

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
v.)	
)	Docket no. 00-CR-59-B-S
KENNETH CRAWFORD,)	
)	
Defendant)	

ORDER DENYING MOTION TO DISMISS

SINGAL, District Judge

Before the Court is Defendant Kenneth Crawford’s Motion to Dismiss (Docket #14) the Indictment against him for interstate stalking in violation of 18 U.S.C. § 2261A (Docket #1). Defendant challenges the constitutionality of the interstate stalking statute by arguing that it exceeds the authority of the Commerce Clause. For the reasons discussed below, the Court DENIES Defendant’s Motion.

I. DISCUSSION

As part of the Violence Against Women Act (“VAWA”), codified in part at 18 U.S.C. §§ 2261 et seq., Congress enacted in 1996 the interstate stalking statute, which makes it a federal offense to stalk someone across state lines. See 18 U.S.C. § 2261A. No court has published an opinion regarding the constitutionality of section 2261A.¹ Therefore, the Court conducts its own analysis of the statute.

¹ Two courts have upheld the constitutionality of section 2261A, albeit in unpublished dispositions: United States v. Vollmer, No. 00-1093, 2001 WL 21234 (Table), at *1 (8th Cir. Jan. 10, 2001), and United States v. Young, 202 F.3d 262 (Table), No. 98-4742, 1999 WL 1203783, at *3 (4th Cir. Dec. 16, 1999), cert. denied, 529 U.S. 1081 (2000). See 8th Cir. R. 28A(i) (permitting, while discouraging, citation to unpublished opinions of the Eighth Circuit); 4th Cir. R. 36(c) (permitting, while discouraging, citation to unpublished opinions of the Fourth Circuit).

The federal Constitution's Commerce Clause, Art. I, § 8, cl. 3, authorizes Congress to regulate the uses, channels, and instrumentalities of interstate commerce, as well as intrastate activities bearing a substantial relation to interstate commerce. See, e.g., United States v. Lopez, 514 U.S. 549, 558-59 (1995). This authority empowers Congress to enact federal statutes regulating certain criminal conduct linked to interstate travel. See, e.g., Scarborough v. United States, 431 U.S. 563, 566-78 (1977); Caminetti v. United States, 242 U.S. 470, 491 (1917).

Some of the other provisions of VAWA also have been the subject of Commerce Clause challenges. In United States v. Wright, 128 F.3d 1274 (8th Cir. 1997), the Eighth Circuit upheld the statute criminalizing interstate violation of a protection order, 18 U.S.C. § 2262(a)(1). See id. at 1276. In United States v. Bailey, 112 F.3d 758 (4th Cir. 1997), the Fourth Circuit upheld the constitutionality of the interstate domestic violence statute, 18 U.S.C. § 2261(a)(1). See id. at 766. Wedged between these two statutes is the interstate stalking statute, section 2261A, which Defendant attempts to argue is significantly different from sections 2261 and 2262.

Defendant argues that in both Bailey and Wright, the courts found it significant that the interstate domestic violence statute and the interstate violation of a protection order statute each feature three important elements: (1) traveling in interstate or foreign commerce, (2) harboring a certain criminal intent, and (3) committing an overt act, be it committing a crime of violence or violating a protection order. See 18 U.S.C. §§ 2261(a)(1), 2262(a)(1); Wright, 128 F.3d at 1276; Bailey, 112 F.3d at 766.² Defendant

² A person commits the crime of interstate domestic violence who travels in interstate or foreign commerce ... with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner...

contrasts the structure of these two statutes with the interstate stalking statute, which makes it a crime for anyone who

travels in interstate or foreign commerce ... with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family ... of that person, or the spouse or intimate partner of that person...

18 U.S.C. § 2261A(1). Defendant argues that the interstate stalking statute makes it a crime for a person to cross a state line with the requisite intent, but requires no further overt conduct on the part of the actor. Rather, Defendant characterizes the elements of section 2261A as: (1) traveling in interstate or foreign commerce, (2) with the intent to kill, injure, harass or intimidate, (3) and that the travel places the victim in reasonable fear of death or serious bodily injury to herself or a family member, spouse or intimate partner. Defendant finds it fatal to the constitutionality of the statute that it purportedly requires no overt act on the part of the actor other than traveling across a state boundary, because in Caminetti v. United States, 242 U.S. 470 (1917), the Supreme Court stated:

It may be conceded, for the purpose of the argument, that Congress has no power to punish one who travels in interstate commerce merely because he has the intention of committing an illegal or immoral act at the conclusion of the journey.

Id. at 491. Indeed, both Bailey and Wright rely heavily on Caminetti, and Wright goes so far as to quote the above passage. See Wright, 128 F.3d at 1276; Bailey, 112 F.3d at 766.

Defendant's argument, however, fails in two regards. First, the above-cited sentence from Caminetti was, as implied from its initial phrase, only dicta. See

18 U.S.C. § 2261(a)(1). A person commits the crime of interstate violation of a protection order who travels in interstate or foreign commerce ... with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct...

18 U.S.C. § 2262(a)(1).

Caminetti, 242 U.S. at 491. This Court is not convinced that it exceeds the scope of the Commerce Clause for a federal crime to feature the element of interstate travel with a certain illegal motive yet lack the element of an additional overt act. See United States v. Delpit, 94 F.3d 1134, 1149 (8th Cir. 1996) (stating in dicta that the interstate murder-for-hire statute, 18 U.S.C. § 1958(a), which requires a showing of interstate travel with a specific intent but no other overt act, is “unquestionably a valid exercise” of Congress’s commerce power); United States v. Brockdorff, 992 F. Supp. 22, 24-25 (D.D.C. 1997) (upholding constitutionality of 18 U.S.C. § 2423(b), which has as its elements traveling in interstate commerce with the intent to engage in a sexual act with a minor, but does not require any other overt act).

Second, even if the dicta from Caminetti did require federal crimes to have as an element the commission of an overt act beyond mere travel in interstate commerce, the interstate stalking law does require a showing of an overt act by a criminal defendant: causing reasonable fear of death or serious bodily injury in another. To this, Defendant would argue that section 2261A does not require that the actor cause the reasonable fear, but that it only requires that his “travel” place the victim in reasonable fear. The Court, however, disagrees with Defendant’s reading of the statute’s language.

Section 2261A makes it a crime for “[w]hoever ... travels in interstate or foreign commerce ... with the [requisite intent] and in the course of, or as a result of, such travel places that person in reasonable fear....” A plain reading of the statute makes clear that the statute requires the actor to place the victim in reasonable fear, rather than, as Defendant would have it, that his travel place the victim in reasonable fear. The portion of the statute reading “in the course of, or as a result of, such travel” is simply a

prepositional phrase. Thus, the Court finds that the third element of section 2261A requires that a defendant commit an overt act in addition to the overt act of interstate travel. See United States v. Helem, 186 F.3d 449, 454 (4th Cir. 1999) (noting in dicta that section 2261A applies to “violence or harassment that occurs during or after interstate travel.”); United States v. Page, 167 F.3d 325, 329 (6th Cir. 1999) (noting in dicta that section 2261A applies to “actions” subsequent to or “in the course of or as a result of” interstate travel); United States v. Brown, 74 F. Supp. 2d 44, 51 (D. Me. 1999) (suggesting that it is an element of interstate stalking for the defendant to “in fact place [the victim] in reasonable fear of death [or] serious bodily injury.”).

II. CONCLUSION

For the foregoing reasons, the Court DENIES Defendant’s Motion to Dismiss.

SO ORDERED.

GEORGE Z. SINGAL
United States District Judge

Dated this 26th day of February 2001.

KENNETH LEWIS CRAWFORD (1) JEFFREY M. SILVERSTEIN, ESQ.

defendant

[COR LD NTC ret]

BILLINGS & SILVERSTEIN

47 MAIN STREET

P.O. BOX 1445

BANGOR, ME 04402-1445

(207) 941-2356

MARTHA J. HARRIS

[term 11/02/00]

947-0191

[COR LD NTC cja]

PAINE, LYNCH & HARRIS, P.A.
P. O. BOX 1451
BANGOR, ME 04402-1451

DAVID W. BATE, ESQ.
[term 11/16/00]
[COR LD NTC cja]
6 STATE STREET
SUITE 403
BANGOR, ME 04401-5112
945-3333