Cyberstalking and the 48 Hour Rule

Author : Jeff Welty

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G.S. 14-196.3 prohibits "cyberstalking," which the statute generally defines to mean using electronic communications to threaten, extort, make an abusive or embarrassing false statement about, or repeatedly harass another person. As Jessie noted in this prior post, cyberstalking has become a frequently charged offense. It can be committed by text message, email, Facebook, and other means.

I've been asked several times recently whether the so-called 48 hour rule, set forth in G.S. 15A-534.1, applies to cyberstalking. That statute provides that for certain domestic violence crimes, bond must normally be set by a judge rather than a magistrate. The statute allows a defendant to be held for up to 48 hours if a judge is not immediately available. I've previously written about the 48 hour rule here.

The 48 hour rule applies to "all cases in which the defendant is charged with assault on, stalking, communicating a threat to, or committing [certain felonies] upon a spouse or former spouse or a person with whom the defendant lives or has lived as if married, with domestic criminal trespass, or with violation of [a DVPO]."

Does the statute's reference to "stalking" include cyberstalking? I don't think so, for two reasons.

- First, although the 48 hour rule has been around since 1995, S.L. 1995-527, "stalking" was only added to the statute in 2007, S.L. 2007-14. Both the original stalking statute, G.S. 14-277 (enacted by S.L. 2001-518), and the cyberstalking statute (enacted by S.L. 2000-125) existed at that time. The General Assembly's decision to add the term "stalking" but not the term "cyberstalking" to G.S. 15A-534.1 may have been a deliberate choice. To the extent that the statutory language is ambiguous, the rule of lenity suggests that the term "stalking" should be strictly construed not to include cyberstalking.
- Second, the cyberstalking statute is clearly patterned on the harassing phone calls statute, G.S. 14-196, not on the "regular" stalking statute, and the General Assembly chose not to include harassing phone calls in the 48 hour law.

Based on the foregoing, I don't think that the 48 hour rule generally applies to cyberstalking charges. However, there's one possible limited exception. The cyberstalking statute encompasses certain threatening communications. One could argue that the 48 hour rule should apply to cases of cyberstalking that involve threats based on the provision in G.S. 15A-534.1 regarding "communicating a threat." (The same argument could be made for harassing phone calls that involve threats.)

I've always thought of the reference in G.S. 15A-534.1 to communicating threats to mean simply that the 48 hour rule applies to charges under G.S. 14-277.1, the communicating threats statute. And I've always thought of the 48 hour rule as binary – either it applies to all the charges under a certain statute or it doesn't apply to that statute at all. But I can see a contrary argument, and I don't think that there's a case that squarely addresses the issue.

I'd be interested in feedback about whether, in practice, the 48 hour rule is ever being applied to harassing phone calls or to cyberstalking. But the issue may not arise very often, because in most cases, a phone call or an electronic communication that includes a threat would likely be charged under G.S. 14-277.1, a Class 1 misdemeanor to which

the 48 hour rule clearly does apply, instead of or in addition to being charged as a harassing phone call or cyberstalking (both Class 2 misdemeanors).

It is also worth noting that some conduct that violates the cyberstalking statute will also violate the current “normal” stalking statute, G.S. 14-277.3A, to which the 48 hour rule also clearly applies.