

IN THE SUPREME COURT OF THE STATE OF DELAWARE

THEODORE O'BRIEN, ¹	§
	§
Defendant Below-	§ No. 574, 2002
Appellant,	§
	§
v.	§ Court Below—Family Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ File No. 0205013672
Plaintiff Below-	§
Appellee.	§

Submitted: January 21, 2003

Decided: March 6, 2003

Before **VEASEY**, Chief Justice, **WALSH** and **HOLLAND**, Justices

ORDER

This 6th day of March 2003, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Theodore O'Brien, filed an appeal from the Family Court's September 16, 2002 order adjudging him delinquent on three counts of Forgery in the First Degree, two counts of Theft by False Pretenses and one count of Conspiracy in the Second Degree.² O'Brien was

¹We have assigned a pseudonym to the appellant pursuant to SUPR. CT. R. 7(d).

²The Family Court issued an oral ruling from the bench following trial on September (continued...)

committed to the custody of the Department of Services for Children, Youth and Their Families at Ferris School for an indeterminate period of time, to be suspended for supervised probation at Level III until his 19th birthday. As further conditions of his sentence, O'Brien was ordered to pay the costs of prosecution, pay restitution to the victims of the crimes, have no contact with his co-defendants and maintain a clean record. This is O'Brien's direct appeal.³

(2) Sometime during 2002, O'Brien and four teen-age friends used a scanner at the home of O'Brien's mother to make several counterfeit one hundred dollar bills. On May 19, 2002, the teen-agers drove to Kings' Market in Lincoln, Delaware, where one of the boys attempted to purchase a soda using one of the counterfeit bills. When the counter attendant became suspicious, the boy became frightened and ran out of the store. The teen-agers then drove to the drive-through at a McDonald's in Rehoboth Beach, Delaware, ordered food, and paid for the food with a counterfeit bill. There was testimony at trial that O'Brien was driving the car at this point and that he handed the attendant the counterfeit bill. Finally, the teen-agers went to Midway Go-Karts in Rehoboth

²(...continued)
16, 2002 and then filed a written order later that same date.

³O'Brien's mother, as his guardian, made objections and asked questions of the witnesses at trial. It also appears that O'Brien's mother wrote the opening brief on appeal.

and used a counterfeit bill to pay for \$35.00 worth of tickets. When the owner of the business became suspicious, he called the State Police, who arrived on the scene and arrested the teen-agers.

(3) In this appeal, O'Brien claims that the Family Court committed legal error and abused its discretion at trial by: a) failing to follow proper procedures and demonstrating bias in favor of the prosecution; b) directing the court reporter to omit portions of the proceedings from the trial transcript; c) relying on witness testimony that was not credible; and d) permitting the prosecutor to ask leading questions and intimidate witnesses. O'Brien requests reversal of the Family Court's judgment and expungement of his record. After a careful review of the entire record in this case, including the transcript of the September 16, 2002 trial, we conclude that O'Brien's claims are without merit.

(4) O'Brien's first claim is that the Family Court failed to follow proper procedures and demonstrated bias in favor of the prosecution. This claim is based, at least in part, on the Family Court's refusal to dismiss the charges against O'Brien because he had not been brought before a magistrate following his arrest. The record reflects that, following his arrest on May 19, 2002, O'Brien was taken to Delaware State Police Troop 4, where he remained

until he was released to the custody of his mother. On May 20, 2002, the juvenile complaint and warrant, and affidavit of probable cause, were filed in the Sussex County Family Court. The procedures applicable to the arrest of a juvenile, thus, were complied with⁴ and, as such, the Family Court neither erred nor abused its discretion by denying O'Brien's motion to dismiss.

(5) O'Brien claims that the Family Court demonstrated bias in favor of the prosecution throughout the trial proceedings.⁵ There is no factual support in the transcript for that claim. In fact, the Family Court afforded O'Brien's mother wide latitude to make objections and place her arguments on the record, even if it meant interrupting the proceedings, and acted at all times with propriety and patience during this difficult trial.⁶

(6) O'Brien's next claim is that the Family Court directed the court reporter to omit certain portions of the proceedings from the trial transcript. There are no facts in the record supporting any such allegation against the Family Court. In connection with the allegation that there are inaccuracies in the trial transcript, we have reviewed a pleading filed by O'Brien in the Family

⁴FAM. CT. CRIM. R. 59(b) (1).

⁵At one point, O'Brien's mother accused the judge of treating her with "disdain."

⁶*Ross v. State*, 482 A.2d 727, 740 (Del. 1984).

Court on November 21, 2002 entitled “Inaccuracies Noted in Transcription of Family Court Records.” Even assuming that O’Brien’s recitation of the alleged errors in the transcript is correct,⁷ there is no basis for reversal as O’Brien has failed to show any prejudice as a result of these alleged errors.⁸

(7) O’Brien next claims that the Family Court improperly relied upon witness testimony that was not credible. Specifically, he contends that the testimony of a co-defendant who implicated him in the crimes was successfully impeached on cross-examination and that, therefore, her testimony should have been discounted by the judge. Questions of witness credibility and the resolution of conflicts in witness testimony lie solely within the province of the trier of fact.⁹ The Family Court carefully explained the basis for its decision on the record following trial, including the testimony that it relied upon in finding that O’Brien had committed the crimes of which he was accused. Our review of the transcript reveals no error or abuse of discretion on the part of the Family Court and no basis upon which to disturb its factual findings.¹⁰

⁷We note that the majority of the alleged inaccuracies consist of non-substantive typographical errors.

⁸*Thornton v. State*, Del. Supr., No. 529, 1996, Holland, J. (June 3, 1998).

⁹*Chao v. State*, 604 A.2d 1351, 1363 (Del. 1992).

¹⁰*Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

(8) O'Brien's final claim is that the Family Court improperly permitted the prosecutor to ask leading questions and intimidate the witnesses. We find no factual basis in the record for that claim. The transcript of the trial reflects that the Family Court sustained all of O'Brien's objections to leading questions and reveals no pattern of intimidation on the part of the prosecutor.

(9) It is manifest on the face of O'Brien's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Family Court is AFFIRMED.

BY THE COURT:

s/ Joseph T. Walsh
Justice