

*Short v. Short*

*PFA - threats constitute "abuse" and are thus covered by PFA-language - defendant found in contempt for making threats even though they were made to a third person and not directly to the victim*

1. Defendant appeals finding of contempt of PFA order for making threats to his wife, because PFA directed him to refrain from "abusing, harassing, or stalking," his wife but not from "threatening" her.
2. Threats constitute "abuse" as defined in Protection From Abuse Act as knowingly engaging in a course of conduct under circumstances which place the person in reasonable fear of bodily injury:
  - a. defendant engaged in course of conduct by making repeated threats over a two day period, even after he had time to calm down;
  - b. plaintiff was put in reasonable fear of bodily injury because the threats were against her life and she took the threats seriously based on threats made in the past.
3. Defendant appeals contempt order because he the threats were conveyed only to a third party, not directly to his wife.
4. A defendant need not directly convey the threat to the victim; it is sufficient that the person to whom the threat is uttered communicated it to the victim.
5. Defendant conveyed threats to mutual friend; and that friend conveyed to plaintiff that threats were made but not the exact wording; friend's affirmative answer to plaintiff's question if the threats were against her life was a sufficient communication to the plaintiff.

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*Michelle R. Calvert, Esq., Counsel for Defendant*

**OPINION**

Walker, P.J., June 29, 1998

**Factual and procedural Background**

This case involves an appeal from this court's order finding Defendant Harry Short in indirect criminal contempt of a protection from abuse ("PFA") order. On November 15, 1997, a petition for emergency relief from abuse was granted by District Justice Hawbaker to Tina Short ("plaintiff") against her husband. A final PFA order was entered on December 3, 1997, which directed defendant to refrain from abusing, harassing or stalking

plaintiff. Subsequently, on My 1, 1998, defendant was charged with a violation of the PFA order. A hearing was held on the indirect criminal contempt charge on May 20, 1998. The testimony at the hearing established the following facts.

On April 26, 1998, Joanne Appleyard, a mutual friend of both plaintiff and defendant, visited defendant at his house. (Notes of Trial Testimony, at 2 - 3 ). At that time, it appeared that defendant was upset about the fact that plaintiff had filed for spousal support in their divorce proceeding. (N.T. at 3). Defendant made a statement that if his wife was granted spousal support, "she would never make it to the bank to cash the first check." (N.T. at 3). That same evening, Ms. Appleyard called defendant back, and in that conversation he said "more or less the same thing." (N.T. at 5). He furthermore said that he would blow plaintiff's head off, shoot her in the knees, and bash her face in. (N.T. at 5). The next day, Ms. Appleyard again spoke to defendant, at which time he was still "adamant." (N.T. at 7). He also stated to her that he did not care if she told plaintiff about his statements. (N.T. at 7). In the evening of Sunday April 26, 1998, Ms. Appleyard spoke to plaintiff on the phone, and she told plaintiff that defendant had made threats against plaintiff. (N.T. at 6; 14). Plaintiff asked Ms. Appleyard for details but Ms. Appleyard said she could not tell her. (N.T. at 14-15). Plaintiff then asked Ms. Appleyard if the threats were against her life; Ms. Appleyard answered "yes." (N.T. at 15). Plaintiff also asked if defendant had made threats against a co-worker, Jim, with whom plaintiff rides to work. (N.T. at 15; 18). Plaintiff's questions were a result of previous threats made by defendant against her and Jim. (N.T. 18). Plaintiff furthermore testified that she works as a security guard at Carlisle Hospital in third shift. (N.T. at 19). She testified that she is afraid when she goes outside to do her rounds because she doesn't know if she is going to get shot. (N.T. at 19). She also testified that her co-workers do not want to stand close to her or sit in her vehicle with her out of fear that defendant would think one of them was Jim, and would get shot by defendant. (N.T. at 19-20).

On April 30, 1998, after having contacted Women In Need (WIN), plaintiff reported to the Pennsylvania State Police that defendant had made threats against her. Defendant has not

conveyed these threats to plaintiff directly. Plaintiff heard the specific contents of the threats for the first time at the contempt hearing.

By order of May 20, 1998, this court found Ms. Appleyard's testimony to be credible, and found defendant in contempt for violation of the PFA order for making threats on the life of his wife. The court found that these threats fit under the definition of harassment an abuse. Defendant was sentenced to sixty days incarceration. On May 27, 1998, defendant filed a notice of appeal against this court's order. In his statement of matters complained of on appeal, defendant raises three issues:

1. That this court abused its discretion in finding defendant in contempt for making threats on the life of his wife where the PFA order specifically directed defendant to refrain from "abusing, harassing or stalking" her and did not direct defendant to refrain from "threatening" his wife.
2. That there was insufficient evidence to find defendant in contempt of court for a violation of the PFA order, where the threats were communicated only to a third party, the defendant did not ask that third party to convey the threats to his wife, and where plaintiff did not learn the details of the threats until the day of the contempt hearing.
3. That this court erred in failing to employ the definition of "threat" contained in 18 Pa.C.S.A. § 2706 in determining that defendant's statements constituted a threat under the Protection From Abuse Act.

### Discussion

#### 1. "Threats" Not Covered by Language of PFA Order

Defendant's first issue for appeal is based on the argument that the PFA order entered against defendant directed him to refrain from "abusing, harassing or stalking" his wife, but did not direct him to refrain from "threatening" her. In essence, defendant argues that the threats he made against his wife do not

constitute abuse, harassment, or stalking as prohibited by the PFA order.

This court finds that defendant's threats constitute "abuse" as prohibited by the PFA order. The Protection From Abuse Act defines abuse as the occurrence of one or more of five specifically defined acts between family or household members, sexual or intimate partners or persons who share biological parenthood. 23 Pa.C.S.A. § 6102. One of those acts of abuse is defined as follows:

- (5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place the person in reasonable fear of bodily injury.

23 Pa.C.S.A. § 6102(a).

It is clear that defendant's threats put plaintiff in reasonable fear of bodily injury. Upon plaintiff's question whether the threats were against her life, Ms. Appleyard told her they were. Based on the fact that defendant had made threats against her life in the past and that Ms. Appleyard seemed very upset, plaintiff took them seriously. (N.T. at 19-20). She also testified that she is afraid defendant will shoot her while she is working as a security guard at the Carlisle Hospital at night. (N.T. at 19-20). She furthermore testified that her children will not let her stand in front of a window when defendant comes to the house out of fear she will get shot by him. (N.T. at 20). Based on this testimony, it is clear that plaintiff feared for her life and that her fear was reasonable.

This court furthermore finds that defendant knowingly engaged in a course of conduct in making the threats against his wife's life. Ms. Appleyard testified that defendant first made the threats when she was visiting him in the afternoon of Sunday, April 26, 1998. (N.T. at 3-4). At this time he made the statement that if "the government granted her this spousal support, she would never make it to the bank to cash the first check." (N.T. at 3). Ms. Appleyard called defendant later that same day to see if he had calmed down. (N.T. at 4). However, defendant was still

angry and he repeated his threats. (N.T. at 5). In fact, he was more specific and threatened that he would shoot his wife in the knees, bash her face in and blow her head off. (N.T. at 5). At that point Ms. Appleyard became very worried about the seriousness of the threats, and she decided to call plaintiff. (N.T. at 5-6). The next day, on Monday April 27, 1998, Ms. Appleyard again called defendant during his lunch hour, hoping he had calmed down by this time. (N.T. at 7). She testified that he had not, that he was still "adamant" and that his tone was still the same. (N.T. at 7). He furthermore told her that he did not care if she told plaintiff about his threats. (N.T. at 7). In this court's view, the defendant's repeated threats over a two-day period constitutes a "course of conduct" as required by the statute. Therefore, this court finds that the threats made by defendant against the life of his wife constitute "abuse" as defined by the Protection From Abuse Act, and that defendant violated the PFA order which directed him to refrain from abusing plaintiff.

## 2. *Insufficiency of the Evidence*

Next, defendant argues that there was insufficient evidence to find defendant in contempt of court for violation of the PFA order by making threats, because the threats were made to a third party, not his wife. Defendant bases his argument on the case of *Commonwealth v. Baker*, \_\_\_ A.2d \_\_\_, 1998 WL 169805 (Pa. Super. 1998). In that case, a PFA order had been entered against defendant prohibiting him from, among other things, "threatening" the plaintiff. In the presence of deputy sheriffs, he made the statement "I'm going to kill this bitch." *Baker*, at \*1. The defendant argued that he had not made a "threat" because he did not communicate it to the victim, and neither did the deputies.

The Superior Court in *Baker* first analyzed what constitutes a "threat" under the terroristic threats statute. *Id.* at \*2; 18 Pa.C.S.A. § 2706. Under that statute, it is required that (1) the defendant makes a threat to commit a crime of violence and (2) such threat is communicated to the victim with the intent of terrorizing the victim or with reckless disregard for the risk of causing terror. *Id.* at \*2. The court then noted that both the terroristic threats statute and the Protection From Abuse Act have a similar purpose: to seek to prevent the psychological distress

created by the invasion of one's personal security. *Id.* For that reason, "threats" under the Protection From Abuse statute could be interpreted similarly. The court held that a general definition of a "threat" could be extracted from § 2706, and held that a "threat" exists when (1) it is made by the defendant and (2) communicated to the victim with the intent of placing the victim in apprehension. *Id.* at \*2.

Defendant argues that he did not make a "threat" because he did not communicate it to the victim, but only to a third person. However, a defendant need not directly convey the threat to the victim; it is sufficient that the person to whom the threat is uttered communicated it to the victim. *Id.*, at \*2, citing *Commonwealth v. Kelley*, 444 Pa. Super. 377, 385, 664 A.2d 123 (1995). In the underlying case, defendant uttered several threats to a mutual friend, Ms. Appleyard. She conveyed to plaintiff that defendant had made threats against the plaintiff. It is true that Ms. Appleyard did not give plaintiff the exact wording of the threats. However, when plaintiff asked Ms. Appleyard if the threats were against her life, Ms. Appleyard answered affirmatively. (N.T. at 14-15). This court finds that this was a sufficient communication of the threats to plaintiff to meet the required elements of a "threat" as defined by the Superior Court. As stated above, because those threats put plaintiff in reasonable fear of bodily injury, they constituted "abuse" which was prohibited by the PFA order. Thus, there was sufficient evidence to find defendant in contempt.

## 3. *Definition of "threat" as Defined in 18 Pa.C.S.A. § 2706*

Lastly, defendant argues that this court erred in failing to employ the definition of "threat" contained in 18 Pa.C.S.A. § 2706 in determining that defendant's statements constituted a threat under the Protection From Abuse Act.

Section § 2706 of the Crimes Code involves the offense of terroristic threats. As stated above, the Superior Court in *Baker*, *supra*, found that a "threat" under § 2706 and the Protection From Abuse Act can be interpreted similarly. As discussed in section 2 above, this court finds that the statements made by defendant were "threats" under that analysis, and that the threats

ited by the PFA order. Thus, this

ctfully requests the Superior Court

## **DENIAL**

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