2018 IL App (4th) 150293-U

NO. 4-15-0293

FILED
July 11, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
MARSHALL ASHLEY,	)	No. 14CF1271
Defendant-Appellant.	)	
	)	Honorable
	)	Scott D. Drazewski,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the stalking statute (720 ILCS 5/12-7.3(a) (West 2012)) (1) did not violate the constitutional guarantee of due process, and (2) defendant's stalking conviction could be sustained based on conduct other than "communicating to or about a person," which was otherwise prohibited by the stalking statute.

¶ 2 In October 2014, the State charged defendant, Marshall Ashley, with two felony counts of stalking, alleging he knowingly engaged in a course of conduct directed at Keisha Tinch, which defendant knew or should have known would cause a reasonable person (1) to fear for his or her safety (count I) (720 ILCS 5/12-7.3(a)(1) (West 2012)), and (2) to suffer emotional distress (count II) (720 ILCS 5/12-7.3(a)(2) (West 2012)). Following a February 2015 bench trial, the trial court found defendant guilty on count II. In April 2015, the court sentenced defendant to a term of one year and six months' imprisonment, followed by a four-year term of mandatory supervised release.

¶ 3 Defendant appeals, arguing subsection (a) of the stalking statute violates state and federal constitutional guarantees of (1) due process, because it lacks a *mens rea* requirement and is unduly vague; and (2) free speech, because it overbroadly criminalizes a substantial amount of protected speech. For the following reasons, we affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 In October 2014, the State charged defendant with two felony counts of stalking, alleging he knowingly engaged in a course of conduct directed at Tinch, which defendant knew or should have known would cause a reasonable person (1) to fear for his or her safety (count I) (720 ILCS 5/12-7.3(a)(1) (West 2012)), and (2) to suffer emotional distress (count II) (720 ILCS 5/12-7.3(a)(2) (West 2012)), in that he drove by her residence, sent her threatening text messages, made threatening phone calls, and went to her residence.

¶ 6 In October 2014, defendant and Tinch had been dating for approximately two years and had a daughter together. Tinch and defendant lived together in an apartment on Dustin Avenue in Normal, Illinois. Karen Miller, Tinch's mother, testified she and several relatives and children were having dinner at Tinch's apartment on October 21, 2014. At some point that evening, Tinch received a phone call from defendant. Miller testified she heard Tinch arguing on the phone and went into the kitchen. Tinch put the telephone on speaker, and Miller heard defendant threaten to come over and kill Tinch with a "banger," and he did not care who was at Tinch's apartment. Tinch testified defendant told her that if she had a man at her apartment, he was going to come and kill her with a "banger," meaning a gun. After receiving this phone call, Tinch, Miller, and the other relatives all went to Miller's house.

¶ 7 On the way to Miller's house, Tinch called the police and gave them both her address and Miller's address. Nicholas Mishevich, an officer with the Normal Police

Department, testified he responded to Miller's address and spoke with Tinch. While Mishevich was present, Tinch received multiple telephone calls and text messages from the same telephone number. Mishevich testified he took photographs of the text messages and identified People's Exhibit Nos. 1-A and 1-B as accurately depicting the text messages he saw on Tinch's telephone that night.

¶ 8 Officer Jonathan McCauley testified he was on patrol on October 21, 2014, and was dispatched to the area near Tinch's apartment to look for defendant. McCauley pulled over a vehicle with defendant in the passenger seat and took defendant into custody. McCauley interviewed defendant at the police station and took photographs of the text messages exchanged with Tinch on defendant's phone.

¶ 9 Tinch identified the photographs of the text messages the police took from both her telephone and defendant's telephone. Defendant sent Tinch the following relevant text messages:

> 2:24 p.m.: "you finna make me come look for you're a**"
>
> 3:04 p.m.: "I love you too much to see u dead dummy. But [I] guarantee u this. I can make u suffer. If [I] want to."
>
> 3:29 p.m.: "You rite start to think more before u talk that s**t will get u hurt or killed talking dumb put your mouth bay"
>
> 3:30 p.m.: "Out"
>
> 7:05 p.m.: "So y haven't you text or call me but it[']s cool [K]eshia [I] guess we don[']t have to talk like that every time"
>
> 7:12 p.m.: "Just saying b***h u don[']t check up on me you don't know how [I']m living"

7:12 p.m.: "Where the f**k are u"

7:12 p.m.: "Cause [I] rode past in seen lights on there"

7:23 p.m.: "Answer my f**king question why is there lights on at the house"

7:26 p.m.: "You got my blood boiling"

7:45 p.m.: "Y u aint answering the phone scary a** b***h"

7:54 p.m.: "So u ain't gon pick up huh"

7:57 p.m.: "Rite you not picking up cause uk im f**king rite b***h [I] swear [I] tried to trust your thot a** w[h]en [I] go over there any tim[e] said u had a n***a over there imma go in on you're a**"

8:23 p.m.: "I swear b***h if a n***a there its g[o]ing to be one"

8:24 p.m.: "U them f**ked up"

8:31 p.m.: "I hope whoever you got it when I got guns"

8:57 p.m.: "So u called the law"

Defendant also sent Tinch a photograph of a handgun. The photographs taken of the messages on defendant's telephone were consistent with those taken from Tinch's telephone. However, defendant's phone did not include the message sent at 8:31 p.m. referencing guns. Tinch testified the text messages "scared" her and the message sent shortly after 7 p.m. "terrified" Tinch because she "knew right then and there that [defendant] was going to come after [her] even more."

¶ 10 Defendant testified he and Tinch lived together in October 2014 and had been arguing a lot. At some point, Tinch told defendant she was getting evicted from her apartment.

On October 21, 2014, defendant was out and Tinch called him and asked him to help her move because someone was coming to change the locks at 3 p.m. Defendant testified he was "heated" because he had given Tinch money for rent and she used the money for something else. Defendant admitted he and Tinch had some heated discussions, but he denied threatening her and specifically denied threatening her with a gun.

¶ 11 Following closing arguments, the trial court found defendant guilty of count II, finding that defendant's text messages and phone calls would cause a reasonable person to suffer emotional distress. In April 2015, the court sentenced defendant to a term of one year and six months' imprisonment, followed by a four-year term of mandatory supervised release.

¶ 12 This appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant argues subsection (a) of the stalking statute violates state and federal constitutional guarantees of (1) due process, because it lacks a *mens rea* requirement and is unduly vague; and (2) free speech, because it overbroadly criminalizes a substantial amount of protected speech. On November 30, 2017, the supreme court filed an opinion addressing the constitutionality of the stalking statute in *People v. Relerford*, 2017 IL 121094. That same date, this court ordered the parties to file supplemental briefs in light of *Relerford*. We first discuss the relevant statutory provision before turning to defendant's claims.

¶ 15 A. Pre-*Relerford* Stalking Statute

¶ 16 Prior to the supreme court's decision in *Relerford*, the stalking statute provided, in pertinent part, as follows:

> "(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(a)(1), (2) (West 2012).

The statute further defines "course of conduct" as follows:

> " '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." 720 ILCS 5/12-7.3(c)(1) (West 2012).

¶ 17 Although not at issue in the present case, the Illinois Supreme Court's decision in *Relerford* addresses the cyberstalking statute. Therefore, we point out the cyberstalking provisions are substantially similar to the stalking statute provisions, with the additional requirement that the defendant used electronic communication in committing the offense. See 720 ILCS 5/12-7.5(a), (c) (West 2012)).

¶ 18 B. The Present Case

¶ 19 As noted above, defendant challenges the constitutionality of the stalking statute, arguing it violates (1) due process because it lacks a *mens rea* requirement and is unduly vague,

and (2) the first amendment because it overbroadly criminalizes a substantial amount of protected speech. In his supplemental brief, defendant argues the stalking statute expressly writes out the requirement of intent from the true threats exception to first amendment protection and, thus, is unconstitutional. We address these claims in turn.

¶ 20 1. *Standard of Review*

¶ 21 Statutes are presumed constitutional, and the party raising a challenge to the constitutionality of a statute bears the burden of proving the statute's unconstitutionality. *People v. Hollins*, 2012 IL 112754, ¶ 13, 971 N.E.2d 504. It is our duty to construe the statute in a manner that upholds the statute's validity and constitutionality if reasonably possible. *Id.* A challenge to the constitutionality of a statute presents a question of law, which we review *de novo*. *Relerford*, 2017 IL 121094, ¶ 30.

¶ 22 2. Relerford *Overview*

¶ 23 In *Relerford*, the defendant was charged with two counts of stalking (720 ILCS 5/12-7.3(a)(1), (a)(2) (West 2012)), and two counts of cyberstalking (720 ILCS 5/12-7.5(a)(1), (a)(2) (West 2012)). *Relerford*, 2017 IL 121094, ¶ 3. The stalking charges were based on allegations that the defendant "(1) called Sonya Blakey, (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," or to fear for her safety. *Id.* The cyberstalking charges were based on allegations that the defendant "used electronic communication to make Facebook postings in which he expressed his desire to have sexual relations with Sonya Blakey 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," or to suffer emotional distress. *Id.* The trial court found the

defendant guilty and subsequently sentenced him to a six-year term of imprisonment for the stalking charge that alleged the defendant (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. *Id*. ¶ 14.

¶ 24 The defendant appealed, and the appellate court vacated all of his convictions, finding the terms of subsection (a) of the stalking and cyberstalking statutes violated due process. *Id*. ¶ 15. "In the appellate court's view, the United States Supreme Court's decision in *Elonis v. United States*, 575 U.S. __, 135 S. Ct. 2001 (2015), compelled invalidation of both statutes on due process grounds because the relevant provisions lack a mental state requirement." *Id*. The supreme court granted the defendant's petition for leave to appeal and we discuss its decision where relevant below.

3. *Due Process*

¶ 25 Defendant first argues subsection (a) of the stalking statute violates state and federal constitutional guarantees of due process because it lacks a *mens rea* requirement and is unduly vague. Defendant relies heavily on the First District Appellate Court's decision in *Relerford*, *People v. Relerford*, 2016 IL App (1st) 132531, 56 N.E.3d 489, and the primary case relied on by the First District Appellate Court, *Elonis*, 575 U.S. __, 135 S. Ct. 2001.

¶ 26 We conclude the Illinois Supreme Court decision in *Relerford* precludes defendant's due-process argument. See *Relerford*, 2017 IL 121094, ¶ 22. The Illinois Supreme Court rejected the appellate court's holding that the stalking statute violated due process, concluding (1) *Elonis* decided a question of statutory interpretation and did not engage in any due process analysis; and (2) "substantive due process does not categorically rule out negligence

as a permissible mental state for imposition of criminal liability, and *Elonis* does not suggest such a categorical rule." *Id*. ¶¶ 21-22. The supreme court observed the *Elonis* Court acknowledged the recognition of criminal negligence as a valid basis to impose criminal liability. *Id*. ¶ 22. The supreme court also pointed to the Criminal Code of 2012, which includes both recklessness and negligence as permissible mental states and permits absolute liability in limited circumstances. *Id*. (citing 720 ILCS 5/4-6, 4-7, 4-9 (West 2012)). Finally, *Relerford* further mentioned that the stalking and cyberstalking statutory provisions were not silent as to mental state. *Id*. ¶ 21. Accordingly, the supreme court rejected "the appellate court's reasoning and its determination that *Elonis* mandates invalidation of the statutory provisions at issue here." *Id*. ¶ 22. As the arguments defendant makes before this court were rejected by the supreme court in *Relerford*, we conclude defendant's due-process claim must fail.

¶ 27 4. *First Amendment*

¶ 28 Defendant next contends subsection (a) of the stalking statute violates the first amendment guarantee of free speech because it criminalizes a substantial amount of protected speech. Defendant maintains this position in his supplemental brief, arguing he was convicted for "communications" that he knew or should have known would cause a reasonable person to suffer emotional distress. Defendant further argues the stalking statute expressly writes out the requirement of intent from the true threats exception to first amendment protection and, thus, is unconstitutional. The State asserts *Relerford* held the phrase "communicates to or about" was facially unconstitutional and must be stricken from the statute. However, in *Relerford* the supreme court went on to determine whether the defendant's convictions could be upheld based on other conduct prohibited by the statute. Accordingly, the State asserts defendant's conviction

in the present case can be sustained based on other conduct prohibited by the stalking statute, including his conduct threatening and monitoring the victim.

¶ 29 The first amendment, applicable to the states through the fourteenth amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., amends. I, XIV. The first amendment means the government does not have the power to prohibit expression based on its subject matter, message, ideas, or content. *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002). Laws targeting speech based on its communicative content are presumed to be invalid. *Relerford*, 2017 IL 121094, ¶ 32. However, there are categories of expression the first amendment does not protect, including "true threats." *United States v. Alvarez*, 567 U.S. 709, 717 (2012).

> " 'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. [Citations.] The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur." (Internal quotation marks omitted.) *Virginia v. Black*, 538 U.S. 343, 359-60 (2003).

¶ 30 Turning back to *Relerford*, we now examine the supreme court's discussion of the defendant's first amendment challenge to the stalking statute. *Relerford*, 2017 IL 121094, ¶¶ 23-63. The supreme court found the proscription against communications to or about a person that

would cause a reasonable person to suffer emotional distress was a content-based restriction. *Id.* ¶ 34. "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." *Id.* *Relerford* rejected the State's argument that the prohibited communications do not unconstitutionally encroach on the right to free speech because they are categorically unprotected by the first amendment. *Id.* ¶¶ 35, 45. Specifically, the State argued the prohibited communications fell within the exceptions for (1) true threats, and (2) speech integral to criminal conduct. *Id.* ¶ 35.

¶ 31 The supreme court recognized the United States Supreme Court has held that speech "qualifies as a true threat if it contains a 'serious expression of an intent to commit an act of unlawful violence.' " *Id.* ¶ 37 (quoting *Black*, 538 U.S. at 359. The *Relerford* court went on to say the following:

> "The State offers no cogent argument as to how a communication to or about a person that negligently would cause a reasonable person to suffer emotional distress fits into the established jurisprudence on true threats. The State does not explain how such a communication, without more, constitutes a 'serious expression of an intent to commit an act of unlawful violence.' *Black*, 538 U.S. at 359. Moreover, it is unclear whether the true threat exemption from the first amendment would apply to a statement made with innocent intent but which negligently conveys a message that a reasonable person would perceive to be threatening. Compare *United States v. Cassel*, 408 F.3d 622, 632-

> 33 (9th Cir. 2009) (interpreting the Supreme Court's decision in *Black* as indicating that speech is unprotected under the first amendment only if the speaker subjectively intended the speech as a threat), with *State v. Johnston*, 156 Wash. 2d 355, 127 P.3d 707, 710 (2006) (adopting an objective standard for statements that may be understood to convey a threat, even if the speaker did not so intend). The State does not attempt to reconcile this conflicting precedent." *Relerford*, 2017 IL 121094, ¶ 38.

The supreme court declined to resolve that question, because the prohibited communications stood separate and apart from the statutory prohibition on threats. *Id.* ¶ 39. "Therefore, even assuming that statements which negligently convey a threat are not protected, a course of conduct based on such statements could be prosecuted under the threat portion of subsection (a). If distressing communications to or about a person are construed to refer to 'true threats,' as the State's argument suggests, then the language proscribing threats would be superfluous." *Id.* The supreme court rejected such a construction because it would render part of the statute superfluous. *Id.*

¶ 32 *Relerford* also rejected the State's argument that communications to or about a person were exempt from first amendment protection as speech integral to criminal conduct. *Id.* ¶ 45. The supreme court then determined the prohibition on communications to or about a person was overbroad on its face as it "embrace[d] a vast array of circumstances that limit speech far beyond the generally understood meaning of stalking." *Id.* ¶ 52. The supreme court offered the following hypothetical as an example of the type of protected speech the stalking statute encroached upon:

> "[S]ubsection (a) prohibits a person from attending town meetings at which he or she repeatedly complains about pollution caused by a local business owner and advocates for a boycott of the business. Such a person could be prosecuted under subsection (a) if he or she persists in complaining after being told to stop by the owner of the business and the person knows or should know that the complaints will cause the business owner to suffer emotional distress due to the economic impact of a possible boycott." *Id.* ¶ 53

The supreme court found the degree of overbreadth was substantial, given the wide range of constitutionally protected speech covered by the prohibition on communications to or about a person. *Id.* ¶ 63. *Relerford* 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, is facially unconstitutional." *Id.*

¶ 33 Because the supreme court found the prohibition on communications to or about a person overbroad, it determined the phrase "communicates to or about" must be stricken from subsection (a) of the stalking statute. *Id.* ¶ 65. Because that provision was severable, the court then addressed whether the defendant's convictions could be sustained based on other conduct prohibited by the statutes.

¶ 34 As set forth above, the *Relerford* defendant's stalking charges were based on allegations that the defendant called and e-mailed the victim, stood outside her place of employment, and entered her place of employment. The supreme court determined the calls and e-mails could not be considered as part of a course of conduct because there was no evidence

they were threatening. *Id*. ¶ 66. The record did not establish that one of the incidents at the victim's place of employment was nonconsensual, so the court did not consider it as part of a course of conduct. That left a single instance of nonconsensual contact, which was "insufficient to establish a course of conduct requiring two or more acts." *Id*. ¶ 68. The defendant's cyberstalking charges were based on allegations that the defendant "used electronic communication to make Facebook postings in which he expressed his desire to have sexual relations with Sonya Blakey and threatened her coworkers, workplace, and employer." *Id*. ¶ 3. The supreme court determined the Facebook posts did not include language that could be construed as specifically threatening the victim. *Id*. ¶ 69. Even if one of the Facebook posts could be construed as a threat to all employees of the victim's employer, thus including a threat to the victim, it amounted to a single incident and could not establish a "course of conduct" under the statutory language. *Id*. Accordingly, the supreme court vacated all four of the defendants convictions. *Id*.

¶ 35 Defendant asserts his convictions were based on his communications to or about Tinch and must be reversed in light of the supreme court's holding in *Relerford*. While we follow the supreme court's decision that the "communicates to or about" portion of the statute is overbroad, it is clear from *Relerford* this does not end our inquiry. As the State argues, we must determine whether defendant's conviction can be sustained based on other prohibited conduct.

¶ 36 Based on *Relerford*, the 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*, surveils, [or] *threatens* *** 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."

(Emphases added.) 720 ILCS 5/12-7.3(c)(1) (West 2012). The State argues defendant's conduct in driving by Tinch's house and observing lights on falls within the statute's prohibition on monitoring a person. The State further argues defendant's phone calls and text messages were threatening and fall within the statute's prohibition on threatening a person.

¶ 37 The text messages sent by defendant on October 21, 2014, show he "monitored" Tinch by driving by her house and observing lights on inside. For example, one text read, "you finna make me come look for you're a**," and another series of texts read, "Where the f**k are u[?] Cause [I] rode past in seen lights on there[.] Answer my f**king question why is there lights on at the house[?]" Moreover, defendant was stopped and taken into custody near Tinch's home. Defendant argues his text messages were mere "communications," pointing to messages such as "I love you *** betta not hear anything that will make me mad," and "You got my blood boiling" as examples. However, the text about defendant's blood boiling was sent shortly after he sent the text messages indicating he drove by Tinch's house and saw lights on. Defendant also ignores other text messages, such as "But [I] guarantee u this. I can make u suffer," "I swear b***h if a n***a there its g[o]ing to be one," and "I hope whoever you got it when I got guns." Tinch testified defendant called her and told her he was going to come and kill her with a "banger," meaning a gun. Additionally, Miller testified she heard defendant threaten to come over and kill Tinch with a "banger," and he did not care who was at her apartment.

¶ 38 Defendant argues that, where the statute "contain[s] no requirement that the predicate communications express any intent to act in the future, or even refer to an 'unlawful act of violence' for a felony conviction, the statute lacks any elements of a required true threat." Defendant asserts the State cannot avoid the impact of *Relerford* by relabeling "communications" as "threats" when it prosecutes a defendant under a statute that lacks the

constitutional protections required by "true threats" jurisprudence. Finally, defendant argues *Relerford* rejected the same "true threats" argument the State raises before this court.

¶ 39 Initially, we find the State has not relabeled "communications" as "threats" in order to avoid the consequences of *Relerford*. Defendant was charged with stalking in that he drove by Tinch's residence, sent her threatening text messages, made threatening phone calls, and went to her residence. The State has consistently argued that defendant's threatening texts and phone calls were "true threats" exempt from first amendment protection. Relatedly, we disagree that *Relerford* rejected the same "true threats" argument the State raises before this court. In *Relerford*, none of the phone calls or emails were threatening and, therefore, could not be considered as part of a course of conduct. Here, there is evidence defendant's text messages and phone calls specifically threatened Tinch, including an expression of defendant's intent to get a gun, come to Tinch's home, and kill her.

¶ 40 Here, the defendant fails to cite any authority for his argument that the statute must contain a requirement that conduct which "threatens" a person must express an intent to act in the future to commit an unlawful act of violence. Defendant also contends the statute imposed criminal liability based on a mental state of negligence thereby criminalizing statements made with an innocent intent. Defendant draws this argument from the supreme court's statement that, "it is unclear whether the true threat exemption from the first amendment would apply to a statement made with innocent intent but which negligently conveys a message that a reasonable person would perceive to be threatening." *Relerford*, 2017 IL 121094, ¶ 38. How does one negligently threaten someone? We fail to see how a *threat* that meets the definition of a "true threat" could be negligently made.

¶ 41 Unlike in *Releford*, in this case, defendant's conviction is sustained by considering whether his conduct meets the definition of a true threat. Inherent to a true threat is a "serious expression of an intent to commit an act of unlawful violence." *Black*, 538 U.S. at 359. A statement containing a "serious expression of an intent to commit an act of unlawful violence" is not a statement made with "innocent intent," and therefore meets the definition of a true threat.

¶ 42 We acknowledge the "conflicting precedent" with regard to whether a "true threat" requires a showing of the speaker's subjective intent to threaten or an objective standard for statements that are reasonably understood to convey a threat, even if the speaker did not so intend. However, in this case we need not determine which standard must be met, because under either standard defendant's statements to Tinch were "true threats." Defendant's rapid, angry text messages provide some context for his mental state, and the other evidence in the record supports the inference that he subjectively intended to express an intent to commit an act of unlawful violence when he threatened to get a gun and go to Tinch's house to kill her. Those statements also objectively convey a threat, which both a reasonable speaker and a reasonable listener would understand.

¶ 43 To summarize, we adhere to the supreme court's decision in *Relerford* that the "communicates to or about" portion of the stalking statute is overbroad. As that does not end the inquiry, we determined defendant's conviction could be sustained based on his conduct that was otherwise prohibited by the statute. Accordingly, we affirm the judgment of the trial court.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016)).

¶ 46 Affirmed.