

臺灣苗栗地方法院刑事判決

112年度易字第226號

公 訴 人 臺灣苗栗地方檢察署檢察官

被 告 ST AUREL TIIIL

上列被告因違反家暴跟蹤騷擾防制法案件，經檢察官提起公訴（112年度偵字第3431號），本院判決如下：

主 文

甲 ○○ ○○○ 犯跟蹤騷擾防制法第十八條第一項之跟蹤騷擾罪，處拘役肆拾日，如易科罰金，以新臺幣壹仟元折算壹日。

犯罪事實

一、甲 ○○ ○○○ 與代號BH000-K112011號女子（真實姓名、年籍詳卷，下稱乙）曾為同居之男女朋友，兩人間具有家庭暴力防治法第3條第2款之家庭成員關係，然自民國101年間雙方分手後即未再聯繫。詎甲 ○○ ○○○ 竟基於跟蹤騷擾之犯意，於112年3月3日22時許，前往乙位在苗栗縣竹南鎮之住處（地址詳卷），向乙胞兄即代號BH000-K112011A號男子（真實姓名、年籍詳卷，下稱丙）表示其欲找乙復合，丙因此將自身手機號碼給予甲 ○○ ○○○ ○，並表明請甲 ○○ ○○○ 不要找乙等語。但甲 ○○ ○○○ 仍於同年3月5日11時49分許，致電丙手機號碼與丙及乙通話，復於同年3月4日16時51分許至同年3月8日16時20分許間，反覆以手機傳送如附表一所示訊息至丙之手機號碼，並由丙將訊息內容轉達予乙，另於同年3月7日16時許，前往乙上開住處與乙父親交談，並留置如附表二所示表明其欲復合之紙條，以此方式持續違反乙之意願對其為聯絡及追求行為，使其心生畏怖，足以影響其日常生活。

二、案經乙訴由苗栗縣警察局竹南分局報告臺灣苗栗地方檢察署檢察官偵查起訴。

01 理由

02 一、證據能力：

03 (一)本判決下述所引用被告以外之人於審判外之陳述，檢察官、  
04 被告甲 ○○ ○○○ 於本院審理時對於該等證據能力  
05 均不爭執，且迄於言詞辯論終結前亦未聲明異議，本院審酌  
06 上開證據資料作成時之情況，尚無違法不當及證明力明顯過  
07 低之瑕疵，認為以之作為證據應屬適當，依刑事訴訟法第15  
08 9條之5規定，均有證據能力。

09 (二)本判決下述所引用之非供述證據，與本案均具有關聯性，且  
10 均係依法定程序合法取得，而查無依法應排除其證據能力之  
11 情形，復經本院依法踐行證據調查程序，自均得作為本院認  
12 事用法之依據。

13 二、認定犯罪事實所憑之證據及理由：

14 訊據被告固坦承伊有與告訴人乙 及案外人丙 通話，並有分  
15 別傳送及留置如附表一、二所示之訊息及紙條等事實，然矢  
16 口否認有何跟蹤騷擾犯行，辯稱：伊是為了和告訴人復合而  
17 來到臺灣，伊認為告訴人如果不要與伊聯繫，應該親自告  
18 訴伊並把戒指還給伊，而不該由丙 對伊說，且伊認為伊並  
19 未騷擾告訴人等語。經查：

20 (一)被告與告訴人曾為同居之男女朋友，兩人自101年間分手後  
21 即未再聯繫。而後被告於112年3月3日22時許，前往告訴人  
22 住處向丙 表示其欲找告訴人復合，丙 因此將自身手機號碼  
23 給被告，並表明請被告不要找告訴人等語。但被告仍於同年  
24 3月5日11時49分許，致電丙 手機號碼與丙 及告訴人通話，  
25 復於同年3月4日16時51分許至同年3月8日16時20分許間，反  
26 覆以手機傳送如附表一所示訊息至丙 之手機號碼，並由丙  
27 將訊息內容轉達予告訴人，另於同年3月7日16時許，前往告  
28 訴人上開住處與告訴人父親交談，並留置如附表二所示表明  
29 其欲復合之紙條等各節，為被告於偵訊及審理中所坦認（見  
30 偵卷第138至143頁、第170至173頁，本院卷第27至31頁），  
31 核與告訴人及丙 於警詢及偵訊中證述之情節相符（見偵卷  
32 第195至203頁，其餘筆錄置於偵卷密封袋內），並有訊息擷  
33 圖1份、監視器錄影畫面擷圖7張及手寫紙條翻拍照片1張附  
34 卷可稽（見偵卷第69至91頁、第101至103頁、第107至111

01 頁），是此部分之事實，均堪認定。

02 (二)被告雖仍以前詞置辯，惟經本院檢視卷附訊息擷圖（見偵卷  
03 第81頁），可見丙於112年3月6日，即已傳送訊息明確向被告  
04 表示其行為已構成騷擾，並請其切勿再與告訴人聯絡或靠近  
05 告訴人住處。又依被告於審理中自承：伊於112年3月5日  
06 有與告訴人及丙通話，電話中告訴人有對伊說她不願意再  
07 回去等語（見本院卷第28頁），經核與丙於偵訊中證述：  
08 被告在112年3月5日與伊及告訴人通話時，伊和告訴人均已  
09 明確拒絕被告，但被告仍然持續傳送訊息等語大致相符（見  
10 偵卷第197頁），在在堪認被告確有在告訴人已明確拒絕追  
11 求，並請其勿再聯絡後，猶以前開方式持續違反告訴人之意  
12 願對其為聯絡及追求行為。再依告訴人於警詢中證稱：被告  
13 在112年3月間，突然出現在我家附近又持續傳送訊息，讓我  
14 感到非常害怕等語（筆錄置於偵卷密封袋內），足認被告上  
15 開行為確已使告訴人心生畏怖，並足以影響其日常生活而屬  
16 跟蹤騷擾行為。是以，被告於審理中辯稱伊並未騷擾告訴人  
17 等語，顯與實情有間，尚非可採。

18 (三)綜此，本案事證明確，被告犯行洵堪認定，應依法論科。

### 19 三、論罪科刑：

20 (一)核被告所為，係犯跟蹤騷擾防制法第18條第1項之跟蹤騷擾  
21 罪。又按所謂家庭暴力罪，係指家庭成員間故意實施家庭暴  
22 力行為而成立其他法律所規定之犯罪；又所謂家庭暴力行  
23 為，係指家庭成員間實施身體、精神或經濟上之騷擾、控  
24 制、脅迫或其他不法侵害之行為；再所謂家庭成員，包括現  
25 有或曾有同居關係者，家庭暴力防治法第2條第2款、第1  
26 款、第3條第2款分別定有明文。經查，被告與告訴人具有家  
27 庭暴力防治法第3條第2款之家庭成員關係，是被告對告訴人  
28 實施精神上不法侵害之跟蹤騷擾行為，除成立上開犯罪外，  
29 揆諸前揭規定，亦成立家庭暴力罪，然因家庭暴力防治法就  
30 家庭暴力罪並無科刑規定，自應依前揭跟蹤騷擾防制法之規  
31 定予以論罪科刑。

32 (二)另因跟蹤騷擾防制法第3條第1項對於跟蹤騷擾行為之定義，  
33 係以對特定人「反覆或持續」實行跟蹤騷擾行為為前提。該  
34 要件判斷除以時間上之近接性為必要外，並就個別具體事案

01 之樣態、緣由、經過、時間等要素為是否持續反覆之評斷，  
02 是立法者應已預定跟蹤騷擾行為具有反覆實行之特性，而具  
03 有集合犯之性質。經查，被告於上開期間內所實施之跟蹤騷  
04 擾犯行，均係基於同一犯意所為，本質上具有反覆、延續性  
05 行為之特徵，故於刑法評價上，應論以集合犯之一罪為宜。

06 (三)爰審酌被告既為智識健全之成年人，理應以理性、正當之方  
07 式追求異性，詎其在與告訴人已分手十餘年，且雙方已未聯  
08 絡之狀況下，竟忽然出現在告訴人住處表明欲復合，並在告  
09 訴人已明示拒絕被告，復透過丙 向其表明勿再聯繫後，仍  
10 漠視告訴人之意願，持續傳送訊息或前往告訴人住處留置紙  
11 條，以此方式一再干擾告訴人之生活使其惶恐度日，所為甚  
12 屬不該。復考量被告犯後於偵訊及審理中均否認犯行，且其  
13 迄今尚未與告訴人達成和解並賠償所受損害，尚難認其犯後  
14 態度良好。惟念被告並無前科，此品行資料有臺灣高等法院  
15 被告前案紀錄表1份存卷可查，可見其素行良好。兼衡被告  
16 於審理中自陳學歷為大學畢業，現職教師，家中尚有其領養  
17 之孩童需其扶養等語（見本院卷第63頁）之智識程度、家庭  
18 與生活狀況，暨告訴人於審理過程中向本院表達之刑度意見  
19 （見本院卷第41頁）等一切情狀，量處如主文所示之刑，並  
20 諭知易科罰金之折算標準，以資警惕。

21 據上論斷，應依刑事訴訟法第299條第1項前段，跟蹤騷擾防制法  
22 第18條第1項，家庭暴力防治法第2條第2款、刑法第11條前段、  
23 第41條第1項前段，刑法施行法第1條之1第1項，判決如主文。

24 本案經檢察官吳珈維提起公訴，檢察官陳昭銘到庭執行職務

25 中 華 民 國 112 年 5 月 30 日

26 刑事第四庭 法官 朱俊瑋

27 以上正本證明與原本無異。

28 如不服本判決應於收受判決後20日內向本院提出上訴書狀，並應  
29 敘述具體理由。其未敘述上訴理由者，應於上訴期間屆滿後20日  
30 內向本院補提理由書（均須按他造當事人之人數附繕本）「切勿  
31 逕送上級法院」。告訴人或被害人如對本判決不服者，應具備理  
32 由請求檢察官上訴，其上訴期間之計算係以檢察官收受判決正本  
33 之日期為準。

34 書記官 鄭雅雁

01 中 華 民 國 112 年 5 月 30 日

02 附錄本案論罪科刑法條：

03 跟蹤騷擾防制法第18條第1項。

04 實行跟蹤騷擾行為者，處一年以下有期徒刑、拘役或科或併科新  
05 臺幣十萬元以下罰金。

06 攜帶凶器或其他危險物品犯前項之罪者，處五年以下有期徒刑、  
07 拘役或科或併科新臺幣五十萬元以下罰金。

08 第一項之罪，須告訴乃論。

09 檢察官偵查第一項之罪及司法警察官因調查犯罪情形、蒐集證  
10 據，認有調取通信紀錄及通訊使用者資料之必要時，不受通訊保  
11 障及監察法第十一條之一第一項所定最重本刑三年以上有期徒刑  
12 之罪之限制。

13 【附表一】

14

編號	時間	內容
1	112年3月4日 16時51分許	Ahsin...It's the day of GOD today my custom is to not eat food or drink any water apart from praying and worshipping GOD...Please keep Abbey,mama li,aju even along together tomorrow by lunch time...I ll be there. Thankyou Sonny
2	112年3月5日 16時16分許	Thanks ahsin,, take care of your sister and everyone...I don't know what to do now but I will find a way I will never forget you I am sorry. Good bye Don't and never forget me I am a brother despite my many mistakes
3	112年3月5日 20時13分許	I have been admitted in Tainan private hospital, I just collapsed half hour ago, let none worried about it I will be okay...I did marry your sister between

		<p>us two, I don't know if she still wear a ring with 3 stones... And this was the ring I bought from Canada for her to renew our friendship... I am regrettably sorry for all that did happen to us. Don't let her worried about anything I spent 11 years without none I will try to keep going like that maybe she will change her mind one day' I will be patient for I never love any woman before she is the first and the last... Take good care of her for me my brother, whatever you, she or your family want me pay to try to make out for my fault and mistake I will pay it... And I will always love your sister ahsin please forgive me.</p>
4	112年3月6日 11時42分許	<p>Thanks... I am okay' the doctors asked me not to think to much now* but still I cannot let go of your sister man, if I do' then my love was not true to her and I will be a liar... I love your sister and forever let her know that I cannot just forget about the woman I love because of some anger, jalousie &amp; misunderstandings... I love your mother &amp; father same way I love you even though that's why I cannot let go, I cried for the dead of your brother(because of love)I just need a chance to prove it... I am a protector to her nothing else and my love to her isn't doubtful I will find some reconciliation groups here</p>

		<p>to help us reconciled before I return... I am sorry my brother I will try, I don't want no trouble because I didn't make this journey for that but for love.</p> <p>*I HOPE YOU UNDERSTAND ME AS A MAN* &amp; you can't call the police on someone who is coming in the name of love Thanks</p>
5	112年3月6日 19時1分許	<p>Forgive me my brother but don't forget, it's up to me now to make the future better... I wasn't smart enough back then ahsin</p> <p>Think again... &amp; Think twice if your sister was meant to be for someone else I was going to find her married with kids after 11years... She is ours' yours and mine... I am your legitimate brother in law... We had to pass through this journey to grow, now I even love her more although I didn't see her for so long</p> <p>You ahsin' your mother, your sister, your father and even your friend long and any other person that is with you if you want will come with me in my country... I will take good care of you' your sister I will provide for her she will be avenged and satisfied, you will be happy and then you will know that I am your true brother... your sister doesn't need to be scared because I love her... you are all my own personal family</p>

		<p>ly...I don't love no other or none else " but you please believe and then you will know the truth about who really I am...All other things that I do is just to waste time...</p> <p>But time is gone now...I am something else that I never tell anyone about myself not even aju, your sister is that tresor I have been looking since I became a man. I learnt a lot about myself now and the world...you won't need to call no police if you want to kill me for loving you I should let you do to me all that you wish without defending myself, I can't blame you...you are just being protective and I understand that.</p>
6	112年3月6日 23時6分許	<p>sure whatever you thanks.</p> <p>GOD bless you</p> <p>Just take care...If you speak like that, remember that when we met each other you wasn't present so please by all respect don't tell me what to do and don't come between me and Hsiao Mind your own business now, since you are not being nice, respectful and reasonable let your mother or father or Hsiao herself tell me that, I am not a gay, I won't talk to you again next time I come there you can do whatever you want</p> <p>If you can or call your police like you did say I won't give up on you "I didn't come here for trouble, why is your</p>



		<p>brother talking to me like he was your boyfriend?when we met he wasn't present...he knows nothing about us apart from what you told him" Just please keep him out of our subject,you are not his girlfriend...I don't want this situation to escalate to any other level than love alone...Next time I come there talk to me yourself, he doesn't speak for me I am talking to him out of respect as your brother, I can't be disrespected for willing to be respectful towards him.</p> <p>I won't give up on you "I didn't come here for trouble,why is your brother talking to me like he was your boyfriend?when we met he wasn't present...he knows nothing about us apart from what you told him" Just please keep him out of our subject,you are not his girlfriend...I don't want this situation to escalate to any other level than love alone...Next time I come there talk to me yourself, he doesn't speak for me I am talking to him out of respect as your brother, I can't be disrespected for willing to be respectful towards him.</p> <p>Hey "Hsiao Hsin I don't want no trouble"...It's up to you so please don't start ear me up</p>
7	112年3月8日 16時20分許	lovely thankyou fake incestuous brother...It's against the law to have sex w

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		ith your own sister if you even like her a little bit why don't you go to the police with her again to report about her being raped in france by nziengu e max aufray like I did' the police needed her statement. Rubbish
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02

【附表二】

03

AP... please i assume all responsibility for all that happened between us, it is all my fault i wish to reunite with you i am sorry for all now i am 12 years older than our past you don't know what pass through to make it till here please talk to AZ&ZZZZ; 0000000000 i told your father & his friends that i am Here to marry you...please say yes AB
--