



# Know Your Rights

Attorney Jay Howell

## Aggravated Stalking

By Jay C. Howell

In the 1990's almost every state enacted new laws to specifically address the crime of stalking. Florida was no exception. Our felony stalking crime is called "aggravated stalking." Since this law has now been on the books for a number of years, our Appellate Courts are beginning to receive appeals which will define the meaning of these relatively new crimes.

In this case, the victim was stalked by her former boyfriend, the defendant in the criminal case that followed. She obtained a permanent injunction against him for protection as a result of domestic violence. Among other things, the injunction prohibited contact of any type between the defendant and the victim.

In September of 1998, the victim and her daughter were at home in the Miami area when the child saw the

defendant outside the residence. The victim immediately went outside to speak with him. When she did this, she was holding a kitchen knife she had been using. There was an encounter between the two and the victim cut the defendant on his arm. The victim immediately went back inside and called the police. The defendant was arrested.

About a week after these events, the defendant called the victim ten times from jail. These were collect calls the victim refused to accept.

The defendant was charged in criminal court with the offenses of aggravated stalking and trespass. He appealed his conviction to the District Court.

The defendant argued on appeal that the evidence was legally insufficient to convict him of the crime of trespass. Our criminal statutes define the crime of "trespass" as an act committed by a person

who, without being authorized or invited, willfully enters upon or remains on any property as to which notice against his entering or remaining has been given by actual communication to the offender.

In ruling on this point, the Appellate Court relied upon the fact that the domestic violence injunction not only directed the defendant to have no contact with the victim, but also specifically stated that the defendant shall not enter on to the residential premises or property of the victim wherever she may reside in the State of Florida. The court concluded that the domestic violence injunction had the effect of giving the required notice to the defendant against entering the victim's property. The testimony in the case was that the defendant went to the back door of the victim's property and this was legally sufficient to establish trespass. The conviction for trespass

was upheld by the Appellate Court.

The defendant argued that the evidence was also insufficient to convict him of the offense of aggravated stalking. The criminal statute in question makes it a felony for a person to knowingly, willfully, maliciously, and repeatedly follow or harass the victim after an injunction for protection or any other court imposed prohibition of conduct toward the victim or their property.

Under the statute, the word "harass" means to engage in a course of conduct directed at a

specific person that causes substantial emotional distress in such person and which serves no legitimate purpose. The court concluded the defendant's repeated attempts to contact the victim despite the existence of the injunction and evidence from which the jury could conclude that the conduct had caused substantial emotional distress, were sufficient to constitute the crime of aggravated stalking. His conviction for this offense was also affirmed on appeal.

The case is *Jordan vs. State*, and can be found at 27 Florida Law Weekly, 55.

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