IN THE COURT OF APPEALS OF IOWA
No. 15-1375

DONNA JEAN HOLMAN

Appellant

vs.

STATE OF IOWA

Appellee

Johnson County No. SMSM067310
Appeal from the ruling of Judge Stephen C. Gerard, II

PETITION FOR REHEARING

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Petitioner comes before this court to request rehearing as provided by Rule 6.1204:

> 6.1204(3) Content.The petition [for rehearing] shall state with particularity the points of law or fact which in the opinion of the petitioner the court of appeals has overlooked or misapprehended.

This Court writes that I "had the burden to establish that she no longer posed a threat to the protected parties, but instead she did quite the opposite."

> Holman had the burden to prove she was no longer a threat to those protected by the order. ...The no-contact order was originally entered after Holman was convicted of harassment in the third degree, and it was extended because the court believed she was still a threat to engage in such behaviors. "A person commits harassment when the person, purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person." Iowa Code § 708.7(1)(b) (2013). Holman had the burden to establish that she no longer posed a threat to the protected parties, but instead she did quite the opposite. The affidavits she filed with the court, rather than assuaging fears about her possible future behavior, indicated that she intended to continue much as she had before, and as she had in other locations since her initial arrest.

This Court asserts this, without any further discussion of the facts or law, and then writes "Holman lists a number of other arguments about issues not properly before us on appeal; we decline to consider them."

"Issues" this court "declines" to "consider" include several defenses showing that the actions and statements I am charged with do not meet the elements of any Iowa crime. How can a criminal charge against me be "affirmed" by this court in a ruling which fails to address even a single one of my defenses? How can claims that the elements of the charge are not met be so far from "before this court" that they can be dismissed without even a word about why they are not, or what they even are?

For example, is it that unreasonable of me to question how I can be such a Superwoman that at the age of 80, unarmed, I still "threaten the safety" of a crowd of young people so seriously that they require court protection?

Does it merit not one word of comment, that Judge Gerard said my "criminal history clearly proves that the Defendant continues to present a threat to the safety of the Protected Party..." but supported that finding with a "criminal history" that fails to suggest that the "threat" he means is remotely physical?

> "[she has] no intention of stopping her activities as an anti-[aborticide] protester...to communicate to women why they should not kill their children....[and I want to] speak to those who wish to enter [Planned Parenthood; I was] convicted of criminal trespass....[and in the view of Planned

> Parenthood staff I] display hostility against Planned Parenthood....” (App. 88 – ruling begins p. 86)

Is it of no concern to the Court that the nature of the “threats”, whose charge against me you have affirmed, never alleged much less proven to be physical, are intellectual and spiritual? Does this Court assert jurisdiction to prosecute intellectual and/or spiritual speech protected by the First Amendment whenever it makes someone uneasy?

Has this Court no interest in my claim that what I am charged with saying is the simple truth – that no one has alleged that anything I have said was *not* true or would not have been just as true even if I never existed – and that over half of Americans agree my statements are true?

Is this Court unwilling to address whether the truth of a statement is a defense against its prosecutability as a “threat”?

Even if every word of Judge Gerard’s description of my “threats” were true, can this Court actually take the position that they describe on their face the kind of physical threat which is prosecutable under American law?

Is this Court willing to make intellectual and spiritual "threats" prosecutable, despite the threat of such a ruling to Freedom in America?

It *should* go without saying that a prosecutable "threat", in America, must be a physical threat or it must be left alone by courts. In Judge Gerard's mind the spiritual challenge Americans call "Truth" "threatens" Planned Parenthood's staff and customers. In fact, Truth "threatens" all tyranny, and all lies. But Truth's intellectual and spiritual threats, unlike physical threats, are not only not prosecutable, they are protected as among the most fundamental of rights by the First Amendment, and are universally held as central to the Freedoms which distinguish and preserve our nation.

At least until now.

Is it irrelevant that nothing in the record proves or even alleges that anything I ever said or did was a "threat to the" *physical* "safety" of anyone?

But if the "safety" of the "victim" in the mind of the "state"

and of the judge is not physical, but is the "victim's" *spiritual* "safety", this Court should join me in reassuring them that my warnings cannot put people in *greater* danger, but the opposite: if heeded they will completely *spare* them from *any* danger.

To the extent this Court now regards *spiritual* warnings as prosecutable, our First Amendment now means nothing.

The fact that I was charged with 3rd degree harassment and not 1st or 2nd degree, "threat to commit a forcible felony" and "threat to commit bodily injury", proves that no one thought I was about to *physically* hurt anybody.

Another element is "intimidated". Does this Court seriously think "intimidated" describes what people feel towards an old woman who poses no tangible or imaginable physical threat, nor any authority over the people, nor any other levers over their minds or lives than telling them facts never alleged to be untrue?

If the charge against me is only that I tell people about reality, or about God, then this Court should be prosecuting reality, or God, not me. I haven't done anything to anybody, nor do I plan to or

want to. I want to save people. Does this Court desire the opposite?

Another element is “alarm”.

This Court should clarify that it can’t be Constitutionally prosecutable to merely inform people of facts which are true and which would still be true even if the messenger did not exist.

In American justice, evidence that I told the truth *has* to be allowed as a defense against the charge that I alarmed somebody. Before this charge can legitimately, legally, and constitutionally stand, there has to be an allegation that what I said is *not* true, or that it would be made true only by my present or future actions. Then I would have to be allowed to present evidence that what I said was already true, and it has to be the burden on the State to prove I raised a *False* Alarm – the only kind of alarm which can be Constitutionally prosecutable.

At least until now.

If my message was already true, then its recipients’ strong negative emotional reaction to mere truth marks them as immature, and probably as fools, although the latter charge might

be too strong since their ignorance is at least intentional. But when millions are willfully ignorant about whether they are committing murder, America faces a very serious, very grave spiritual problem.

No Court can, therefore, logically or legally rule on such a case, without addressing whether the "alarm" raised was false, or true. When an "alarm" is true, the word for it is "warning". No law criminalizes giving a "warning", and the perversion of any law to such a result would constitute an unconstitutional and irrational application.

My evidence that the substance of my message that unborn babies are humans/persons – which was prosecuted as "3rd degree harassment" – has been true independently of myself, and is legally recognizable as true, is laid out in my October 21, 2014 brief.

Until some Court somewhere finally squarely addresses the unanimous verdict of court-recognized fact finders, that has "established" what *Roe* said must be "established" for legal abortion to end, (an inquiry avoided by every court since 1973 as my initial brief shows), my theory remains unchallenged that the

only way it has been possible for aborticide to remain "legal" all these years, and especially since 18 USC §1841(d) in 2004, has been to suppress evidence – in my case, to not allow me to attend my trial, to prosecute undisputed statements of fact as "threats", to ignore my October 21 brief, and to ignore the fact that all four court-recognized finders of fact have unanimously "established" what *Roe v. Wade* said must be established for legal abortion to end.

To suppress evidence is to ignore reality.

In fact, should this Court perpetuate the same pattern of suppression of evidence, by, for example, dismissing all of my defenses as not "before this court" without a word of explanation why not, which as my brief explains has been typical of aborticide jurisprudence, that will only confirm the truth of my message, by this principle from the *Tryal of John Peter Zenger* (1735) which established Freedom of the Press in America: "The suppressing of evidence ought always to be taken for the strongest evidence."

Truth can certainly "threaten" the comfort of those who deny it and those who must adjust to it. That was acknowledged by the

judge in the Zenger trial. When Zenger tried to prove that everything he published was true, the judge ruled that would make the "libel" even *more* insulting!

Judge Gerard wanted to keep Planned Parenthood's customers "safe". From what? Not "safe" from any physical danger; but "safe" from the content of my message. And what is the method for keeping patients "safe" from the content of my message? To hold umbrellas between them and me.

Umbrellas? For what? To help fight me off should I suddenly morph into some manner of credible physical threat for which no evidence was alleged or theory proposed?

When speech is prosecuted as "threats to safety" which are not even alleged to threaten anyone's *physical* safety but which only articulates *beliefs* shared by about half of society and hated by the other half, the prosecution is called an unconstitutional "content-based restriction" which regulates speech according to its subject matter or viewpoint.

No one has alleged that my words have incited physical

violence, or are ever likely to, or that my words are not essential to expressing my ideas.

Ideas, like “They are killing babies in there”, “Thou shalt not murder”, a physical description of the aborticide process, “the babies didn’t ask to die”, “You’re a mom – don’t kill your baby”, are the heart of the complaint against me. It is my *motivating ideology* – my opinion – *my Biblical perspective* – that the “rationale” of the Court’s no-contact order targets. “A [prohibited] content-based speech restriction is one that regulates ‘speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.’” *Galena v. Leone*, 638 F.3d 186, 199 (3d Cir. 2011) “The question in every case is whether the words used . . . create a clear and present danger. . . .” *Schenck v. United State*s, 249 U.S. 47, 52 (1919)

Schenck is not talking about a spiritual danger, or an intellectual danger, or a psychological danger, but a *physical* danger.

As for the charge of **disorderly conduct**, an element of 708.7(1)(b) is “raucus”, which means “behaving in a very rough and noisy

way...strident...hoarse...harsh...raucus laughter...a raucus crowd"[1]. I doubt if that is an appropriate word for a focused, non-physical message with which many agree, delivered with no more volume needed than to bridge the distances involved. Another element is occurrence outside a "public building" which means "a building that belongs to a town or state, and is used by the public".[2] Planned Parenthood is not owned by any government.

Courts have not yet squarely addressed questions about the legality of aborticide to the satisfaction of a clear majority of Americans. My case presents courts an opportunity to resolve those lingering disputes and heal America, which will end the lawbreaking. It is America Herself which will suffer, if Courts gloss over these unanswered questions one more time.

What Canonof Judicial Ethics 19 articulates is not some remote fringe option of American law. It articulates a universal requirement of reason. There can be no intellectual interaction

1 Merriam-Webster.com. http://www.merriam-webster.com/dictionary/raucous

2 Collins Dictionary, http://www.collinsdictionary.com/dictionary/english/public-building. Also see https://en.wikipedia.org/wiki/Public_Buildings_Act "The Public Buildings Act of 1926, also known as the Elliot-Fernald Act, was a statute which governed the construction of federal buildings throughout the United States...." The U.S. Code defines "public building" as "suitable for use...by one or more federal agencies...." 12 categories are listed of federally owned facilities. Privately owned buildings are not on the list. 40 USCS § 3301 (5)

between human beings except to the extent they are “responsive” to each other.

Has this Court nothing to say about whether the practitioners of what is now legally recognizable as murder have standing to sue in civil court for a no contact order, or to seek relief from interference in criminal court? Will this Court rule that murderers are legally entitled to protection while they are murdering? Do they have standing in an equitable action to apply for protection?

Or is this Court still unpersuaded that abortion is legally recognizable as murder? If the unanimous verdict of all four court-recognized finders of facts, that all unborn babies are humans/persons from fertilization, is not enough evidence to establish this fact, can this Court accept any fact? Can any fact be more established?

This became relevant, as my brief explains, when Judge Gerard switched the issue from whether his ex parte hearing was illegal, to “whether the Defendant continues to pose a threat to the safety of the Protected Party”. Now it is relevant whether “the

Protected Party" has any standing to request relief, in view of its own contribution to the harms about which it complains.

Doesn't Iowa law 704.10 say my nonviolent actions can't be prosecuted as a "public offense" if their intent was to prevent "serious injury"? Meaning, of course, to human beings. Babies of humans are now legally recognizable as humans. How can this Court say this defense is not before this Court, but the charge which this defense negates is?

704.10 says even if I *had* violated criminal threat laws, I can't be prosecuted for actions which prevent serious injury. Much less can I be prosecuted for actions which *have in fact* saved lives – a fact never disputed, and affirmed by the prosecution of me for interfering with those killings. (That is, had we not driven away a single killing customer, it is hard to imagine why Planned Parenthood would spend such resources on prosecuting me.)

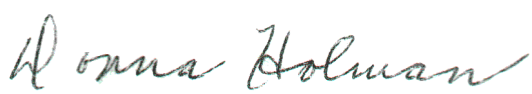
I ask your ruling clarifying that "threats" and "harassment" are not prosecutable if they involve only mental and spiritual allegations whose truth no one contests and which a majority of

Americans believe, and do not involve any physical danger. I ask this clarification because Judge Gerard is not the only American, and probably not the only judge, to be confused about this. This misunderstanding of the nature of Freedom of Speech creates a chilling effect on our First Amendment freedoms.

Is this an unreasonable thing to ask?

I ask that you rule on the fact that since at least 18 USC §1841(d) in 2004, abortion has been legally recognizable as murder according to all four court-recognized finders of facts, and that murderers have no standing in courts of equity to apply for relief from the truth about their actions. I ask this so that America may be healed.

CONCLUSION. Wherefore I ask this Court to re-hear my case, and to explain, if really not one of my defenses is "before this court", why not. And, if after further consideration it deems some of them before this Court after all, to address them.



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