

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

IN THE INTEREST OF: W.N.W., A MINOR

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

APPEAL OF: W.N.W., A MINOR

No. 1565 MDA 2013

Appeal from the Dispositional Order of August 7, 2013  
In the Court of Common Pleas of Luzerne County  
Juvenile Division at No.: CP-40-JV-0000215-2013

BEFORE: DONOHUE, J., WECHT, J., and STRASSBURGER, J.\*

MEMORANDUM BY WECHT, J.:

**FILED JUNE 09, 2014**

W.N.W. ("Appellant") appeals the August 7, 2013 order that placed Appellant on probation following his delinquency adjudication. We affirm.

The juvenile court provided the following factual and procedural history:

On July 18, 2013, the Wilkes-Barre Police Department was called to a crime scene wherein a report of a gunshot victim lying in the street was received. Upon arrival, the police officers found a large group of people, and a male victim lying in the tree line [] with a gunshot wound to the head. The victim was unresponsive. The homicide scene was described as "chaotic" based upon the number of people in the streets and the overall tone of the crime scene. David Scherbenco, a freelance photographer from the Citizen's Voice newspaper, attested that there was a large aggressive crowd at the crime scene when he arrived. He recalled the temperature was in the eighties and it was the possible "worst situational crime scene he saw in

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\* Retired Senior Judge assigned to the Superior Court.

awhile.” He indicated that there was a large crowd of people milling around including family and random people from the neighborhood and ten to fifteen juveniles standing around him.

The police officers immediately attempted to take control of the crime scene by marking the area off with police tape to set the perimeter. The tape blocked the sidewalk and roadways and blocked vehicles from entering the area. The only individuals allowed [within] the perimeter included law enforcement, the district attorney, and the Coroner. Due to the nature of the crime scene, and the large amount of people in the streets, the Wilkes-Barre City Police Department responded along with the Kingston, Wilkes-Barre Township and Hanover Police Departments. Several off[-]duty Wilkes-Barre officers also responded. The K-9 unit was also on scene with approximately sixteen police officers in total.

Approximately one half hour after law enforcement arrived, [Appellant] arrived at the scene of the homicide wherein it was determined his brother was the deceased victim. [Appellant] immediately attempted to enter the crime scene and was stopped by law enforcement. [Appellant] was advised that it was a crime scene and they were gathering evidence. He was told he could not enter the area. The police officers understood that he was distraught and tried to speak with him repeatedly. However, [Appellant] refused to listen, took off his shirt and hat and threw them to the ground in the “area right [past] the tape.” The officers enlisted the help of family members on scene, who were cooperative, to try and keep him away from the crime scene to no avail. [Appellant] was loud, argumentative, and used curse words. At one point, [Appellant] yelled to the officers on scene to “fuck off.” He was ultimately physically removed from the crime scene by family members. Despite their efforts, [Appellant] continued to break loose from his family members and repeatedly attempted to get back inside the crime scene.

Officer Brian Gist testified that he warned [Appellant] at least four times to stay [out] of the crime scene and also attempted to explain the need to preserve the evidence surrounding his brother’s death. Despite the repeated warnings, [Appellant], in total, attempted to enter the crime scene five or six times. His actions were after repeated warnings, family interventions and physical removal. The police officers were not at a loss for the emotional distress of [Appellant] and [Officer Gist] attested as follows, “At one point, I actually tried to console him and

explained to him the nature of why we had it blocked off. He just didn't want to hear any of that."

[Mr. Scherbenco] witnessed [Appellant] attempting to cross the police tape at least three times. He stated that he observed the police try and remove [Appellant] from the crime scene. He stated, "He was - I'm going to say he was - for lack of a better word, gently warned off by the police. They were being very considerate in this situation. They - considering what was going on, they kind of used very - I call it, velvet glove routine, when they warned him and he would go off and then come back . . . ." Tony Ingargiola, WBRE Cameraman, also observed [Appellant] attempt to cross the crime tape several times. He also testified that he observed [Appellant] screaming obscenities "the whole time." He notes that [Appellant's] repeated attempts to cross the police perimeter coupled with his yelling curse words and obscenities was "very disruptive" to the crime scene. He also recollected that the police tried to calm him down as follows, ". . . hey let's calm down. You're making this worse." He concluded, "The gentleman just didn't seem to follow the orders of the police."

In addition to the actions described above, [Appellant] acted out toward the media personnel on scene. [Mr. Ingargiola] was on scene filming along with [Mr. Scherbenco]. [Mr. Scherbenco] observed [Appellant] milling around and noted that he was visibly upset. He stated that he first picked up on [Appellant] when he observed [Appellant] approach the WBRE cameraman and got "combative" with him. He stated that [Appellant] was loudly questioning him as to his purpose at the scene and would not allow the cameraman to take pictures. He saw [Appellant] place his hand in front of the camera. He then saw the police approach [Appellant] and the cameraman and the parties separated. After a period of time he observed that [Appellant] "milled around for a bit."

Mr. [ ] Ingargiola testified that he was approached by [Appellant] who started to ask what he was doing there. He testified that [Appellant] put his hand in the camera lens, moved the camera and actually physically moved him as [Appellant] was pushing at the camera. He attested that the incident luckily ended because the police were nearby and intervened. However, Mr. Ingargiola testified that [Appellant] approached him a second time when he started filming again. He stated that [Appellant] was highly irate toward him. The police intervened a second time and

[Appellant] stepped away but continued to mill around the scene and was cursing very loudly.

Officer Gist attested that [Appellant] approached Mr. Ingargiola several times warning him to stop filming, placed his hand in front of the camera, shoved the camera several times and threatened him as well as Mr. Scherbenco. He also saw [Mr. Scherbenco] taking pictures and when [Appellant] approached him Officer Gist heard [Appellant] state, "Take [one] more picture and see what happens. I'll knock you the fuck out."

Mr. Scherbenco attested that he remained at the crime scene after he observed [Appellant] interact with the WBRE Cameraman and moved toward the fence to take photographs. He again saw [Appellant] standing at the police tape. He then heard [Appellant] yell, "What are you doing?" He responded by explaining he was from the Citizen's Voice and showed him his press credentials. [Appellant] then asked what was in his hand and he replied that it was his camera. [Appellant] then told Mr. Scherbenco he was not taking anymore pictures. After a brief discussion, [Appellant] threatened him that if he took a picture he would see what would happen. Mr. Scherbenco testified that his attention was immediately distracted as [] he approached the fence as the body was being removed. He noted that five to ten kids were standing near him when he heard someone from the crowd yell and looked to his left and saw somebody coming at him. He stated that two police officers grabbed him and he heard a taser go off. He stated that [] "[i]t got very chaotic" at that point[] and he left. He did not identify the person who was coming at him but noted that he was not wearing a shirt. [Mr. Scherbenco] also testified that based on the tone of his conversation with [Appellant] he expected the worst and that he expected something to happen.

Officer Gist testified that after he heard [Appellant] make the threat, they continued to be "very, very lenient" with him.

Well, we were very, very lenient with [Appellant] based upon the circumstances. We didn't want to have to arrest him or do anything of this nature. It was already a distraught situation. We didn't want to make it worse on him. When I heard him state the threat and he walked away, I saw him reach [to the] ground. He picked something up.

Officer Gist [indicated] that [Appellant] picked up an item off the ground and ran into a crowd of twenty plus people towards the photographer. He attested that the photographer was standing on an elevated retaining wall with approximately four-five people standing near him. Officer Gist attested that he was watching [Appellant] due to his prior actions and that his behavior "continued to escalate on scene." He noted that [Appellant] was "acting very violent" and he was concerned for the safety of the people at the crime scene, coupled with the threat to the cameraman. He testified that [Appellant] was running very fast and was within three or four feet of the photographer when he deployed his taser. The officer recovered a five inch long cylinder shaped piece of wood from [Appellant's] hand.

Once [Appellant] was tased, he continued to struggle. He could not be placed into handcuffs in that he refused to comply or place his hands behind his back. He was screaming obscenities very loudly. He threatened multiple people including a neighbor, used foul language and told every police officer in his vicinity to "fuck off." After multiple requests to place his arms behind his back and the threat by law enforcement that he would be tased again, [Appellant] put his hands around his body and was hand cuffed.

[Mr. Ingargiola] heard the stun gun and panned his camera to the area where [Appellant] was acting out. He saw the police eventually cuff [Appellant] and also saw [Appellant] spit in the face of Officer Gist and they tried to restrain him. He stated that [Appellant] "resisted heavily."

Thereafter [Appellant] was removed to a transport vehicle on scene. As the police officer attempted to place him in the vehicle, he continued to resist until a taser was placed at his neck. [Appellant] continued to resist by pushing away from Sergeant Price. When [Appellant] was finally secured in the vehicle, he began to kick at the back window at the rear of the vehicle. [Appellant] kicked the back window of the vehicle with such force that the glass smashed onto the roadway. [Mr. Ingargiola] resumed taping [Appellant] after the window smashed out and attested that [Appellant] continuously and loudly cursed until he was removed from the crime scene.

[The juvenile court] conducted a hearing on August 7, 2013 wherein testimony was taken from [Appellant] and witnesses and arguments were made by the Commonwealth and

[Appellant's] counsel. As a result of the hearing, [Appellant] was found to be factually responsible [for] the crimes of: Count (1) One – Terroristic Threats, 18 Pa.C.S.A. § 2706(a)(1); Count (2) Two – Obstruction of the Administration of Law, 18 Pa.C.S.A. § 5101; Count (3) Three through Count (6) Six – Disorderly Conduct, 18 Pa.C.S.A. § 5503(a)(1)-(4); and Count (8) Eight – Criminal Mischief, 18 Pa.C.S.A. § 3304(a)(1), and was declared a delinquent child under Pennsylvania's Juvenile Act.<sup>[1]</sup> A Dispositional Hearing was conducted and the Juvenile was placed on Formal Indefinite Probation and placed in the custody of his uncle, [C.J.], with a series of community based conditions imposed.<sup>[2]</sup>

Subsequent to [the juvenile court's] finding, [Appellant] filed a Notice of Appeal on or about August [13], 2013 and was ordered by [the juvenile court] to file a concise statement of [errors] complained of on appeal pursuant to Pa.R.A.P. 1925(b) via order dated August 21, 2013. On or about September 6, 2013, [Appellant] filed a motion for extension of time to file a concise statement and [the juvenile court] granted an extension of twenty (20) days after the receipt of all ordered transcripts in this matter. Accordingly, [Appellant] received the necessary transcript on or about November 6, 2013 and filed [Appellant's] 1925(b) statement on or about November 18, 2013.

Juvenile Court Opinion ("J.C.O."), 1/28/2014, 1-7 (citations to notes of testimony omitted, minor modifications to punctuation and capitalization).

Appellant raises the following issues for our review:

Whether the Juvenile Court erred by finding [Appellant] factually responsible for one count of Obstructing Administration of Law or Other Governmental Function, pursuant to 18 Pa.C.S. § 5105,

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<sup>1</sup> Another charge, possession of marijuana, 35 P.S. 780-113(a)(31)(i) was dismissed after the court found that the Commonwealth did not prove Appellant had committed that act beyond a reasonable doubt.

<sup>2</sup> The court entered the adjudication and disposition on the record during the August 7 hearing and entered an order memorializing its verbal orders on August 10, 2013.

where the Commonwealth failed to present evidence sufficient to establish beyond a reasonable doubt the mens rea element of the offense or that [Appellant] obstructed, impaired, or perverted the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act.

Whether the Juvenile Court erred by finding [Appellant] factually responsible for one count of Terroristic Threats, pursuant to 18 Pa.C.S. § 2706(a)(1), where the Commonwealth failed to present evidence sufficient to establish beyond a reasonable doubt that [Appellant] intended to terrorize another?

Appellant's Brief at 2.

Appellant challenges the sufficiency of the evidence underlying two of the crimes for which he was adjudicated delinquent. We review such challenges as follows:

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. 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. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. 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.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, the 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. 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.

***Commonwealth v. Rahman***, 75 A.3d 497, 500-01 (Pa. Super. 2013) (citations and quotation marks omitted).

Appellant first challenges his delinquency adjudication for obstructing administration of law or other governmental function. Appellant argues that the Commonwealth did not prove beyond a reasonable doubt that he intended to impair or obstruct the administration of law. Instead, Appellant admits that he was distraught over his brother's death, but contends that his actions toward the two media representatives did not obstruct the police investigation. Appellant also argues that there was insufficient evidence to demonstrate that he actually obstructed or impaired the administration of law. Appellant contends that there was no evidence that the officers present were impeded in their investigation. Appellant's Brief at 8-14.

Obstructing administration of law or other governmental function is defined as:

A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

18 Pa.C.S.A. § 5101.



Regarding Appellant's second contention, that there was no evidence that the administration of law was actually obstructed, we have held that actual obstruction is not necessary. **See Commonwealth v. Trolene**, 397 A.2d 1200, 1204 (Pa. Super. 1979) ("[Section] 5101 includes intentional, albeit unsuccessful, attempts to influence, obstruct, or delay the administration of law."). However, police officers were diverted from their official duties to deal with Appellant in his attempts to enter the crime scene, when he was arguing with the media personnel, and finally, when he had to be removed from the police vehicle after he kicked out the window. That was sufficient to prove interference with the officers' duties and that segment of his argument must fail.

Based upon prior decisional law, we also find that the Commonwealth presented sufficient evidence of intent. In **Commonwealth v. Reed**, 851 A.2d 958, 960 (Pa. Super. 2004), a police officer responding to a tip regarding the location of a runaway teenager went to that location to investigate a second-floor apartment. Upon arrival, the officer realized that the outside apartment building door could only be opened by a resident. Shortly thereafter, Reed, a resident of a third-floor apartment, arrived at the main entrance to let in his guest. The officer forced his way inside. Reed blocked the officer's entrance, asked if the officer had a warrant, and questioned the officer about his presence in the building. The officer responded by saying, "Just let me get by and do my job." Reed continued to attempt to block the officer as they went up the stairs and they pushed each

other before the officer arrested Reed. **Id.** On appeal, Reed challenged the sufficiency of the evidence that he intended to obstruct the administration of law. **Id.** at 963. We held that the officer's statement conveyed that he was at the apartment building "engaged in the exercise of his duties and any interference with the officer would be interference with the administration of law." Because Reed continued to impede the officer after he was so informed, the evidence sufficed to prove intent. **Id.** at 964.

Here, Appellant attempted to cross into the crime scene multiple times. He was warned not to do so and informed that the police needed to keep the area clear to collect evidence. Similarly to **Reed**, Appellant was warned that the police were engaged in the exercise of their official duties and that his attempts to enter the crime scene were impeding the police's ability to complete their duties. Appellant's actions required continuing intervention by officers and diverted a significant amount of police resources from a serious and chaotic crime scene. While Appellant argues that he was acting out of grief, there is nothing in the record to indicate that he was unable to understand the warnings that he was given. As in **Reed**, the continued attempts to impede the investigation after the warnings were given, alone and without considering Appellant's other actions, were sufficient to prove Appellant's intent when the evidence is viewed in the light most favorable to the Commonwealth as we are required to do.

Appellant next challenges the sufficiency of the proof of his intent to make terroristic threats. That crime is defined as:

**(a) Offense defined.**--A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to:

- (1) commit any crime of violence with intent to terrorize another.

18 Pa.C.S.A. § 2706.

Appellant argues that his statements to Mr. Scherbenco were merely a spur-of-the moment expression of his anger and grief over his brother's death. Appellant asserts that he was distraught by the photographer and cameraman taking pictures of his brother's body. Appellant contends that this anger fueled his threat, not an intent to terrorize as is required by the statute. Appellant's Brief at 14-16.

While the statute does not intend to punish spur-of-the-moment threats, "[b]eing angry does not render a person incapable of forming the intent to terrorize." **Commonwealth v. Fenton**, 750 A.2d 863, 865 (Pa. Super. 2000). Further:

Neither the ability to carry out the threat nor a belief by the persons threatened that it will be carried out is an essential element of the crime. **Commonwealth v. Hudgens**, 582 A.2d 1352, 1358 (1990) (quoting **Commonwealth v. Anneski**, 362 Pa.Super. 580, 525 A.2d 373, 376 (1987)). Rather, the harm sought to be prevented by the statute is the psychological distress that follows from an invasion of another's sense of personal security.

**In re B.R.**, 732 A.2d 633, 636 (Pa. Super. 1999) (citations modified).

In **B.R.**, the juvenile, while in a school hallway with a teacher, made statements that he was going to destroy the communications system in the

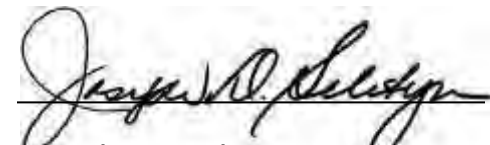
school and was going to bring a gun to school and shoot teachers. **Id.** at 635. The trial court found that the statements were meant to cause fear or apprehension, thereby proving the requisite intent. We agreed. **Id.** at 637. We distinguished prior case law in which statements were found to be spur-of-the moment by noting that those cases involved heated exchanges between parties prior to the threats being made. **Id.** at 637-38 (discussing **Commonwealth v. Anneski**, 525 A.2d 373 (Pa. Super. 1987); **Commonwealth v. Sullivan**, 409 A.2d 888 (Pa. Super. 1979)). Because the juvenile's statements were not part of a heated exchange, but were unprovoked, we found that they were not a spur-of-the-moment threat. **Id.** at 638; **see also Commonwealth v. Tizer**, 684 A.2d 597, 601 (Pa. Super. 1996) (holding evidence sufficient to prove intent when the appellant made multiple threats toward victim when victim never made any threats toward appellant and no argument preceded the threats).

Here, Officer Gist testified that he heard Appellant say to Mr. Scherbenco, "Take one more picture and see what happens. I'll knock you the fuck out." Notes of Testimony ("N.T."), 8/7/2013, at 14. Mr. Scherbenco testified that Appellant approached him, asking what Mr. Scherbenco was doing. Mr. Scherbenco explained that he was from the newspaper, showed Appellant his press credentials, and explained that he was doing his job. **Id.** at 46-47. Mr. Scherbenco heard Appellant say "Take a photo. You'll see what happens." Then Mr. Scherbenco was distracted by activity at the crime scene. **Id.** at 47.

Clearly, Appellant was angry and upset. However, that alone does not negate intent. Appellant intended that his threats would carry sufficient weight to convince Mr. Scherbenco to stop taking pictures. That is the type of psychological harm following an invasion of one's sense of security that the statute was designed to prevent. **See B.R., supra.** Mr. Scherbenco's testimony, which the juvenile court credited, was that he tried to explain his presence, not that he engaged in a shouting match or was confrontational with Appellant. As in **B.R.**, Appellant's threats were not the result of a heated exchange between Appellant and Mr. Scherbenco, but were intended to cause fear. Therefore, the evidence was sufficient to demonstrate that Appellant had the requisite intent for the purpose of terroristic threats.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/9/2014