

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES W. SIMPERS,	§	
	§	No. 90, 2002
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. ID No. 0102003252
Plaintiff Below,	§	
Appellee.	§	

Submitted: October 22, 2002
Decided: January 15, 2003

Before **WALSH, BERGER** and **STEELE**, Justices.

ORDER

This 15th day of January, 2003, on consideration of the briefs of the parties, it appears to the Court that:

1) Charles W. Simperts appeals from his conviction, following a jury trial, of stalking, criminal contempt and breach of release. He argues that: (i) the trial court committed plain error when it merged two counts of stalking into one; and (ii) his criminal contempt conviction must be reversed because the underlying charge that precipitated a no-contact order (which Simperts violated) was nolle prossed. We find no merit to either argument and affirm.

2) At the time of the events in question, Simperts was living in Laurel, Delaware. He regularly rode a bicycle around town collecting bottles and returning them to food stores to recover the deposits. Angel Stevenson worked at a super market in Laurel and saw Simperts when he came to the store. She testified that in July 2000, Simperts gave her a birthday card, although she did not know how he knew it was her birthday. For Christmas, he left a sweatshirt in the back of her truck, even though she told Simperts she did not want his gift.

3) In January and February 2001, Simperts left letters for Stevenson and approached her in the food store in an effort to start up conversation. Stevenson testified that Simperts' approaches made her uncomfortable and that she told him to stay away and leave her alone. Simperts responded by writing another letter.

4) After Stevenson told David Evans, the store manager, about Simperts, Evans confronted Simperts and called the police. Simperts told Evans that he loved Stevenson and that Evans could not do anything about it. The Laurel Police officer who responded to Evans' call told Simperts that he would be arrested if he did not stop pursuing Stevenson.

5) On February 4, 2001, Simperts rode his bicycle past Stevenson's house and Stevenson's father went outside to confront Simperts. Again, Simperts declared his love and said that nobody could do anything about it. Someone in the Stevenson

household called the police and this time Simperts was arrested. When Simperts was arraigned, the magistrate ordered that Simperts have no contact with Stevenson either at her residence or place of employment. On March 24, 2001, Simperts left a note and box of chocolates in the back of Stevenson's truck. He was arrested that day.

6) Simperts was indicted on two counts of stalking – one for the period between January 15, 2001, and February 14, 2001, and one for the period between March 1 and March 24, 2001. In addition, Simperts was indicted on charges of criminal contempt and breach of release for violating the February 4, 2001, no-contact order and a no-contact condition of release.

7) At trial, Simperts moved for judgment of acquittal on the second stalking count, arguing that during the March time frame all he had done was to wave at Stevenson several times and leave the chocolates in her truck. The trial court reserved decision and, after Simperts rested, the court suggested that the two stalking counts be merged. Simperts said he had no objection to combining the time frame for the stalking into one charge covering the period from January 15 - March 24, 2001.

8) Notwithstanding Simperts' agreement at the time of trial, he now argues that the joinder of the two stalking charges was "extremely prejudicial." Simperts does not explain, however, how he was prejudiced and, from our review of the record, we find nothing to support Simperts' argument. Since Simperts did not raise this argument in

the trial court, we review for plain error, which is error that is “so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process.”¹

There being no identifiable prejudice, we find no plain error.

9) Simperts also argues that his criminal contempt conviction must be reversed. On February 4, 2001, when the Justice of the Peace no-contact order was entered, it was based on a harassment charge. That charge, however, was nolle prossed before Simperts was indicted on the criminal contempt charge. As a result, Simperts claims that he was denied due process of law. This argument, like his first, is reviewed for plain error.

10) When Simperts was arrested on February 4, 2001, he was charged with stalking and harassment, and the no-contact order related to both charges. Thus, his premise that all of the underlying charges were nolle prossed is incorrect. Moreover, dismissal or acquittal of the underlying charges would not preclude a conviction on the contempt charge because criminal contempt is a separate and distinct offense.² Thus, we find this claim to be without merit.

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

¹*Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986).

²*Eaton v. State*, 703 A.2d 637, 640 (Del. 1997).

By the Court:

/s/ Carolyn Berger
Justice