

# Third District Court of Appeal

## State of Florida

Opinion filed June 26, 2019.  
Not final until disposition of timely filed motion for rehearing.

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No. 3D19-60  
Lower Tribunal No. 18-14732

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**Miguel Garcia,**  
Appellant,

vs.

**The State of Florida,**  
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Lourdes Simon,  
Judge.

Carlos J. Martinez, Public Defender, and Jonathan Greenberg, Assistant  
Public Defender, for appellant.

Ashley Moody, Attorney General, and Asad Ali, Assistant Attorney General,  
for appellee.

Before SALTER, HENDON and GORDO, JJ.

SALTER, J.

Miguel Garcia appeals from judgments of conviction and sentence entered by the circuit court. The single issue presented is whether Garcia violated an injunction for protection against stalking. See §§ 784.0485, 784.0487(4), Fla. Stat. (2018). Garcia contends (a) he could not be convicted based on the initially-entered temporary ex parte injunction, because his alleged violation occurred after the temporary injunction had expired, and (b) he could not be convicted based on a permanent injunction entered after a notice and hearing, because he had not attended that hearing and had not been served with a copy of the permanent injunction issued by the trial court at that hearing.

#### The Timeline

The victim obtained a temporary, ex parte injunction for protection against stalking against Garcia on June 12, 2018. Garcia was duly served with a copy of the temporary injunction the same day. The caption of the temporary injunction stated that it “EXPIRES: July 5th 2018 OR UNTIL THE FINAL JUDGMENT OF INJUNCTION FOR PROTECTION IF ENTERED IS SERVED ON RESPONDENT [Garcia].”

The temporary injunction set a hearing on July 5, 2018, for consideration of whether a final judgment of protection against stalking should be entered. The temporary injunction instructed the victim and Garcia that “they are scheduled to appear and testify” at the hearing and that if either or both did not appear, “this

temporary injunction may be continued in force, extended, or dismissed, and/or additional orders may be granted.”

On July 5, 2018, the victim appeared, but Garcia did not. A permanent injunction was entered against Garcia, but Garcia was not separately served with a copy of the final injunction until August 13, 2018. In the interim, on July 21, Garcia stepped onto the porch of the victim’s home, was recorded on a security video camera at the home as he tried to open the (locked) front door, and was subsequently arrested for a violation of the injunction.

#### Trial and Motion for a Judgment of Acquittal

At trial, the State entered into evidence the temporary injunction, duly served on Garcia on June 12, 2018, and established the fact of Garcia’s uninvited proximity to the victim and her residence on July 21st. The defense moved for a judgment of acquittal based on the alleged expiration of the temporary injunction and the fact that the final injunction had not been served upon Garcia at the time of the July 21st incident. The defense relied on Suggs v. State, 795 So. 2d 1028 (Fla. 2d DCA 2001), and Livingston v. State, 847 So. 2d 1131 (Fla. 4th DCA 2003), in support of the motion.

The trial court denied the defense motion. The jury returned a verdict of guilt on the charge,<sup>1</sup> the defense renewed its motion for a judgment of acquittal, and the trial court again denied the motion. Garcia was sentenced to 364 days in jail for the violation of the injunction. This appeal, which has been expedited, followed.

### Analysis

This appeal presents an issue of law reviewed de novo. The defense contends that the temporary injunction issued June 12, 2018, and duly served on Garcia, had expired by the time of the July 21st incident. Section 784.0485(5)(c), Florida Statutes (2018), states that an “ex parte temporary injunction is effective for a fixed period not to exceed 15 days,” but it also allows the trial court to continue that period of effectiveness for good cause shown. The injunction “shall be extended if necessary to remain in full force and effect during any period of continuance.” Id.

The record before us does not include a transcript of the July 5, 2018, hearing for the permanent injunction or a copy of the permanent injunction itself.<sup>2</sup> The record thus contains no evidence that the trial court terminated the temporary injunction. To the contrary, the temporary injunction (which was introduced into evidence during Garcia’s trial in the criminal case) specifically warns that if a final

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<sup>1</sup> Garcia was also acquitted of a burglary charge and convicted on a trespass charge arising from the same incident. The trespass conviction is not an issue on appeal.

<sup>2</sup> Testimony did establish, however, that the permanent injunction was issued at the close of the July 5, 2018, noticed hearing.

judgment of injunction for protection is entered, the temporary injunction does not expire until that final judgment of injunction is served on the respondent. The very order itself thus includes an extension of the effectiveness of the temporary injunction after the permanent injunction has been entered, but before it has become effective via service on the respondent.

This distinguishes the present case from Suggs, in which there was an express finding that, at the hearing on the permanent injunction, “the trial court dissolved the temporary injunction and entered the permanent injunction.” 795 So. 2d at 1029.

The present case is also distinguishable from the other case relied upon by Garcia, Livingston, because in that case (a) “[t]he court dissolved the temporary injunction and entered a permanent injunction,” and (b) the charge and conviction were for an alleged violation of the permanent injunction (which had been mailed, but not personally served as required). 847 So. 2d at 1133-34. The present case was charged and proven based on a violation of the temporary injunction, which had not expired according to its own terms.

Finally, the statutes themselves use the term “injunction for protection against stalking” without differentiation as between temporary and permanent (or final) injunctions for such protection when addressing enforcement. Section 784.0485(1) begins, “There is created a cause of action for an injunction for protection against stalking.” Later subsections of the statute describe the procedures for consideration

of petitions for, and entry of, ex parte, temporary, and final injunctions for such protection. Section 784.0487, captioned “Violation of an injunction for protection against stalking or cyberstalking,” begins in subsection (1), “If the injunction for protection against stalking or cyberstalking has been violated . . .,” again without differentiation.

This comports with common sense, of course, as a duly-served temporary injunction is entitled to enforcement while in effect, just as is a permanent or final injunction. And having failed to appear at the July 5, 2018, hearing, Garcia had been warned in the temporary injunction that this might result in the continuance in force of the temporary injunction.

For these reasons, we affirm the judgments of conviction and sentence in all respects.