

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,)	No. ED95044
)	
Respondent,)	Appeal from the Circuit Court
)	of the County of St. Louis
vs.)	
)	
ANDREW BERNHARDT,)	Hon. Carolyn Whittington
)	
Appellant.)	FILED: March 1, 2011

Defendant Andrew Bernhardt appeals from the trial court’s judgment and sentence entered upon a jury conviction of aggravated stalking and armed criminal action. Defendant was arrested after he was observed by a member of the victim’s household parking his car in front of the victim’s house, leaving and returning four times between 3 a.m. and 5 a.m., loading a gun, and stepping out of the car with it under a bright spotlight and 25 feet from the victim’s house. Defendant denies that he communicated a credible threat as contemplated by the stalking statute and that he did so with the use of a deadly weapon.

AFFIRMED.

DIVISION THREE HOLDS: (1) The word communicate conveys with sufficient definiteness what conduct is prohibited by law and is not so vague and indefinite as to render the stalking statute void for vagueness. (2) Defendant’s conduct was sufficiently communicative to satisfy the statute in that, through his repeated apparitions, parking maneuvers, and exits from the vehicle carrying a gun under a spotlight in front of the victim’s house in the middle of the night, Defendant made himself and his weapon known to a member of the victim’s household. It is sufficient that the threat was communicated via an intermediary. (3) Defendant’s actions of loading his handgun and stepping out of the car with it in front of the victim’s residence comprised the credible threat supporting the stalking count; therefore Defendant necessarily committed that offense with the use of a deadly weapon so as to constitute armed criminal action.

Opinion by: Clifford H. Ahrens, J. Sherri B. Sullivan, P.J., and Lawrence E. Mooney, J., concur.

Attorney for Appellant: Kenneth A. Leeds

Attorney for Respondent: Chris Koster

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