

Appendix:

- 1) A copy of the judgment sought to be reviewed
- 2) A copy of the portion of the trial transcript containing the judgment of acquittal

Appendix 1

**GRAHAM SCHIFF**

\* **IN THE**  
 \* **COURT OF APPEALS**  
 \* **OF MARYLAND**  
 \* **Petition Docket No. 115**  
 \* **September Term, 2022**  
 \* **(No. 725, Sept. Term, 2021**  
 \* **Court of Special Appeals)**  
 \* **(No. 136380C, Circuit Court**  
 \* **for Montgomery County)**

v.

**STATE OF MARYLAND**

**ORDER**

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the Emergency Motion for a Stay filed thereto, in the above-captioned case, it is this 17<sup>th</sup> day of June, 2022

**ORDERED**, by the Court of Appeals of Maryland, that the Emergency Motion for a Stay be, and it is hereby, **DENIED**; and it is further

**ORDERED**, that the petition be, and it is hereby, **DENIED** as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Matthew J. Fader  
Chief Judge



1 THE CLERK: Let me check. I believe it's 78.

2 THE COURT: Okay. All right, I'll tell you all about  
3 the note that she gave my law clerk.

4 THE CLERK: I'm sorry, it's 73.

5 THE COURT: Are you sure? One, two, three, four,  
6 five, six, seven, eight, nine.

7 THE CLERK: I believe that's correct, based on  
8 today's jury sheet from Ms. Warren.

9 THE COURT: You're saying she said --

10 THE CLERK: It's No. 81 on her pad.

11 THE COURT: Okay. All right, we're going to have to  
12 figure out where these people are all sitting. Because they're  
13 not sitting, 1 through 12, and then, 13, 14. I don't want to  
14 dismiss the alternate by mistake. Or not dismiss the alternate  
15 by mistake. Do you understand? So, tomorrow, I'm going to  
16 have them identify themselves.

17 THE CLERK: Yes, Your Honor.

18 THE COURT: Okay. All right, I'll hear your motion  
19 now.

20 MR. SCHIFF: Okay. I'd like to file an oral motion  
21 for a judgment of acquittal on both counts of stalking and  
22 harassment.

23 On the grounds of stalking, first and foremost, that  
24 there is evidentiary insufficiency to establish that the  
25 defendant reasonably should have known the conduct would cause

1 serious emotional distress to Ms. Getty. This is because he  
2 was never informed as such, and after he was informed through a  
3 peace order, he simply complied with the provisions of the  
4 peace order and contacted people who were other than Ms. Getty  
5 in accordance with the law.

6           The second ground for the charge of stalking is that  
7 this conduct was all constitutionally protected for everything  
8 under the First Amendment, freedom of speech, but for the email  
9 sent to Ms. Getty and Ms. Bagheri, the defendant was  
10 representing himself pro se at the time. There is filings to,  
11 to demonstrate that. And under the law for stalking it says,  
12 the provision of this section does not apply to conduct that is  
13 authorized, required or protected by local, state or federal  
14 law, which freedom of speech and effective counsel rights are.

15           The third ground --

16           THE COURT: Okay, tell me, tell me how effective  
17 counsel rights is affected by these charges.

18           MR. SCHIFF: Because if I was representing myself at  
19 the time, you cannot charge me without violating my right to  
20 due process and charge me for exercising a constitutional  
21 right, like effective counsel, or free speech.

22           THE COURT: No, let's, let's look at the effective  
23 counsel. Okay. You are representing yourself. What about,  
24 what's in those emails or letters that had to do with you  
25 representing yourself? Say, for example, if you were saying,

1 can I have a continuance? Or, you know, I don't believe this  
2 evidence should come in. Why do you feel that that's effective  
3 assistance of counsel?

4 MR. SCHIFF: Simply as a matter of as, as, as a  
5 matter of fact that I was representing myself at the time. I  
6 won't speculate as to the content of the emails.

7 THE COURT: So, is it your belief that the fact that  
8 you're representing yourself, you could say whatever you want  
9 and that would be?

10 MR. SCHIFF: As long as the content itself does not  
11 reach criminal liability for something like actually  
12 threatening someone. Or something that is a specific charge  
13 for, for written or spoken speech, then, yes, absolutely. And  
14 I believe it complies with the provision of the stalking law  
15 which protects against authorized, required or protected by  
16 local, state or federal law.

17 THE COURT: Okay.

18 MR. SCHIFF: And the third ground, on the charge of  
19 stalking, is that the way the defendant is charged, which is  
20 that he engaged in a malicious course of conduct where he  
21 pursued Ms. Getty and reasonably should have known his conduct  
22 would cause her serious emotional distress to another is too  
23 unconstitutionally vague. So, as to violate the defendant's  
24 right to due process because there is no factual basis to be  
25 established when you're using a malleable term, like

1 reasonably.

2 THE COURT: Okay.

3 MR. SCHIFF: And on the, to continue, on the charge  
4 of harassment, the defendant is charged with harassment because  
5 after he received a reasonable warning request to stop  
6 contacting Ms. Getty on July 17th, he exercised his legal right  
7 to contact Ms. Bagheri on July 18th. The mere mention of Ms.  
8 Getty does not violate this section, it also violates his First  
9 Amendment right to free speech. If he had sent anything  
10 directly to Ms. Getty after that, it would constitute criminal  
11 harassment.

12 But to, to charge him, there is no implications of  
13 fact based on the way the harassment law is written or in  
14 conjunction with an individual's right to free speech under the  
15 Maryland and federal Constitutions.

16 THE COURT: All right, anything else?

17 MR. SCHIFF: That's it, Your Honor.

18 THE COURT: All right, Mr. Grochowski.

19 MR. GROCHOWSKI: Thank you. Your Honor, as for the  
20 first argument, stalking, I believe that was a Constitutional  
21 argument, there is. I'm clearly this, this statute was passed.  
22 It's, there's not all free speech is protected, especially  
23 speech that puts other people in fear for themselves. So,  
24 this, this section is absolutely Constitutional.

25 As to the argument that the term reasonably is vague,

1 Your Honor, it's, whether a reasonable person would believe  
2 that this would cause them to put them in harm. It's, the jury  
3 that's, that standard is for the jury to decide whether or not  
4 a reasonable person should have known that sending all of these  
5 would cause her to feel emotional distress. It's not a vague  
6 term. It's divided in the statutes.

7           As far as his harassment goes, Your Honor, defendant  
8 states that because he didn't contact her directly after the  
9 warning, that he should not be able to be charged with this.  
10 The harassment law says a person may not follow another in or  
11 about a public place, or maliciously engage in a course of  
12 conduct that alarms or seriously annoys the other. With the  
13 intent to harass, alarm or annoy the other after receiving a  
14 reasonable warning or request and without a legal purpose. The  
15 other state of the conduct has to be direct.

16           He clearly knew that he, that Ms. Bagheri worked with  
17 Ms. Getty. (Unintelligible) to the Courthouse. Every single  
18 one of those letters that was sent, referenced or was sent to a  
19 person that he should have known and did know had personal  
20 contact with Ms. Getty. His intent to be decided by the jury,  
21 if they decide that his intent was, in fact, to get those  
22 messages or to get and harass Ms. Getty.

23           For all those reason, Your Honor, and with all the  
24 evidence in the light most favorable for the State, we would  
25 ask that both judgments of acquittal, that both charges be



1 denied.

2 THE COURT: All right, you get the last word, Mr.  
3 Schiff. Anything else?

4 MR. SCHIFF: Yeah. I'd first like to, to address,  
5 Mr. Grochowski continues to say that this does not constitute  
6 free speech because Ms. Getty claims, you know, it sometimes  
7 serious emotional distress, sometimes alarm, sometimes concern.  
8 There are very limited provisions in which you can restrict  
9 free speech, and I actually have cases to reference if that's  
10 okay. For example, Cohen v. California, the ability of  
11 government --

12 THE COURT: All right, give me the cite.

13 MR. SCHIFF: Cohen v. California, I don't have the  
14 year, I believe, it's 1975.

15 THE COURT: Who decided it?

16 MR. SCHIFF: Oh, the Supreme Court of the United  
17 States.

18 THE COURT: Okay.

19 MR. SCHIFF: The ability of government consonant with  
20 the Constitution to shut off discourse, solely to protect  
21 others from hearing it, is depending upon a showing that  
22 substantial privacy interests are being invaded in an  
23 essentially intolerable manner. Any broader view of this  
24 authority would effectively empower a majority to silence  
25 dissidents simply as a matter of personal pre, predilections.

1 In addition, from the same case, most situations  
2 where the State has a justifiable interest in regulating speech  
3 will fall within one or more various established exceptions to  
4 usual rule that governmental bodies may not prescribe the form  
5 or content of individual expression. And also from the same  
6 case, the constitutional right of free expression is designed  
7 and intended to remove governmental restraints from the arena  
8 of public discussion, putting the decision as to what view  
9 shall be voiced largely into the hands of each of us, in the  
10 hope that such freedom will ultimately produce a more capable  
11 citizenry.

12 In addition, from the case Snyder v. Phelps, which I  
13 believe is 2012, also decided by the Supreme Court, the Court  
14 determined that First Amendment protection is required when  
15 statements are matters of public concern, were not provably  
16 false and were expressed solely through hyperbolic  
17 (unintelligible).

18 From the case, Texas v. Johnson, 19 --

19 THE COURT: All right, now, tell me the second case  
20 again.

21 MR. SCHIFF: Snyder v. Phelps.

22 THE COURT: And that was a case where the issue was  
23 whether or not a matter was a public concern.

24 MR. SCHIFF: Yeah, but there were other, yeah, but  
25 there were other issues as well.

1 State's Attorney Offices, in police departments, in  
2 governmental administrations, who are public officials who are  
3 not-elected officials. So, to say that Ms. Getty is not a  
4 public official in the context of the public concern test, as a  
5 matter of fact under the law, I would just say that that is  
6 patently untrue.

7 THE COURT: Oh. So, you believe she's a public  
8 official?

9 MR. SCHIFF: Absolutely, she works for the State's  
10 Attorney's Office.

11 MR. GROCHOWSKI: Your Honor, under Maryland law, the  
12 State's Attorney's Office, Assistant State's Attorneys are not  
13 public officials. I can provide that statute to you, Your  
14 Honor.

15 THE COURT: Okay, I've taken a look at most of the  
16 cases that the defendant cites. And they all seem to be,  
17 basically, saying the same type of thing. In those cases, the  
18 speech involved was clearly protected. In Cohen v. California,  
19 the Supreme Court held that conviction of defendant who walked  
20 through a Courthouse corridor, wearing a jacket bearing the  
21 words, Fuck the Draft in a place where women and children were  
22 present, a breach of peace under a California statute  
23 prohibiting disturbance of the peace by offensive conduct could  
24 not be justified either upon theory that the quoted words were  
25 inherently likely to cause violent reaction. Or upon more

1 general assertions that the State, acting as guardians of  
2 public morality, may promptly remove such offensive words from  
3 the public vocabulary. Since the State may not consistently  
4 with the First and Fourteenth Amendments, make the simply  
5 public display involved of a single four-letter expletive a  
6 criminal offense.

7           In Snyder v. Phelps, in that case the father was a  
8 deceased military service member, brought action against  
9 fundamentalist church and its members, stemming from  
10 defendant's anti-homosexual demonstration near service member's  
11 funeral and asserting claims for intentional infliction of  
12 emotional distress, invasion of privacy by intrusion upon  
13 seclusion of civil conspiracy. The Supreme Court held that in  
14 light of the content form and context, speech of church members  
15 who picketed near the funeral of military service member was a  
16 public concern and therefore, was entitled to special  
17 protection under the First Amendment.

18           And then, in Rankin v. McPherson, a former clerical  
19 employee in a county constable's office brought suit against  
20 the constable and county, alleging that she was denied her  
21 First and Fourteenth Amendment rights when she was fired by the  
22 constable for political remark made to co-employee during  
23 private conversation. The Supreme Court held that a statement  
24 by employee made in the course of conversation with co-  
25 employee, addressing policies of the President's administration

1 that. If they go for him again, I hope they get him, dealt  
2 with a matter of public concern. And constable's interest in  
3 discharging the clerical employee in the constable's office for  
4 making the statement did not outweigh employee's right under  
5 the First Amendment.

6 In the cases cited by the defendant, it dealt with  
7 matters of public concern that the defendant in those cases had  
8 in a public forum. Here, the issue is whether or not the  
9 letters and the emails that were sent to and about Ms. Getty,  
10 were protected. And there is no support in these cases cited  
11 by the defendant that they were protected speech.

12 JUDGE'S RULING

13 The Court finds that the State has made out a prima  
14 facie case with respect to stalking and harassment. And,  
15 therefore, the defendant's motion for judgment of acquittal is  
16 denied.

17 MR. SCHIFF: May I interject?

18 THE COURT: You can object, but that's it.

19 MR. SCHIFF: No, I was wondering if you were going to  
20 cite it on other grounds as well.

21 THE COURT: I decided on what I stated.

22 MR. SCHIFF: Okay, whatever.

23 THE COURT: You will have an opportunity to testify  
24 tomorrow morning. But I want to read to you the juror's note.  
25 And you said it was Juror No 81?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: She said, is it possible to have the  
3 defendant wear a clear face mask, so, it's easier to see his  
4 emotions? And then, she says. Is it possible to see the  
5 letters/emails, rather than hear them read aloud? I am a  
6 visual learner.

7 So, with respect to the second part, the jurors will  
8 be receiving copies of the emails and letters.

9 With respect to the first part, what's your position  
10 on that?

11 MR. GROCHOWSKI: Your Honor, our position is, because  
12 he's going to be testifying, anyway, I think we've all agreed  
13 that he's going to wear a clear mask. And I think that's the  
14 only testimony left in the trial. So, I have no objection to  
15 all of their witnesses wearing a clear mask.

16 THE COURT: No, I understand that. And, and he will  
17 be wearing a clear mask when he testifies. But, otherwise,  
18 when he's making closing remarks or making objections, it's up  
19 to you, Mr. Schiff. If you want to wear a clear mask the rest  
20 of the time, that's fine. If you want to wear it only when you  
21 are testifying, that's fine, too.

22 MR. SCHIFF: I'd like to wear the clear mask. I just  
23 want to make sure. You know, as I said, I know we're dealing  
24 in uncharted territory because of the pandemic. That's not  
25 going to screw up anything, you know, with the case. Like,

1 like, it's not going to be like, I just want to make sure it's  
2 totally okay under the law to wear a clear mask. Just because  
3 I imagine the, the policy is not that. You know, without,  
4 unless you're on the stand.

5 THE COURT: Well, I mean, there's no policy with  
6 respect to, unless you're on the stand, this is a different  
7 situation because you are representing yourself.

8 MR. SCHIFF: Okay.

9 THE COURT: And if you don't have a problem with  
10 wearing it for the rest of the trial, that's fine. You'll be  
11 starting off tomorrow testifying, and then, you'll just keep it  
12 on for the rest of the trial.

13 MR. SCHIFF: Okay.

14 THE COURT: Okay, so, we'll give you a clear one  
15 tomorrow before the jury comes back.

16 MR. SCHIFF: Okay.

17 THE COURT: And so, just to be clear, tomorrow,  
18 you're going to be testifying. And there are no other  
19 witnesses for your side. Is that correct? Because all of the  
20 witnesses that you have subpoenaed, that you wanted to testify,  
21 either have testified or the subpoenas were dismissed. Is that  
22 correct?

23 MR. SCHIFF: Yes.

24 THE COURT: Okay. So, we'll see you back here  
25 tomorrow at 9:30.

1 MR. SCHIFF: Thank you, Your Honor, have a wonderful  
2 evening.

3 MR. GROCHOWSKI: Your Honor, is the Courtroom going  
4 to be locked? Or are we advised to take everything with us?

5 THE COURT: Is the 9 o'clock virtual?

6 THE CLERK: Yes, Your Honor.

7 THE COURT: So, you can leave it if you want.

8 MR. GROCHOWSKI: Okay, I just don't want to carry all  
9 these papers.

10 THE COURT: That's fine.

11 (The proceedings were concluded.)  
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√ Digitally signed by Bernadette Smith

DIGITALLY SIGNED CERTIFICATE

**DEPOSITION SERVICES, INC.** hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Criminal No. 136380

STATE OF MARYLAND

v.

GRAHAM HARRY SCHIFF

By:



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BERNADETTE SMITH  
Transcriber