

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-483

JOHN MICHAEL CONNORS,

Petitioner/Appellee,

v.

HAZEL NOONAN,

Respondent/Appellant.

APPELLANT'S REPLY BRIEF

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I. NO CONVICTION FOR STALKING UNDER MONTANA’S STALKING STATUTE – OR AN ORDER OF PROTECTION GRANTED UNDER THE STALKING STATUTE – CAN SURVIVE THE U.S. SUPREME COURT’S DECISION IN *COUNTERMAN V. COLORADO*.

In their Response Briefs, both the Intervenor and Appellee rely on the argument that existing Montana law comports with the *Counterman* decision, even though Montana’s objective standard in its stalking statute is statutory and contrary to the U.S. Supreme Court’s decision in *Counterman*.

Like Montana, Colorado’s stalking statute contains a mental state requirement of knowingly. CO Code § 18-3-602(1)(a) (2021). Nevertheless, the U.S. Supreme Court found Colorado’s statute unconstitutional for a very simple reason – the Defendant was prosecuted “in accordance with an objective standard.” *Counterman v. Colorado*, 600 U. S. ____ (2023). Under its then-existing statutory framework, Colorado had to show only that a reasonable person would understand Counterman’s statements as threats. Colorado did not have to show any awareness *on Counterman’s part* that the statements could be understood that way, which is a violation of the First Amendment. *Counterman v. Colorado*, 600 U. S. ____ (2023).

In Montana, a person commits the offense of stalking if the person purposely or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to: (1) fear for the person's own safety or the safety of a third person; or (2) suffer other substantial emotional distress. Mont. Code Ann. § 45-5-220(1)(a) through (b). The

standard used is specifically an objective standard. MCA § 45-5-220(2)(b).

Simply put, Montana’s stalking statute is unconstitutional because it allows an individual to be convicted if the person: (1) *should* know (2) that the course of conduct would cause a *reasonable person* (3) to fear for their safety, the safety of a third person, or suffer other substantial emotional distress. In Montana, an individual can be convicted under the stalking statute without any knowledge that his or her own conduct caused a specific victim to fear for his or her safety, the safety of a third person, or suffer emotional distress. The words “purposely” and “knowingly” in Montana’s stalking statute describe one’s awareness of his or her conduct, not an awareness that his or her statements could be understood as threats. Because Montana’s stalking statute, like Colorado’s, does not require any showing of any awareness *of a defendant* that his or her statements could be understood as described in § 45-5-220(1)(a) through (b), Montana’s stalking statute is unconstitutional under the First and Fourteenth Amendments and *Counterman v. Colorado*.

RESPECTFULLY SUBMITTED this 27th day of March, 2024.

/S/ MICHAEL C. DOGGETT
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2020 is 445, not averaging more than 280 words per page, excluding caption, certificate of compliance, and certificate of service.

RESPECTFULLY SUBMITTED this 27th day of March, 2024.

BY: /S/MICHAEL C. DOGGETT

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CERTIFICATE OF SERVICE

I, Michael Connor Doggett, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 03-27-2024:

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