Stalking Statute Not Unconstitutionally Vague

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The Fourth Circuit recently rejected a vagueness challenge to the federal stalking statute. Because of the similarity between the federal statute and North Carolina's stalking law, I thought the decision was worth mentioning here.

The federal stalking statute makes it a crime to "engage in a course of conduct that causes substantial emotional distress to [the victim] or places [the victim] in reasonable fear of the death of, or serious bodily injury to, [the victim or his or her spouse, intimate partner, or immediate family member]" with the intent to kill, injure, harass, intimidate, or cause fear or emotional distress to the victim. 18 U.S.C. § 2261A(2). (Because it defines a federal offense, the statute also includes the jurisdictional requirement that the defendant used a facility of interstate commerce such as the mail or a computer network to commit the crime.)

The North Carolina stalking statute makes it a crime to harass a victim repeatedly or to engage in a course of conduct with respect to a victim knowing that a reasonable person in the victim's place would, as a result, fear for the safety of himself or herself, or his or her "immediate family or close personal associates" or would suffer emotional distress due to fear of death, injury, or continued harassment. G.S. 14-277.3A.

You can see that the statutes are pretty similar, and that they're both pretty elastic. In other words, they can encompass a wide range of conduct. Supporters of such laws argue that such flexibility is necessary because stalking may take many forms. Critics of such laws argue that they are vague and overbroad.

That leads us to the Fourth Circuit's recent case, United States v. Shrader, __ F.3d __ (4th Cir. April 4, 2012). The facts are awful. The defendant and a woman identified in the opinion as D.S. dated while the latter was in high school. The relationship ended, but the defendant harassed and threatened D.S., eventually killing D.S.'s mother and a friend, and wounding a neighbor, during an armed invasion of D.S.'s home. The defendant was imprisoned for his crimes, but was later released, and resumed his efforts to terrorize D.S. I'll spare you the details, but his conduct involved threatening to kill D.S., telling her that he hoped one of her children would be killed, and attempting to contact her children. He was charged with, inter alia, stalking D.S. under the federal stalking statute. He was convicted and appealed, arguing in part that the stalking statute was unconstitutionally vague. The Fourth Circuit rejected his argument, stating that "a common sense reading of the statute adequately defines the prohibited conduct," and noting that the defendant's conduct went far beyond any possible gray area.

I'm not aware of an appellate decision addressing a vagueness challenge to the current North Carolina stalking statute. The predecessor to the current statute was upheld against a vagueness challenge in *State v. Watson*, 169 N.C. App. 331 (2005). A few minutes on Westlaw suggests that vagueness challenges to other states' laws have generally met the same result. *See*, *e.g.*, State v. Bernhardt, 338 S.W.3d 830 (Mo. Ct. App. E.D. 2011); State v. Stockwell, 770 N.W.2d 533 (Minn. Ct. App.2009); State v. Haines, 213 P.3d 602 (Wash. Ct. App. Div. 1 2009); People v. Stuart, 797 N.E.2d 28 (N.Y. 2003).

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