

# Third District Court of Appeal

## State of Florida

Opinion filed January 16, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D17-1965  
Lower Tribunal No. 14-11389

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**Javier Fernandez,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Marisa Tinkler Mendez, Judge.

The Law Office of Adam K. Goodman, PLLC, and Adam K. Goodman, for appellant.

Ashley Brooke Moody, Attorney General, and Marlon J. Weiss, Assistant Attorney General, for appellee.

Before EMAS, C.J., and LOGUE and SCALES, JJ.

PER CURIAM.

Affirmed. See Bouters v. State, 659 So. 2d 235 (Fla. 1995) (holding that the “substantial emotional distress” element of stalking requires application of an objective, reasonable-person standard); Pallas v. State, 636 So. 2d 1358 (Fla. 3d DCA 1994); T.B. v. State, 990 So. 2d 651 (Fla. 4th DCA 2008); D.L.D. v. State, 815 So. 2d 746 (Fla. 5th DCA 2002); McMath v. Beirnacki, 776 So. 2d 1039 (Fla. 1st DCA 2001). See also McKinnon v. State, 712 So. 2d 1259, 1260-61 (Fla. 1st DCA 1998) (holding that the “harassment” element of crime of stalking requires State to prove defendant’s acts caused substantial emotional distress, not that defendant intended to cause substantial emotional distress); Seese v. State, 955 So. 2d 1145 (Fla. 4th DCA 2007) (noting distinction between “legal malice” (wrongfully, intentionally, without legal justification or excuse) and “actual malice” (ill will, hatred, spite, or evil intent), and holding that section 784.08(4) requires proof of legal malice); Fla. Std. J. Inst. 8.7(b) (Crim.) (providing: “‘Maliciously’ means wrongfully, intentionally, and without legal justification or excuse”).