

Cyberstalking

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Furious that her ex-boyfriend slept with her best friend, defendant puts up a post on Facebook falsely stating that boyfriend enjoys intimate relations with inbred dogs (actually, the phrase “enjoys intimate relations” and the term “dogs” are mine; defendant herself employed far more colorful language). Since boyfriend and defendant are “friends” on Facebook, defendant knows that boyfriend will see the post. Did defendant commit a crime?

In a post [here](#), I wrote about cyberbullying, a crime enacted in 2009. A related offense but one that generates far more charges annually (over 1,200 charges in 2010) is cyberstalking. Because I get a fair number of questions about cyberstalking, particularly with regard to postings on social media sites such as girlfriend’s above, I’ll use this post to explain the crime.

The cyberstalking statute, G.S. 14-196.3, actually proscribes four offenses, all of which are Class 2 misdemeanors. G.S. 14-196.3(d).

Using Electronic Mail or Electronic Communication To Threaten or Extort

The first cyberstalking offense involves using electronic mail or electronic communication to threaten or extort. A person guilty of this offense uses in electronic mail or electronic communication words or language threatening to inflict bodily harm to any person, threatening physical injury to the property of another, or for the purpose of extorting money or other things of value from any person. G.S. 14-196.3(b)(1). If there is no threat or purpose to extort, this offense doesn’t apply. Note that as to the threat, statute does not define the terms “bodily harm” or “physical injury.”

For this and all cyberstalking offenses:

- The term “electronic mail” means the transmission of information or communication by the use of the Internet, a computer, a facsimile machine, a pager, a cellular telephone, a video recorder, or other electronic means sent to a person identified by a unique address or address number and received by that person. G.S. 14-196.3(a)(2).
- The term “electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature, transmitted in whole or in part by a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system. G.S. 14-196.3(a)(1).
- The statute provides that the offenses don’t to apply to any peaceable, nonviolent, or nonthreatening activity intended to express political views or to provide lawful information to others. G.S. 14-196.3(e). Also, the offenses may not be construed to impair any constitutionally protected activity, including speech, protest, or assembly. *Id.*
- The offenses are considered to have been committed where the electronic mail or electronic communication was originally sent, originally received in North Carolina, or first viewed by a person in North Carolina. G.S. 14-196.3(c).

Repeated Use of Electronic Mail or Communication To Harass, Etc.

The second cyberalking offense involves repeated use of electronic mail or communication to harass, etc. A person guilty of this offense electronically mails or electronically communicates to another, repeatedly and for the purpose of abusing, annoying, threatening, terrifying, harassing, or embarrassing any person. G.S. 14-196.3(b)(2). Conversation need not occur. *Id.* This offense only applies when there is repeated conduct. Thus, if it's one message or one posting, this offense hasn't occurred. The statute does not define the terms abusing, annoying, threatening, terrifying, harassing, or embarrassing. However, the stalking statute defines the terms "harasses" and "harassment" as knowing conduct directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose. G.S. 14-277.3A(b)(2). Apparently, the person the defendant seeks to abuse, annoy, etc., need not be the person to whom the defendant directs the electronic mail or communication. See G.S. 14-196.3(b)(2) (to annoy, abuse, etc., "any person").

Using Electronic Mail or Communication To Send a Specified False Statement

The third prohibited offense is using electronic mail or communication to send a false statement. A person guilty of this offense electronically mails to or electronically communicates with another and knowingly makes a false statement concerning death, injury, illness, disfigurement, or indecent or criminal conduct of the person electronically mailed or any member of the person's family or household with the intent to abuse, annoy, threaten, terrify, harass, or embarrass. G.S. 14-196.3(b)(3). Note that any false statement won't do it—the statement has to concern death, injury, illness, disfigurement, or indecent or criminal conduct. As with the previous offense, the statute does not define the terms abuse, annoy, threaten, terrify, harass, or embarrass. But as noted, the stalking statute provides guidance on the meaning of the terms "harass" and "harassment." It's not clear what falls within the scope of the statutory term "indecent conduct."

Permitting Cyberstalking

Finally, the statute makes it a crime to permit cyberstalking. A person guilty of this offense knowingly permits an electronic communication device under his or her control to be used for a purpose prohibited by the three offenses listed above. G.S. 14-196.3(b)(4). This offense would apply, for example, if I knowingly let you use my smart phone to send threatening text messages to the victim.

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So what about defendant's post? Since she didn't threaten or extort, the first offense doesn't apply. And since she only made one post, the second doesn't apply either. That brings us to offense three: using electronic mail or communication to send a false statement. Defendant's Facebook posting probably qualifies as an electronic communication within the meaning of the statute. Given her anger over boyfriend's conduct, we can probably infer the improper purpose. That leaves the question of whether the communication pertained death, injury, illness, disfigurement, or indecent or criminal conduct. With regard to this posting, my caller was wondering whether an allegation that someone is having sex with dogs constitutes "indecent conduct." As noted above, the statute doesn't define that term. But I didn't get hung up on that issue because the post clearly concerns criminal conduct. Having sex with animals constitutes crime against nature, a Class I felony. Since all of the elements are satisfied, I think there is probable cause to charge. Let me know if you disagree.