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RECENT DEVELOPMENT

HACKLEY v. STATE: THE CRIME OF STALKING IN MARYLAND INCLUDES, BUT DOES NOT REQUIRE AS AN ESSENTIAL ELEMENT, “APPROACHING OR PURSUING” THE VICTIM

By: Kate E. Stewart

In a case of statutory construction, the Court of Appeals of Maryland held that the crime of stalking does not require the accused to approach or pursue the victim as an essential element of the offense. *Hackley v. State*, 389 Md. 387, 885 A.2d 816 (2005). The Court clarified the proper interpretation of Section 3-802 of the Maryland Criminal Law Article and found that the Maryland Legislature’s extensive consideration upon enacting the statute reveals that it did not intend to limit the criminal conduct covered by the statute to “approaching or pursuing.” *Id.* at 397, 885 A.2d at 822.

Wendell Hackley (“Hackley”) dated Ms. P. for eight months in 1991 and they conceived a daughter before ending their relationship that same year. Neither Ms. P. nor their daughter, Adriana, had contact with Hackley from 1991 until November 17, 2001 when Hackley confronted Ms. P. in her car and asked about Adriana. When Ms. P. told him that Adriana was not there, Hackley reached into his pocket and pulled out a gun. He forced Ms. P. out of her car and began hitting her in the head with the gun. The State issued an arrest warrant two days later charging Hackley with attempted murder and first-degree assault, but he was not immediately apprehended. Between November 17 and December 16, Ms. P. found two threatening letters from Hackley on her car, one addressed to her and one addressed to Adriana. In the letter to Ms. P., Hackley admitted to hitting her, but declared that his intention was to kill her. He also claimed to be on drugs and warned her that he might hurt her again, especially if he saw her with another man. In his letter to Adriana, Hackley professed his love for her, admitted to hurting Ms. P., and threatened to harm Adriana’s future boyfriends.

Hackley left menacing letters for Ms. P. and Adriana on two subsequent occasions, warning that Ms. P. had “only 10 days before

the killing starts.” On December 14, 2001, Ms. P. saw Hackley approaching her house and called the police. On December 16, Ms. P. found a bookbag on her car filled with four more threatening letters from Hackley, in which he revealed that he had an A1 rifle and watched her almost every day. Hackley was apprehended on December 28.

Hackley was convicted of second-degree assault, reckless endangerment, and stalking in the Circuit Court for Prince George’s County. His conviction for stalking brought a five-year prison sentence with three years suspended for probation. In his appeal to the Court of Special Appeals of Maryland, Hackley claimed that an essential element of the crime of stalking is “approaching or pursuing” the victim. He argued that the evidence against him did not show that he engaged in such conduct.

The Court of Special Appeals agreed with Hackley that “approaching or pursuing” was an essential element of the crime of stalking. However, the Court upheld Hackley’s conviction because it found that Hackley’s behavior met this standard. The Court of Appeals granted *certiorari* to resolve the question of whether the crime of stalking required, as an essential element of the crime, “approaching or pursuing” the victim.

When Hackley was charged, the crime of stalking was codified in Maryland Code, Article 27, Section 124 (1996 Repl.Vol., 2001 Supp.). *Id.* at 391, 885 A.2d at 818-19. In subsection (a) of Section 124, stalking is defined as “a malicious course of conduct *that includes* approaching or pursuing another person with intent to place that person in reasonable fear,” and that he, she or a third person will suffer serious harm or death. *Id.* at 392, 885 A.2d at 819.

The Court began by following the rules of statutory construction with the predominant goal of determining the legislative intent. *Id.* at 392, 885 A.2d at 819. The Court assigned the statutory language its ordinary meaning in the context of the statutory scheme. *Id.* It noted that Section 124 did not define stalking as *meaning* the approaching or pursuing of another person. *Id.* Rather, it defines stalking as *including* approaching or pursuing another person. *Id.* at 393, 885 A.2d at 819. The Court cited Article 1, Section 30 of the Maryland Code which specifically addresses the meaning of “includes” when used in a statute. *Id.* “The words ‘includes’ or ‘including’ mean, unless the context *requires* otherwise, includes or including by way of illustration and not by way of limitation.” *Id.* at 393, 885 A.2d at 819 (quoting MD. ANN. CODE art. 1 Section 30 (2005)). The Court also

cited the Maryland Style Manual for Statutory Law, which directs legislative drafters to use the word “includes” if the definition is intended to be partial or illustrative and to use the word “means” if the definition is intended to be exhaustive. *Id.* The Court concluded that the essential element of the crime of stalking is the malicious course of conduct, which includes, among other things, approaching or pursuing the victim with the requisite intent. *Id.* at 393, 885 A.2d at 820.

Because the words of the statute were unambiguous, the Court said it had no need to consider legislative history. *Id.* Nevertheless, because Hackley relied almost entirely on legislative history to support his argument, the Court reviewed the legislative enactment of Maryland’s stalking laws. *Id.* at 393-94, 885 A.2d at 820.

Hackley argued that because Maryland has a separate harassment statute and because other states include approaching or pursuing as essential elements of their stalking laws, the Legislature intended approaching or pursuing as elements of the crime of stalking. *Id.* at 393, 885 A.2d at 820. The Court found that the extensive legislative consideration when enacting the prohibition against stalking revealed that the Legislature did not intend approaching or pursuing as essential elements of the offense. *Id.* at 393-94, 885 A.2d at 820.

The Legislature enacted a prohibition against stalking in 1993. *Id.* at 394, 885 A.2d at 820. The stalking law originated from two separate bills: Senate Bill 7 and House Bill 433. *Id.* The Court found it significant that neither version of the stalking law made approaching, following, or pursuing a required element. *Id.* at 396, 885 A.2d at 821. The Court noted that when deciding upon the final language of the statute, the General Assembly eventually had four different proposed versions of the stalking law from which to choose. *Id.* at 397, 885 A.2d at 822. The final enacted version stated that it “included approaching or pursuing the victim, but did not limit the crime to that conduct.” *Id.*

The Court also found the committee files revealing. *Id.* at 396, 885 A.2d at 821. First, the Court found that the Legislature was concerned that the harassment law was not sufficient to handle conduct that the stalking law would address. *Id.* Second, the Court concluded that the Legislature was aware that other states had already adopted stalking laws, and realized that the language used varied from state to state. *Id.* at 396, 885 A.2d at 821. The Legislature was aware of its options and deliberately chose its language. *Id.* at 397, 885 A.2d at 822. The Court concluded that the stalking statute is not limiting: “any malicious course of conduct intended to place another person in

reasonable fear of serious bodily injury or death or that a third person will likely suffer such harm constitutes stalking.” *Id.* at 397, 885 A.2d at 822.

In holding that the Legislature did not intend to limit the conduct covered by what is now Section 3-802 of the Criminal Law Article to approaching or pursuing a victim, the Court of Appeals of Maryland broadened the scope of Maryland’s stalking law. The Court made a clear statement that *any* malicious course of conduct committed with the requisite intent would satisfy the definition of stalking. In so holding, the Court has afforded victims of stalking in Maryland greater protection against threatening and frightening behavior. As a result, the Court encourages victims of stalking to contact the police and to use the court system for protection. This holding also deters stalkers from pursuing victims because a wider range of behavior is now punishable under Maryland’s stalking law.