

**IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 824-CR-2016
	:	
ANDREA MAZZELLA,	:	
	:	
Defendant	:	
Joseph D. Perilli, Esquire		Counsel for the Commonwealth
Assistant District Attorney		
Matthew J. Mottola, Esquire		Counsel for Defendant
Assistant Public Defender		

MEMORANDUM OPINION

Serfass, J. - April 2, 2018

Andrea Mazzella (hereinafter "Defendant") has taken this appeal from our Order of Sentence entered in this matter on September 5, 2017, and made final when his timely post-sentence motion was denied by our order of February 12, 2018. We file the following Memorandum Opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a) and recommend that the aforesaid orders be affirmed for the reasons set forth hereinafter.

FACTUAL AND PROCEDURAL BACKGROUND

On June 9, 2016, Pennsylvania State Police Trooper Marvin Shair was dispatched to 65 Autumn Lane, Penn Forest Township, Carbon County, Pennsylvania, in response to a reported violation of a protection from abuse ("PFA") order. There were no persons at the aforesaid

residence when Trooper Shair arrived. He informed the dispatcher that there was no one at the residence, and the dispatcher told the complainant, Ida Mazzella, to return to the residence. Mrs. Mazzella then returned to the residence and stated to Trooper Shair that her husband, Defendant, Andrea Mazzella, had stopped by the house earlier in violation of a PFA order entered against him by this Court. While the two were talking, Mrs. Mazzella observed a motorcycle drive past the residence. She was able to identify the driver as Defendant because he was not wearing a helmet. Trooper Shair promptly left Mrs. Mazzella and followed the motorcycle in his patrol vehicle. He found the motorcycle nearby at 169 Yellow Run Road. Trooper Shair checked the motorcycle's registration and determined that Defendant was the registered owner. He then received a second dispatch informing him that Mrs. Mazzella had called stating that Defendant was again at the residence. Trooper Shair left the motorcycle and returned to the residence where he found Defendant lying in the driveway.

Trooper Shair spoke with Defendant and observed bloodshot eyes, slurred speech, and the strong odor of alcohol emanating from Defendant's facial area. Defendant stated that he understood he was not supposed to be at the residence due to the PFA order. Trooper Shair asked Defendant to submit to standardized field sobriety testing, but Defendant refused. Trooper Shair then arrested Defendant. After he was placed in handcuffs, Defendant stated he would submit to a breath test. However, when given the breath test, Defendant was not cooperative. As a result, Trooper Shair placed

Defendant in the patrol vehicle and transported him to Gnadon Huetten Memorial Hospital for a blood test. Defendant was read the DL-26 form and consented to the blood draw. En route to the hospital, Defendant threatened to kill Trooper Shair and the trooper's family. These threats continued for hours throughout the night at the hospital and, later, at the Lehighton State Police Barracks. Moreover, Defendant threatened to blow up the barracks.

Defendant was charged with DUI: General Impairment/Incapable of Safe Driving - 1st Offense (M), 75 Pa. C.S.A. § 3802(a)(1), Terroristic Threats with Intent to Terrorize Another (M), 18 Pa. C.S.A. § 2706(a)(1), Harassment - Communicate Lewd, Threatening Language (M), 18 Pa. C.S.A. § 2709(a)(4), Public Drunkenness and Similar Misconduct (S), 18 Pa. C.S.A. § 5505, and Careless Driving (S), 75 Pa. C.S.A. § 3714(a).

On May 30, 2017, the parties filed a stipulation to suppress the blood drawn and the related toxicology report. This Court approved the stipulation via suppression order dated May 31, 2017.

On June 5, 2017, defense counsel filed "Defendant's Suggested Charge for Terroristic Threats" averring that the standard jury instruction did not adequately address the element of intent. This Court denied Defendant's suggested charge and retained the standard instruction.

A jury trial was held before the undersigned on June 6, 2017. On that same date, the jury returned its verdict. Defendant was found not guilty of DUI but guilty of Terroristic Threats and

Harassment. Additionally, this Court found Defendant guilty of the two summary offenses, Public Drunkenness and Careless Driving.

On September 5, 2017, this Court sentenced Defendant to an aggregate period of incarceration in the Carbon County Correctional Facility of not less than six (6) months nor more than two (2) years less one (1) day. On September 15, 2017, Defendant timely filed a post-sentence motion. In his motion, Defendant asked this Court to enter a judgment of acquittal on the charge of Terroristic Threats, and he requested a new trial on all other charges. On November 29, 2017, this Court granted Defendant's oral motion on the record for a thirty (30) day extension of time for this Court to render a decision on the post-sentence motion pursuant to Pa. R.Crim.P. 720(B)(3)(b). Oral argument on the post-sentence motion was held on January 29, 2018. On February 12, 2018, this Court entered an order and memorandum opinion denying Defendant's post-sentence motion.

On March 14, 2018, Defendant filed a notice of appeal with the Superior Court. Because the trial court was not served with a copy of Defendant's notice, we were unaware that an appeal had been filed until March 29, 2018, when defense counsel submitted a "Concise Statement of Errors Complained of on Appeal". In Defendant's Pa. R.A.P. 1925(b) statement, he raises the following issues for appellate review:

1. Whether this Court erred by allowing the Commonwealth to question Mr. Mazzella on cross-examination about whether his

wife and Trooper Shair were lying when they testified inconsistently from Defendant's testimony; and

2. Whether this Court erred by not instructing the jury that Pennsylvania courts have held a defendant lacks intent to terrorize when the threat is made in the spur-of-the-moment during transitory anger.

DISCUSSION

Both issues raised by Defendant on appeal were specifically addressed in our memorandum opinion of February 12, 2018. Relying upon the reasoning contained therein, we have attached a copy of that memorandum opinion for the convenience of the Honorable Superior Court and incorporate the same herein.

CONCLUSION

For the reasons set forth hereinabove and in our memorandum opinion dated February 12, 2018, we respectfully recommend that the instant appeal be denied and that our Order of Sentence dated September 5, 2017, and our Order of Court dated February 12, 2018, denying Defendant's post-sentence motion, be affirmed accordingly.

BY THE COURT:

Steven R. Serfass, J.