

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CURTIS HUTCHINSON,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 560 EDA 2011

Appeal from the Judgment of Sentence entered January 25, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0010457-2010

BEFORE: BENDER, J., BOWES, J., and LAZARUS, J.

MEMORANDUM BY BENDER, J.

FILED MAY 06, 2013

Curtis Hutchinson appeals the judgment of sentence of 30 to 60 months' incarceration imposed following his conviction of Retaliation Against Witness or Victim and Terroristic Threats. **See** 18 Pa.C.S. §§ 4953(a), 2706(a) (respectively). Hutchinson contends that the Commonwealth failed to adduce sufficient evidence to sustain his conviction of Retaliation Against Witness or Victim and that the trial court erred in admitting the victim's testimony that Hutchinson's threats were "depressing" and "nerve-racking." Hutchinson, who had been previously convicted of robbing the victim in this case, apparently sought him out following release on parole and, in the incident that underlies this case, threatened him with death.

Hutchinson's case proceeded to a non-jury trial before the Honorable Roxanne E. Covington. During the Commonwealth's case-in-chief, the

prosecution introduced, over the objection of defense counsel, testimony of the victim, Juan Ramon, concerning emotions he experienced in response to the threats Hutchinson had made. Judge Covington concluded that the evidence was relevant to prove an element of Retaliation Against Witness or Victim as it reflected Hutchinson's intention in making the threats.

At the conclusion of trial, Judge Covington found Hutchinson guilty as charged and imposed the term of imprisonment at issue here to be followed by two years' reporting probation based on the defendant's status as a repeat felon. In support of the judgment of sentence, Judge Covington prepared an Opinion pursuant to Pa.R.A.P. 1925(a), which we find correct and comprehensive. We need not add to Judge Covington's discussion and accordingly, we adopt her Opinion as our own. For the reasons stated therein, we affirm Hutchinson's judgment of sentence.

Judgment of sentence **AFFIRMED**.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetti", written over a horizontal line.

Prothonotary

Date: 5/6/2013

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION – CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0010457-2010
: :
vs. : 560 EDA 2011
: :
CURTIS HUTCHISON : :

OPINION

FILED

COVINGTON, J.

SEP 18 2012

Criminal Appeals Unit
First Judicial District of PA

Procedural History

On January 25, 2011, following a bench trial, the defendant was found guilty of Retaliation Against Witness or Victim (18 Pa.C.S. §4953 §A) and Terroristic Threats (18 Pa.C.S. §2706 §A). After a Presentence Report was completed, the defendant was sentenced thirty (30) months to five years incarceration followed by two years reporting probation, based on a prior record score of repeat felon.

On February 23, 2011, the defendant filed a timely appeal. The defendant filed a 1925(b) statement with the Court on June 08, 2011.

Factual History

On March 9, 2009, Defendant was convicted of robbery charges against the complaining witness, Mr. Juan Roman, and subsequently incarcerated for over a year. N. T. 12/06/2010, p. 12. On June 12, 2010, Mr. Roman received a call from the court system informing him Defendant had been paroled and released from incarceration on June 10, 2010. *Id.* at 9-10.

Exhibit "A"

On June 12, 2010, at approximately 9:00 p.m., Mr. Roman went to a distributor at 5440 North 5th Street. N, T. 12/06/2010, p. 10. Mr. Roman drank two beers in the corner of the store for about 20 minutes, while the clerk stood behind the counter. *Id.* at 13, 33. Around 9:20 p.m., the Defendant walked into the beer store and shouted to Mr. Roman and the clerk, "Look, take a look at myself. I just got out of jail. The police could not keep me behind bars." *Id.* at 13.

Defendant looked at Mr. Roman and then headed to the corner of the beer store where Mr. Roman stored his bike upon his arrival. *Id.* at 14. Mr. Roman watched Defendant approach the area of the bike when Defendant turned around and shouted, "Why do you keep looking at me?" *Id.* Mr. Roman explained that he was watching his bike. *Id.* Defendant walked to the center of the store and then back to the area of Mr. Roman's bike, and again shouted to Mr. Roman, "Why do you keep looking at me?" *Id.* at 14-15. Mr. Roman responded, "because that's my bike and I don't know what you are up to." *Id.* at 15. Defendant then approached Mr. Roman, making face-to-face contact, and asked if Mr. Roman was going to buy him a beer. *Id.* Mr. Roman replied, "no." *Id.* The Defendant further stated, "Look I just got out of jail because this one I was caught... but next time, I'm not going to jail because next time I'm not going to be caught... next time somebody is going to get killed." *Id.* The Defendant then said to Mr. Roman, "I want you to know that from now on I'm going to be watching every move that you make. I'm going to keep track of every step that you take." *Id.* at 16.

Mr. Roman waited a few minutes, left the beer store, and called the police. N. T. pp. 16-17. There is a discrepancy between Mr. Roman's testimony and statement to police as to the precise time he called the Police at on Saturday, June 12, 2010. *Id.* at 34-36. Mr. Roman testified that he called twenty (20) minutes after the interaction with the Defendant from a block away from the beer store. *Id.* Mr. Roman also indicated he, "immediately called the police at

10:26 p.m., 10:28 p.m., and ... a third time from [his] apartment at 11:15 p.m., but they never showed up.” *Id.* at 41. Additionally, Mr. Roman testified that on Monday, June 15, 2010, he went in person to make a report at the 35th district police station. *Id.* at 44.

Detective Linda Hughes testified she investigated the incident and took a statement from Mr. Roman on June 15, 2011. N. T. p. 47. Detective Hughes further testified that Mr. Roman was visibly upset when she took his statement on June 15, 2011. *Id.* at 48.

Defendant’s sister, Donna Hutchinson, testified Defendant was with her between 4:00 p.m. and 10:30 p.m. on June 12, 2010. N.T. p. 51-52. Donna Hutchinson stated she took her car to Defendant’s house and drove him to his daughter’s graduation party. *Id.* Ms. Hutchinson stated she never lost eyesight of Defendant until after she drove him home at 10:30 p.m. *Id.* at 52-53. Ms. Hutchinson’s husband, Jeffery Dickerson, testified he accompanied Ms. Hutchinson to drive Defendant to the party. *Id.* Mr. Dickerson stayed on the front porch for the duration of the party and stated he saw Defendant several times before leaving with him at 10:30 p.m. or 11:00 p.m. *Id.* at 62-63. Jeffery Dickerson stated Defendant never left the house, where the party was held, that night. *Id.*

During Mr. Roman’s testimony, the Commonwealth asked, “How has this experience with the Defendant that night affected your life since then?” N.T. p. 21. Defense objected on the grounds of relevancy. *Id.* The Court overruled the objection. *Id.* at 22. Mr. Roman answered, “It’s depressing. It’s nerve-racking. It makes you very insecure that these things could actually happen at any place, especially the City of Philadelphia. It’s nerve-racking. It’s very real, but it seems like it’s just a play, you know. I mean, it seems like just a play in terms of what these people think, that it’s just a joke. That you can go out and rob and threaten someone and retaliate.” *Id.*

Standard of Review

The standard of review for sufficiency of the evidence is “whether the evidence, viewed in the light most favorable to the Commonwealth as verdict winner, is adequate to enable a reasonable jury to find every element of the crime beyond a reasonable doubt.” *Commonwealth v. Rega*, 933 A.2d 997 (Pa. 2007). Moreover, in applying the above test, the entire trial record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence introduced at trial. *Commonwealth v. Proetto*, 771 A.2d 823, 833 (Pa. Super. 2001). Under this standard, the Commonwealth’s evidence was sufficient to sustain the convictions.

Trial judges are afforded broad latitude and discretion in determining the admissibility of evidence. Their learned determinations will not be disturbed absent a finding of an abuse of discretion. *Commonwealth v. Wharton*, 607 A.2d 710, 719 (Pa. 1992). An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record. *Commonwealth v. Carter*, 861 A.2d 957, 961 (Pa. Super. 2004).

Discussion

Pursuant to Defendant’s Statement of Errors, the following claims are asserted on appeal: (1) court erred in overruling Defendant’s objection to the Commonwealth’s question of the complaining witness as the question elicited information from the complaining witness with probative value (if any) outweighed by the risk of prejudice; and (2) court erred in finding the

defendant guilty of Retaliation Against Witness, Victim, or Party, as there was insufficient evidence of a course of conduct required for conviction.

I. The Court Did Not Err in Overruling the Defendant's Objection

Evidence is relevant if it tends "to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Pa.R.E. 401. The probative value of the evidence might be outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, pointlessness of presentation, or unnecessary presentation of cumulative evidence. Pa.R.E. 403. Unfair prejudice means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa.R.E. 403 cmt.

The Court admitted Mr. Roman's testimony regarding the impact of the Defendant's threats for the purpose of establishing the Defendant's intent to terrorize Mr. Roman, as required for a terroristic threats conviction. The Defendant's testimony had high probative value of making it significantly more likely that Defendant acted with the intent to terrorize. Mr. Roman's testimony helped prove Defendant's actions could not be construed as jest or mere conversation, and directly implied Defendant was aware of the effects of his threats. Mr. Roman only testified that the threats were nerve-wracking and depressing. These comments are not the type to inflame the fact-finder and have no potential to suggest the fact finder to decide the case on an improper basis.

As such, the court's admission of the witness's statement was not an abuse of discretion.

II. There Was Sufficient Evidence to Convict the Defendant of Retaliation

A person commits retaliation against a witness when he harms another by any unlawful act or engages in a course of conduct or repeatedly commits acts which threaten another in

retaliation for anything lawfully done in the capacity of witness, victim, or a party in a civil matter. 18 Pa.C.S. § 4953(a). The Commonwealth can sustain its burden by proving any one of the following three scenarios: (1) the defendant harmed another by any unlawful act; or (2) the defendant engaged in a course of conduct which threatened another; or (3) the defendant repeatedly committed acts which threaten another. *Commonwealth v. Ostrosky*, 909 A.2d 1224, 1228 (Pa. 2006). While there is no doubt that a single threat is sufficient to satisfy the requirements of other criminal provisions, in order to satisfy the specific requirements of the retaliation statute, multiple threats are necessary. *Id.* at 1233.

The instant matter demonstrates sufficient evidence to prove Defendant engaged in a course of conduct threatening the complaining witness. The Defendant's behavior towards the complaining witness clearly surpassed a single act and rose to multiple threats. Upon entering the same store and seeing Mr. Roman, Defendant loudly announced he was out of jail "because the police couldn't keep him." Before the Defendant made explicit threats against Mr. Roman, he tried to intimidate Mr. Roman by hovering over his bike. The Defendant intimated to harm Mr. Roman again, claiming that the next time Defendant would not be caught by police. Defendant further stated that the next time he is going to kill him. Additionally, Defendant indicated he would accomplish this by stalking and harassing Mr. Roman. Every action the Defendant took after entering the beer store was deliberate and calculated to intimidate and threaten the Defendant. The above statements clearly indicate defendant's intentions to threaten Mr. Roman with crimes, harassment, and death.


Stalking and harassment charges, similarly to retaliation against witness or victim charges where no harm is found, require a course of conduct. See 18 Pa.C.S.A. § 2709 (defining summary harassment). In analyzing course of conduct, the Superior Court stated, "The

Pennsylvania Crimes Code defines course of conduct as, "[a] pattern of actions composed of more than one act over a period of time, *however short*, evidencing a continuity of conduct.'" *Commonwealth v. Duda*, 831 A.2d 728 (Pa. Super. 2003) (quoting 18 Pa.C.S.A. § 2709(f)). The Superior Court upheld a finding that defendant engaged in a course of conduct in *Duda* where the defendant made three threatening phone calls over a short period of time one evening.¹ The instant case is analogous to *Duda*, as the Defendant made three explicit threatening statements to the complaining witness over a short period of time. The Defendant's threats were different and specific enough to be considered different acts. These threats clearly established a continuity in conduct, as all of the Defendant's actions towards Mr. Roman were similarly threatening and intimidating.

Conclusion

Based upon the foregoing, there is more than sufficient evidence of intimidation, and no harmful error by this court, and thus the conviction should be sustained.

BY THIS COURT:



Roxanne E. Covington
August 28, 2012

¹ The defendant in *Commonwealth v. Duda*, made a second threatening phone call immediately after his first phone call ended. The defendant's third phone call was made shortly after a police officer responded the complaining witness's complaint.