In the
Supreme Court of Illinois

124744

People of the State of Illinois,	) Appeal from the Circuit
Plaintiff-Appellant,	) Court of Cook County
vs.	) No. 2018-CR-13629
Miguel DeLeon	) Honorable Arthur F. Hill, Jr.,
Defendant-Appellee.	) Judge Presiding.

Brief of Appellee

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E-FILED
12/30/2019 4:41 PM
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Oral Argument Requested

Points and Authorities

Issues Presented for Review

I. The circuit court gave the appellant State all the relief that the State asked for. The State appeals only the reasoning employed by the trial court. Should this Court consider the constitutional issue, or do anything else other than affirm the judgment?

II. Is the Civil No-Contact Order statute unconstitutional?

Supplemental Statement of Facts

1. The State's petition for a Civil No Contact Order.

In its petition, the State asked that the circuit court to:

> (1) order defendant to "stay away" from the complaining witness. The petition defined "stay away" as "to refrain from both physical presence and nonphysical contact *** whether direct indirect (including but not limited to telephone calls mail email, faxes and written notes) or through third parties who may or may not know about the Order of Protection";
>
> (2) order defendant to "stay away from any **other** person protected under a Civil No Contact Order entered in this matter" (emphasis added), but the petition named no one other than the complaining witness, the assistant State's attorney, and the defendant;
>
> (3) prohibit defendant from "physical abuse harassment [sic], intimidation of a dependent interference [sic] with personal liberty or stalking any person protected under a Civil No Contact Order entered in this matter"; and

> (4) prohibit defendant from "entering or remaining present at the school and/or place of employment of **any** person protected under a Civil No Contact Order entered in this matter" (emphasis added), but again, the petition named no one but the complaining witness, the assistant State's attorney, and the defendant. C 42.

In written reply to the defense written objection to that petition, The State observed that when the State asks for a Civil No Contact Order, the defendant "is already prohibited from having any contact with the victim as one of standard conditions of bond." C 74.

2. The reports of proceedings.

In open court, the circuit court acknowledged that there was "already a no contact order based on a condition of bond, a special condition of bond on this case. [T]here's a court date set to get a permanent no contact order." R 23. Trial defense counsel likewise observed that there was "a bond order of no contact." R 31. Counsel for the complaining witness argued that the special "no contact" condition of bond was insufficient because

> my client's name is not on it. [T]he police *** wouldn't do anything because they'd be like where is your name. Prove you're covered by this ***. [I]t says "Stay away from CW's home, work and school."

R 34.

3. The orders appealed.

In addition to the order in which the circuit court denied the State's petition for Civil No Contact Order (C 79-80), the circuit court on the same date entered an order (1) amending "the Special Conditions of Bond initially issued on 9-1-18" to "reflect the full name of" the complaining witness; and (2) prohibiting defendant from "contacting, by any means" the complaining witness, "or visiting her home, school or work, in addition to the other terms set out in the original special conditions of bond." C 81. The State appealed the former order, but not the latter. C 83-98.

4. The Special Conditions of Bond.

The document "Special Conditions of Bond" referred to in the preceding paragraph and elsewhere by the trial court (R 23), is not in the record on appeal. At the latest hearing of record, the trial court referred to defendant as "on bond" (R 40), and the assistant State's attorney asked "for the special condition of bonds [sic] in the file to see the wording of it." R 57.

Argument

I. This Court should affirm the judgment because the trial court gave the State all the relief for which the State asked. This Court should not consider the State's complaints about the trial court's reasoning.

This defense argument has two parts which are essentially the same. The first part is that this Court only reviews judicial acts and not judicial reasoning. The second is that this Court does not engage in constitutionality analysis unless it is unavoidable.

Both of those principles apply to the instant appeal by the State. The State is complaining about the reasoning of the trial court; the trial court awarded the State all the relief it asked for. And that means that this Court does not need to address the constitutionality of the statute in question to decide this case.

A. This Court should follow its own policy of reviewing judicial acts instead of reviewing the reasons for those acts.

As noted above, the circuit court ordered "special" conditions of bond, presumably pursuant to section 110-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/110-10 (West 2019)). That section authorizes a trial court to prohibit a defendant from approaching or communicating with persons. 725 ILCS 5/110-10(b)(1) (West 2019). Apparently the trial court did that in this case. R 23, 31. The statute

also authorizes "[s]uch other reasonable conditions as the court may impose." 725 ILCS 5/110-10(b)(17) (West 2019). This Court has observed that a court can prohibit a defendant from entering or remaining at a residence. *People v. Witherspoon*, 2019 IL 123092, ¶22. Presumably a trial court can extend it to any place as justice requires.

Let us look at what the trial court ordered in the instant case. Again, the State in its Petition for Civil No Contact Order asked for relief in four parts:

The first was to order defendant to "stay away" from the complaining witness, that is, "to refrain from both physical presence and nonphysical contact *** whether direct indirect (including but not limited to telephone calls mail email, faxes and written notes) or through third parties who may or may not know about the Order of Protection." C 42. The circuit court ordered defendant to not contact the complaining witness by any means, and to not visit her home, school or work, "in addition to the other terms set out in the original special conditions of bond." C 81. Those special conditions of bond included that defendant was not to contact the complaining witness (R 31) and was to stay away from her home, work and school (R 34). If the terms of those prohibitions were insufficient, the State did not

alert the circuit court to that insufficiency and has not complained about it to this Court.

The State's second plea for relief was that the circuit court should order defendant to "stay away from **any other person** protected under a Civil No Contact Order entered in this matter" (emphasis added). C 42. Again, the petition named no one other than the complaining witness, the assistant State's attorney, and the defendant. If the circuit court's order (C 81) omitted some other person, the State did not alert the circuit court or complain about it to this Court.

The State's third request was that the circuit court should prohibit defendant from "physical abuse harassment [sic], intimidation of a dependent interference [sic] with personal liberty or stalking any person protected under a Civil No Contact Order entered in this matter." C 42. Again, the circuit court ordered defendant to stay away from the complaining witness, and her home, work, and school. C 81; R 31, 34. If those specific prohibitions were insufficient, the State did not alert the circuit court to the insufficiency and has not complained about it to this Court.

Fourth, the State asked the circuit court to prohibit defendant from "entering or remaining present at the school and/or place of

employment of **any** person protected under a Civil No Contact Order entered in this matter." C 42 (emphasis added). There are two ways in which the State could have been disappointed in the trial court's response to this request. The first was the "any person" part. Again, the petition named no one but the complaining witness, the assistant State's attorney, and the defendant. The order named the complaining witness, C 81, so the State got what it asked for on that.

The second way the trial court could disappoint the State was by not ordering all the specific prohibitions sought in this request by the State. But the circuit court twice expressly ordered the defendant to stay away from the complaining witness's home, school and work. C 81, R 34. Once again, if these particular prohibitions were not enough, the State didn't tell the circuit court and has not told this Court.

Counsel of record for the complaining witness made just one concrete request, which was that the special conditions of bond include the full name of the complaining witness, so that police could discern that the complaining witness was the person that defendant was to not approach. R 34. The State joined in that request. R 57. The circuit court gave the complaining witness and the State exactly what they asked for. C 81. Nobody told the circuit court that that was not

enough. Again, the State hasn't complained on that point to this Court, either.

So the State's (and *amicus curiae*'s) gripe is not with the relief granted by the circuit court. Neither of them disputes anything in the order at C 81. They complain to this Court that the circuit court refused to put the heading desired by the State on the order that the trial court entered. That is, the State complains that the circuit court did not sign and file an order titled "CIVIL NO CONTACT ORDER UNDER 725 ILCS 5/112A-11.5." That's reasoning, not relief.

By the way, the circuit court held, as required by Rule 18(c)(4), that its finding of unconstitutionality was necessary to the decision or judgment rendered and the decision or judgment could not rest on an alternate ground. C 80. The circuit court was wrong about that. The judgment could rest on an alternate ground, because that court held the statute unconstitutional *and gave the State every bit of concrete relief that it asked for*.

This Court repeatedly explains its view of such situations, that is, where the appellant received the relief it requested but complains about the reasoning. Here are a few citations from the dozens available:

> A party cannot complain of error which does not prejudicially affect it, and one who has obtained by judgment all that has been asked for in the trial court cannot appeal from the judgment.

Material Serv. Corp. v. Dep't of Revenue, 98 Ill. 2d 382, 386 (1983), quoted in *Geer v. Kadera*, 173 Ill. 2d 398, 414 (1996); see *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶36 ("[A]s a general rule, a party cannot complain of an error that does not prejudicially affect that party").

> It is fundamental that the forum of courts of appeal should not be afforded to successful parties who may not agree with the reasons, conclusion or findings below.

Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, 414 Ill. 275, 282–83 (1953).

> [W]e can sustain the decision of the circuit court on any grounds which are called for by the record regardless of whether the circuit court relied on the grounds and regardless of whether the circuit court's reasoning was correct.

Bell v. Louisville & Nashville R. Co., 106 Ill. 2d 135, 148 (1985).

> What is before us on review is the trial court's judgment, not the reasoning the court employed.

City of Chicago v. Holland, 206 Ill. 2d 480, 491 (2003).

> The judgment was correct but the findings upon which it was based cannot be sustained. However, that is immaterial for it is the result obtained and not the reasoning that leads to it that controls.

McGookey v. Winter, 381 Ill. 516, 527–28 (1943).

> [W]e can reverse only for erroneous judicial acts, and not simply because the court may possibly have given bad reasons for performing those acts.

Pennsylvania Co. v. Keane, 143 Ill. 172, 177 (1892).

> This court would have no right to reverse a judgment merely because it thought some of the reasons assigned for that court's judgment were unsound.

Christy v. Stafford, 123 Ill. 463, 466 (1888). Constitutionality-or-not is just part of the trial court's reasoning. This Court should not start entertaining quibbles about reasoning.

The *amicus* argues that the legislature "could reasonably decide to expand release provisions designed to protect victims beyond bail conditions, which the victim has no way to enforce." *Amicus* brief at page 16. Even if that argument were made to the trial court, and apparently it wasn't, the fact remains that the trial court granted the State all the concrete relief that it asked for. There may be a case for taking up the *amicus*' concern. This should not be that case.

B. This Court should decline to address the constitutionality question posed by the appellant. It is not necessary to answer that question in this case.

On a related point, this Court should decline to address the constitutionality of the Civil No Contact Order statute in the instant case because this Court can dispose of the case without reaching the constitutional question.

The trial court held that the statute was unconstitutional. But again, the State and the *amicus* do not seem to want to discuss the order entered the same day at C 81. The trial court ordered the defendant to not contact the complaining witness by any means, and prohibited the defendant from visiting her home, work or school. C 81. In the State's written reply to the defense response to the State's petition for Civil No Contact Order, the State admitted that "the defendant is already prohibited from having any contact with the victim as one of the standard conditions of bond." C 166. In that document, the State also recognized the trial court's discretion to decide which remedies to include in the Civil No Contact Order. C 161-62. However, neither that document nor the petition for the Civil No Contact Order nor the State's appellant's brief to this Court identifies any remedy that the State sought and the trial court denied.

The State's opening brief explains the only difference between what the State asks this Court for and what the trial court gave it:

> Article 112A of the Criminal Code *** permits restraint via a no-contact order, **which has advantages for the victim, including entry in the Law Enforcement Automated Data System (LEADS) and entitlement to full faith and credit in other States**.

Appellant's brief at page 4 (emphasis added); see also *amicus* brief at page 17. It does not appear that the State made either of those points

to the trial court. The State waived them. See *People v. Hughes*, 2015 IL 117242, ¶¶46-47.

Waiver does not bind this Court (*People v. Williams*, 161 Ill. 2d 1, 27 (1994)), but the State's hitherto-unraised assertion about the full-faith-and-credit clause (U.S. Const., art. IV, § 1) is unsupportable. The clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." See *Vasquez Gonzalez v. Union Health Service, Inc.*, 2018 IL 123025, ¶23. If a court order prohibits the defendant from contacting the complaining witness, it shouldn't matter whether the prohibition is a condition of bond or a free-standing civil order, as far as full faith and credit goes. And the record does not suggest that the complaining witness plans to leave the state of Illinois, so "full faith and credit" is purely academic. It's not involved in the instant case.

Then there is the State's argument that if the circuit court enters a no-contact order, it will be entered in the LEADS database. Appellant's brief at 13. That seems to be true. 725 ILCS 5/112A-28 (West 2019). But the circuit court *did order* the defendant to not contact the complaining witness. C 81. Is *that* entered in LEADS? Can it be? The State's LEADS argument should have been raised before

the trial court, so the parties could thrash it out there. Then our record would answer that question. The State's LEADS argument wasn't developed at all below.

In sum, the State has not explained how the ruling that it wants from this Court, that the Civil No Contact Order statute is constitutional, has any effect on the defendant or the complaining witness. This Court often explains the wisdom of deciding what is constitutional only when absolutely necessary:

> [C]ourts do not rule on the constitutionality of a statute where its provisions do not affect the parties, and decide constitutional questions only to the extent required by the issues in the case.

People v. Chairez, 2018 IL 121417, ¶13, quoting *People v. Mosley*, 2015 IL 115872, ¶11 (citation omitted); see also *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 396 (1994) ("A court will consider a constitutional question only where essential to the disposition of a case, *i.e.*, where the case cannot be determined on other grounds"); *Application of Rosewell*, 97 Ill. 2d 434, 440 (1983) ("It is the established rule of this court that a constitutional question will not be considered if the case can be decided without doing so," citing *In re Estate of Ersch*, 29 Ill. 2d 572, 576-77 (1963)); *In re Haley D.*, 2011 IL 110886, ¶54 ("constitutional principles should be addressed

only as a last resort, when a case cannot be resolved any other way"); *People v. White*, 2011 IL 109689, ¶148 ("it is a fundamental rule of judicial restraint that a court not reach *constitutional* questions in advance of the necessity of deciding them" (emphasis by the court)); *Evans v. Shannon*, 201 Ill. 2d 424, 441 (2002) ("This court will not address constitutional issues that are unnecessary for the disposition of the case under review even though the court acquires jurisdiction of the case because a constitutional question is involved").

The United States Supreme Court shares this Court's aversion to unnecessary comment on constitutionality. See *Matal v. Tam*, 137 S. Ct. 1744, 1755 (2017) ("[I]t is important to avoid the premature adjudication of constitutional questions, and *** we ought not to pass on questions of constitutionality unless such adjudication is unavoidable" (internal quotations and edits omitted)); *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011) ("Courts should think carefully before expending scarce judicial resources to resolve difficult and novel questions of constitutional or statutory interpretation that will have no effect on the outcome of the case" (internal quotation omitted)).

In sum, this Court has jurisdiction in this matter due to the holding of the circuit court. This Court should not reach the constitutional question. But out of caution, the defense will address that question.

II. The Civil No Contact Order statute is unconstitutional on its face and as applied to this case.

A good place to start the constitutional analysis is to decide which test applies. That hinges on whether the right infringed upon is "fundamental." If the answer to that question is yes, the test is more strict. But the question why the choice of test is important in the instant case begs to be asked.

In this section of the argument, the defense addresses (A) the choice of tests of constitutionality (there are two), and (B) the test for choosing which test, and then goes on to each of the tests (C) and (D).

A. Which tests could apply?

This Court has written that "the nature of the right upon which a statute supposedly infringes" determines which analysis this Court applies to a due-process claim. *In re R.C.*, 195 Ill. 2d 291, 302 (2001). Where the right infringed upon is "fundamental," this Court applies "strict scrutiny." *In re R.C.*, 195 Ill. 2d at 303. To survive "strict scrutiny," the means employed by the legislature "must be 'necessary' to a 'compelling' state interest, and the statute must be narrowly tailored thereto." *Id.* The legislature must use "the least restrictive means consistent with the attainment of its goal." *Id.*

But if the right upon which the statute supposedly infringes is not "fundamental," this Court looks only to see "whether the statute bears a rational relationship to a legitimate state interest." *In re R.C.*, 195 Ill. 2d at 302. The "rational relationship" test has two parts:

> [W]e must determine whether there is a legitimate state interest behind the legislation, and if so, whether there is a reasonable relationship between that interest and the means the legislature has chosen to pursue it.

People v. Johnson, 225 Ill. 2d 573, 584 (2007); *People v. Pepitone*, 2018 IL 122034, ¶14. So the next question is whether the right here infringed upon is "fundamental."

B. Is the right upon which the statute infringes "fundamental"?

> This court has stated that fundamental rights are "only those which 'lie at the heart of the relationship between the individual and a republican form of nationally integrated government.' " [Citations.] Fundamental rights include the expression of ideas, participation in the political process, travel among the states and privacy with regard to the most intimate and personal aspects of one's life. [Citation.]

Committee for Educational Rights v. Edgar, 174 Ill. 2d 1, 35–36 (1996). "The fourteenth amendment *** and article I, section 2, of the Illinois Constitution *** provide that no person shall be deprived of life, liberty, or property without due process of law." *People v. Pepitone*, 2018 IL 122034, ¶13. In *People v. Martin*, 119 Ill.2d 453, 458 (1988), this Court wrote of the "fundamental right to liberty." So

according to this Court, the right to not be deprived of liberty without due process of law is fundamental.

> [P]ersonal liberty, when deprived by lawful incarceration, is not a fundamental right for purposes of equal protection analysis. Thus, strict scrutiny of a criminal statute is not appropriate when the only consequence of the statutory classification involves confinement as a result of a **lawful conviction**.

People v. Shephard, 152 Ill. 2d 489, 501–02 (1992) (emphasis added). In contrast, the present case involves restriction of liberty pre-conviction.

The State argues that a lesser standard applies because this is a matter of "criminal procedure and the criminal process." Appellant's brief at 7-8. That is not true. The legislature plopped the statute in question (725 ILCS 5/112A-11.5 (West 2019)) in the middle of the Code of Criminal Procedure of 1963 (725 ILCS 5/100-1 *et seq.* (West 2019)), but the statute in question permits a "**civil** no contact order." 725 ILCS 5/112A-2.5; 112A-3; 112A-14.5; 112A-21.5; 112A-23; 112A-26 (West 2019) (emphasis added). The legislature could protect any civil legislation from strict scrutiny simply by planting it in the Code of Criminal Procedure, if this Court approved such a gambit.

C. This statute does not survive strict-scrutiny analysis.

Again, to survive "strict scrutiny," the means employed by the legislature "must be 'necessary' to a 'compelling' state interest, and

the statute must be narrowly tailored thereto." *In re R.C.*, 195 Ill. 2d at 303. The legislature must use "the least restrictive means consistent with the attainment of its goal." *Id.* The legislature has written its "goal" as to the instant statute:

> The purpose of this Article is to **protect the safety of victims** of domestic violence, sexual assault, sexual abuse, and stalking and the safety of their family and household members; **and to minimize** the trauma and inconvenience associated with attending separate and multiple **civil court proceedings** to obtain protective orders. ***.

725 ILCS 5/112A-1.5 (West 2019). But the State concedes that a court may order no-contact in a criminal case as a condition of bond. See appellant's brief at page 9 ("the protective order restrains the same rights already controlled by pretrial bond conditions"). It follows that the least restrictive means consistent with attaining the legislature's goals is to do nothing. In the instant case, the trial court furthered the goals of the legislature without a Civil No Contact Order. The statute in question is redundant. A redundant statute cannot achieve its goal by the least-restrictive means.

The State apparently agrees that the statute in question is redundant, though it doesn't employ that word. Its argument seems to be that the statute passes muster because it doesn't accomplish anything. The State argues:

> One *** restraint imposed in sexual abuse cases precludes the accused from contacting the alleged victim of his offenses. **Traditionally, this restraint is imposed as a condition of pretrial bond release**.

Appellant's brief at page 4 (emphasis added). The State argues that if issued, the protective order "restrains the same rights already controlled by pretrial bond conditions." Appellant's brief at page 9. The State argues that it does not offend the Due Process Clause for the government to restrain persons where there is probable cause to believe that the accused committed a serious offense: "[I]t is standard to condition a criminal defendant's release on bond on him not contacting his victim or going to her residence." Appellant's brief at page 12. The State concludes that "the protective order deprived defendant of **no additional private right or interest**." Appellant's brief at page 14-15 (emphasis added). So the State repeatedly makes the point that this statute accomplishes nothing that isn't already accomplished. This Court should hold that a statute that doesn't accomplish anything doesn't pass the "strict scrutiny" test.

D. The instant statute also does not survive the "rational relationship" test.

It follows from the above comments that the instant redundant statute can't survive any reasonable test. Again, the "rational relationship" test has two parts:

> [W]e must determine whether there is a legitimate state interest behind the legislation, and if so, whether there is a reasonable relationship between that interest and the means the legislature has chosen to pursue it.

People v. Johnson, 225 Ill. 2d 573, 584 (2007). The state has no legitimate interest in *yet again* prohibiting the defendant from contacting the complaining witness. One more prohibition makes no difference to an accused willing to violate the conditions of bond.

The State's brief describes the State's purportedly legitimate interest in the statute in question as "protecting victims of sexual abuse pending trial *** without requiring the victim to testify in a mini-trial." Appellant's brief at page 13; see also page 17 ("a mini-trial preview of the government's case that would take up resources, threaten the ability to secure convictions, and further traumatize the victim"). The *amicus* brief describes the State's interest as "[l]imiting the number of times victims are required to testify" and "protecting the victim." *Amicus* brief at page 13. Again, the problem with these arguments is that the statute doesn't do anything that isn't already accomplished. Bond must be set. Setting bond doesn't take the complainant to court an additional time or entail a mini-trial. And again, defendant is already, by the conditions of bond, prohibited from contacting the complaining witness or going where she goes.

This statute is redundant. It has no independent purpose, no function. A redundant statute is not a legitimate basis for curtailing the liberty of this defendant.

E. Summary.

The difficulty with analyzing the statute in question is that it doesn't accomplish anything. The defendant is already contact-prohibited. The State's arguments in favor of the statute are essentially that it's no big deal. The circuit court gave the State all the concrete relief that the State requested without resort to this statute.

If this Court considers the constitutional merits, this Court should hold that the Civil No Contact Order statute violates the Due Process Clause either (under strict scrutiny analysis) because it is not "necessary" to a "compelling state interest," or (under the rational relationship test) because there is no legitimate state interest behind the legislation, or because there is no reasonable relationship between a legitimate state interest and the means the legislature has chosen to pursue it, or both.

Conclusion

Appellee requests this Court affirm the judgment of the circuit court.

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Certificate of Filing and Service of Appellee's Brief

Date: I did all acts listed here on December 30, 2019.

Filing: I filed the petition for leave to appeal via the eFileIL system.

Service: By e-mail (per the e-filing system):

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true. 735 ILCS 5/1-109 (West 2019).

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Certificate of Compliance with Rule 341(c)

Compliance with Rule 341(c): I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages ~~or words~~ contained in 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 23 pages ~~or words~~.

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