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STALKING AT SCHOOL

by Jay Howell

Starting in 1992, Florida's legislature and the legislature of almost every other state enacted new statutes to address the crime identified as "stalking." Florida lawmakers created the felony offense of aggravated stalking and defined it as conduct where the perpetrator maliciously and repeatedly follows or harasses another person and makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury. The legislature further explained that the threat must be against a person's life or a threat to cause bodily injury to a person.

For the purposes of the new stalking statute, the legislature described "harass" as a course of conduct directed at a specific person that causes substantial emotional distress in the victim and which serves no legitimate purpose.

When these statutes were enacted, none of the states could be certain how the language of the new laws would be interpreted by our courts. Now, ten years after the first Florida stalking statute was passed, we are learning that our courts apparently intend for these statutes to provide broad protection to our citizens.

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Recently, in an Orlando juvenile courtroom, the State presented evidence which established that D.L.D. and J.R. were middle school students in the same class. J.R. testified that D.L.D. had been hitting her, calling her obscene names, jumping on her, pushing her, and threatening her almost every day at school for a period of at least two months. This activity occurred mostly outside the classroom and the victim had not reported this conduct to her teachers because she thought they would not do anything about it. She did, however, complain to her parents, who in turn called the school's resource officer. J.R. had previously reported D.L.D.'s behavior to the resource officer and to her friend, identified as T.S.

One day in January, 2001, J.R. and her friend T.S. went to the office of the school resource officer to report the fact that D.L.D had just called J.R. an ugly name and had hit her, and that he had also pushed T.S. While the report was being taken, D.L.D. himself suddenly appeared in the office and disputed their accounts, trying to blame them for having started the altercation. Unable to resolve the matter, the resource officer asked D.L.D. to leave, assuring him he would call him back later to hear his side of the story. D.L.D. became very angry, and before leaving he threatened J.R. with "getting her" when she left the office. J.R., T.S., and the resource officer believed that D.L.D. intended to carry out his threat. At that point, the resource officer arrested D.L.D. He was charged in juvenile court with the crime of aggravated stalking.

D.L.D. argued to the trial court that the evidence in the case was not sufficient to convict him of the crime. The trial court rejected his contentions and D.L.D. appealed his case.

In the appellate court D.L.D. argued that the State failed to produce sufficient evidence that D.L.D. harbored malice or ill will against J.R. However, the appellate court noted that the inference of malice or ill will logically followed the continual pattern of harassing behavior engaged in by D.L.D. against J.R. over a

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two-month period of time. The court also noted that the officer and T.S. were present at the time that D.L.D. became very angry and made a specific threat to "get" J.R. and they testified about this threat. The court concluded that these behaviors provided a sufficient basis to establish malice and ill will on the part of D.L.D. It was not necessary that the State prove why D.L.D. apparently disliked J.R. or the reasons for the continued harassment.

D.L.D. also argued to the appellate court that the State's evidence was not sufficient to establish "harassment" as that work is defined in the stalking statute. Specifically, D.L.D. said the proof had failed to establish any basis upon which to conclude that J.R. suffered "substantial emotional distress." His attorney argued that she did not testify that she was upset, unable to sleep or eat, or made to cry. Though the prosecutor did ask her, during her testimony, about whether she was "scared," D.L.D.'s lawyer objected to such testimony and the objection was sustained.

The appellate court offered their opinion that emotional distress should not be judged on a subjective standard such as whether the victim was in tears or terrified, but on a more objective one - would a reasonable person be put in distress when subjected to such conduct? The court concluded that D.L.D.'s conduct, continuing on an almost daily basis, of pushing and hitting J.R. at school (a place J.R. had to be and could not avoid), and jumping on her and calling her obscene names would likely substantially emotionally upset any normal person. Further, the court declared the fact that J.R. complained repeatedly to her parents and to the officer about D.L.D.'s behavior is sufficient to permit an inference that she was, in fact, emotionally upset by D.L.D's behavior. Even if a subjective standard were applied, a person need not be reduced to tears and hysteria in order to be considered "substantially emotionally distressed."

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D.L.D.'s conviction for aggravated stalking was affirmed. Presumably, the same conduct that convicted D.L.D. of aggravated stalking would have also been sufficient for J.R. to secure a protective injunction under the Florida law protecting victims of repeat violence or stalking (Florida Statutes, §784.046). The case is *D.L.D. v. State*, and can be found in legal publications at 815 So.2d, page 746 (Fla. 5th D.C.A. 2000).