

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
RYAN RICHARD,	:	
	:	
Appellee	:	No. 2173 MDA 2013

Appeal from the Order entered on December 4, 2013
in the Court of Common Pleas of Centre County,
Criminal Division, No(s): CP-14-CR-0000016-2013;
CP-14-CR-0000708-2013; CP-14-CR-0000711-2013

BEFORE: LAZARUS, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED JULY 24, 2014

The Commonwealth of Pennsylvania appeals from the trial court’s Order granting the pre-trial Motion *in limine* filed by Ryan Richard (“Richard”) regarding the terroristic threats¹ charges filed against him. We affirm.

The trial court set forth the relevant history underlying this appeal as follows:

In December [] 2012, Richard was scheduled to be released from prison after pleading guilty to murdering his wife in 1989. That same month, Richard was charged with eight counts of Terroristic Threats, ... and eight counts of Harassment, 18 Pa.C.S.A. § 2709(a)(1). On January 2, 2013, Richard waived his preliminary hearing, and the charges were bound over to [the trial c]ourt. The charges of Terroristic Threats and Harassment stem from [two] letters [collectively referred to as “the letters”] Richard sent [to] his now deceased mother, which [contained] threats to kill certain people [who] were involved in

¹ See 18 Pa.C.S.A. § 2706(a)(1).

Richard's murder trial. The letters written by Richard were discovered by his brother, [Russell Richard ("Russell"),] in their mother's home following her death. The letters were [] taken to [the Pennsylvania State Police ("PSP")], who then relayed the contents of those letters to the persons named in them, and charges were subsequently filed against Richard.

Trial Court Opinion and Order, 6/13/13, at 1-2 (paragraph breaks and numbering omitted).

On February 14, 2013, Richard filed a Motion to Quash Information Pursuant to Statute of Limitations (hereinafter "Motion to Quash"), asserting that the terroristic threats and harassment charges against him must be dismissed because the Commonwealth filed these charges outside of the applicable statutes of limitations. On June 13, 2013, after considering the Commonwealth's response to the Motion to Quash, the trial court granted the Motion as it pertained to the eight counts of harassment, but refused to dismiss the eight counts of terroristic threats. In so ruling, the trial court advanced the following analysis:

The Commonwealth contends Richard's prosecution is not time-barred, [as] the "commission of the offense" did not occur until December [] 2012, when [the PSP] communicated the threats made by Richard to those [individuals named] in the letters. The Commonwealth cites to *In re L.A.*[, 853 A.2d 388 (Pa. Super. 2004),] for the proposition that the focus of the court should be whether Richard had intent to terrorize, rather than if Richard communicated those threats directly. [*See id.* at 392 (stating that "[t]he 'intent' referenced in the [terroristic threats] statute is expressly the intent to terrorize, not, as stated by defense counsel, 'the intent to communicate [a threat].'").] Richard argues that the statute of limitations

beg[an] to run when the letters were actually sent.^[FN] In the instant case, the [trial c]ourt believes the statute of limitations began when Richard sent the letters, not when they were communicated to the victims by [the PSP].

[FN] It remains unclear to the [trial c]ourt when exactly Richard wrote the letters and when they were both sent. At the omnibus hearing, Richard's brother, Russell, testified [that] their mother passed away in January [] 2010. It was in 2012 when Russell discovered the letters written by Richard, in their mother's attic. The postmark on the envelope for one of the letters was dated June 17, 2011, and it was unclear whether the other letter had been included in that envelope or sent another time.

A prosecution for Terroristic Threats must be commenced within five years after [the offense] is committed, and a prosecution for Harassment must be commenced within two years. **See** 42 Pa.C.S.A. § 5552. The statute [of limitations] further defines when a crime is *committed* as "either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity of the defendant therein is terminated. Time starts to run on the day after the offense is committed." 42 Pa.C.S.A. § 5552(d). The purpose underlying a statute of limitations is to limit the amount of time an individual is exposed to criminal liability due to the inherent difficulties in defending against a criminal charge where a great deal of time has passed between the commission of the crime and the prosecution thereof, *e.g.* [,] the death or lack of memory of witnesses. **Commonwealth v. Laventure**, 858 A.2d 112 (Pa. Super. [] 2004), citing **Commonwealth v. Cardoniek**, 292 A.2d 402, 407-[]08 (Pa. 1972).

In this case, Richard's letters were addressed to his mother. His mother never communicated the contents of his letters to anyone. At the omnibus hearing, Richard testified that his mother passed away on January 30, 2010. Trooper Gretchen Swank ["Trooper Swank"] credibly testified [that] she believed the letters were written between September [] 2009 (after Richard's final parole hearing – something he references in the letters), and January [] 2010 (his mother's passing). Approximately two years after his mother's passing, Richard's brother stumble[d] across the letters in cleaning out their

mother's attic. Richard's brother then provided the letters to [the PSP], who [] took it upon themselves to relay the contents of the letters to the victims. The [trial c]ourt believes that the threats were *communicated* when Richard sent the letters, triggering the statute of limitations. The [trial c]ourt cannot adopt the Commonwealth's logic whereby a criminal offense does not "occur" until the police complete the offense, as this would lead to an absurd result, whereby a letter writer might have to wait for decades before he could be relieved of the obligation to defend against some ancient threat. This would completely eviscerate the concept and the protection of a statute of limitation. Based on Trooper Swank's testimony, there is evidence to suggest the letters were written between 2009 and 2010. The envelope carrying the letters was postmarked June 17, 2011, and included the notation "GETS OUT DEC 13, 2012." This timeframe is within the five[-]year statute of limitations for the charges of Terroristic Threats filed against Richard. However, the statute of limitations has expired for the charges of Harassment, as prosecution for this offense must be commenced within two years after it is committed.

Trial Court Opinion and Order, 6/13/13, at 5-7 (footnote and some emphasis in original).

On December 4, 2013, after the empaneling of a jury, Richard filed a Motion *in limine* seeking to preclude the Commonwealth from arguing to the jury that the crime of terroristic threats was completed when the persons named in the letters were notified by the PSP (as opposed to when Richard sent the letters to his mother). On the same date, the trial court entered an Order granting the Motion *in limine*.² The Commonwealth filed a timely

² We observe that the trial court did not prohibit the introduction of evidence that Richard gave the letters to the PSP, or that the PSP informed the victims of the threats set forth in the letters.

Notice of Appeal from the December 4, 2013 Order,³ which properly included a certification, pursuant to Pennsylvania Rule of Appellate Procedure 311(d), that the Order terminated or substantially handicapped the Commonwealth's prosecution.

The Commonwealth presents the following issues for our review:

- I. Did the motions court err in writing an Opinion relied upon [by] the trial court which decided [Richard's] Motion *in limine*, in essence precluding the Commonwealth from arguing to the jury that the statute of limitations did not begin to run until the threats were indirectly communicated to the victims in December [] 2012, in accordance with the plain language of 42 Pa.C.S.A. [§] 5552(D), in that an offense is not committed until every element occurs[,] and specifically[,] with regards to the crime of terroristic threats, communication of the threat either directly or indirectly to the victim?

- II. Did the trial court err in granting [Richard's] Motion *in limine*, precluding the Commonwealth from arguing to the jury that the statute of limitations did not begin to run until the threats were indirectly communicated to the victims in December [] 2012, in accordance with the plain language of 42 Pa.C.S.A. [§] 5552(D), in that an offense is not committed until every element occurs[,] and specifically[,] with regards to the crime of terroristic threats, communication of the threat either directly or indirectly to the victim?

³ In its appellate brief, the Commonwealth also purports to appeal from the trial court's June 13, 2013 Order, which granted Richard's Motion to Quash as it pertained to the charges of harassment, but not the terroristic threats charges. However, the Commonwealth's Notice of Appeal did not mention the June 13, 2013 Order, and, in any event, the Notice of Appeal was not filed within thirty days of the Order. Additionally, the Commonwealth does not challenge on appeal the trial court's ruling that its prosecution of Richard for the eight counts of harassment is barred by the offense's two-year statute of limitations.

Brief for the Commonwealth at 4 (capitalization omitted). We will address these related issues simultaneously.

Preliminarily, we note that

[w]hen reviewing a ruling on a motion *in limine*, we apply an evidentiary abuse of discretion standard of review. The admission of evidence is committed to the sound discretion of the trial court and our review is for an abuse of discretion. A trial court's ruling regarding the admissibility of evidence will not be disturbed unless that ruling reflects manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support as to be clearly erroneous.

Commonwealth v. Orié, 88 A.3d 983, 1022 (Pa. Super. 2014) (citation, quotation marks, brackets and paragraph breaks omitted).

The Commonwealth argues that the trial court erred in granting Richard's Motion *in limine* and precluding the Commonwealth from arguing to the jury that the crime of terroristic threats was completed when the individuals named in Richard's threatening letters were notified, in December 2012, by the PSP as to their contents. **See** Brief for the Commonwealth at 9, 13-15. According to the Commonwealth, "[t]he [trial] court's ruling that the threats were communicated when [Richard] mailed the letters ... to his mother is erroneous, because the threats were never communicated, directly or indirectly, to the victim[s] until December [] 2012." ***Id.*** at 9; ***see also id.*** at 15 (arguing that "[Richard's] act of sending these letters to his mother is not enough to complete the crime of Terroristic Threats.>").

In its Opinion, the trial court addressed the Commonwealth's claim, and discussed the cases it relied upon in support of its claim, as follows:

[T]he Commonwealth would ask [the trial c]ourt to again, consider its argument that the “commission of the offense” of Terroristic Threats did not occur until December [] 2012, when [the PSP] communicated the threats made by [Richard] to those listed in the letters. For a second time, the Commonwealth cites to ***In re L.A.***[, *supra*,] as well as ***In re B.R.***, [732 A.2d 633 (Pa. Super. 1999),] arguing the Commonwealth must prove in its case-in-chief, that the threats were communicated to the victims. ***In re B.R.*** states:

A person is guilty of terroristic threats, a misdemeanor of the first degree, if he or she “[communicates a threat to] commit any crime of violence with intent to terrorize another[;] cause evacuation of a building, place of assembly, or facility of public transportation[;] or otherwise [] cause serious public inconvenience, or [cause terror or serious public inconvenience with] reckless disregard of the risk of causing such terror or inconvenience.” [18 Pa.C.S.A. § 2706(a)]. Accordingly, the Commonwealth must prove that 1) the defendant made a threat to commit a crime of violence, and 2) the threat was communicated with the intent to terrorize another *or with reckless disregard for the risk of causing terror*. 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. 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 [at] 636 [] (citations omitted[, emphasis supplied by trial court]). [The trial c]ourt understands the reasoning for the Commonwealth’s position[;] however, the instant case is a unique one. [Richard] wrote these letters to his mother, which were eventually found by [Richard’s] brother[], who then delivered the letters to [the PSP], who then communicated the threats to the victims. While [the trial c]ourt feels the fact-finder may determine [that Richard] met the elements of the offense by showing reckless disregard for the risk of causing terror, [the court does] not believe [that it] can agree with the Commonwealth’s assertions, and place the police in the position to “complete” the offense on behalf of [Richard], in order for the statute of limitations to run. The elements of the crime of Terroristic Threats focus not on the harm, but on the

intent and actions of the defendant. As one of the elements of the crime is that a defendant shows reckless disregard for the risk of causing terror (**See [Commonwealth] v. Sinnott**, 976 A.2d 1184, [1188] (Pa. Super. [] 2009), (affirmed in part, reversed in part on other grounds), we believe the Commonwealth can establish the elements of communication of the threats, by a demonstration that [Richard] actually sent the letters, thereby showing the necessary reckless disregard for the risk of causing terror. [The trial c]ourt also feels this decision is in line with the purpose of the statute, which is to prevent the psychological distress that follows from invasion of another's sense of personal security.

Trial Court Opinion and Order, 11/20/13, at 4-5; **see also** Trial Court Opinion and Order, 6/13/13, at 6-7 (stating that "[t]he [trial c]ourt cannot adopt the Commonwealth's logic whereby a criminal offense does not "occur" until the police complete the offense, as this would lead to an absurd result, whereby a letter writer might have to wait for decades before he could be relieved of the obligation to defend against some ancient threat.").

After review, we agree with the trial court's sound analysis, which is supported by the record and the law. Accordingly, we affirm on this basis in concluding that the trial court properly exercised its discretion in granting Richard's Motion *in limine*. **See** Trial Court Opinion and Order, 11/20/13, at 4-5; **see also** Trial Court Opinion and Order, 6/13/13, at 5-7.

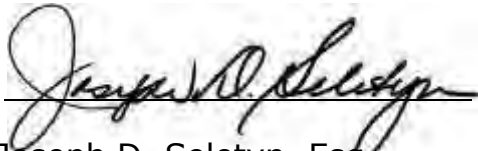
Finally, the Commonwealth argues that the trial court, in granting Richard's Motion *in limine*, erred in relying upon the determination and analysis of the separate trial court judge who authored the prior June 13, 2013 Opinion and Order. **See** Brief for the Commonwealth at 16 (arguing that the facts of the instant case fall under an exception to the coordinate

jurisdiction rule, since the trial court's ruling in the June 13, 2013 Opinion and Order "was clearly erroneous and would create a manifest injustice if followed." (quoting **Commonwealth v. Starr**, 664 A.2d 1326, 1331-32 (Pa. 1995)). This claim does not entitle the Commonwealth to relief, as we have already determined that the trial court properly precluded the Commonwealth from arguing at trial that the crime of terroristic threats was completed when the PSP notified the victims of the threats contained in Richard's letters.

Based upon the foregoing, we discern no abuse of discretion or error of law by the trial court, and therefore affirm the Order granting Richard's Motion *in limine*.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/24/2014