

State of New Hampshire
Supreme Court

NO. 2023-0702

2024 TERM
MARCH SESSION

Nicholas Edraos

v.

Joseph York

RULE 7 APPEAL OF FINAL DECISION OF THE
CONCORD DISTRICT COURT

BRIEF OF DEFENDANT/APPELLEE, JOSEPH YORK

March 11, 2024

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STATEMENT OF FACTS

Joseph York, the defendant, is 43 years old, and lives in Hopkinton, New Hampshire. When he was married to Jennifer Pletcher, they had twins. *Hrg.* at 6; STALKING PETITION (Sept. 22, 2023), *Appx.*¹ at 58. Thereafter, York and Pletcher went through a “contentious” divorce, resulting in shared custody. *Hrg.* at 8, 42.

Nicholas Edraos, the plaintiff, is 51, works for the State, and lives in Warner, New Hampshire. *Hrg.* at 5. He married Ms. Pletcher in 2021, and is stepfather to the 8-year-old twins. *Hrg.* at 8, 27; STALKING PETITION at 1.

Depending upon his and Pletcher’s work schedules, sometimes Edraos takes the children to school. *Hrg.* at 27. On September 20, 2023, he experienced a frustrating morning getting the twins ready for their day. He raised his voice, swore, and corporally lifted one of the children by her armpits to his eye level, causing the girl to cry. *Hrg.* at 8-11, 27-34; STALKING PETITION at 4.

It is apparent that when York retrieved the children from school around 5:30 that afternoon, *Hrg.* at 11, he discerned that his daughter was upset at having been manhandled by Edraos.

A half-hour later, over a period of seven minutes, from 5:59PM to 6:06PM, York sent five text messages to Edraos. TEXT MESSAGES BETWEEN YORK & EDRAOS (Sept. 20, 2023), Exh. 1, *Addendum* at [18](#). All five contained threats, and all but one generated a reply from Edraos. *Id.* Six minutes later, at 6:12PM, after Edraos offered an explanation for his interaction with the child, York sent a sixth text, which did *not* contain a threat. *Id.*

¹Citation to “*Appx.*” refer to the appendix filed with Edraos’s brief.

5:59PM: If you ever put your hands on MY daughter again I will break your arms off!!!

6:01PM: That's not a threat it's a promise!!

6:02PM: I lifted her up. I didn't hit her.

6:02PM: If you fucking touch her again, I'm gonna fucking pound you

6:04PM: Call Dcyf if you have a problem.. I'll wait.

6:04PM: There's no do you need for DC why F I'm telling you if you fucking touch her again, I'm gonna break your face

6:05PM: So I didn't do anything wrong enough to call the authorities, but you are threatening to assault me?

6:06PM: Yes, I'm promising you if you put my hands on my daughter again. I'm going to fucking break your face

6:11PM: First I lifted her up because she wouldn't stop what she was doing. Then I yelled at her to move her ass. There, you have my full confession. I didn't lift her up any harder than I did to help her into the hay wagon.

6:12PM: Great!

TEXT MESSAGES BETWEEN YORK & EDRAOS (Sept. 20, 2023), Exh. 1, *Addendum* at [18](#) (spelling, punctuation, syntax as in original) (York's texts presented in regular type; Edraos's in italics).

STATEMENT OF THE CASE

York sent text messages to Edraos on September 20, 2023, aiming to protect his daughter. Despite claiming the texts caused him fear, Edraos did not call 911. After a day's delay, Edraos reported the texts to the Warner Police Department, *Hrg.* at 21-22, and a day after that, filed a stalking petition “pursuant to [RSA] 633:3-a.” STALKING PETITION (Sept. 22, 2023), *Appx.* at 58. York relinquished his firearms. RETURN OF SERVICE (Sept. 25, 2023) (omitted from appendix).

On October 16, the Concord District Court (*James Carroll*, Ref.), held a hearing, at which both parties appeared with counsel. Edraos testified and the court accepted as an exhibit his copy of the text messages. TEXT MESSAGES BETWEEN YORK & EDRAOS (Sept. 20, 2023), Exh. 1, *Addendum* at [18](#). York, concerned about criminal allegations because Edraos had gone to the police, declined to testify, *Hrg.* at 38-39, although no charges have materialized. *Hrg.* at 25.

On October 17, the court (*Ryan C. Guptill*, J.) dismissed the petition, indicating that it “does not find evidence of a course of conduct.” STALKING FINAL ORDER OF DISMISSAL (Oct. 17, 2023), *Addendum* at [20](#).

Edraos filed post-trial motions arguing that the texts were separate acts. POST-HEARING MOTION (Oct. 17, 2023), *Appx.* at 65; MOTION FOR RECONSIDERATION (Oct. 26, 2023), *Appx.* at 81; REPLY TO OBJECTION (Nov. 6, 2023), *Appx.* at 88. York objected, noting the texts were over a short time and were a single event. OBJECTION TO POST-HEARING MOTION (Oct. 24, 2023), *Appx.* at 74; OBJECTION TO RECONSIDERATION (Nov. 3, 2023), *Appx.* at 85.

The court denied reconsideration.

[S]ee the Defendant’s objection.... The court disagrees with Petitioner’s analysis. The court continues to find that this is a text “thread,” a singular event and not a course of conduct.

MARGIN ORDER (Nov. 3, 2023, *James Carroll*, Ref.) (Nov. 6, 2023, *Ryan C.*

Guptill, J.) (double underline emphasis in original), *Addendum* at [21](#).

Edraos appealed.

SUMMARY OF ARGUMENT

The stalking statute requires discrete acts to constitute a course of conduct. Because the texts from York to Edraos contained no breaks between them to create a subsequent communication, the text thread was a “singular event.” The trial court properly denied a stalking order, and this court should affirm.

ARGUMENT

I. Stalking Statute Requires Multiple Acts

To prove stalking, the plaintiff must show the defendant engaged in a “course of conduct,” RSA 633:3-a, I(a), which is defined as “2 or more acts over a period of time, however short, which evidences a continuity of purpose.” RSA 633:3-a, II(a); *Kiesman v. Middleton*, 156 N.H. 479, 481 (2007).

Evidence of a course of conduct under the stalking statute may be physical, *Despres v. Hampsey*, 162 N.H. 398 (2011) (landlord entering tenant’s apartment); *Miller v. Blackden*, 154 N.H. 448 (2006) (driving by, parking near, removing property, following), by telephone, *State v. Simone*, 152 N.H. 755 (2005) (leaving twenty messages on answering machine), a combination, *Fisher v. Minichiello*, 155 N.H. 188 (2007) (irate customer disrupting business operations); *State v. Gubitosi*, 152 N.H. 673 (2005) (physical presence and phone calls), or by electronic means. RSA 633:3-a, II(a)(7) (referencing RSA 644:4, II); *SD v. NB*, __ N.H. __, 306 A.3d 211 (2023) (cyber-stalking).

Separate from the stalking statute, which includes civil remedies, New Hampshire law also provides for a crime of Harassment, pursuant to RSA 644:4. Conviction for certain types of Harassment involves proof of “repeated communications.” RSA 644:4, I(b). However, the “repeated communications” portion of the Harassment statute is unrelated to, and not referenced by, the stalking statute. Thus, cases decided under the Harassment statute, which construe “repeated communications” are inapposite to Stalking.

Throughout his brief, Edraos relies on two Harassment cases: *In re Alex C.*, 161 N.H. 231 (2010), and *In re DJ*, __ N.H. __, 306 A.3d 775 (2023). He even argues that the case at bar is controlled by *Alex C.* EDRAOS BRF. at 14 (“[T]his court’s decision in *Alex C.* should be dispositive here.”). While the notion is attractive because *Alex C.* involved the sending of numerous “instant messages,” which are similar to the text messages in this case, the two statutes

are separate and different – each contains its own definition of what constitutes single versus multiple acts – and should not be conflated.

Accordingly, there is no precedent in New Hampshire regarding whether a small number of electronic messages clumped together in a short span of time constitute a single or multiple acts for the purpose of the stalking statute. There are also no known *unreported* New Hampshire Supreme Court case orders, canvassed since 2018, that have examined a course of conduct pursuant to the Stalking statute based on text messages.

While the definition of “course of conduct” employed by RSA 633:3-a, II(a) is identical to statutes in other states, the only known case construing the phrase – “2 or more acts over a period of time, however short, which evidences a continuity of purpose” – in the context of text messages, is divergent from the situation here. *See AR v. RD*, No. A156268, 2019 WL 2498673 (Cal. Ct. App. June 17, 2019) (unreported) (defendant texted favored teacher over a period of nearly 7 hours, appeared at her home, circumvented a phone-number block, and had third party text her several days later).

II. Text Thread Was a Singular Act

This court defers to the findings of the trial court regarding whether alleged stalking acts are single or multiple. *See Despres v. Hampsey*, 162 N.H. 398, 401 (2011) (“With respect to sufficiency of the evidence claims, we review them as a matter of law and uphold the findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law.”) (quotation omitted).

In this case, the trial court made a factual finding that the five texts over seven minutes was “a text ‘thread,’ a singular event and not a course of conduct.” MARGIN ORDER (Nov. 3, 2023, *James Carroll*, Ref.) (Nov. 6, 2023, *Ryan C. Guptill*, J.) (double underline emphasis in original), *Addendum* at [21](#).

The District Court’s factual finding that it was “a singular event” should be accorded deference, especially in light of York’s concern for the safety of his daughter and the short duration of the text thread.

III. There Was No Break in Communications to Form a Discrete Subsequent Act

As noted, the cases relied on by Edraos were decided under the Harassment statute, while this is a Stalking case, and are therefore inapposite. See *In re Alex C.*, 161 N.H. at 231; *In re DJ*, 306 A.3d at 775.

Even if this court looks to those for guidance, it should affirm. The Harassment cases require a break in communications in order for a renewed communication to constitute a subsequent act, and there was no break here.

In *Alex C.*, a juvenile texted another juvenile's mother a series of threatening messages over a total of 56 minutes. The first 2 texts were within a minute of each other. The next 2 were 7 minutes later. Then there was a "forty-six minute break." *Id.* at 234 & 238. Following that, there were 17 separate texts within a period of 37 seconds, then, 4 minutes later, there were 21 additional messages within 1 minute. The juvenile argued that the entire exchange was a single conversation. This court commented:

While a fifty-six minute telephone call between two people might not be uncommon, we think that a forty-six minute break during that call strains the meaning of "conversation."

In re Alex C., 161 N.H. at 238.

In *DJ*, over the course of 8 minutes, a juvenile yelled threats to a victim on the sidewalk. When the victim yelled back, the juvenile challenged him to a physical fight. This court reemphasized the "break" it identified in *Alex C.*:

[I]f messages exchanged in a verbal conversation are sufficiently discrete, they ... may be "repeated communications." We conclude that when an individual makes a verbal remark, rejects an opportunity to stop communicating with the recipient, and imparts another message, a break has occurred sufficient to make the communications "repeated."

In re DJ, __ N.H. at __, 306 A.3d at 779 (decided July 13, 2023).

Thus, to be “repeated communications” under the Harassment statute, RSA 644:4, I(b), the actor’s messages must be “discrete” and contain a “break” between them.

Here, there was no break. Over a period of seven minutes, from 5:59PM to 6:06PM, York sent five text messages to Edraos. TEXT MESSAGES BETWEEN YORK & EDRAOS (Sept. 20, 2023), Exh. 1, *Addendum* at [18](#). The texts were either 1 or 2 minutes apart, and were part of a back-and-forth with Edraos. York’s texts were just about as fast as one can be expected to communicate by text. There was no break to create a discrete subsequent act.

Accordingly, even if the standard for “repeated communications” in the Harassment statute applies, here there was no repeat, and therefore this court should affirm.

IV. York Had a Legitimate Purpose to Prevent Harm to His Child

The stalking statute requires that the defendant have a purpose to cause fear. RSA 633:3-a, I & II. Exempt from the statute is “conduct . . . necessary to accomplish a legitimate purpose independent of making contact with the targeted person.” RSA 633:3-a, II(a).

Having a “legitimate purpose,” RSA 633:3-a, I(c), is a defense to stalking, *State v. Small*, 150 N.H. 457, 458 (2004), which was raised below. OBJECTION TO POST-HEARING MOTION ¶¶24 (Oct. 24, 2023), *Appx.* at 74, 77. To determine the legitimacy of purpose, the purpose must be traced to its source. *Miller v. Blackden*, 154 N.H. 448 (2006) (being a licenced private investigator insufficient to establish “legitimate purpose” without revealing why investigator was hired). “A legitimate purpose is one that is genuine or accordant with law.” *State v. Porelle*, 149 N.H. 420, 425 (2003) (quotation and citation omitted).

All of the texts which York sent to Edraos concededly promise fearful events – “break your arms off,” “pound you,” “break your face.” TEXT MESSAGES BETWEEN YORK & EDRAOS (Sept. 20, 2023), Exh. 1, *Addendum* at [18](#).

However, all of them were conditional. *Id.* at 5:59PM (“*If* you ever put your hands on MY daughter again...” (emphasis added); *Id.* at 6:02PM: (“*If* you fucking touch her again ...”) (emphasis added); *Id.* at 6:04PM: (“*[I]f* you fucking touch her again ...”) (emphasis added); *Id.* at 6:06PM: (“*[I]f* you put my hands on my daughter again ...”) (emphasis added).

The texts do not betray any intent by York to harm Edraos *unless* he manhandles the child in the future. York’s purpose was to prevent that, not to cause fear. Preventing harm to one’s child is a legitimate purpose “accordant with law.” See RSA 169-C (Child Protection Act); *In re RA*, 153 N.H. 82, 90 (2005) (“The right of parents to raise and care for their children is a fundamental liberty interest.”). This court should accordingly affirm.

CONCLUSION

Joseph York stood up for his daughter after he heard from her that she was upset at how she had been manhandled by Nicholas Edraos in his effort to get her to school that morning. York texted Edraos five times over seven minutes, with responses from Edraos between each one. A text exchange cannot happen much quicker than that. There was no break between them to create a subsequent discrete communication, and thus the five texts were a “singular event” as the trial court found.

The trial court’s finding was supported by the evidence, and this court should affirm.

Respectfully submitted,

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Dated: March 11, 2024

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CERTIFICATIONS & REQUEST FOR ORAL ARGUMENT

A full oral argument is requested.

I hereby certify that the decision being appealed is addended to this brief. I further certify that this brief contains no more than 9,500 words, exclusive of those portions which are exempted.

I further certify that on March 11, 2024, copies of the foregoing will be forwarded to Michael E. Strauss, Esq.

Dated: March 11, 2024

Joshua L. Gordon, Esq.

ADDENDUM

1. Text Messages Between York & Edraos (Sept. 20, 2023) [18](#)
2. Final Order of Dismissal (Oct. 17, 2023) [20](#)
3. Margin Order (Nov. 3 and Nov. 6, 2023). [21](#)