



LEGAL UPDATE

STATEMENTS TO EMPLOYEE AT CLERK'S OFFICE WHO WAS NOT INVOLVED IN DEFENDANT'S CASE DID NOT VIOLATE INTIMIDATION STATUTE

Commonwealth v. Jeffrey Wheeler, Appeals Court (March 16, 2023).

RELEVANT FACTS

On July 26, 2018, a case specialist with the Newburyport District Court Clerk's office received a telephone call from the defendant. In that call, the defendant referred to a specific judge, stated that he was going to serve the judge in hand, that the judge would not be a judge anymore, and that it would "appear on the TV." The defendant was "speaking very quickly, repetitively, and aggressively." The case specialist wrote down the statements, including that he said he was "going to go rogue." The defendant talked about serving the judge with paperwork and the specialist believed the defendant was going to "take things into his own hands and do it himself."

During the call the specialist was able to alert a co-worker about what was going on. A supervisor was notified and the State police arrived before the end of the call. The specialist was disturbed and frightened as a result of the call.

The judge named in the call was notified about the call. She was escorted back to her office and then to her home by a State trooper. The judge had presided over two harassment prevention order extension hearings involving the defendant back in August 2017, almost a year before the call; however, the judge had no recollection of the defendant or those hearings. The judge was shocked and alarmed by the threatening comments that were made.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

The defendant was charged and convicted of two counts under MGL c 268 §13B, the intimidation statute. One charge for the case specialist and one for the judge. The defendant appealed arguing that the Commonwealth failed to prove the elements of intimidation.

DISCUSSION

The intimidation statute, often referred to as the witness intimidation statute, was rewritten in 2018 to broaden the list of people protected by the statute to include, among others, a judge or a clerk.

To prove intimidation in this case, the Commonwealth had to prove four elements:

1. The defendant willfully
2. Threatened, intimidated, or harassed
3. A judge or clerk who participated in a civil proceeding
4. He did so with the intent to or with reckless disregard for the fact that it may punish, harm, or otherwise retaliate against the judge or clerk who participated in the civil proceeding.

The focus of the statute is the defendant's actions and intent, not the result. The Commonwealth is not required to prove that the threats were conveyed to the intended victim or that the victim was actually harassed or intimidated.

With respect to the intimidation of the judge, the defendant said he was "going to go rogue" and that it was "going to appear on the TV." These statements could reasonably be construed to be a threat to harm the judge physically because of her involvement in extending two harassment prevention orders against the defendant. The defendant's statement that he was going to serve the papers "in-hand" was further evidence of his intent to carry out the threats personally.

With respect to the charge of intimidation of the case specialist, the Commonwealth failed to establish the fourth element. There was no evidence that the case specialist was in any way involved in the harassment prevention order proceedings, so the acts of the defendant could not have been done with intent to retaliate for any such act. There was also no evidence that the case specialist would have fit into any of the other categories of people protected by the statute based on these facts.

The court did not determine whether a case specialist with the court would be considered a "clerk" for purposes of this statute. Because the Commonwealth failed to establish the fourth element, the court did not reach this issue.

The conviction for intimidation of the judge was affirmed. The conviction for intimidation of the case specialist was vacated.

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