

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR-1115-2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
MICHAEL J. ENGEL,	:	
Defendant	:	Petition for Habeas Corpus

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus, filed August 2, 2007. Counsel stipulated to having the Court decide the matter based on a transcript of the preliminary hearing, and no argument was heard.

Defendant has been charged with one count of terroristic threats in connection with alleged threats made to his wife on May 21, 2007. In his Petition for Habeas Corpus, Defendant contends the evidence presented by the Commonwealth was insufficient to establish, prima facie, the elements of the charge.

The elements of the offense of terroristic threats (as charged here) are 1) a threat to commit a crime of violence, and 2) communication of such threat with intent to terrorize. 18 Pa.C.S. Section 2706. Our appellate courts have made a distinction, based on language in the Pennsylvania Joint State Government Commission's Comment on the section, between threats which evidence a settled purpose to terrorize and mere spur-of-the-moment threats which result from anger. For example, in Commonwealth v. Speller, 458 A.2d 198 (Pa. Super. 1983), the Court found a settled purpose to terrorize based on the history of incidents initiated by the defendant which were calculated to harass and annoy the victims, and in Commonwealth v. Lumpkins, 471 A.2d 96 (Pa. Super. 1984), the Court found the evidence sufficient to support a conviction where the defendant threatened to kill police officers while holding one of them hostage, pointing a revolver alternately at each of them and inflicting bodily

injury on one of them. On the other hand, courts have found the intent to terrorize lacking in situations where there was an exchange of threats made during a heated argument between neighbors, Commonwealth v. Anneski, 525 A.2d 373 (Pa. Super. 1987), where a threat was made over the telephone in anger and again during a chance meeting on the street the following day during a shouting match, Commonwealth v. Sullivan, 409 A.2d 888 (Pa. Super. 1979), and where the defendant made threats to police who had taken him to the hospital for treatment after he fell out of the police car after having been arrested for public drunkenness, noting that the defendant was “obviously inebriated and in an agitated and angry state of mind.” Commonwealth v. Kidd, 442 A.2d 826, 827 (Pa. Super. 1982).

In the instant case, Defendant’s wife testified that on May 21, 2007, she was staying at the home of some friends while house-sitting for them and at 9:30 that evening called her husband at home to inquire about his work schedule the next day. She testified that he “started yelling”¹ and that the conversation ended in his telling her that he was going to kill her. It also appears, however, that Defendant was angry with his wife because he believed that she had put a hold or stop on his debit card as he had been unable to use it earlier that evening. While Defendant’s wife’s testimony on direct examination is rather vague regarding the contents of the conversation, she admitted on cross-examination that she actually made four phone calls to Defendant within a short period of time that evening, as well as having called the bank and her step-daughter’s mother (from whom she received the information about Defendant’s inability to use his debit card earlier that day). The threats were made only in the first telephone conversation.

Considering all of the circumstances, and the inference drawn by the Court from those circumstances that the threat was made in anger and was not the threat of a “serious assassin”,² the Court finds this case

¹N.T. June 20, 2007, at 4.

²See Ashford 407 A.2d 1328, 1330 (Pa. Super. 1979), where the Court distinguished the “braggadocio of an intoxicated bully”, from the threats of a “serious assassin”.

to fall within the parameters of those which the appellate Courts of this Commonwealth have determined to not warrant punishment under Section 2706. Defendant's petition for habeas corpus will therefore be granted and the charge will be dismissed.

ORDER

AND NOW, this 11th day of September 2007, for the foregoing reasons, Defendant's Petition for Habeas Corpus is hereby GRANTED and the charge in this matter is hereby DISMISSED Costs shall be placed on the County.

BY THE COURT,

Dudley N. Anderson, Judge