

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
SCOTT J. BAKER,	:	No. 606 WDA 2012
	:	
Appellant	:	

Appeal from the Judgment of Sentence, March 5, 2012,
in the Court of Common Pleas of Greene County
Criminal Division at No. CP-30-CR-0000544-2009

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BEFORE: FORD ELLIOTT, P.J.E., SHOGAN, AND STRASSBURGER,* JJ.

CONCURRING AND DISSENTING MEMORANDUM BY STRASSBURGER, J.:
FILED: APRIL 21, 2014

I concur with my learned colleague that the majority of Appellant’s claims on appeal do not entitle him to relief. However, because I conclude that that the evidence was insufficient to convict Appellant of intimidation of witnesses or victims, I respectfully dissent as to that count. Here, the evidence shows only that Appellant instructed his son to assist him, and that

* Retired Senior Judge assigned to the Superior Court

the son complied. ***Commonwealth v. Brachbill***, 555 A.2d 82 (Pa. 1989), cited in the Majority Memorandum, involved crooked prison guards who attempted to prevent an abused prisoner from discussing their misconduct with police by offering him money and other gifts. ***Id.*** at 84. Our Supreme Court concluded that the prison guard's conduct fell within the language of 18 Pa.C.S. § 4952 because the statute specifically provides for situations where a defendant "offers any pecuniary or other benefit to the witness or victim[.]" ***Id.*** at 85-86 (quoting 18 Pa.C.S. § 4952(b)(2)).¹ Such is not the case here. While Appellant's conduct in using his young son to assist him in committing murder may have been reprehensible, this alone does not support Appellant's conviction under Section 4952.

¹ The statute was amended in 2001, and the relevant language now appears at 18 Pa.C.S. § 4952(b)(1)(ii).