

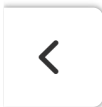


Appeals court nixes North Ridgeville man's harassment conviction over angry voicemail to city employees (UPDATED)



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This story has been updated with a comment from the North Ridgeville Law Department.



The 9th District Court of Appeals in Akron has overturned a North Ridgeville man's criminal harassment conviction, saying he had no intent to "purposefully abuse, intimidate or harass" city employees when he called them to get his water service turned back on three years ago.

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The vote was 2-1, with Judges Jennifer Hensal and Donna Carr voting to overturn the conviction on the grounds that there wasn't enough evidence to convict Matthew Golga of



Judge Jill Flagg Lanzinger dissented, concluding that prosecutors "presented sufficient evidence" to convict Golga.

Golga's attorneys said his speech was protected by the First Amendment.

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"This was a shockingly unconstitutional prosecution and conviction and we're grateful it's been reversed," attorneys Peter Pattakos and Gregory Gipson of the Pattakos Law Firm in Fairlawn wrote in a statement on behalf of their client. It was the only conviction of its kind they said they could find in their research.

Sean Kelleher, the assistant North Ridgeville law director and prosecutor who argued the appeal on behalf of the city, said the city respects the court's decision "but disagree with their finding."

"It's a split decision. We agree with the dissent," he said. "We look forward to appealing it to the (Ohio) Supreme Court."

Pattakos said Thursday that "there will be legal accountability" for North Ridgeville.

Golga "does intend to and will be seeking compensation and accountability for this unconstitutional prosecution," he said in a phone interview.

The case

According to the appeals court's decision, the city shut off Golga's water because he didn't pay his \$180 water bill on time.

Golga's attorneys said he was "a few weeks late" paying the bill, and that the city's utilities manager had just started a new policy of being "less forgiving" of unpaid water bills.

Golga "responded by calling the City's Water Department eight times" in under 30 minutes,



A clerk tried to help him but ended the calls when Golga wouldn't stop screaming and cursing at her, according to the appeals court.

When she let one of his calls go to voicemail, he left a message that was transcribed in the court's decision:

"(Y)ou can't just be hanging up on people. That's f***ing bull****. If you're f***ing trying to kill me by turning my f***ing water off, then f*** you. And if you'd like me to come down to the f***ing thing, we can have a f***ing conversation, go f*** yourself! You think you're f***ing bad? Yeah, f*** him. Let's starve him out. Let's f***ing kill 'em all, right? F*** you!" Golga said in his message, according to the appeals court.

Golga and North Ridgeville's public utilities director worked out a plan to restore his service, but his voicemail was forwarded to the North Ridgeville Police Department. Police Chief Michael Freeman filed a criminal charge in Elyria Municipal Court, according to court records.

< A jury convicted Golga at trial. Retired Judge Lisa Locke Graves, sitting by assignment, sentenced Golga to 180 days in jail with all but three days suspended, and ordered him to complete anger management. He spent a weekend in the Lorain County Jail.



In his appeal, Golga argued there wasn't enough evidence to convict him, nor evidence he intended to harm anyone. The majority of the three-judge panel agreed.

There was no evidence that Golga intended to "purposefully abuse, intimidate or harass the employees," Hensal wrote. Even the employees testified in court that Golga called in order to get his water service turned back on, and that he was required to show up in person to get it turned back on.

Golga's calls started out polite but became angry when he was told he couldn't be helped or that employees wouldn't help him, Hensal wrote. He swore at city employees "repeatedly" and also "accused them of trying to kill him and his children by depriving them of water," she wrote.

Golga also told one of his two children that "the employee he was talking to wanted to kill the



seeking to harass, intimidate or abuse others," Hensal wrote.

Carr also wrote that Golga's prosecution "could have a chilling effect on the First Amendment rights of citizens to contact government offices in order to redress grievances."

"Courts should remain mindful that the First Amendment affords protections against laws which abridge the freedom of speech as well as the freedom to petition the government to redress grievances," she wrote.

The defense

It wasn't disputed that Golga called the city to have his water turned back on, nor that he called eight times in 24 minutes, his attorneys wrote.

"While our client did become increasingly angry and directed expletives (mainly the F word) toward city officials on the eight phone calls he placed after they had repeatedly hung up on him and were unresponsive to his concerns, there was no evidence that he uttered any threats of harm against them," according to Pattakos and Gipson.

He even went to the Water Department, made a partial payment and agreed to pay in full in three days once his next paycheck came in, they said.

Golga might have been angry and vulgar, but there was a "complete lack of evidence that our client was doing anything but expressing a legitimate and constitutionally protected complaint to the government," according to Pattakos and Gipson.

Locke Graves refused the defense's request to instruct jurors "on the heightened scrutiny the First Amendment requires of criminal charges that implicate a defendant's free speech rights," they wrote.

Jurors were deadlocked after three hours of deliberation, were instructed to go back and continue deliberations, then took 15 minutes to come back with a guilty verdict, according to Pattakos and Gipson.

Some appeared "obviously confused" and even "looked right at us and shrugged" after finding



Ridgeville's prosecutor simply respected the Constitution and declined to issue these outrageous charges in the first place," Pattakos and Gipson wrote.

Numerous legal scholars supported Golga's appeal.

Ohio's law could not be constitutionally applied to Golga's speech in the case, a group of them argued in a brief written by attorney Jeffrey Nye of the law firm of Stagnaro, Saba & Patterson in Cincinnati. And while some speech directed at the government may be properly punishable, "merely offensive speech" may not, he wrote.

"Golga did not threaten violence, engage in face-to-face 'fighting words,' or incite others to cause harm," Nye wrote. "If Golga's conviction is affirmed, this would open the door for others to be convicted based on one-time phone calls."

The amicus curiae or "friend of the court" brief was put together by Nye; Cleveland State University College of Law Professor Emeritus Stephen Lazarus; Cleveland-Marshall College of Law associate professor Kevin O'Neill; attorney Maurice Thompson and the 1851 Center for Constitutional Law in Columbus; Indiana University-Purdue University of Indianapolis McKinney School of Law professor Margaret Tarkington; and UCLA law professor Eugene Volokh and his students Dice Hagiwara, Jonathan Kaiman and Brandon Peevy.

"Americans are entitled to call their government offices to express their grievances, especially when there is a plausible case that their and their families' safety are in danger," Nye wrote. "That includes the right to express themselves using offensive words ... Golga did no more than that, and his conviction should therefore be reversed."

The dissent

In her written dissent, Flagg Lanzinger disagreed with her fellow judges, writing that Golga wouldn't listen to the utilities clerk "even when she tried to offer ways to help."

Golga's voicemail was "pure aggression, intimidation and abuse" and there was "no legitimacy to the phone call at all," he testified, according to Flagg Lanzinger's dissent. He "didn't want to hear about resources, he just wanted (his) water back on," she wrote.



Employees testified they felt "abused, intimidated and harassed, and concerned for their safety," she wrote. One testified Golga was one of only two customers she had ever worried about coming to City Hall in her 17-year career, Flagg Lanzinger wrote.

The jury was right to conclude Golga had "specific intent to mentally injure the (employees), cause them fear and/or annoy, alarm, or cause them substantial emotional distress for no legitimate purpose," she wrote.

"The record does not support the majority's reading of Mr. Golga's voicemail," Flagg Lanzinger wrote.

Hensal, however, noted that for Golga to get his water turned back on, he had to go to the Water Department in person "to make arrangements to continue (his) service, which includes putting the arrangements in writing."

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