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# *LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH*

**By Don Hays**

Month of January – 2018

**LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH**

**Month of January - 2018**
**People v. Walter Relerford, 2017 IL 121094, November 30, 2017**

This is a case dealing with the constitutionality of the offenses of *Stalking and Cyberstalking*.

**FACTS:** In 2010, the legislature greatly expanded the definition of the offense of stalking. The previous threat-focused definition of stalking was retained and renumbered as subsection (a–3). However, the legislature also crafted new statutory language to include additional conduct in the definition of the offense. The new language in subsection (a) significantly broadened the types of conduct proscribed under the statute and eliminated the requirement of a threat.

The amended version of subsection (a) of the stalking statute provides as follows: "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."

For a brief period of time, Walter Relerford was an intern for a radio station. When he was not hired to a full-time position, Relerford began contacting the victim, who worked for the station. Based upon these contacts, Relerford was charged with and convicted of stalking and cyberstalking.

Based on allegations that he (1) called the victim, (2) sent her e-mails, (3) stood outside of her place of employment, and (4) entered her place of employment and that he knew or should have known that this course of conduct would cause a reasonable person to suffer emotional distress, Relerford was convicted of stalking. Based on allegations that he used electronic communication to make Facebook postings in which he expressed his desire to have sexual relations with the victim and threatened her coworkers, workplace, and employer and that he knew or should have known that his conduct would cause a reasonable person to fear for her safety, he was convicted of Cyberstalking. On appeal, the appellate court declared subsection (a) of these two offenses unconstitutional. This appeal followed.

***ISSUE*:** Were the amended versions of Stalking and Cyberstalking unconstitutional? **ANSWER: Yes.**

**FINDINGS:** On appeal, Relerford argued that the stalking provision under which he was convicted was facially unconstitutional because it violated his right to free speech. In response, the Supreme Court noted that under the terms of the amended statute, two or more nonconsensual communications to or about a person that the defendant knows or should know would cause a reasonable person to suffer emotional distress constitute a course of conduct sufficient to establish the offense of Stalking.

Further, the proscription against "communicat[ions] to or about" a person that negligently would cause a reasonable person to suffer emotional distress criminalizes certain types of speech based on the impact that the communication has on the recipient. Under the relevant statutory language, communications that are pleasing to the recipient due to their nature or substance are not prohibited, but communications that the speaker "knows or should know" are distressing due to their nature or substance are prohibited.

Therefore, it was clear that the challenged statutory provision must be considered a content-based restriction because it could not be justified without reference to the content of the prohibited communications.

Additionally, the Court ruled that as amended in 2010, subsection (a) embraces a vast array of circumstances that limit speech far beyond the generally understood meaning of stalking.

Indeed, the amended provision criminalizes any number of commonplace situations in which an individual engages in expressive activity that he or she should know will cause another person to suffer emotional distress. The broad sweep of subsection (a) reaches a host of social interactions that a person would find distressing but are clearly understood to fall within the protections of the first amendment.

Given the wide range of constitutionally protected activity covered by subsection (a), the Court concluded that a substantial number of its applications were unconstitutional when judged in relation to its legitimate sweep.

Accordingly, the degree of overbreadth was substantial, rendering subsection (a) overbroad on its face. Consequently, the Court held that the portion of subsection (a) of the stalking statute that makes it criminal to negligently "communicate[ ] to or about" a person, where the speaker knows or should know the communication would cause a reasonable person to suffer emotional distress, was facially unconstitutional. Additionally, because subsection (a) of the cyberstalking statute imposes criminal liability based on similar language, it was unconstitutionally overbroad as well.

**CONCLUSION:** In sum, the terms of subsection (a) of the stalking statute violates the first amendment because they are overbroad in that they impermissibly infringe on the right to free speech. [The Court had previously ruled that the Stalking subsection that required a threat (subsection a-3) was not unconstitutionally overbroad because it prohibited only conduct committed without lawful authority. *People v. Bailey*, 167 Ill. 2d 210, (1995).] Because Relerford's convictions under those provisions could not be sustained based on other, illegal conduct, his convictions were reversed.

**QUIZ QUESTIONS FOR THE MONTH OF JANUARY - 2018**

**People v. Walter Relerford, 2017 IL 121094, November 30, 2017**

1. One subsection of the Illinois Stalking statute provides that 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 suffer emotional distress.
   a. True.
   b. False.

2. In this month's case, the Court concluded that under the terms of subsection 12-7.3(a) (2) of the amended statute, two or more nonconsensual communications to or about a person that the defendant knows or should know would cause a reasonable person to suffer emotional distress constitute a course of conduct sufficient to establish the offense of Stalking.
   a. True.
   b. False.

3. Did the Supreme Court find, in this case, that the statute the defendant allegedly violated, 720 ILCS 5/12–7.3(a)(2) was constitutional?
   a. Yes.
   b. No.

4. Did the Supreme Court find that the provisions of subsection (a-3) of the Stalking statute, those requiring an intentional threat of a violent crime plus multiple acts of following or surveillance in furtherance of the threat, unconstitutionally overbroad?
   a. Yes.
   b. No.

**QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF JANUARY - 2018**

**People v. Walter Relerford, 2017 IL 121094, November 30, 2017**

1. One subsection of the Illinois Stalking statute provides that 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 suffer emotional distress.

***a. True.*** That is one of the ways that the Stalking statute defined the Offense of Stalking. 720 ILCS 5/12–7.3(a)(2)

2. In this month's case, the Court concluded that under the terms of subsection 12-7.3(a) (2) of the amended statute, two or more nonconsensual communications to or about a person that the defendant knows or should know would cause a reasonable person to suffer emotional distress constitute a course of conduct sufficient to establish the offense of Stalking.

***a. True.*** This is what the Court concluded in ¶ 29 of this Opinion.

3. Did the Supreme Court find, in this case, that the statute the defendant allegedly violated, 720 ILCS 5/12–7.3(a)(2) was constitutional?

***b. No.*** The Court found these subsections of the Stalking and the Cyberstalking statutes to be unconstitutionally overbroad.

4. Did the Supreme Court find that the provisions of subsection (a-3) of the Stalking statute, those requiring an intentional threat of a violent crime plus multiple acts of following or surveillance in furtherance of the threat, unconstitutionally overbroad?

***b. No.*** The Court held: "This court held that the threat-focused version of subsection (a) was not unconstitutionally overbroad because the speech prohibited by the statute was an integral part of unlawful conduct. See *People v. Bailey*, 167 Ill. 2d 210, (1995). This conclusion was premised on the fact that the statute encompassed only activities performed without lawful authority and required that the defendant actually threaten the victim and take action in furtherance of the threat. *Id.* at 227–28. ¶ 26.

**LAW ENFORCEMENT OFFICER TRAINING CASE OF THE WEEK**

**Month of January - 2018 - ALTERNATIVE CASE**

**Robert Iuffues Webb II v. City of Joliet, 2017 WL 4864920, Case No. 15 C 11298, October 26, 2017**

Webb was arrested after he obstructed the Officers attempt to identify him.

**FACTS:** Two Officers found Webb standing without shoes on a public sidewalk while wearing torn and dirty clothing. The officers approached Webb in their squad car. After Webb refused to answer the Officers' questions, one of the Officers exited his car to identify Webb and learn if he was alright. Webb refused to answer. Webb claimed that one of the Officers, while still asking him for his name or other identification, placed his hands inside Webb's front and back pockets. While the Officers spoke with Webb's neighbors, Webb remained at the location of his original interaction with the Officers. One neighbor provided the Officers with Webb's address, which was near the location of the original interaction. The Officers wanted Webb's address to find someone who could confirm his identity and that he did not need aid. Once the officers learned Webb's address and began to approach his house, Webb started to run to the house. A sidewalk runs along the front of Webb's home, and a path leads from the sidewalk to the front door of the house. Webb intercepted the officers at the junction of the sidewalk and the path and told them that they could not access his property without trespassing.

As Webb describes, "I ... posted myself in front of (the Officers) ... to block their movement onto the premises[.]" While attempting to approach Webb's front door, an Officer and Webb made contact on the path. They again made contact on or near the steps leading to Webb's door. The Officers then arrested Webb for Obstructing an Officer. Webb sued the Officers. The Officers asked that the Federal District Court find in their favor.

**ISSUE:** Should the District Court find in favor of the Officers and dismiss**?** **ANSWER: Yes.**

**FINDINGS:** Webb first alleged that the officers' initial encounter with him and the search of his pockets violated the Fourth Amendment. The Officers claimed that they were entitled to qualified immunity because they reasonably believed they were acting under the community caretaking function of their duties.

In response, the District Court noted that qualified immunity shields a government official from liability for damages for discretionary acts taken in his or her official role if the actions do not violate clearly established rights. Furthermore, police officers may be entitled to qualified immunity where they

reasonably believed they were engaged in a community caretaking function authorized by Illinois law under some circumstances.

Therefore, the Court ruled that the question before the Court was whether a reasonable officer could understand the search of Webb to be authorized under the community caretaking doctrine recognized by Illinois law. If so, the Officers were entitled to qualified immunity.

The Court then listed the "two general criteria" to determine whether the community caretaking doctrine applies to a particular search or seizure: (1) whether the officer was doing something other than investigating a crime and (2) whether the act was reasonably taken to protect the safety of the public.

***[1]*** According to the Court, the evidence showed that the officers found Webb standing on a public sidewalk, without any shoes, in dirty and tattered clothing. Nothing in the record would permit a reasonable inference that the officers were pursuing a law enforcement function. There was no evidence, for example, that the officers asked Webb whether he had any weapons or contraband. The Court held that a reasonable officer, under these circumstances, could conclude that the search of Webb was permitted by that exemption as the Illinois courts have construed it. As a result, the search of Webb did not violate his "clearly established rights," and the Officers were entitled to summary judgment on Webb's illegal search claim. ***[2]*** Alternatively, Webb argued that he was illegally arrested and jailed. Again, the Officers argued that qualified immunity shields them.

The Court then held that to prevail on qualified immunity concerning these allegations, the officers had to establish that a reasonable officer would not have believed that he violated Webb's rights in arresting and imprisoning him. After considering the circumstances of this case, the Court held that because a reasonable officer reasonably could believe that Webb had (1) obstructed the officers from (2) carrying out an authorized act, they reasonably could conclude that there was probable cause to arrest Webb. The Court held that the Officers were therefore entitled to summary judgment on Webb's false arrest and false imprisonment complaints based on qualified immunity.

***[3]*** Finally, Webb complained the Officers violated his equal protection rights because he was arrested based upon his race and political activity. The Court held that to prevail on a political activity claim of this sort, a plaintiff must show (1) he is similarly situated to members of the unprotected class, (2) he was treated differently from those members, and (3) the defendants acted with discriminatory intent. Further, to prove his racial discrimination claim Webb must provide evidence from which a reasonable jury could find that he was discriminated against based on his race. Because Webb provided no evidence from which a reasonable jury could find a racial or political motivation behind his arrest, the Court granted summary judgment in favor of the Officers on these complaints as well.

**QUIZ QUESTIONS FOR THE MONTH OF JANUARY – 2018**

**Robert Iuffues Webb II v. City of Joliet, 2017 WL 4864920, Case No. 15 C 11298, October 26, 2017**

1. Qualified immunity shields a government official from liability for damages for discretionary acts taken in his or her official role if the actions do not violate clearly established rights.

a. True.
b. False.

2. If the Officers were investigating criminal activity when they approached Webb, could they legally claim they were acting pursuant to their community caretaking authority?

a. Yes.
b. No.

3. In this case, Webb complained that the Officers arrested him without probable cause. If the Officers reasonably believed that they had probable cause to place Webb under arrest, would those Officers be immune from liability concerning Webb's arrest?

a. Yes.
b. No.

4. Webb complained that he was denied equal protection of the law because the Officers arrested him because of his race. When Webb made this complaint, the People had the burden of proving that Webb's arrest did not result as a consequent of his race.

a. True.
b. False.

**QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF JANUARY – 2018**

**Robert Iuffues Webb II v. City of Joliet, 2017 WL 4864920, Case No. 15 C 11298, October 26, 2017**

1. Qualified immunity shields a government official from liability for damages for discretionary acts taken in his or her official role if the actions do not violate clearly established rights.

**a. True.** The Court ruled: "Qualified immunity shields a government official from liability for damages for discretionary acts taken in his or her official role if the actions do not violate clearly established rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

2. If the Officers were investigating criminal activity when they approached Webb, could they legally claim they were acting pursuant to their community caretaking authority?

***b. No.*** In *People v. Slaymaker*, 2015 IL App (2d) 130528, the court cited "two general criteria" to determine whether the community caretaking doctrine applies to a particular search or seizure: (1) whether the officer was doing something other than investigating a crime and (2) whether the act was reasonably taken to protect the safety of the public. *Id.* ¶ 16 (quoting *People v. McDonough*, 239 Ill. 2d 260, (2010)).

3. In this case, Webb complained that the Officers arrested him without probable cause. If the Officers reasonably believed that they had probable cause to place Webb under arrest, would those Officers be immune from liability concerning Webb's arrest?

***a. Yes.*** The Court ruled: "To prevail on qualified immunity with regard to Webb's arrest, the officers must establish that a reasonable officer would not have believed that he violated Webb's rights in arresting and imprisoning him." Here the Court held: "Because a reasonable officer reasonably could believe that Webb had (1) obstructed the officers from (2) carrying out an authorized act, he reasonably could conclude that there was probable cause to arrest Webb. The defendants are therefore entitled to summary judgment on Counts 3 and 5 based on qualified immunity."

4. Webb complained that he was denied equal protection of the law because the Officers arrested him because of his race. When Webb made this complaint, the People had the burden of proving that Webb's arrest did not result as a consequent of his race.

***b. False.*** The Court ruled: "To prevail on a section 1983 claim of this sort, a plaintiff must show (1) he is similarly situated to members of the unprotected class, (2) he was treated differently from those members, and (3) the defendants acted with discriminatory intent. *DeWalt v. Carter*, 224 F.3d 607, 618 (7th Cir. 2000)." Ultimately, the Court found in favor of the Officers because Webb failed to prove that his arrest was a consequence of his race.