NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JOSEPH JOHNSON,	:	No. 1705 WDA 2012
Appellant	:	

Appeal from the Judgment of Sentence, October 3, 2012,
in the Court of Common Pleas of Allegheny County
Criminal Division at No. CP-02-CR-0002491-2012

BEFORE: FORD ELLIOTT, P.J.E., WECHT AND STRASSBURGER,* JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: FILED: December 6, 2013

Appellant brings this appeal challenging the judgment of sentence entered below. Finding no error, we affirm.

On October 3, 2012, appellant was convicted of terroristic threats and harassment following a bench trial.[1] Immediately following his conviction, the trial court imposed a sentence of five years' probation for terroristic threats with no further penalty for harassment. This timely appeal followed.

The trial court accurately summarized the nature of appellant's crimes:

> The Defendant was charged with Terroristic Threats and Harassment following a series of phone calls he made to, and voicemails he left for, his ex-girlfriend, Tameca Dickerson. The Defendant and Ms. Dickerson had been in a relationship for

* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 2706(a)(1) and 2709(a)(4), respectively.

three (3) years when the relationship ended in August, 2011. (T.R. 9/27/12, p. 8). The parties have one child together, a daughter two years old at the time of trial, and they have had numerous custody disputes since the relationship ended, according to both the Defendant and Ms. Dickerson. (T.R. 9/27/12, pp. 9-11, T.R. 10/3/12, pp. 16-18). Ms. Dickerson had obtained a Temporary Protection from Abuse Order (TPFA) on November 30, 2011. That order was vacated and a civil consent order was entered on December 5, 2011. The consent order indicated that the Defendant was not to abuse, stalk, harass or threaten Ms. Dickerson. (Exhibit A). On February 7, 2012, Ms. Dickerson reported to the Coraopolis Borough police station to complain of threats made by the Defendant to her, (T.R. 10/3/12, p. 3), and on February 13, 2012 a second TPFA was entered. A Final PFA was entered on March 13, 2012. It was entered for a three (3) year term. (T.R. 9/27/12, pp. 11-13).

According to the Criminal Complaint and Affidavit of Probable Cause, admitted into evidence by the defense as Exhibit A, the Defendant called Ms. Dickerson seven (7) times in two (2) days. (Exhibit A, T.R. 10/3/12, p. 3). He left three (3) voicemails on Ms. Dickerson's phone, the contents of which were quoted in the police report. (Exhibit A). The messages left by the Defendant included the following language:

> • Ms. Dickerson "made his life hell rather than be civil with him."
>
> • The Defendant was "getting ready to burn the bridge, burn her house down and burn Coraopolis down, that's what I'm about to fucking do."
>
> • The Defendant stated that "things are about to get real fucking ugly" and that he's gone "over the edge."
>
> (Exhibit A).

> The victim also testified to additional conduct of the Defendant, including driving by her house when he lives some distance away (T.R. 9/27/12, pp. 21, 23), leaving items on her doorstep even after a PFA was entered (T.R. 9/27/12, p. 21), and following her so that he always seemed to know where she was. (T.R. 9/27/12, p.21). Ms. Dickerson indicated that she changed her locks because of the Defendant's conduct, as well as her telephone number. (T.R. 9/27/12, pp. 21-22).

Trial court opinion, 6/26/13 at 2-3.

On appeal, appellant raises a single issue, contending that the evidence was insufficient to support his conviction for terroristic threats. We begin our analysis of that issue with our standard of review:

> As a general matter, our standard of review of sufficiency claims requires that we evaluate the record "in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." ***Commonwealth v. Widmer***, 560 Pa. 308, 744 A.2d 745, 751 (Pa.2000). "Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt." ***Commonwealth v. Brewer***, 876 A.2d 1029, 1032 (Pa.Super.2005). Nevertheless, "the Commonwealth need not establish guilt to a mathematical certainty." ***Id.***; ***see also Commonwealth v. Aguado***, 760 A.2d 1181, 1185 (Pa.Super.2000) ("[T]he facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence."). Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. ***See***

> ***Commonwealth v. DiStefano***, 782 A.2d 574, 582 (Pa.Super.2001).
>
> The Commonwealth may sustain its burden by means of wholly circumstantial evidence. ***See Brewer***, 876 A.2d at 1032. Accordingly, "[t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence." ***Id.*** (quoting ***Commonwealth v. Murphy***, 795 A.2d 1025, 1038–39 (Pa.Super.2002)). Significantly, we may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld. ***See Brewer***, 876 A.2d at 1032.

Commonwealth v. Lynch, 72 A.3d 706, 707-708 (Pa.Super. 2013), quoting ***Commonwealth v. Stays***, 70 A.3d 1256, 1266 (Pa.Super. 2013).

In order to sustain a conviction for terroristic threats, the Commonwealth must prove that the defendant: 1) threatened to commit a crime of violence; 2) with the intent to terrorize another or with reckless disregard of the risk of causing terror. ***Commonwealth v. Reynolds***, 835 A.2d 720, 730 (Pa.Super. 2003). Neither the ability to carry out the threat nor a belief by the victim that the threat will be carried out is an element of the crime. ***Id.***

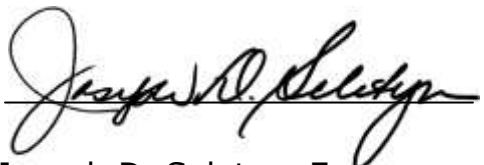
On appeal, appellant argues that the crime of terroristic threats is not meant to punish spur-of-the-moment threats issued during a heated dispute and attempts to position his remarks within this class of threats. We agree

that our case law does exempt spur-of-the-moment threats issued during a heated dispute from the crime of terroristic threats. ***See Reynolds***, 835 A.2d at 730; ***In re J.H.***, 797 A.2d 260, 262-263 (Pa.Super. 2002); ***Commonwealth v. Anneski***, 525 A.2d 373, 376 (Pa.Super 1987), ***appeal denied***, 516 Pa. 621, 532 A.2d 19 (1987). However, we disagree that appellant's threats fall into this category.

First, appellant's threats were not made in the midst of a heated dispute, but were coldly left in voicemails. Second, appellant repeatedly made these threats in two separate voicemails, which does not indicate a spur-of-the-moment burst of anger, but a settled purpose. Third, appellant committed the threats to a semi-permanent medium in order to insure that the victim would receive them. We find that the evidence demonstrated a clear intent to terrorize and not a mere, spur-of-the-moment threat. There is no merit to appellant's issue on appeal.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/6/2013