NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 KA 0419

STATE OF LOUISIANA

VERSUS

CHARLES RICHARDSON

Judgment Rendered: December 21, 2007

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On Appeal from the 19th Judicial District Court
In and For the Parish of East Baton Rouge
Trial Court No. 02-05-0594

Honorable Michael R. Erwin, Judge Presiding

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Douglas P. Moreau District Attorney Dylan C. Alge Assistant District Attorney Baton Rouge, LA	Counsel for Appellee State of Louisiana
George K. Anding, Jr. John S. McLindon Baton Rouge, LA	Counsel for Defendant/Appellant Charles Richardson

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BEFORE: PETTIGREW, DOWNING, AND HUGHES, JJ.

Downing, J. dissents

HUGHES, J.

The defendant, Charles Richardson, was charged by bill of information with stalking, a violation of LSA-R.S. 14:40.2. He pled not guilty. Following a bench trial, the defendant was found guilty as charged. The trial judge deferred imposition of sentence under LSA-C.Cr.P. art. 894 and placed the defendant on supervised probation for one year with specific conditions that the defendant participate in counseling, avoid any contact with the victim, and pay a fine of $250.00 plus court costs. The defendant appealed.

Without considering the assignments of error, the matter was remanded to the trial court for an evidentiary hearing on the question of whether the defendant waived his right to a jury trial. **State v. Richardson**, 2006-0419 (La. App. 1 Cir. 9/20/06), 937 So.2d 937 (unpublished). On remand, the trial court held a hearing wherein it was determined that the defendant was advised of his right to a jury trial. He opted to waive the right and proceed with a bench trial.

The defendant's assignments of error are as follows:

I. The trial judge erred in finding defendant guilty of the crime of stalking, when there was no evidence presented of malice as required by the pertinent statute [LSA-R.S. 14:40.2].

II. The trial judge erred in finding defendant guilty of the crime of stalking, when the only evidence of actions allegedly committed by defendant constituted "constitutionally protected activity" of the type specifically and statutorily excepted from the definition of "stalking" by [LSA-R.S. 14:40.2(C)(2)].

III. The trial judge erred in application of the "reasonable person" standard of the statute in question [LSA-R.S. 14:40.2(A)], by wrongly (and admittedly) considering facts and circumstances personally applicable and unique to the alleged victim in this case, and the effect of defendant's alleged actions upon her in particular.

Finding no merit in the assignments of error, we affirm the defendant's conviction and sentence.

FACTS

The victim in this case is Karen Roy, a special-needs counselor at Gonzales Middle School. Mrs. Roy was previously the victim of an unrelated crime that left her partially paralyzed and confined to a wheelchair.

In June 2003, Mrs. Roy was teaching vacation bible school at Trinity Lutheran Church when an individual from Florida Boulevard Baptist Church (which is located next door to Trinity) came over and told her that an unidentified individual had been in the parking lot watching someone at Trinity. Mrs. Roy did not consider herself to be the target. A few months later, in November or December 2003, Mrs. Roy began to notice a suspicious vehicle in her neighborhood when she left for work. Mrs. Roy paid particular attention to the vehicle based upon its suspicious behavior. According to Mrs. Roy, each time she would begin to drive down her street, the car would "dart off." This occurred approximately three times over the next few months. In January 2004, the fourth time Mrs. Roy observed the vehicle in her subdivision, she decided to investigate further. When the vehicle drove away this time, Mrs. Roy followed it and a brief chase ensued. The vehicle ultimately exited the subdivision and Mrs. Roy discontinued pursuit. Mrs. Roy noted that the silver vehicle did not have a visible license plate. There was a red plate where the license plate should have been and a temporary registration tag in the window that was not fully visible. Mrs. Roy reported the incident to her father and to the off-duty police officer working security in the subdivision. According to Mrs. Roy, a surveillance video of the subdivision confirmed the presence of the vehicle described by

Mrs. Roy.[1] However, because it was dark outside and there was no visible license plate, neither the vehicle, nor its driver, could be identified. Mrs. Roy described the driver of the vehicle as a short, white male with gray or blond hair and a baseball hat.

On May 16, 2004, Mrs. Roy again observed the same vehicle in her neighborhood. On this Sunday morning, as Mrs. Roy and her family prepared to leave home, she observed the silver vehicle stop at the end of her driveway and back up. Mrs. Roy explained that this particular maneuver was suspicious because she lived on a cul-de-sac street where people normally drove the circle to exit, not back up. Mrs. Roy and her husband followed the vehicle. Once again, Mrs. Roy was unable to record any licensing information because there was no visible license plate on the vehicle. The temporary tag in the back window was lying flat. This incident was also captured on the neighborhood surveillance footage. According to Mrs. Roy, in the video, the driver of a silver Hyundai Sonata was observed turning away from the security camera and using his hand to block his face.[2]

A few days later, on May 19, 2004, Mazie Rowel, a cafeteria worker at Gonzales Middle School, told Mrs. Roy that there was a man who had, on two separate occasions, watched Mrs. Roy from the school parking lot. Rowel explained that the man had been to the school that same morning. On that particular morning, the man arrived at the school before Mrs. Roy. He was driving a silver vehicle. He sat in the parking lot and waited for Mrs. Roy to arrive. He watched as she unloaded her wheelchair, then he left. Rowel also observed this same individual in a red/burgundy vehicle on a previous occasion. Simultaneously, as Rowel was explaining to Mrs. Roy

[1] This video was neither introduced into evidence nor played at the trial.

[2] This video was neither introduced into evidence nor played at the trial.

what she observed, the vehicle returned to the area. Once the driver realized that they were looking towards his direction, he hurriedly backed up and left. Mrs. Roy again observed the lack of a license plate on a silver Hyundai Sonata.

Rowel testified that the individual did not do anything other than stare at Mrs. Roy. He did not get out of his car, nor did he attempt to talk to or gesture towards Mrs. Roy. On both occasions, he simply watched Mrs. Roy exit her vehicle and unload her wheelchair. Once she left, he left. When presented a pretrial photographic lineup containing the defendant's picture, Rowel was unable to positively identify any of the men as the driver of the vehicle.

Lorraine Ammons, Mrs. Roy's next-door neighbor, testified that she had previously observed a mid-size gray or silver vehicle "hovering" outside her home. The vehicle was just sitting still with the engine on and the lights off. The vehicle was positioned in such a way as to allow an unobstructed view of Mrs. Roy's residence. Ammons identified the defendant, in open court, as the individual she observed seated in the driver's seat of the "hovering" vehicle. Again, upon realizing that he was being observed, the driver of the vehicle drove off. This time, he went around the circle of the cul-de-sac and exited the street. Ammons testified that there was no license plate on the vehicle.

Ammons further testified that on a separate occasion, she observed a gray/silver vehicle oddly parked on a grassy area in her cul-de-sac. Ammons was not sure if this was the same vehicle she saw the defendant driving. Like Rowel, Ammons also testified that the individual never exited the vehicle or acted in a threatening manner. He simply fled upon making eye contact.

Lydia Talley, a special-needs counselor with the Ascension Parish School System, testified regarding events that occurred in May 2004, when she and Mrs. Roy attended a meeting at Leblanc Special Services. Talley stated that she and Mrs. Roy went into the building together. However, because she had forgotten something in her vehicle, Talley went back outside. As she approached her vehicle, Talley observed a silver, medium-sized car that matched the description of the vehicle that Mrs. Roy believed might have been stalking her. When the driver of the vehicle saw Talley approaching and eye contact was made, he immediately put the car in reverse and left the parking lot. Talley immediately conveyed this information to Mrs. Roy, who was still inside at the meeting. Talley testified that the driver of the vehicle did not exit the vehicle or attempt to speak or make any gestures. Talley was unable to positively identify the defendant from a pretrial photographic lineup or in open court during the trial. She testified, however, that the defendant looked similar to the man she saw in the vehicle.

Several days later, on May 21, 2004, Mrs. Roy's brother, Doug Fernbough, decided to drive by his sister's workplace to check on her. Fernbough was concerned about his sister's well-being because he was aware that she believed she was being stalked. As he drove past the school, Fernbough observed a silver vehicle with a driver fitting the description provided by Mrs. Roy, drive past him. Fernbough watched as the vehicle drove by the school, slowed down, turned around at the corner, and drove back the other way. Fernbough decided to follow the vehicle described as a silverish-gray Hyundai Sonata. He tracked the vehicle from Gonzales back to Baton Rouge. When the vehicle stopped at a Kean's The Cleaner location on Jones Creek Road in Baton Rouge, Fernbough and Phillip Roy, Mrs.

Roy's husband, cornered the vehicle, approached, and questioned the driver. The driver, subsequently identified as the defendant, denied ever following and/or stalking Mrs. Roy.

The police were called to the scene. The defendant denied any wrongdoing. He was released.

Norva Lee Williams, an employee at Gonzales Middle School, testified that she was present in the school's office one day in either April or May 2004, when the defendant came in and requested an employment application. Mrs. Roy was not in the office at that time. Ms. Williams testified that the incident was discussed and the next day she was shown a picture on the Internet of Mr. Richardson, but it did not look like the man who came in for the application. In court, however, Ms. Williams did not waver in her identification of the defendant as that individual requesting the application in the school's office.

Mrs. Roy testified that on May 29, 2004, at approximately 12:43 a.m. she received a telephone call at her home. She stated that the voice on the phone, which she unequivocally identified as that of the defendant,[3] stated, "don't hang up ... answer my questions and I will stop bothering you." Mrs. Roy yelled for her husband. By the time Phillip Roy picked up the phone, no one was there. Attempts to trace the call were inconclusive.

The defendant did not testify. However, defendant's wife, Carolyn Richardson, testified that based on her thirty-nine year relationship with the defendant she did not think he was capable of stalking Mrs. Roy. On each of the dates in question, Mrs. Richardson provided an alibi for the defendant,

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[3] Mrs. Roy testified that upon learning the defendant's identity, she looked up his church on the Internet. From an audio clip on the website, she was able to positively identify the defendant's voice as the voice of the caller. The audio clip was neither introduced into evidence nor played at the trial.

including the midnight call on May 29, 2004. Mrs. Richardson testified that the defendant could not have placed this call to Mrs. Roy because she and the defendant were in a hotel in Tennessee. They were up late talking.

Dr. Donald Cottrill, Provost of the Louisiana Conference of The United Methodist Church of Louisiana, testified on behalf of the defense. Dr. Cottrill testified that he and the defendant had been colleagues in the United Methodist Church Pastoral Ministry for approximately twenty-five years. He testified that at the time of the instant offense the defendant was one of seven District Superintendents for the United Methodist Church in Louisiana. As such, the defendant supervised approximately eighty Methodist churches in the Baton Rouge district. Dr. Cottrill also testified regarding the defendant's general moral character. He described the defendant as an upstanding, very well-respected ordained minister who, to his knowledge, had never been the subject of any disciplinary actions.

Dr. Cottrill further testified that, in connection with the instant offense, the defendant was placed on paid suspension for several weeks. The defendant subsequently was placed in an administrative position as the Director of the Disaster Recovery Process for the Annual Conference. Dr. Cottrill did not offer any personal testimony regarding the defendant's involvement in the instant offense. On cross-examination, Dr. Cottrill admitted that the defendant also underwent psychotherapy to address his well-being in dealing with being charged in connection with this offense and the after-effects of his June 2003 heart attack.

ASSIGNMENTS OF ERROR ONE AND TWO

In these assignments of error, the defendant contends the state failed to produce sufficient evidence to sustain his conviction for stalking. Specifically, the defendant asserts the evidence presented at trial failed to

establish his identity as the alleged perpetrator, and the requisite element of malicious intent. The defendant further argues that even assuming that he was the individual observed near Mrs. Roy's home and at her place of employment, these actions do not establish a "following" and all such actions are constitutionally protected and cannot be construed as harassing for purposes of the stalking statute.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the state proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. See LSA-C.Cr.P. art. 821; **State v. Johnson**, 461 So.2d 673, 674 (La. App. 1 Cir. 1984). The **Jackson v. Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, i.e., "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. LSA-R.S. 15:438. See **State v. Northern**, 597 So.2d 48, 50 (La. App. 1 Cir. 1992). The reviewing court is required to evaluate the circumstantial evidence in the light most favorable to the prosecution and determine if any alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. **State v. Fisher**, 628 So.2d 1136, 1141 (La. App. 1 Cir. 1993), writs denied, 94-0226 and 94-0321 (La. 5/20/94), 637 So.2d 474 and 476. When a case involves circumstantial evidence and the trier of fact reasonably rejects the hypothesis of innocence presented by the defense, that

hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. **State v. Moten**, 510 So.2d 55, 61 (La. App. 1 Cir.), writ denied, 514 So.2d 126 (La. 1987).

After its amendment by 2001 La. Acts No. 1141, § 1, but prior to its amendment by 2005 La. Acts No. 161, § 1, LSA-R.S. 14:40.2(A) defined stalking as "the willful, malicious, and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress." The statute further provided that stalking shall include but not be limited to the "willful, malicious, and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted." LSA-R.S. 14:40.2(A). Intent is a condition of mind which is usually proved by evidence of circumstances from which intent may be inferred. See **State v. Fuller**, 414 So.2d 306, 310 (La. 1982); **State v. Phillips**, 412 So.2d 1061, 1063 (La. 1982).

Initially, we note that the defendant makes much of the fact that many of the witnesses were unable to positively identify him as the person who was observed watching Mrs. Roy. He argues that the testimonial evidence presented was insufficient to prove his identity as the perpetrator. We disagree. The evidence presented at the trial established that the victim, and each of the witnesses, described the silver/gray vehicle the defendant was driving. Connecting the defendant to the offense was Fernbough's testimony. Fernbough testified that he was simply riding by to check on his sister when he observed the defendant slowly driving by Mrs. Roy's place of

employment. The defendant matched the physical description given by Mrs. Roy and was driving a silver, metallic-colored Hyundai Sonata, which matched the description of the vehicle given by Mrs. Roy. This evidence directly connected the unidentified driver with Mrs. Roy's place of employment. Once Fernbough followed the defendant to Baton Rouge, he was able, through police investigation, to determine the defendant's identity. Fernbough's testimony, coupled with the consistent descriptions of the vehicle and its driver by the witnesses, some of whom positively identified the defendant, was sufficient to show that the defendant was, in fact, the same person observed at Trinity Lutheran Church, Gonzales Middle School, and in Mrs. Roy's subdivision near her home.

Having found the evidence sufficient to prove the defendant's identity as the perpetrator, we must now determine if the defendant's actions constituted stalking. Is the fact that the defendant repeatedly showed up at locations where Mrs. Roy was and watched her from a distance, making no direct contact, never speaking to her, and driving away when noticed, sufficient evidence of "willful, malicious, and repeated harassing" to support the conviction? We conclude that it is.

Contrary to the state's assertion in its brief, the defendant in this case was not accused of "following" Mrs. Roy. At the trial, there was absolutely no evidence of "following." Although Mrs. Roy and the other state's witnesses testified that the defendant was repeatedly observed at Mrs. Roy's residence, her church, and her place of employment, none of the witnesses, not even Mrs. Roy, testified that the defendant ever followed Mrs. Roy. In fact, all of the state witnesses testified that the defendant immediately fled upon being noticed. In convicting the defendant of stalking, the trial court noted that the defendant "was annoying, harassing, whatever words you

want to call it, to the extent that he caused Mrs. Roy to become emotionally distressed or alarmed." So, the question in this case is whether the defendant's actions were sufficient to prove willful, malicious, and repeated harassing.

Harassing is defined as "the repeated pattern of verbal communications or nonverbal behavior without invitation which includes but is not limited to making telephone calls, transmitting electronic mail, sending messages via a third party, or sending letters or pictures." LSA-R.S. 14:40.2(C)(1). "Pattern of conduct," as defined in the stalking statute, means "a series of acts over a period of time, however short, evidencing an intent to inflict a continuity of emotional distress upon the person." The statute further provides that constitutionally protected activity is not included within the meaning of pattern of conduct. LSA-R.S. 14:40.2(C)(2).

In this case, the defendant's first argument turns on the statutory requirement that the actions of a stalker be "malicious." We find that, of equal importance to the determination of this case, is the portion of the statute that provided at the time of the instant offense that stalking "shall include ... the willful, malicious, and repeated uninvited presence of the perpetrator at another person's home, workplace, school, or any place which would cause a reasonable person to be alarmed." LSA-R.S. 14:40.2(A). There was ample evidence to prove the defendant's repeated, uninvited presence. Contrary to the defendant's assertions, such uninvited presence does not require an overt act. The maliciousness of the action can be inferred from the circumstances.

The evidence shows that the defendant's uninvited presence at Mrs. Roy's home, workplace, and church was willful, malicious, and repeated and that such actions would cause a reasonable person to be alarmed. Mrs. Roy

did not know the defendant personally, yet he appeared at her workplace, her church, and then at her home. This pattern of peculiar behavior, by a total stranger, and for no apparent reason, is both frightening and inappropriate. Such behavior is sufficient to support not only an inference of malicious intent, but also circumstances that "would cause a reasonable person to feel alarmed," as required by the stalking statute. LSA-R.S. 14:40.2(A). Furthermore, the defendant's actions of fleeing upon being discovered provide additional evidence of his malicious intent. The fact that the defendant left and on some occasions attempted to conceal his identity, suggests that he was aware that his presence was unwanted and that it would cause distress. Thus, considering all of the facts and circumstances of this case, it is clear that the defendant's actions were sufficient to constitute the crime of stalking. The fact that the defendant did not threaten or gesture towards Mrs. Roy is of no moment. Under the plain wording of the version of the statute in effect at the time of the commission of the offense, the repeated uninvited presence, under these circumstances, is sufficient.

Furthermore, the defendant erroneously states in his brief that the state was required to prove that he possessed "intent to place the victim in fear of death or bodily injury." It is well settled that criminal offenses are governed by the law in effect at the time of the commission of the offense. See **State v. Wright**, 384 So.2d 399, 401 (La. 1980). Compare **State v. Mayeux**, 2001-3195, p. 1 (La. 6/21/02), 820 So.2d 526, 527. The instant offense occurred between late 2003 to May 2004. 2001 La. Acts No. 1141, § 1 amended the stalking statute to delete the requirement of "intent to place that person in fear of death or bodily injury." Under the version of the statute in effect at the time of the commission of the offense, the state was required to prove a "willful, malicious, and repeated following or harassing of another

person that would cause a reasonable person to feel alarmed or to suffer emotional distress." See LSA-R.S. 14:40.2 (after its amendment by 2001 La. Acts No. 1141, § 1 but prior to its amendment by 2005 La. Acts No. 161, § 1). As amended, the statute lessened the state's burden of proof as to the perpetrator's intent. The statute placed more emphasis on the impact of the perpetrator's conduct on the victim (causing fear and/or emotional distress) and less on the perpetrator's intent.[4] As previously discussed, the facts and circumstances of this case are such that any reasonable person would be alarmed or suffer emotional distress. The state clearly met its burden of proof on this element.

Insofar as the defendant claims his behavior was "constitutionally protected," we note that by enacting the stalking statute the Legislature sought to criminalize otherwise lawful behavior based upon the impact the behavior has on the victim. Although the defendant had the right to be in each of the places in question, he did not have the right to cause the victim alarm and emotional distress by his disturbing behavior. This repeated pattern of behavior, which clearly caused the victim to suffer emotional distress, is exactly the type of behavior the Legislature sought to prevent when enacting this statute. Thus, contrary to the defendant's assertions, we conclude the evidence presented by the state in this matter was sufficient to prove each of the essential elements of the crime of stalking under the applicable version of the statute as set forth above.

These assignments of error lack merit.

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[4] In 2005, LSA-R.S. 14:40.2 was again amended to even further lessen the intent requirements. Currently, the statute requires only that the following, harassing, and/or uninvited presence be "intentional and repeated." There is no requirement of malicious intent.

ASSIGNMENT OF ERROR THREE

In his final assignment of error, the defendant contends the trial court erred in considering the facts and circumstances personally applicable to the instant victim when the stalking statute requires application of a reasonable person standard.

In convicting the defendant of stalking, the trial court explained his finding on each of the essential elements of the statute. In applying the objective "reasonable person" standard to determine if Mrs. Roy was justified in feeling alarmed or suffering emotional distress, the court reasoned:

> [W]hen I got to the reasonable persons standard, I believe we added a little bit to it but maybe I'm not supposed to, I'm sure y'all will appeal this and find out. Generally a reasonable person's standard means to one of us who is a healthy, robust individual. Unfortunately, for Mrs. Roy, that is not entirely the case, so to that reasonable person standard, I have added a standard: What would a reasonable person who is confined to a wheelchair think and feel, when she continuously notices and other people continuously notice the same man at her home, at her work place, or any other place where she could be alarmed or distressed?"

Louisiana law neither requires nor precludes a statement of reasons supporting the verdict returned by the court sitting as a fact finder in a bench trial. If a trial judge chooses to do so, a statement of the court's reasons may provide a useful guide for reviewing the sufficiency of the evidence under the **Jackson** standard. However, the pertinent inquiry in judge trials must remain, as it does in jury trials, on the rationality of the result and not on the thought processes of the particular fact finder. **State v. Marshall**, 2004-3139, pp. 6-7 (La. 11/29/06), 943 So.2d 362, 367-68, cert. denied, ___ U.S. ___, 128 S.Ct. 239, ___ L.Ed.2d ___ (2007).

While the trial court's reasons in this case are perhaps inartfully phrased, we do not believe they constitute legal error. The reasonable

person standard does not exclude handicapped persons, or the fairer sex. One need not be robust to be reasonable. However, any error by the trial judge in articulating the standard is harmless beyond a reasonable doubt as it is clear that the facts and circumstances of this case are such that a reasonable person would feel alarmed or suffer emotional distress. See LSA-C.Cr.P. art. 921; **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993).

For the foregoing reasons, we affirm the defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED.