

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL  
CIRCUIT OF THE STATE OF FLORIDA IN AND  
FOR PINELLAS COUNTY

21-004904-FD  
UCN: 522021DR004904XXFDFD

**LUNA, ANNA PAULINA**

Petitioner,

VS.

**BRADDOCK, WILLIAM**

Respondent.

\_\_\_\_\_ /

**MOTION IN LIMINE REGARDING THIRD PARTY COMMUNICATIONS  
AND ILLEGALLY OBTAINED EVIDENCE**

**COMES NOW**, Respondent William Braddock, by and through undersigned counsel and pursuant to applicable case law, and – if this court does not grant relief to dismiss this action - moves this court to limit from use in the above referenced cases any evidence of irrelevant third party communications and evidence obtained contrary to Florida law, to wit:

**BACKGROUND AND OVERVIEW**

1. Petitioner Anna Paulina Luna (hereinafter “Luna”) has filed a Petition for Injunction against Stalking (hereinafter “Petition”) against Respondent William Braddock (hereinafter “Braddock”), wherein Luna alleges that Braddock has committed stalking against Luna, in contravention of Florida statute 784.048, et al. Luna is seeking a permanent injunction enjoining Braddock from having any additional conduct.
2. Luna and Braddock are not domestically related and are not acquaintances or friends. Rather, Luna is a politician; she was the Republican nominee for the United States House of Representatives Florida District 13 seat in the 2020 election cycle, and is vying to be the Republican candidate for the same seat for the next election, which will occur in November of 2022.
3. Braddock, meanwhile, was originally seeking the same 2022 nomination. That campaign has ended, but he remains a politically engaged American citizen.
4. Luna has alleged that Braddock has committed stalking, consisting of a series of harassing events. While some of these events reflect direct contact between Braddock and Luna, others are messages and communications which Braddock sent to third parties, who

subsequently advised Luna of the occurrence. This includes a phone conversation between Luna and Erin Olszewski (hereinafter “Olszewski”), which Olszewski secretly recorded and then disseminated, in violation of Florida Statute §934.03, and which cannot be used in these proceedings, pursuant to Florida Statute §934.06.

### INDIRECT CONTACT

#### Disparaging Texts and Social Media Posts

5. Luna has not alleged that Braddock ever directly called, texted, or otherwise communicated electronically with her. When later asked to elaborate, Luna confirmed that they have only had two instances of direct contact<sup>1</sup>.
6. In addition, as part of Luna’s Petition, she has alleged that she received texts from other people informing her of disparaging and repugnant remarks Braddock has made concerning Luna<sup>2</sup>, including threats of violence<sup>3</sup>.
7. Regardless of whether these statements represent a civil cause of action for intentional infliction of emotional distress, or perhaps evidence of a crime<sup>4</sup>, they are irrelevant to this proceeding, which alleges stalking.
8. Stalking is predicated on a statutory definition derived from Florida Statutes:

“A person who willfully, maliciously, and repeatedly follows, harasses or cyberstalks another commits the offense of stalking...”  
*Florida Statutes §784.048(2)*

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<sup>1</sup> Q: “So the first time was on a radio show on [May 26, 2021] and the second one was [May 26, 2021] in person?

A: “I believe those are the correct dates, yes.”

Q: “When is the next date that you had direct contact with –

A: “I have not had direct contact with Mr. Braddock since those dates where he has sought interaction with me.”  
*Deposition of Anna Luna, August 31, 2021, Page 14, Line 8 – Line 15*

<sup>2</sup> “...I was also well aware at this point in time of multiple text messages that Braddock had made to at least five people that I know calling me a ‘fucking speed bump in the road’, saying that I was a ‘dumb cunt’, calling me a ‘whore’...I was told by multiple people that I needed to stay away from him, that he was dangerous, and that he was going to try to hurt me, and it was making them feel uncomfortable as well.” *Deposition of Anna Luna, August 31, 2021, Page 20, Line 23 – Page 21, Line 2; Page 21, Line 9 – Line 12*

<sup>3</sup> Q: “Any other recorded phone calls where he threatened you directly or indirectly?”

A: “You mean talked about murdering me? If I can clarify, is that what you mean, or just threaten in general?”

Q: “Threaten you in general.”

A: “Not that I can recall, no, but there are text messages.”

Q: “The text messages that you are referring to are the one that were sent to your friends and colleagues – “

A: “Correct.”

Q: “Okay. Got you.”

A: “Or people that voted for me...”

*Deposition of Anna Luna, August 31, 2021, Page 56, Line 16 – Page 57, Line 4*

<sup>4</sup> Doubtful: “...the incident at the credit union did not involve a threat of violence that amounted to an assault because there was no overt act demonstrating that the violence was **imminent**.” *Singletary v. Greever*, 62 So.3d 700, 702 (Fla. 2<sup>nd</sup> DCA 2011) [Emphasis added]

“(a) “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose”

(d) “Cyberstalk” means:

1. To engage in a course of conduct to communicate, or to cause to be communicated, directly or indirectly, words, images, or language by or through the use of electronic mail or electronic communication, directed at or pertaining to a specific person”

*Florida Statutes* §784.048(1)

9. Germane to this discussion is the particular requirement that the conducted by directed at, or pertaining to, a specific person. As interpreted by the 2<sup>nd</sup> District Court, this does **not** include third party electronic communications that are then re-routed to the person being discussed.

“[Appellee] testified that [Appellant] sent emails about [Appellee] and [Appellee]’s family, partners, and former employees to 2200 NAPS members...[Appellee] testified that none of the emails were sent directly to him but that he knows about them because they were forwarded by the recipients to him or he received phone calls about them...the emails do not meet the statutory definition of cyberstalking. The emails were not ‘addressed’ to [Appellee], and nothing indicates that [Appellee] was the intended recipient...[Appellant] did not communicate words, images, or language via email or electronic communication directly to [Appellee]...the emails sent to 2200 NAPS members do not constitute words ‘ directed at a specific person’ for purposes of the cyberstalking statute simply because they are about [Appellee].”  
*Scott v. Blum*, 191 So.3d 502, 503-505 (Fla. 2<sup>nd</sup> DCA 2016)

10. In fact, the Second District Court has regularly and routinely found that messages sent to third parties, even when about a specific individual, do not constitute stalking of that individual.

“The emails or messages [Appellant] allegedly sent to third parties, such as [Appellee]’s business associates, did not constitute cyberstalking because they were not addressed to [Appellee] herself...[Appellant]’s online posts also did not meet the definition of cyberstalking because they were not addressed at a specific person.” *Wright v. Norris*, 2021 WL 1555406 (Fla. 2<sup>nd</sup> DCA, April 21, 2021) [Non-final opinion]

11. This includes social media postings.

“Decisions by our sister courts in the Second and Third Districts on whether ‘a course of conduct [is] directed at a specific person’ have been interpreted to exempt social media messages from qualifying as the type of conduct covered by section 784.048, Florida Statutes.” *Logue v. Book*, 297 So.3d 605, 611 (Fla. 4<sup>th</sup> DCA 2020)

12. The explanation given is that social media posts are being expressed to the world, through cyberspace, and therefore are not directed *towards* anybody in particular. It’s akin to standing on the side of the road and yelling at the cars which drive by. It might cross other boundaries, but it is not relevant to a claim of stalking.

“Angry social media posts are now common. Jilted lovers, jilted tenants, and attention-seeking bloggers spew their anger into fiber-optic cables and cyberspace. But analytically, and legally, these rants are essentially the electronic successors of the pre-blog, solo complainant holding a poster on a public sidewalk in front of an auto dealer that proclaimed, “DON’T BUY HERE! ONLY LEMONS FROM THESE CROOKS!” Existing and prospective customers of the auto dealership considering such a poster made up their minds based on their own experience and research. If and when a hypothetical complainant with the poster walked into the showroom and harangued individual customers or threatened violence, however, the previously-protected opinion crossed the border into the land of trespass, business interference, and amenability to tailored injunctive relief. The same well-developed body of law allows the blogger to complain, with liability for money damages for defamation if the complaints are untruthful and satisfy the elements of that cause of action. Injunctive relief to prohibit such complaints is another matter altogether.” *Krapacs v. Bacchus*, 301 So.3d 976, 980 (Fla. 4<sup>th</sup> DCA 2020)

13. Moreover, Luna is a candidate for public office, has appeared on nationally prominent television programs, and is a published author, and the disparagement alleged concerned her attempt to obtain public office. Thus, there is a very strong protection to be afforded by the First Amendment; repugnant language and disgusting sentiments, as protected speech, are simply not relevant to her Petition.

“Publicly expressing anger toward an election official is not a basis for entry of an injunction. In public debate, elected officials must tolerate insulting remarks – even angry, outrageous speech – to

provide breathing room for the First Amendment...Respondent's methods and posts, as boorish, crude, and crass as they may be, must also be considered 'against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'" *Logue v. Book*, 297 So.3d 605, 619-620 (Fla. 4<sup>th</sup> DCA 2020) [Emphasis added]

14. Accordingly, this court should limit any testimony or evidence pertaining to communications which Braddock had with third parties, regardless of how hostile or disparaging they may have been. If Luna was made aware of these communications because they were forwarded by those people to her, then they were not directed at or pertaining to Luna, and are not pertinent to a claim of stalking.

#### **Recorded Phone Call**

15. In addition, Luna is intending to rely on communications which Olszewski recorded, which consisted of a telephone conversation that Olszewski had with Braddock; this call purportedly consisted of a threat to kill Luna. The recording was obtained without Braddock's knowledge or consent<sup>5</sup>, and was then disseminated to Luna's attorneys and campaign manager<sup>6</sup> and may be used in this case. This conduct represents a crime under Florida law:

"1) Except as otherwise specifically provided in this chapter, any person who:

(a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

(c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason

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<sup>5</sup> Q: "Did you get his consent orally or in writing to record that conversation?"

A: "No, I didn't."

Q: "So this oral communication that you intercepted and recorded, that communication occurred without getting consent from him orally or in writing, and I assume that never occurred during the phone call?"

A: "No, no." *Deposition of Erin Olszewski, August 31, 2021, Page 24, Line 10 – Line 18*

<sup>6</sup> "Yeah, I sent it to the sheriff's detectives and the FBI and **Anna's lawyer/campaign manager.**" *Deposition of Erin Olszewski, August 31, 2021, Page 34, Line 2 – Line 3*

to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection shall be punished as provided [in this section]" *Florida Statutes* 934.03(1)

16. It is true that exceptions exist which might allow for the use and recording of telephone communications, such as consent of all parties, but no such exception applies herein.

"Section 934.03(2), Florida Statutes (2010), contains a list of specific exceptions to the general prohibition in section 934.03(1)...None of the exceptions allow for the interception of conversations based on one's status as a victim of a crime." *McDade v. Florida*, 154 So.3d 292, 297 (Fla. 2014)

17. More relevant to this matter, the evidence obtained from this illegal recording should not be allowed in these proceedings.

"Whenever any wire or oral communication has been intercepted, **no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court**, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter." *Florida Statutes* §934.06 [Emphasis added]

18. Indeed, continued use of the recording as evidence in furtherance of an injunction might reasonably be inferred as additional criminal conduct, in violation of *Florida Statutes* §943.1(d), such that any person intending to testify to such contents should be cautioned by this court that their statements may be used against them at a later date as evidence of a crime.

19. It is no matter that the recording was an attempt to document Braddock's alleged threats as an attempt to have him criminally prosecuted. The *McDade* case, cited above makes that starkly clear. In that case, the secret recording was done to document unlawful child sexual abuse. Despite the ostensibly worthwhile purpose of the undercover espionage, done by the victim herself, the statutory language of Florida made it inadmissible.

"The recordings were made surreptitiously. [Petitioner] did not consent to the conversations being recorded, and none of the other exceptions to §934.03(2) apply. The recordings, therefore, were prohibited." *McDade v. Florida*, 154 So.3d 292, 298 (Fla. 2014)

20. Similarly, here, the recorded telephone conversation, and evidence derived therefrom, should be limited from use, as they were criminally obtained and no exceptions to their prohibition apply.

**WHEREFORE**, Respondent prays this honorable court will enter an order limiting from use at any hearing in this case evidence of indirect third party contact or evidence derived from an illegally obtained telephone conversation.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished via E-Filing Portal to the Clerk of the Court and all parties of record, this 9<sup>th</sup> day of September, 2021.

THE LAW OFFICES OF CARLSON, MEISSNER, HART & HAYSLETT, P.A.

*/S/ J. KEVIN HAYSLETT, ESQUIRE*

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