Enacting Those Laws.

The First District held that portions of two statutes — 720 ILCS 5/12-7.3 ("the stalking statute") and 720 ILCS 5/12-7.5 ("the cyberstalking statute") — are facially unconstitutional. This holding was incorrect. The stalking and cyberstalking statutes do not violate the Due Process Clause because they do not criminalize a significant amount of conduct wholly unrelated to the legislature's purpose in enacting them.

---

[2] Defendant was sentenced for a violation of subsection (a)(2) of the stalking statute. The First District addressed the constitutionality of subsection (a)(1) of the stalking statute and also subsections (a)(1) and (a)(2) of the cyberstalking statute, under which defendant had unsentenced convictions, because it was vacating defendant's sentenced conviction. *See People v. Dixon*, 92 Ill. 2d 346, 353-54 (1982) ("the appellate court should entertain jurisdiction where a defendant has sentenced and unsentenced convictions and the sentenced conviction has been vacated").

In relevant part, the stalking statute states:

> (a) A person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to:
>
> (1) fear for his or her safety or the safety of a third person; or
>
> (2) suffer other emotional distress.

720 ILCS 5/12-7.3. The cyberstalking statute is almost identical. It says:

> (a) A person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to:
>
> (1) fear for his or her safety or the safety of a third person; or
>
> (2) suffer other emotional distress.

720 ILCS 5/12-7.5. Each statute defines "emotional distress" as "significant mental suffering, anxiety or alarm," and "reasonable person" as "a person in the victim's situation." 720 ILCS 5/12-7.3(c)(3) & (8); 720 ILCS 5/12-7.5(c)(3) & (6).

Prior to the charged offenses, in 2009, the General Assembly amended the stalking statute, repealing the requirement that a defendant have the actual "intent to place [the victim] in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint," *see* 720 ILCS 5/12-7.3(a) (1992), and replacing it with the current version, which moved away from an intentional-threat-based definition of stalking. This Court should reverse the First District's judgment because the amended stalking and cyberstalking statutes do not violate due process.

This Court has held that a statute violates due process when it criminalizes "a significant amount of . . . conduct . . . wholly unrelated to the legislature's purpose in

enacting the law." *People v. Hollins*, 2012 IL 112754, ¶¶ 27 & 28. That is not the case with the statutes at issue here. Stalking is a serious threat to the public health. Approximately one in ten women report being stalked by the age of forty-five. Diette, T. M., Goldsmith, A. H., Hamilton, D., Darity, W. and McFarland, K. (2014), *Stalking: Does it Leave a Psychological Footprint?*, Social Science Quarterly 95: 563–580. Women who are stalked are at significantly greater risk of suffering psychological distress than their peers. *Id.* The government has a compelling interest in deterring and punishing conduct that causes such distress. *See People v. Bailey*, 167 Ill. 2d 210, 233 (1995) (holding prior version of stalking statute served legitimate government interest in preventing "terror, intimidation, and justifiable apprehension caused by the stalker's conduct"). When the General Assembly amended the stalking and cyberstalking statutes in 2009, it did so to ensure that the statute captured all of the behavior relevant to this interest, in light of the myriad ways in which modern technology has empowered stalkers to cause their victims distress. Senator Toi Hutchinson observed:

> A recent U.S. Department of Justice study said that seventy-six percent of female homicide victims were stalked first, prior to their death. It's terrifying and it's something that we need to do all we can to protect our victims from. This will broaden the definition of stalking. It amends the Criminal Code to update our stalking laws. It updates the cyberstalking law. So it encompasses all technologies that stalkers use to track and harass their victims. This is our opportunity to make sure that our Criminal Code follows twenty-first century technology.

96th Ill. Gen. Assem., Senate Proceedings, May 21, 2009, at 125 (statements of Senator Hutchinson).

The General Assembly found the old, intentional-threat definition of stalking inadequate. As Senator Hutchinson pointed out, the changes to the law were necessary to

address the ways in which modern technology empowers stalkers to harass their victims. Modern technology allows stalkers to remain physically removed from their victims, maintain near-anonymity, impersonate their victims, and even incite "innocent" third parties to doing their stalking for them. *See* Naomi Harlan Goodno, *Cyberstalking, a New Crime: Evaluating the Effectiveness of Current State and Federal Laws*, 72 Mo. L. Rev. 125, 128-32 (2007). In one example, a California man impersonated a woman in various Internet chat rooms and posted her telephone number and address along with messages indicating that she fantasized about being raped. *Id.* at 132. On at least six separate occasions, men then knocked on the woman's door and told her that they wanted to rape her. *Id.* The intentional threat model of stalking might not encompass this conduct because there was no overt threat and no communication directly to the victim. Needless to say, the harm to the victim is every bit as severe. The amended version of the statute better accounts for this new form of stalking, in which the perpetrator knew or should have known that his conduct would cause the victim to fear for her safety or suffer other emotional distress.

Indeed, this case provides another example of conduct better captured by the amended statute than by the discarded intentional-threats model. Defendant posted messages on a website that caused his victim to feel fear, but did not communicate those messages directly to her. It would be difficult to prove that a defendant intended "to place [his victim] in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint," 720 ILCS 5/12-7.3(a)(1992), when he posted a message on his Facebook page and his victim was not one of his Facebook "friends." But defendant knew, or should have known, that these disturbing messages, disseminated on the Internet — including to Blakey's co-workers who *were* defendant's Facebook "friends" — would cause Blakey to fear for her safety or suffer

other emotional distress. And this is exactly the conduct the amended statute was meant to cover. Stalking statutes exist "to eliminate behaviors which disrupt normal life for the victim and to prevent such behaviors from escalating into violence." James Thomas Tucker, *Stalking the Problems With Stalking Laws: The Effectiveness of Florida Statutes Section 784.048*, 45 Fla. L. Rev. 609, 617 (1993). Here, defendant's behavior disrupted normal life for Blakey. She experienced fear and had to remain home from work for several days. And as discussed, this kind of online behavior can, and often regrettably does, escalate into violence.

The following example illustrates how the amended statute proactively captures dangerous conduct before it escalates into violent crime. In 1994, Iowa's statute underwent similar amendments to Illinois's, moving from an intentional-threats-based model to one requiring that the defendant know or should know that his conduct would place the victim in reasonable fear. *See Iowa v. Limbrecht*, 600 N.W. 2d 316, 318-19 (Iowa 1999). In *Limbrecht*, the validity of Limbrecht's conviction likely depended on which version of the standard applied. *Id.* at 319. Limbrecht, a prison inmate, became obsessed with an activities supervisor, Stacey Corey, at his prison. *Id.* at 317. Limbrecht falsely claimed to other inmates that he had had sexual relations with Corey and might be the father of her child, and told Corey that he could "take" her husband in the event of a paternity dispute. *Id.* Corey eventually quit her job as a result of Limbrecht's harassment. *Id.* The conduct giving rise to Limbrecht's stalking conviction occurred when he was released from prison shortly after Corey quit. *Id.* Limbrecht sent multiple notes to Corey's husband describing in detail her alleged sexual infidelity with inmates at the prison. *Id.* Corey testified that the letters made her feel "shocked. Scared. Sick." *Id.* Limbrecht also repeatedly drove past the Coreys'

home, which was located on a dead-end, residential street. *Id.* The Iowa Supreme Court affirmed Limbrecht's conviction for stalking, holding that while he had not made an intentional threat, as was required by the old version of the statute, he knew or should have known that his conduct would cause Corey to feel fear. *Id.* at 319-20. Similarly, it would have been difficult to prove Limbrecht guilty under Illinois's old stalking statute. In contrast, the current statute would encompass his behavior, which is exactly the prophylactic intent of the amended stalking and cyberstalking statutes.

Indeed, the Internet has magnified the problem presented by cases like *Limbrecht* and this one. Limbrecht sent the Coreys two letters. "Cyberstalkers, on the other hand, can easily use the Internet to send hundreds, even thousands, of frightening email messages — similar to the letters sent in *Limbrecht* — in a matter of one hour, which over days and weeks can create havoc for a victim." Goodno, 72 Mo. L. Rev. at 137. Far from criminalizing "a significant amount of . . . conduct . . . wholly unrelated to the legislature's purpose in enacting the law," see *Hollins*, 2012 IL 112754, ¶¶ 27 & 28, the amended stalking and cyberstalking statutes criminalize conduct directly related to the legislature's purpose in responding to new forms of stalking, including those that are unique to the Internet era. Therefore, the statute does not violate due process.

III. *Elonis* is Inapposite.

The First District held that the United States Supreme Court's decision in *Elonis* compelled a different outcome. It read *Elonis* as holding that a "reasonable person" *mens rea* standard violates the Due Process Clause:

> Subsection (a)(2) contains no requirement that the individual actually intend to inflict emotional suffering on a person. Thus, as currently drafted, subsection (a)(2) bypasses "'the conventional requirement for criminal

> conduct — *awareness* of some wrongdoing'" in favor of a reasonable person standard of criminality. (Emphasis in original.) *Elonis*, 575 U.S. ___, 135 S. Ct. at 2011 (quoting *Staples v. United States*, 511 U.S. 600, 606-607 (1994)). This is a standard which the due process clause does not permit. *Id.* at ___, 135 S. Ct. at 2011.

Relerford, 2016 IL App (1st) 132532, ¶ 26. But *Elonis* did no such thing. Indeed, the question of whether the federal threats statute at issue in *Elonis* survived scrutiny under the Due Process Clause was neither decided by, nor even presented to, the Court in that case. *Elonis* merely interpreted the federal threats statute as requiring that a defendant be more than merely negligent with respect to whether his communication would be regarded as a threat. The federal statute is silent as to the *mens rea* required to satisfy this element of the crime. *Elonis*, 135 S. Ct. at 2008-09. The trial court had filled in this gap with a *mens rea* requirement similar to the negligence standard typically found in tort cases. *Id.* at 2007. The Court held, as a matter of federal statutory interpretation, that this was error. *Id.* at 2011 ("we have long been reluctant to infer that a negligence standard was intended in criminal statutes" (internal quotations omitted)). The Court, and both parties, agreed that the statute is satisfied when a defendant knows or intends that his communication be viewed as a threat, and the Court declined to decide whether a finding of recklessness would be sufficient, but held that negligence did not satisfy the mental state requirement of the federal statute. *Id.* at 2012. Because that was the standard on which the jury was instructed, Elonis's conviction could not stand. *Id.*

In vacating Elonis's conviction, the Court did not resolve any constitutional issues. Indeed, the Court's opinion in *Elonis* did not mention the Due Process Clause, and the petition for a writ of certiorari did not raise any issue relating to due process. Furthermore, the Court's analysis makes clear that its concern was merely determining the appropriate

mens rea where the legislature has not articulated a specific mental state requirement. *Id.* at 2010 ("Congress *could* have intended to cover such a broad range of conduct, but [the Court] declined to adopt such a sweeping interpretation in the absence of a clear indication that Congress intended that result." (emphasis in original) (internal quotations omitted)). Here, in contrast, the General Assembly has given a clear indication that it intended the statute to cover a broader range of conduct than an intentional *mens rea* requirement would encompass, and defendant does not dispute that his conduct falls within the statute's prohibitions. Thus, *Elonis* is inapposite.

IV. The Stalking and Cyberstalking Statutes Do Not Violate the First Amendment Because They Criminalize Conduct Rather Than Speech.

Although the First District did not address defendant's First Amendment argument — because it held that the statutes violated the Fourteenth Amendment — both statutes survive scrutiny under the First Amendment as well. The stalking and cyberstalking statutes do not prohibit speech; they prohibit a "course of conduct." 720 ILCS 5/12-7.3(a)(1) & (2); 720 ILCS 5/12-7.5(a)(1) & (2). "'[I]t has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed.'" *Norton v. City of Springfield, Ill.*, 768 F.3d 713, 716 (7th Cir. 2014) (quoting *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978)). Thus, while the course of conduct prohibited by the statutes may include speech, that potentially communicative aspect does not render the statute overbroad or subject it to heightened scrutiny under the First Amendment. *See United States v. Osinger*, 753 F.3d 939, 944 (9th Cir. 2014) (rejecting overbreadth challenge to federal stalking statute criminalizing "a course of *conduct* that . . . causes . . . substantial

emotional distress" because "the proscribed acts are tethered to the underlying criminal conduct and not to speech") (quoting 18 U.S.C. § 2261A(2)(A)) (emphasis in original); *United States v. Petrovic*, 701 F.3d 849, 856 (8th Cir. 2012) (holding that interstate stalking statute's prohibition against criminal contact "is directed toward 'course[s] of conduct,' not speech, and the conduct it proscribes is not 'necessarily associated with speech'") (quoting 18 U.S.C. § 2261A(2)(A)). Because the stalking and cyberstalking statutes further a substantial government interest, that interest is not related to the suppression of free expression, and the incidental restriction on alleged First Amendment freedoms is not greater than is essential to the furtherance of that interest, neither statute violates the First Amendment. *See, e.g.*, *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994).

CONCLUSION

This Court should reverse the judgment of the appellate court.

December 27, 2016

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

DAVID L. FRANKLIN
Solicitor General

MICHAEL M. GLICK
GARSON S. FISCHER
Assistant Attorneys General
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-2566
gfischer@atg.state.il.us

Attorneys for Plaintiff-Appellant
People of the State of Illinois

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is sixteen pages.

/s/ Garson S. Fischer
GARSON S. FISCHER
Assistant Attorney General

APPENDIX

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KeyCite Yellow Flag - Negative Treatment
Appeal Allowed by People v. Relerford, Ill., November 23, 2016

2016 IL App (1st) 132531
Appellate Court of Illinois,
First District, Sixth Division.

The PEOPLE of the State of Illinois, Plaintiff–Appellee,
v.
Walter RELERFORD, Defendant–Appellant.

No. 1–13–2531.
|
June 24, 2016.

Synopsis
Background: Defendant was convicted in the Circuit Court, Cook County, William G. Lacy, J., of stalking and cyberstalking. Defendant appealed.

Holdings: The Appellate Court, Delort, J., held that:

[1] general stalking statute subsection that criminalized communicating to or about a person if, and only if, the defendant "knows or should know" that it would cause a reasonable person to suffer emotional distress was facially unconstitutional under the due process clause;

[2] defendant had standing to raise a constitutional challenge to the general stalking statute and the cyberstalking statute;

[3] general stalking statute subsection that criminalized communicating to or about a person if the defendant engaged in a course of conduct that he or she "knows or should know" that it would cause a reasonable person to fear for his or her safety or the safety of a third person was facially unconstitutional under the due process clause; and

[4] cyberstalking statute subsections that criminalized communicating to or about a person electronically if the defendant "knows or should know" that it would cause a reasonable person to suffer emotional distress, or cause a reasonable person to fear for his or safety or the safety of a third person, were facially unconstitutional under the due process clause.

Vacated.

West Headnotes (6)

[1] **Constitutional Law** ⇐ Extortion, threats, stalking, and harassment
Threats, Stalking, and Harassment ⇐ Validity
General stalking statute subsection that criminalized communicating to or about a person if, and only if, the defendant "knows or should know" that it would cause a reasonable person to suffer emotional distress, lacked a mens rea requirement, and was therefore facially unconstitutional under the due process clause of the fourteenth

amendment; the provision did not require that the defendant actually intended to inflict emotional distress on a person, the conventional requirement for criminal conduct-awareness of some wrongdoing, but instead favored a reasonable person standard of criminality, a standard not permitted under the due process clause. U.S.C.A. Const.Amend. 14; S.H.A. 720 ILCS 5/12–7.3(a)(2).

Cases that cite this headnote

[2] **Constitutional Law** ⇦ Criminal Law

Defendant had standing to raise a constitutional challenge to the general stalking and cyberstalking statutes because he was criminally prosecuted and convicted for violating those statutes. S.H.A. 720 ILCS 5/12–7.3(a)(1), (2); 5/12–7.5(a)(1), (2).

Cases that cite this headnote

[3] **Criminal Law** ⇦ Necessity of sentence

There is no final judgment in a criminal case until the imposition of sentence, and, in the absence of a final judgment, an appeal cannot be entertained.

Cases that cite this headnote

[4] **Criminal Law** ⇦ Necessity of sentence

The appellate court should entertain jurisdiction where a defendant has sentenced and unsentenced convictions and the sentenced conviction has been vacated.

Cases that cite this headnote

[5] **Constitutional Law** ⇦ Extortion, threats, stalking, and harassment

Threats, Stalking, and Harassment ⇦ Validity

General stalking statute subsection that criminalized communicating to or about a person if the defendant engaged in a course of conduct that he or she "knows or should know" that it would cause a reasonable person to fear for his or her safety or the safety of a third person, lacked a mens rea requirement, and was therefore facially unconstitutional under the due process clause of the fourteenth amendment; criminality turned entirely on what the defendant "knows or should know" how a reasonable person would react to the defendant's conduct, without regard to the defendant's subjective intentions. U.S.C.A. Const.Amend. 14; S.H.A. 720 ILCS 5/12–7.3(a)(1).

Cases that cite this headnote

[6] **Threats, Stalking, and Harassment** ⇦ Validity

Cyberstalking statute subsections that criminalized communicating to or about a person electronically if the defendant "knows or should know" that it would cause a reasonable person to suffer emotional distress, or cause a reasonable person to fear for his or safety or the safety of a third person, lacked a mens rea requirement, and were therefore facially unconstitutional under the due process clause of the fourteenth amendment; criminality turned entirely on what the defendant "knows or should know" how a reasonable person would react to the defendant's conduct, without regard to the defendant's subjective intentions. U.S.C.A. Const.Amend. 14; 720 ILCS 5/12–7.5(a)(1), (2).

Cases that cite this headnote

West Codenotes

Held Unconstitutional
S.H.A. 720 ILCS 5/12–7.3(a)(2), 5/12–7.3(a)(1)720 ILCS 5/12–7.5(a)(1), (2)

Attorneys and Law Firms

***490** Michael J. Pelletier, Patricia Mysza, Kate Schwartz, and Jonathan Yeasting, all of State Appellate Defender's Office, of Chicago, for appellant.

Anita M. Alvarez, State's Attorney, of Chicago (Alan J. Spellberg, Annette Collins, Kathryn Schierl, and Veronica Calderon Malavia, Assistant State's Attorneys, of counsel), for the People.

OPINION

Justice DELORT delivered the judgment of the court, with opinion.

****506** ¶ 1 After a bench trial, defendant Walter Relerford was convicted of stalking and cyberstalking. He was originally sentenced to six years' imprisonment and one year of mandatory supervised release (MSR). Several months after the original sentencing hearing, the court reconvened ****507** ***491** and sentenced defendant to four years of MSR on the basis that it had imposed the MSR portion of the original sentence in error. On appeal, defendant contends that his convictions should be vacated because the statutes under which he was convicted (720 ILCS 5/12–7.3(a)(1), (2) (West 2012), and 720 ILCS 5/12–7.5(a)(1), (2) (West 2012)) violate state and federal constitutional guarantees of free speech and due process. He also contends that he is entitled to a new trial because the trial court ignored his requests to proceed *pro se.* Finally, he asks that we vacate his term of four years of MSR and reinstate the original term of one year. For the reasons that follow, we find that the statutes are unconstitutional and therefore vacate defendant's conviction and sentence on that basis alone. Accordingly, we need not reach the remaining issues.

¶ 2 BACKGROUND

¶ 3 Defendant was charged by indictment with two counts of stalking (720 ILCS 5/12–7.3(a)(1), (2) (West 2012)) (the general stalking statute) and two counts of cyberstalking (720 ILCS 5/12–7.5(a)(1), (2) (West 2012)) (the cyberstalking statute). In particular, the indictments collectively alleged that defendant: (1) called Sonya Blakey on the telephone; (2) sent her e-mails; (3) stood outside of her place of business; (4) entered her place of business; and (5) made multiple posts on his Facebook page threatening Blakey's coworkers and expressing his desire to engage in sexual acts with Blakey. The indictments further alleged that defendant "knew or should have known" that his conduct "would cause a reasonable person to suffer emotional distress" and "fear for her safety."

¶ 4 At trial, Sonya Blakey testified that she worked for Clear Channel Media and Entertainment (CCME), where she managed and appeared on-air for a gospel radio station called Inspiration 1390. Beginning in May 2011, defendant began working as an intern at Inspiration 1390. His internship ended the following August. Around September or October 2011, he applied for an open position as board operator at the station. Blakey and Derrick Brown, one of her coworkers, interviewed defendant for the position. After the interview, defendant sent Blakey a follow-up e-mail asking if the position had been filled.

¶ 5 At some point, defendant was informed that he was not being offered the position. In response, defendant called and e-mailed Blakey, as well as several of her colleagues, asking whether he could intern at the station again. Blakey testified that she received five e-mails from defendant.

¶ 6 In January 2012, Blakey became aware that defendant was also contacting other CCME employees. At that point, Blakey's manager told her to report any e-mails or phone calls that she received from defendant to human resources staff. According to Blakey, sometime between January and March 2012, CCME took the position that defendant was not welcome at the station and that his calls and e-mails should go unreturned. Jeffrey Garceau, an executive assistant to CCME's president, testified that sometime around late March or early April 2011, he told defendant to stop contacting CCME employees.

¶ 7 In March 2012, while Blakey was leaving her downtown Chicago office, she looked through a glass window on the ground floor and saw defendant standing outside with some friends. Defendant saw Blakey and waved at her. Blakey did not wave back and continued on her way. She testified that this encounter made her "scared" and "nervous."

***492** ****508** ¶ 8 Blakey next encountered defendant on April 4, 2012. That day, while Blakey was in the studio broadcasting live, defendant walked into the studio unannounced. Blakey explained that defendant's act of entering the studio caused her to feel "startled," "nervous," and "violated." According to Blakey, she had to switch her show to automated programming when defendant entered because she "was very nervous, very startled, shocked, scared, nervous, and * * * didn't know what to expect with him being there." Ultimately, Blakey and one of her colleagues escorted defendant from the building.

¶ 9 On April 9, 2012, Blakey received an e-mail from defendant apologizing for the April 4 incident. In the e-mail, defendant stated, "[m]y intentions were not to startle you or to catch you off guard." Around the time that defendant sent that e-mail, one of Blakey's colleagues who was a Facebook friend of defendant informed Blakey that defendant had made several postings on Facebook about Blakey. Blakey and defendant were not Facebook "friends," so Blakey could not see defendant's posts through her own Facebook account. However, Blakey's colleague e-mailed the posts to Blakey.

¶ 10 In his first post, defendant demanded a job at CCME and, in a somewhat rambling manner, made a thinly veiled threat towards CCME's employees if he was not given a job. In his second post, defendant wrote, "[t]he order: If Sonya's vagina is not in my mouth by next Friday, bury the entire Michigan State football team from 1993. That's the order. Send it through. One hundred." Defendant's third post described his affection for Blakey and long-held desire to obtain employment at CCME. Defendant's fourth post stated "How am I gay? I want to fuck Sonya. There's nothing gay about that." Lastly, defendant's fifth post contained a disjointed statement about Blakey, CCME, and an unidentified group of "Chinese people" whom defendant claimed were "talking about killing everyone" at CCME.

¶ 11 After CCME and Blakey became aware of the Facebook posts, CCME advised Blakey to stay home from work until the police located defendant. Blakey took some time off from work around April 11 or 12 because defendant's actions made her feel "uncomfortable * * * just a little bit uneasy, a little scared, a little fearful." After defendant was apprehended on April 12, Blakey returned to work.

¶ 12 On cross-examination, Blakey testified that she did not recall defendant making any threats in any of the e-mails he sent to her and her colleagues regarding employment opportunities at CCME. With respect to the March 2012 incident, Blakey conceded that defendant did not verbally communicate with her. She testified that defendant did not enter the building during the incident, but rather stayed outside on the sidewalk with a group of friends. Moreover, she acknowledged that the ground level of the building where CCME's offices are located contains several businesses and restaurants.

¶ 13 Blakey admitted that defendant did not threaten her while he was at the studio on April 4 and that he did not put up a struggle when Blakey and her colleague escorted him from the premises. As to defendant's April 9 e-mail to Blakey, she conceded that the e-mail did not contain any statement threatening her safety or the safety of anyone at CCME. With respect to the Facebook postings, Blakey acknowledged that defendant did not send the posts directly to her and that she saw them only because a colleague showed them to her.

¶ 14 After the conclusion of testimony and closing arguments, the court found defendant "guilty as charged." On July ****509** ***493** 23, 2013, the court sentenced defendant to six years' imprisonment and one year of mandatory supervised release (MSR). The order of commitment entered by the court indicates that defendant was sentenced only on count I, which alleged a violation of section 7.3(a)(2), a provision of the general stalking statute. 720 ILCS 5/12–7.3(a)(2) (West 2012). On January 7, 2014, the court held a supplemental hearing. The court noted that it had sentenced defendant to one year of MSR, but stated that the "sentence was in error" because due to a " change * * * in the law, on a charge of stalking, mandatory supervised release term is four years." The court accordingly issued a "[c]orrected" mittimus, *nunc pro tunc* to July 23, 2013, reflecting a four-year MSR term. This appeal followed.

¶ 15 ANALYSIS

[1] ¶ 16 On appeal, defendant contends that subsections (a)(1) and (a)(2) of the general stalking and cyberstalking statutes are facially unconstitutional and unconstitutional as applied to him under the first and fourteenth amendments to the United States Constitution. Specifically, defendant argues that the stalking statutes violate the first amendment because they restrict a substantial amount of protected speech, and that the statutes violate the due process clause because, *inter alia,* they do not contain a *mens rea* requirement. Defendant has raised similar challenges under the Illinois Constitution. See Ill. Const. 1970, art. I, §§ 2, 4. However, because the Illinois Supreme Court has interpreted the Illinois Constitution's due process and free speech protections as generally coextensive with the federal constitution's free speech and due process protections, we will first consider defendant's federal claims. See Ann M. Lousin, The Illinois State Constitution: A Reference Guide 46 (Praeger 2010) (citing *City of Chicago v. Pooh Bah Enterprises, Inc.,* 224 Ill.2d 390, 309 Ill.Dec. 770, 865 N.E.2d 133 (2006)) (suggesting that the free speech clause of the Illinois Constitution may be narrower than the first amendment); *Hope Clinic for Women, Ltd. v. Flores,* 2013 IL 112673, ¶ 55, 372 Ill.Dec. 255, 991 N.E.2d 745 (due process clause of Illinois Constitution is coextensive with federal due process guarantees).

¶ 17 In *People v. Bailey,* 167 Ill.2d 210, 212 Ill.Dec. 608, 657 N.E.2d 953 (1995), the supreme court rejected a first amendment and due process challenge to the version of the Illinois stalking statute that was in effect in 1992. *Id.* at 225–27, 212 Ill.Dec. 608, 657 N.E.2d 953. The 1992 statute provided that a person committed the offense of stalking by "transmit[ting] to another person a threat with the intent to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint" and then in furtherance of the threat either follows or surveils the target on more than one occasion. 720 ILCS 5/12–7.3(a) (West 1992). Between 1992 and 2010, the legislature revised the stalking statute seven times. The first six revisions retained the general requirement that an individual must "transmit to another person a threat with the intent to place that person in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint" to commit the offense of stalking. See, *e.g.,* Pub. Act 88–402, § 5 (eff. Aug. 20, 1993) (requiring that defendant "transmit[ ] a threat * * * of immediate or future bodily harm, sexual assault, confinement or restraint" or place a person "in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement or restraint."); Pub. Act 88–677, § 20 (eff. Dec. 15, 1994) (same); Pub. Act 89–377, § 15 (eff. Aug. 18, 1995) (same); Pub. Act 91–640, § 5 (eff. Aug. 20, 1999) (same); ****510** ***494** Pub. Act 92–827, § 5 (eff. Aug. 22, 2002) (same); Pub. Act 95–33, § 5 (eff. Jan. 1, 2008) (same).

¶ 18 In 2009, the legislature significantly amended the stalking statute. See Pub. Act 96–686, § 5 (eff. Jan. 1, 2010). The 2009 amendments: (1) removed the threat requirement from the definition of the general stalking offense; (2) created subsection (a–3), which retained the threat-centric definition of stalking that was present in the statute since 1992; and

(3) redefined the general offense of stalking in section (a). Accordingly, *Bailey* and similar cases relied on by the State do not control our analysis of defendant's constitutional claims.

¶ 19 In its current form, section (a) of the general stalking statute provides:

> "A person commits stalking when he or she knowingly engages in a course of conduct directed at a specific person, and he or she knows or should know that this course of conduct would cause a reasonable person to:
>
> (1) fear for his or her safety or the safety of a third person; or
>
> (2) suffer other emotional distress." 720 ILCS 5/12–7.3(a)(1), (2) (West 2012).

¶ 20 The general stalking statute defines "course of conduct" as:

> "2 or more acts, including but not limited to acts in which a defendant directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, engages in other non-consensual contact, or interferes with or damages a person's property or pet. A course of conduct may include contact via electronic communications." 720 ILCS 5/12–7.3(c)(1) (West 2012).

The statute further defines "emotional distress" as "significant mental suffering, anxiety or alarm" (720 ILCS 5/12–7.3(c)(3) (West 2012)) and "reasonable person" as "a person in the victim's situation" (720 ILCS 5/12–7.3(c)(8) (West 2012)).

¶ 21 In *People v. Douglas,* 2014 IL App (5th) 120155, 379 Ill.Dec. 548, 6 N.E.3d 876, the Fifth District rejected a due process challenge to subsection (a) of the general stalking statute on the basis that it did not contain a *mens rea* requirement. *Id.* ¶ 39. However, after the court's decision in *Douglas,* the United States Supreme Court handed down its decision in *Elonis v. United States,* 575 U.S. ——, 135 S.Ct. 2001, 192 L.Ed.2d 1 (2015), which compels a result different from that in *Douglas.*

¶ 22 In *Elonis,* the Court held that due process precluded the government from convicting a defendant under a federal stalking statute because the defendant's conviction "was premised solely on how his posts would be understood by a reasonable person." *Id.* at ——, 135 S.Ct. at 2011. The defendant was charged with violating a federal statute that made it a crime to " 'transmit[ ] in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another' " after he made several Facebook posts about his ex-wife containing violent imagery. *Id.* at ——, 135 S.Ct. at 2008 (quoting 18 U.S.C. § 875(c) (2006)).

¶ 23 At trial, the defendant requested a jury instruction stating " 'the government must prove that he intended to communicate a true threat,' " but the district court refused to tender the instruction. *Id.* at ——, 135 S.Ct. at 2007. In its closing argument, the government explicitly claimed that it was not relevant whether the defendant intended his posts to be threats, stating " 'it doesn't matter what he thinks.' " *Id.* at ——, 135 S.Ct. at 2007. A ****511** ***495** jury found the defendant guilty, and the court of appeals affirmed his conviction.

¶ 24 The Supreme Court reversed. The court noted that the defendant and the government both agreed that "a defendant under Section 875(c) must know that he is transmitting a communication." *Id.* at ——, 135 S.Ct. at 2011. "But," the Court explained, "communicating *something* is not what makes the conduct ' "wrongful." ' " (Emphasis in original.) *Id.* at ——, 135 S.Ct. at 2011. Instead, the Court noted, " 'the crucial element separating legal innocence from wrongful conduct' is the threatening nature of the communication." *Id.* at ——, 135 S.Ct. at 2003 (quoting *United States v. X–Citement Video, Inc.,* 513 U.S. 64, 73, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994)). The problem, though, was that the defendant's conviction "was premised solely on how his posts would be understood by a reasonable person." *Id.* at ——, 135 S.Ct. at 2011. The Court explained that imposing criminal liability using a "reasonable person" standard was incompatible with due process requirements:

"Such a 'reasonable person' standard is a familiar feature of civil liability in tort law, but is inconsistent with 'the conventional requirement for criminal conduct-*awareness* of some wrongdoing.' [Citations.] Having liability turn on whether a 'reasonable person' regards the communication as a threat—regardless of what the defendant thinks —'reduces culpability on the all-important element of the crime to negligence,' [citation], and we 'have long been reluctant to infer that a negligence standard was intended in criminal statutes.' [Citations.] Under these principles, 'what [Elonis] thinks' does matter." *Id.* at ——, 135 S.Ct. at 2011.

¶ 25 We note that *Elonis* was decided in 2015. Thus, neither the legislature, when it amended the stalking statute in 2009, nor the judge who presided over defendant's trial in 2013, had the benefit of the Supreme Court's guidance on this issue.

¶ 26 As noted above, defendant was sentenced for violating subsection (a)(2) of the general stalking statute. That section criminalizes a wide range of conduct, including communicating to or about a person. But, like the statute at issue in *Elonis,* "communicating *something* is not what makes * * * conduct 'wrongful' " under subsection (a)(2). (Emphasis in original.) *Id.* at ——, 135 S.Ct. at 2011. Instead, an individual's conduct is criminal under section (a)(2) if, and only if, the defendant "knows or should know" that it would cause "reasonable person" to "suffer * * * emotional distress." 720 ILCS 5/12–7.3(a)(2) (West 2012). Subsection (a)(2) contains no requirement that the individual actually intend to inflict emotional suffering on a person. Thus, as currently drafted, subsection (a)(2) bypasses " 'the conventional requirement for criminal conduct—*awareness* of some wrongdoing' " in favor of a reasonable person standard of criminality. (Emphasis in original.) *Elonis,* 575 U.S. ——, 135 S.Ct. at 2011, 192 L.Ed.2d 1 (quoting *Staples v. United States,* 511 U.S. 600, 606–607, 114 S.Ct. 1793, 128 L.Ed.2d 608 (1994)). This is a standard which the due process clause does not permit. *Id.* at ——, 135 S.Ct. at 2011 ("defendant could face 'liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind' " (quoting *Cochran v. United States,* 157 U.S. 286, 294, 15 S.Ct. 628, 39 L.Ed. 704 (1895))).

¶ 27 Accordingly, we hold that subsection (a)(2) of the general stalking statute, of which defendant was convicted and sentenced, lacks a *mens rea* requirement and is therefore facially unconstitutional under ****512** ***496** the due process clause of the fourteenth amendment.

¶ 28 We next address defendant's claims concerning his convictions under subsection (a)(1) of the general stalking statute and subsections (a)(1) and (a)(2) of the cyberstalking statute. At the outset, we must address our jurisdiction to consider these claims. The State suggests that we lack jurisdiction over defendant's convictions under subsection (a)(1) of the general stalking statute and subsections (a)(1) and (a)(2) of the cyberstalking statute because sentence was not entered on those convictions.

[2] **[3]** **[4]** ¶ 29 Our jurisdiction extends only to "final judgments." Ill. Const. 1970, art. VI, § 6. And, as the supreme court has explained, "it is axiomatic that there is no final judgment in a criminal case until the imposition of sentence, and, in the absence of a final judgment, an appeal cannot be entertained." *People v. Flores,* 128 Ill.2d 66, 95, 131 Ill.Dec. 106, 538 N.E.2d 481 (1989). But, as the State concedes in its appellate brief, the supreme court has also explained that the appellate court should entertain jurisdiction where a defendant has sentenced and unsentenced convictions and the sentenced conviction has been vacated. See *People v. Dixon,* 91 Ill.2d 346, 353–54, 63 Ill.Dec. 442, 438 N.E.2d 180 (1982). Furthermore, defendant has standing to raise this challenge because he was criminally prosecuted and convicted for violating these statutes. *People v. Aguilar,* 2013 IL 112116, ¶ 12, 377 Ill.Dec. 405, 2 N.E.3d 321 (finding that a criminal defendant had standing to make a facial challenge to a criminal statute under similar circumstances).

¶ 30 Since we have found that statute pursuant to which defendant was convicted *and* sentenced is unconstitutional, his conviction thereunder must be vacated. And since defendant's conviction under subsection (a)(2) is vacated, we have jurisdiction to consider his challenges to his remaining convictions.

[5] ¶ 31 Subsection (a)(1) of the general stalking statute violates due process for the same reason as subsection (a)(2), as it does not contain a mental state requirement. Under subsection (a)(1), a defendant can be convicted of stalking if he or she engages in course of conduct and "knows or should know" that the course of conduct would "cause a reasonable person to * * * fear for his or her safety or the safety of a third person." 720 ILCS 5/12–7.3(a)(1) (West 2012). Like subsection (a)(2), criminality under subsection (a)(1) turns entirely on whether the defendant "knows or should know" how a "reasonable person" would react to the defendant's conduct, without regard to the defendant's subjective intentions. The two sections differ only in that subsection (a)(2) requires the victim to suffer emotional distress, whereas subsection (a)(1) requires the victim to fear for his or her safety, or the safety of a third person. Subsection (a)(1) of the general stalking statute is therefore facially unconstitutional under the due process clause of the fourteenth amendment.

[6] ¶ 32 We next consider defendant's challenge to subsections (a)(1) and (a)(2) of the cyberstalking statute. Subsection (a) of the cyberstalking statute provides:

> "(a) A person commits cyberstalking when he or she engages in a course of conduct using electronic communication directed at a specific person, and he or she knows or should know that would cause a reasonable person to:
>
> (1) fear for his or her safety or the safety of a third person; or
>
> (2) suffer other emotional distress." 720 ILCS 5/12–7.5(a)(1), (2) (West 2012).

***497 **513** ¶ 33 Subsections (a)(1) and (a)(2) of the cyberstalking statute are virtually identical to subsections (a)(1) and (a)(2) of the general stalking statute. The principal difference is that the cyberstalking statute specifies that the defendant's course of conduct involved electronic communications. It necessarily follows then, that subsections (a)(1) and (a)(2) of the cyberstalking statute, which also lack a *mens rea* requirement, are facially unconstitutional under the due process clause of the fourteenth amendment for the same reason that subsections (a)(1) and (a)(2) of the general stalking statute are unconstitutional.

¶ 34 CONCLUSION

¶ 35 Accordingly, we vacate defendant's convictions for violating the statutes in question. Based on this disposition, we need not consider defendant's other contentions.

¶ 36 Vacated.

Presiding Justice ROCHFORD and Justice HOFFMAN concurred in the judgment and opinion.

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SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

November 23, 2016

Mr. Garson Steven Fischer
Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

No. 121094 - People State of Illinois, petitioner, v. Walter Relerford, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today ALLOWED the petition for appeal as a matter of right in the above entitled cause.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that on December 27, 2016, the foregoing **Brief and Appendix of Plaintiff-Appellant** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and copies were served upon the following, by placement in the United States mail at 100 West Randolph Street, Chicago, Illinois, 60601, in envelopes bearing sufficient first-class postage:

Patricia Mysza
Office of the State Appellate
Defender
203 North LaSalle Street
24th Floor
Chicago, Illinois 60601

Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail a copy of the brief sto the Clerk of the Supreme Court of Illinois, Michael A. Bilandic Building, 160 North LaSalle, Chicago, Illinois 60601.

/s/ Garson S. Fischer
GARSON S. FISCHER
Assistant Attorney General