

Extortion or Just Doing Business?

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Categories : [Crimes and Elements](#), [Uncategorized](#)

Tagged as : [extortion](#)

Date : July 27, 2010

Some recent celebrity news has made me think about our extortion statute.

The statute is G.S. 14-118.4, and it says:

Any person who threatens or communicates a threat or threats to another with the intention thereby wrongfully to obtain anything of value or any acquittance, advantage, or immunity is guilty of extortion and such person shall be punished as a Class F felon

The recent celebrity news includes the following:

- "Robert Halderman, the man accused of trying to extort \$2 million from David Letterman, pleaded guilty . . . and will serve six months in jail. . . . Mr. Halderman's lawyer . . . had argued that his client intended only to write a book or a screenplay about Mr. Letterman's affairs, but that before going forward with the project, Mr. Halderman simply was offering to sell Mr. Letterman the rights to the story for \$2 million." (New York Times City Room, March 10, 2010.)
- "A Michigan couple was convicted . . . of trying to extort \$680,000 from actor John Stamos by threatening to sell old photos of him with strippers and cocaine to the tabloids unless he paid up." (AP, July 15, 2010.)
- [This Los Angeles Times article](#) claims that "extortion is a constant threat to the rich and famous."

What I've been thinking about is, where's the line? What if Mr. Halderman had simply taken his evidence of Letterman's affairs and sold the evidence to a celebrity magazine? [According to Slate](#), exclusive photographs of celebrities can be worth tens, or even hundreds, of thousands of dollars. Gossip sites such as TMZ also [admit paying for stories](#). So long as Mr. Halderman did not obtain his evidence of Letterman's affairs illegally, selling that information would not likely be criminal. Why is it different if the buyer of the story is also the object of it? [Media reports claim](#) that Tiger Woods paid Rachel Urchitel \$10 million to remain silent about their affair.

Let's generalize a little bit. Suppose that A legally obtains information about B. Third parties would be willing to pay for the information, and B would prefer that the third parties not obtain the information. (B might be a celebrity, but might be an elected official, a businessperson, or anyone else.) May A convene an auction to sell the information? I assume so. May A invite B to the auction? Again, I assume so. Then why is it improper for A to approach B and say, in effect, "I'm thinking of selling off this information. Would you like to buy it?"

The most famous case in this area is *United States v. Jackson*, 180 F.3d 55 (2d Cir. 1999). That case arose "out of defendants' attempts to obtain up to \$40 million from [Bill Cosby], a well-known actor and entertainer, by threatening to cause tabloid newspapers to publish Jackson's claim to be Cosby's daughter out-of-wedlock." Jackson and several acquaintances were arrested and prosecuted for extortion. The trial judge instructed the jury that threatening to damage a person's reputation in order to obtain money from that person was extortion, and that it "is not a defense that the alleged threats to another's reputation are based on true facts." The Second Circuit reversed the defendants' convictions, holding that only *wrongful* threats to a person's reputation constituted extortion. As to what constitutes a wrongful threat, the court said: "Where there is no plausible claim of right and the only leverage to force the payment of

money resides in the threat, where actual disclosure would be counterproductive, and where compliance with the threatener's demands provides no assurance against additional demands based on renewed threats of disclosure, we regard a threat to reputation as inherently wrongful."

The wrongfulness requirement imposed in *Jackson* is, of course, explicitly included in G.S. 14-118.4. But whether our courts would parse the wrongfulness requirement in the same way that the *Jackson* court did is unclear. The closest North Carolina case to this issue is *State v. Greenspan*, 92 N.C. App. 563 (1989), in which the defendant was convicted of extortion after threatening to have another person charged with making harassing phone calls unless that person paid him. On appeal, the defendant argued that he lacked wrongful intent, because he believed that he was entitled to compensation for being harassed. The court of appeals affirmed the conviction, stating that "[e]ven if the victim were guilty [of making harassing phone calls], this would not entitle defendant to demand money in exchange for refraining from initiating criminal proceedings." However, the court suggests that it would have been proper for the defendant to demand money in exchange for refraining from filing a *civil* suit, and of course the general practice of settling potential civil actions is well-established. If that's so, it arguably follows that it would not be wrongful to demand money in exchange for refraining from taking some other perfectly legal action, such as selling embarrassing information about a person.

I'd be interested in others' thoughts about this, but it seems to me that as long as there is a genuine market for the information, i.e., it is newsworthy, there isn't a principled and consistent way to interpret the wrongfulness requirement that makes threatening to sell embarrassing information about a person extortion. The situation may be different where the information is *not* newsworthy, as when a defendant threatens to tell a victim's spouse that the victim -- who is not a public figure -- is having an affair unless the victim pays the defendant.