

APPENDIX 6

LEGAL MEMORANDUM EXAMPLE

Below is a *condensed* student-written office memorandum that demonstrates how citations will look in a document. Because underlining is an acceptable way to denote italics, and some law professors require students to underline citations, that typeface has been used throughout this memo. Italics also would be acceptable.

MEMORANDUM

TO: Partner
FROM: Associate
DATE: October 25, 2008
RE: Julia Bergan: Analysis of Credible Threat Element of the Colorado Harassment by Stalking Statute (our file 08/1278)

Issue

Under the Colorado harassment by stalking statute, did Patrick Bergan make a credible threat with the intent to annoy, harass, or alarm his estranged wife, Julia Bergan, when she received faxes originating from his place of business that contained statements such as “Do you think anyone would notice if you disappeared?”

Brief Answer

Yes. Patrick Bergan made a credible threat against Julia Bergan. Mrs. Bergan received a fax that originated from her ex-husband’s workplace; it was signed with the initial “P,” the same as Mr. Bergan’s first initial. That fax alluded to her possible disappearance. The fax, combined with the fact that others spotted his car outside her new residence, would be sufficient to meet the “credible threat” prong of the Colorado harassment statute.

Facts

Our client, Julia Bergan, has accused her estranged husband, Patrick Bergan, of stalking her. On August 24, 2008, Julia and Patrick Bergan were legally separated pending a

divorce that will be final in a few weeks. Mrs. Bergan alleged that, over a five-year period, Patrick Bergan abused her emotionally and verbally, but not physically. Mrs. Bergan's family and friends witnessed the alleged abuse.

After the separation, Mrs. Bergan moved thirty-five miles away to her sister and brother-in-law's home. Over a six-month period, Mrs. Bergan and her sister saw Patrick Bergan's vehicle parked across the street from their residence almost daily. On several occasions, neighbors saw a man who fit Mr. Bergan's description in the driver's seat. The man was watching Mrs. Bergan's house with binoculars.

Mrs. Bergan has also received several faxes sent from Mr. Bergan's place of employment. These faxes were unsigned. One fax stated:

I am watching you. I know your every move and am one step behind you all the way. I will never leave you alone. If I can't have you, no one can. Do you think anyone would notice if you disappeared? Neither the judge, nor your family can protect you. I'll be seeing you. Forever, P.

After she received this fax, Mrs. Bergan called the police, who then arrested Patrick Bergan for stalking.

Discussion

In Colorado,

[a] person commits stalking if . . . such person knowingly: (I) Makes a credible threat to another person and, in connection with such threat, repeatedly follows, approaches, contacts, or places under surveillance that person . . . ; or (II) Makes a credible threat to another person and, in connection with such threat, repeatedly makes any form of communication with that person . . . regardless of whether a conversation ensues. . . .

Colo. Rev. Stat. § 18-9-111(4)(b) (Lexis 2008). Therefore, Patrick Bergan can be convicted of harassment by stalking if he (a) made an explicit credible threat against Julia Bergan with (b) the intent to harass, annoy, or alarm her. As requested, the memorandum will focus solely on credible threat.

“‘Credible threat’ means a threat or physical action that would cause a reasonable person to be in fear for the person's life or safety or the safety of his or her immediate family.” *Id.* at § 4(c)(II); see generally *People v. Baer*, 973 P.2d 1225, 1228–1230, 1234 (Colo. 1999) (analyzing the credible threat portion of the statute and holding that the element is constitutional and not void for vagueness). In addition, the Colorado Supreme Court has defined “threat” as “a statement of purpose or intent to cause injury or harm to the person, property or rights of another.” *People v. Hines*, 780 P.2d 556, 559 (Colo. 1989).

Colorado requires that stalkers make an explicit threat against their victims. See Jennifer L. Bradfield, *Anti-Stalking Laws: Do They Adequately Protect Stalking Victims?* 21 *Harv. Women's L.J.* 229, 249 (1998). Thus, “[a] stalker can engage in conduct that he knows will terrify his victim and which he intends to be a threat, such as repeatedly watching

and following her, but without an explicit threat, his conduct remains lawful.” *Id.* The “credible threat” need not be separate from the harassing conduct, and it need not be verbal. *People v. Cross*, 114 P.3d 1, 5 (Colo. App. 2004) (defendant stared at and watched the victim at her workplace for hours each day over a several-week period, even though the victim changed her schedule; the defendant also appeared at the victim’s church and stared at her), *rev’d on other grounds*, 127 P.3d 71 (Colo. 2006).

People v. Czemerynski, 786 P.2d 1100 (Colo. 1990), contains an example of a statement that constitutes an explicit credible threat under the Colorado harassment statute. In *Czemerynski*, the defendant made sexually explicit phone calls and said to a girl, “[I]f you don’t help me, I’m around the corner and I know where you live and I am going to get you.” *Id.* at 1103. The defendant did not always request sex, but most conversations contained vague threats to “get” the victim. *Id.* The court found that such communications met the harassment statute’s credible threat requirement because the calls were “intended to harass or threaten bodily injury.” *Id.* at 1110. Thus, in *Czemerynski*, the threat was a stated intent to actually harm and not merely to frighten the victim. *Id.*; see *D.L.D. v. State*, 815 So. 2d 746, 747 (Fla. 5th Dist. App. 2002) (holding that the defendant’s statement that he would “get” the victim satisfied Florida’s statute).

Courts in some jurisdictions have ruled that the circumstances behind the alleged threat must be considered to determine its alleged credibility. E.g. *People v. Falck*, 60 Cal. Rptr. 2d 624 (App. 1st Dist. 1997). In *Falck*, the court examined the entire factual context, including surrounding events and the alleged effect the threats had on the listener. *Id.* at 626. Because the alleged threats caused the recipient to change her phone number, the *Falck* court considered the threat more credible. *Id.* Most courts, however, do not require ability or actual intent to carry out the alleged threats. E.g. *Smith v. State*, 532 So. 2d 50, 52 (Fla. 2d Dist. App. 1988) (ruling that the defendant’s claim that his threatening letters were a hoax was irrelevant); *State v. Lasley*, 130 S.W.3d 15, 17 (Mo. App. E. Dist. 2004) (finding that the tone of the defendant’s denial that he intended to kill the victim lent credence that he made a credible threat).

Based on the definitions, the *Czemerynski* case, and cases from other jurisdictions, the faxes do constitute a credible threat. Statements such as “I know your every move and am one step behind you all the way,” “Do you think anyone would notice if you disappeared?,” and “If I can’t have you, no one can,” are explicit credible threats. Further, when the underlying circumstances of the bad marriage and the prior history of verbal abuse are combined with this language, the threat becomes even more credible. Thus, given the harshness of the language and the abuse Mrs. Bergan suffered during the marriage, she was reasonable to fear for her physical safety from Patrick Bergan.

Conclusion

The facts and law show that Mr. Bergan did make a credible threat against Julia Bergan. The language of the faxes Mr. Bergan allegedly sent her contained statements that are explicit threats to Mrs. Bergan. Because courts have considered factors outside of the threats, the Bergans’ failed marriage and Mr. Bergan’s long history of verbal abuse toward Mrs. Bergan also make the threat more credible. Accordingly, it is likely that Mr. Bergan will be convicted of harassment by stalking.

