

STALKING

When Felony Stalking Indictment Had Improperly Alleged Prior Stalking Conviction in Same Count as Stalking Offense and State Moved to Amend Indictment to Transfer Allegation of Prior Stalking Conviction to Separate Count to Comply With G.S. 15A-928, Trial Judge Did Not Err in Allowing Amendment

State v. Stephens, 188 N.C. App. 286, 655 S.E.2d 435 (15 January 2008).

The defendant was convicted of felony stalking. The indictment originally did not comply with G.S. 15A-928 because it alleged the prior stalking conviction in the same count as the stalking offense. The court ruled, distinguishing *State v. Moses*, 154 N.C. App. 332 (2002), and *State v. Sullivan*, 111 N.C. App. 441 (1993), that the trial judge did not err in granting the state's motion to amend the indictment to transfer the allegation of the prior stalking conviction to a separate count in the indictment.

Stalking--Motion to dismiss--Sufficiency of evidence--In victim's presence without legal purpose--Intent to cause reasonable fear of harm

State v Borkar, 173 N. C. APP. 162 (2005)

The trial court did not err by denying defendant's motion to dismiss the charge of stalking because, viewing the evidence in the light most favorable to the State, there was sufficient evidence from which the jury could find that defendant followed or was in the presence of the victim on more than one occasion without legal purpose, and with the intent to place her in reasonable fear of her personal safety.

Criminal law--Felony stalking--Constitutionality of statute

State v. Watson, 169 N. C. APP. 331 (2005)

The trial court did not err by denying defendant's motion to dismiss the charges of felony stalking even though defendant contends that N.C.G.S. § 14-277.3 is unconstitutional both on its face and as applied to defendant, because: 1) the plain meaning and common usage of the statute's words put an ordinary person on notice of what conduct is prohibited; 2) anti-stalking statutes with similar language have been upheld in other states as well; and 3) contrary to defendant's contention, a person can be placed in fear for his or her personal safety and suffer substantial emotional distress at two or more particular times in the same twenty-four hour period as more than one occasion can occur in a single day.

Stalking--sufficiency of evidence

State v. Snipes, 168 N. C. APP. 525 (2005)

The State offered sufficient evidence to support a charge of felony stalking and the trial court did not err by denying defendant's motion to dismiss. N.C.G.S. § 14-277.3.

Threats--Misdemeanor stalking--Motion to dismiss--Sufficiency of evidence

State v. Thompson, 157 N. C. APP. 638 (2003)

The trial court did not err by denying defendant's motion to dismiss the charge of misdemeanor stalking under N.C.G.S. § 14-277.3, because there was sufficient evidence from which the jury could find that defendant followed or was in the presence of the victim on more than one occasion without legal purpose and with the intent to cause her emotional distress by placing her in fear of death or bodily injury.

1) Crimes, Other--Stalking--Elements--Warning to desist--Subsequent actions

State v. Ferebee, 137 N.C. App. 710 2000

Defendant is entitled to a new trial in a stalking case because the trial court's instruction given in accordance with the applicable pattern jury instruction was improper since: 1) the instruction incorrectly allowed the jury to consider acts prior to the alleged warning as constituting part of the basis of a stalking conviction; and 2) a review of the pertinent 1993 version of N.C.G.S. § 14-277.3(a) reveals that the requirement that an alleged stalker must be warned to desist and, notwithstanding such warning, thereafter follow or be in the presence of the victim on more than one occasion, is essentially a threshold element that must be proven before a jury may consider the remaining elements.

2) Crimes, Other--Stalking--Instruction on "reasonable fear"

State v. Ferebee, 137 N.C. App. 710 2000

Although the element of "reasonable fear" in a stalking case is not at issue before the Court of Appeals, the trial court is encouraged to instruct the jury on the definition of "reasonable fear" for alleged violations of N.C.G.S. § 14-277.3(a) to ensure that an objective standard, based on what frightens an ordinary, prudent person under the same or similar circumstances, is applied rather than a subjective standard which focuses on the individual victim's fears and apprehensions.

**3) Evidence and Witnesses § 213 (NCI4th)—Stalking--Events before warning
--Relevant**

State v. Ferebee, 128 N.C. App. 710 (1998)

In a stalking prosecution remanded on other grounds, the trial court did not abuse its discretion by admitting evidence relating to events which occurred before defendant was warned to stay away from the victim. Although the 1993 statute applicable here only criminalizes acts that occur after the warning, the evidence was relevant to enlighten the jury to the background between the defendant and the victim and to allow them to place into context the reason defendant was warned to stay away.