

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ERIC C. PARSONS, :
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 :
 Defendant-Below :
 Appellant, :
 :
 v. : ID 0305007450
 :
 STATE OF DELAWARE, :
 :
 :
 Plaintiff-Below, :
 Appellee. :

Submitted: February 24, 2005
Decided: May 26, 2005

ORDER

This 26th day of May, 2005, upon consideration of the briefs of the parties, it appears to the Court that:

1) Eric C. Parsons (“defendant”) appeals from his conviction, following a bench trial, of one count of terroristic threatening. Defendant argues that the decision of the trial court was not the result of a logical and orderly deductive process and that the testimony of the complaining witness, Ms. Smith, contained essential misstatements and inaccuracies.

2) Ms. Smith testified that she spoke to the defendant, who is the father of her 8-year old daughter during the evening of Thursday, May 8, 2003. Defendant wanted to come to her residence, and she told him “No” because her boyfriend and a friend were there. She also told him that their daughter, Elizabeth, did not want to go with him the next day for visitation, and that he should not come then, either. She testified that the defendant became angry, “started

yelling and threatening to take custody of Elizabeth,”¹ her “back stiffened”² and she told him she had to go. She then testified:

And I said, no, don’t come tomorrow, either. I won’t let you take Elizabeth. And he started, he said, he said, you bitch, I’ll kill you. He said, I know thirty different places in New Castle County to bury your body, nobody will ever find you.³

3) Ms. Smith testified that she felt terrified and called the police. Patrolman Timothy Argoe responded to the call. He interviewed Ms. Smith and reported defendant’s statement as “You bitch, you don’t know who you are messing with. I’ll bury your body in thirty different places in New Castle County.”⁴

4) Patrolman Argoe contacted the defendant who admitted that he had had a conversation with Ms. Smith, but reported saying: “he would get someone to crawl up her butt to figure out what is wrong with her.”⁵

5) Patrolman Argoe gave Ms. Smith the paperwork necessary for a warrant to be issued. The warrant which Ms. Smith signed on May 11, 2003, stated:

ERIC C PARSON (sic), on or about the 8th day of May, 2003, in the County of New Castle, State of Delaware, did threaten to commit a crime likely to result in death or serious injury to person or property, to wit: Victim states the Defendant has guns & knifer (sic) & collectible swords in his home Also states he has assaulted her beford (sic). Wants a no contact order. To wit: During a domestic dispute. Defendant called and then came to the victim’s house, and stated to the

¹Transcript of Trial (July 15, 2004), at 24 (hereinafter “Tr. at __”).

²*Id.*

³*Id.*

⁴Tr. at 5.

⁵Tr. at 8.

victim (omitted) he would kill her and could bury her body in 30 different places.⁶

6) The parties agree that the next day (May 9th) the defendant went to Ms. Smith's residence to pick up Elizabeth. Ms. Smith would not let him take their daughter, and told him to call the police. The defendant, who was accompanied by an employee, called the police. A policeman responded and told the parties that custody was a matter for Family Court, and that he would not take any action. The key difference in the parties recitation of that event is that Ms. Smith says that the defendant was angry, and pounded on the door. The defendant and his employee testified that the defendant was calm and courteous.

7) The defendant testified, and he acknowledged saying what was reported by Patrolman Argoe. He denied making the statement alleged by Ms. Smith.

8) From a nonjury case, the appeal is upon both the law and fact.⁷ If there is sufficient evidence to support the decision of the trial judge, it must be affirmed.⁸ "Only when the findings below are clearly wrong and the doing of justice requires their overturn [is the appellate court] free to make contradictory findings of fact."⁹

9) The Court was the finder of fact and judge of the credibility of witnesses.¹⁰ The Court accepted as true the testimony of Ms. Smith. While the record does indicate certain inconsistencies in her statement as recorded by the police officer, as recited in the warrant which

⁶Appendix to Appellant's Opening Brief, Docket No. 11, filed Jan. 18, 2005, p. A100.

⁷*Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁸*Id.*

⁹*Id.*

¹⁰*Id.*

she signed, and as given at trial, such inconsistencies are not so great as to undermine, as a matter of law, her credibility. The record provides an adequate factual basis for the conclusion that the defendant committed the crime of terroristic threatening. The Court's decision applies the appropriate standard of proof, and reaches a logical conclusion, based on the evidence.

10) The defendant has raised an issue as to the adequacy of the arrest warrant. That argument cannot be raised for the first time on appeal.¹¹

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Common Pleas be, and the same hereby is, AFFIRMED.

Judge Susan C. Del Pesco

Original to Prothonotary
xc: Antonia S. Bevis, Esquire
Brian D. Ahern, Esquire
Court of Common Pleas (C.M. #03062550)

¹¹*Wainright v. State*, 504 A.2d 1096, 1100 (Del. 1986).