

**WISCONSIN SUPREME COURT
WEDNESDAY, OCTOBER 6, 2010
1:30 p.m.**

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a Richland County Circuit Court decision, Judge Michael J. Rosborough, presiding.

2008AP1296-CR [State v. Janet A. Conner](#)

In this case, the Supreme Court examines provisions of Wisconsin's stalking statute, Wis. Stat. § 940.32(2m)(b) to determine what acts may constitute a course of conduct and whether the defendant in this case received adequate notice of the course of conduct elements of the statute.

Some background: Janet A. Conner was charged with two counts of stalking with a previous conviction within seven years, contrary to § 940.32(2m)(b), and one count of criminal damage to property, contrary to Wis. Stat. § 943.01(1), as a repeater. All three counts arose from an incident on Nov. 30, 2005. On that date, the victim, James Gainor, observed Conner "keying" his vehicle and confronted her.

At trial, Gainor testified that he and Conner had been involved in a brief relationship ending in May 2000, and shortly thereafter he began seeing someone else (Rhonda). In 2001, Gainor and Rhonda were married. Gainor testified that in September 2000, Conner began a pattern of harassing behavior involving him and Rhonda and this conduct continued for many years.

A number of witnesses testified to a series of events beginning in September 2000 and ending on Nov. 30, 2005, when Gainor confronted Conner after he saw her keying his vehicle. These events included prank phone calls to James' home, Rhonda's home, and James' place of work, and other vehicle damage involving paint, flat tires and glue.

A harassment injunction was issued on Feb. 16, 2001 effective until Feb. 16, 2003. In June 2003, Conner was convicted of violating the harassment injunction, was sentenced to 90 days in jail and released in September 2003. A woman testified at trial that she observed Conner keying her vehicle in October 2003.

Conner was convicted of stalking Gainor; she was acquitted of stalking Rhonda and causing criminal damage to property.

On appeal, Conner argued that under Wis. Stat. § 940.32(2m)(b), the two acts constituting the course of conduct subjecting her to an enhanced penalty must have occurred after her most recent conviction in 2003.

The Court of Appeals concluded that the seven-year time restriction specified in § 940.32(2m)(b) was ambiguous but requires only that the final act charged as part of a course of conduct occur within seven years of the previous conviction and does not restrict by time the other acts used to establish the underlying course of conduct.

There was no dispute that the final act of keying the Gainors' vehicle occurred within seven years of Conner's previous conviction. The Court of Appeals said the jury properly considered the entire history of acts undertaken by Conner against Gainor, showing a continuity of purpose, to establish Conner's course of conduct.

Conner argues that when the state elects to charge a defendant with a continuing offense, the failure to provide the defendant with a day upon which the charged continuing offense began violates the defendant's due process rights by failing to provide notice that the defendant would have to prepare a defense to that continuing violation.

Conner also argues that the plain language of § 940.32(2m)(b) requires proof of a series of two or more acts intended to place a person in distress committed after the prior conviction for a crime against the same victim.

The state contends that Conner has waived her issue because her motion to dismiss the complaint only questioned probable cause, and did not challenge whether it provided sufficient notice. The state also says that Conner received notice of the fact allegations in the complaint and the statutory charge in the information.

In addition, the state contends that the criminal complaint references an attached motion to introduce evidence of other crimes, wrongs, or acts, which summarizes some of the history of harassment and stalking perpetrated by Conner.