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State v. Shackelford

April 5, 2019
Volume 18, Number 7

Social Media Stalking

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Spring is the season¹ for love! As the weather warms up, it seems that love is in the air everywhere. Scientists will tell you that this is because of something called dopamine.² Dopamine is the chemical your brain uses to make you want things and apparently it is triggered by novel experiences. In the spring, there is a lot of novelty happening around us as the fresh colors and smells of the season³ cause our dopamine levels to rise and bring a sense of euphoria to our lives. Of course, love can't be so easily explained away by science, as anyone who has fallen in love with the wrong person could attest. Which brings us to the defendant in today's case, Brady Lorenzo Shackelford.

In State v. Shackelford,⁴ we learn that the defendant attended a church service in April⁵ of 2015 and had a brief conversation with a woman we'll call "Mary"⁶ who worked for the church's communication department. Shackelford emailed Mary two weeks later to ask her for her help with a company communications plan. When Mary replied and said she would be happy to meet with him about it, the defendant emailed back and detailed his plan to create a business in the British Virgin Islands. In the final paragraph of this email, the defendant wrote that he would pay Mary "100K out of the convertible note proceeds" and take her out to dinner at any restaurant in Charlotte. This email "set off a lot of red flags" for Mary.⁷

Mary then emailed the defendant to cancel the meeting and after he tried to reschedule she referred him to her boss. A couple of weeks later, Mary received a five-page handwritten letter from the defendant at her work address in which he told her he thought she was his soul mate and had used the communications plan as a way to ask her out, that he was highly attracted to her, and wanted to know if she would go on a date with him. The next week, Mary received a seven-page handwritten letter⁸ from the defendant at her home address. In this letter, he apologized for sending a letter to her home address without her providing it to him and told her he got the address from a webpage. Shackelford said that he would not harass or stalk her⁹ and encouraged her to notify him if she felt uncomfortable and he would cease communication. He then asked her to either go on a date with him or tell him to leave her alone.

¹ I realize that seasons have ceased to have any meaning here in North Carolina where we had a pretty heavy snowfall three days ago on April 2nd only to be followed by highs in the upper 70's on April 4th but based on the Gregorian calendar established in 1582, March 20th used to be considered the first day of the season of Spring.

² Scientists will also tell you that it is no coincidence that this chemical starts with the word "dope" because it will make people do some pretty stupid things.

³ And the fact that people are wearing less clothing than they did in winter doesn't hurt, either.

⁴ COA 18-273 (19 March 2019).

⁵ Another example of a love story starting in the early weeks of the spring season.

⁶ "Mary" is a pseudonym used by the court to protect the privacy of the victim in this case. "Pseudonym" is not only a great Hangman or Scrabble word, it is from the Greek "pseudonymon" meaning "false name."

⁷ In the immortal words of Will Ferrell's character in "Anchorman," "Boy, that escalated quickly. I mean, that really got out of hand fast."

⁸ These are not good examples obviously, but I think people should write letters to each other more often. It's really a dying art. I learned in elementary school how to layout a letter with date and return address, etc. But I also learned how to write in cursive in school, so I'm pretty much a dinosaur.

⁹ If you find yourself reassuring someone that you are not stalking or harassing them, take a minute and reevaluate if that's true or not. Because having to say that is a pretty good indicator that you are in fact stalking and/or harassing them.

Mary's answer came when one of her supervisors at the church called the defendant and told him to stop making any contact with her or there could be legal actions because the contact was unwanted. After this conversation, the defendant did not send Mary any more emails or letters. However, Mary logged on to her "Google Plus"¹⁰ account and realized that the defendant had "followed" her and made four posts on his own Google Plus account that were not specifically directed to her but which mentioned her by name. These posts said generally that God chose Mary to be defendant's soul mate, that the defendant chose Mary as his wife and wanted God to make her his wife. Mary then blocked Defendant's account and shortly thereafter deleted her own account. However, she continued to monitor the defendant's public postings by checking his Google Plus page at least once a week.¹¹

The defendant continued to post similar things on his Google Plus page and expressed disappointment and sorrow that his soul mate did not feel the same way that he did. In addition to the posts, in August of 2015, a box of cupcakes was delivered to Mary at her work with a typed, unsigned note that read: "Mary, I never properly thanked you for the help you gave me regarding my company's communication plan, so, with these cupcakes, please accept my thanks."¹² Mary then filed a police report and a detective took out an arrest warrant for misdemeanor stalking. Shackelford was arrested the next day, posted bond, and continued to post on Google Plus about Mary, although he would use either just her initials or a shortened version of her name.¹³

A short time later, Mary applied for and received a no-contact order against the defendant which prohibited him from contacting her or "posting any information about her on social media." The defendant continued to make similar postings and also sent two emails to a friend of Mary (who he connected with on Google Plus.) In the first email, he told the friend that they should "encourage Mary to tell the truth when we show up in court." In the second, he "detailed his plans to issue a \$500 million note as part of a viral marketing campaign that would ultimately result in him taking a polygraph test on CNN to prove that he had 'talked to God over 20 times and seen his face 5 times,'" which would "provide Mary with an opportunity to save face and 'tell the judge that I am obviously a righteous man and was in no way a threat towards her.'"

Based on these emails and the Google Plus posts, the detective obtained an arrest warrant for felony stalking and the defendant was subsequently indicted and tried for eight counts of felony stalking. At the close of the State's evidence, the trial court dismissed four of those counts which were related to violating the no-contact order out of concern that the language in the order prohibiting the defendant from posting on social media might be unconstitutional. The defendant was convicted by a jury of the remaining four counts.

On appeal, the defendant argued that he could not constitutionally be convicted of stalking based on his Google Plus posts because they were an exercise of his free speech under the First Amendment. In considering this issue, the N.C. Court of Appeals first pointed out the settled rule that posting information on the internet is generally considered "speech" just like older, more traditional ways of sharing information. Although the State tried to argue that this defendant's speech should be considered "speech integral to criminal conduct" (a category of speech not entitled to First Amendment protection),¹⁴ the court did not agree, pointing out that in this case "the

¹⁰ Google is successful in many areas, but social media continues to elude the company. Google Plus, or "Google+," was an attempt to create a social media site and replaced Google Buzz which had replaced Google Wave. The main feature of Google Plus was the ability to organize your followers into different circles to better control who saw your information. Google Plus was shut down for consumers on Tuesday, April 2nd. I am checking to see if it was related to our snowstorm on that day.

¹¹ I pause here to make perhaps an inappropriate comment. But like the old rhetorical question about whether the falling tree makes any sound if no one is there to hear it, I'm wondering just how wide an audience these posts about the defendant's love reached on Google Plus. I can count on one hand the number of people I know who have ever had a Google Plus account (see footnote 10) and that's counting my new friends Shackelford and Mary.

¹² Question: if you were Mary's co-worker, would you eat one of these cupcakes? I wish I could insert a poll into these legal updates.

¹³ You may wonder what the short version of the name "Mary" would be but remember that Mary wasn't her real name. Or didn't you read footnote 6?

¹⁴ The boundaries of this exception aren't crystal clear but the Supreme Court has used it to uphold laws on distributing and possessing child pornography and on soliciting crime and lower courts have upheld restrictions on doctor speech that recommends medical marijuana to patients or people who post bomb-making instructions online.

speech itself was the crime.” Threats to a person would not be protected under the First Amendment either, but the State conceded that none of the defendant’s posts constituted threats against Mary.

Since this crime as applied to this defendant was based on the content of the speech (his posts), it would have to pass a “strict scrutiny” test to be constitutional. In order to pass this test, the statute must serve a “compelling governmental interest” and must provide “the least restrictive means of doing so.” Even assuming that the stalking statute serves a compelling governmental interest, the N.C. Court of Appeals held that prohibiting these types of social media posts made by the defendant was not the least restrictive means of preventing the defendant “from engaging in a criminal act against” Mary. As a result, the court determined that the Google Plus posts in this case could not be used to support a criminal stalking charge.

After taking away the social media posts, the court looked at what evidence was left to support the stalking charges against the defendant. One count included the delivery of cupcakes from the defendant to Mary. While this was conduct and not speech, the court noted that for stalking to occur under N.C.G.S. 14-277.3A, at least two acts had to be present.¹⁵ As a result, that one action was not sufficient to support a stalking conviction. With regard to the emails sent to Mary’s friend, the court stated that even assuming these emails did not implicate the First Amendment, the charges based on them also included some of the social media posts and as a result, those convictions had to be set aside as well.

So what are the impacts from this case?

1. The court did not rule that G.S. 14-277.3A (the stalking statute) was unconstitutional, just that it was unconstitutionally applied to Shackelford. So you may still charge suspects with stalking under this statute if the elements are met.¹⁶
2. Public social media posts not directed at the victim may not be used as an underlying act to support a stalking charge unless the content threatens the safety of the victim.
3. However, “distressing and unwanted one-to-one speech” – speech directed toward a particular person, whether through social media, the mail, verbally, or otherwise, that “would cause a reasonable person to fear for the person’s safety or the safety of the person’s immediate family or close personal associates or suffer substantial emotional distress by placing that person in fear of death, bodily injury, or continued harassment”¹⁷ can still be used to support a charge of stalking.

Finally, as Spring springs and dopamine dopes, let me suggest to you that if the target of your affections is really your soulmate, it won’t take a bunch of social media posts or other creepy behavior to convince them. You should really just move on.

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¹⁵ The statute applies when a person “harasses another person on more than one occasion or engages in a course of conduct (defined as two or more acts) directed at a specific person.” (emphasis added)

¹⁶ You should also check out G.S. 14-196.3 (Cyberstalking) and G.S. 14-458.1 (Cyber-bullying). Neither of these applied to Shackelford’s case because cyberstalking usually requires direct electronic communication to the victim and cyber-bullying usually requires the victim to be a minor or a minor’s parent. Remember also, that section (a)(1)(d) of the cyber-bullying statute (“post or encourage others to post on the internet private, personal, or sexual information pertaining to a minor with the intent to intimidate or torment a minor”) has previously been held to be unconstitutional for First Amendment reasons and may not be charged.

¹⁷ G.S. 14-277.3A(c)(3).

ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.



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