

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)
)
 V.) DEF. ID: 1408006741
)
STEPHEN K. THOMAS,)
)
 Defendant.)

Date Submitted: July 8, 2015
Date Decided: September 24, 2015

OPINION

*Upon Consideration of Defendant's
Motion for Judgment of Acquittal.*
DENIED.

James K. McCloskey, Deputy Attorney General, Department of Justice,
Wilmington, Delaware. Attorney for the State of Delaware.

Joseph M. Leager, Jr., Assistant Public Defender, Office of the Public Defender,
Wilmington, Delaware. Attorney for the Defendant.

BUTLER, J.

INTRODUCTION

The conviction in this case is the result of an incident that took place when a police officer initiated a traffic stop on the Defendant's vehicle. After the vehicle was stopped and while the officer was approaching the vehicle, he noticed that the person seated in the driver seat was pointing a gun towards the driver side door. After verbal commands, Defendant eventually dropped the gun. As a result of the incident, Defendant was convicted of Aggravated Menacing. Defendant has filed the instant motion for judgment of acquittal, arguing that it was impossible for him to commit the offense of Aggravated Menacing because there was no face to face confrontation between him and the police officer. After reviewing the evidence presented at trial, this Court has determined that the State presented sufficient evidence to the jury during the trial such that the jury could determine that Defendant was guilty of Aggravated Menacing beyond a reasonable doubt. Accordingly, Defendant's motion for judgment of acquittal is **DENIED**.

FACTS AND PROCEDURAL HISTORY

On August 9, 2014, while stopped at a traffic light, Corporal Michael Murphy observed a vehicle accelerate quickly when the traffic light turned green. The officer attempted to catch up to the vehicle, and he estimated the vehicle was traveling at approximately 85 miles per hour. The officer initiated a traffic stop on the vehicle being driven by Stephen Thomas ("Defendant"). When the officer was

approaching the driver side window, he noticed that the Defendant's attention was focused on the center console of his vehicle. Before arriving at the driver side window, and while observing the Defendant through a window towards the rear of the vehicle, Corporal Murphy observed Defendant pull a .45 caliber black automatic handgun from the center console and point the barrel of the gun in the direction of the driver side door. Corporal Murphy testified that the Defendant's actions led him to believe that the Defendant was going to fire the weapon when he arrived at the driver's side window.

Before arriving at the driver side door, Corporal Murphy un-holstered his own firearm and pointed it at Defendant, ordering him to drop the gun. Corporal Murphy testified that Defendant did not comply and that he continued to hold the gun against his chest with the muzzle pointing in the direction of the driver's side door. After the second command to drop the gun, Defendant complied and dropped the gun to the floor.

On June 16, 2015, after a jury trial, Defendant was found guilty of Aggravated Menacing, Possession of a Firearm During the Commission of a Felony ("PFDCF"), and Driving Under the Influence. On June 19, 2015, Defendant filed the instant motion for judgment of acquittal on the Aggravated Menacing and PFDCF counts.

STANDARD OF REVIEW

Motions for judgment of acquittal are governed by Superior Court Criminal Rule 29. In considering a motion for judgment of acquittal, this Court must determine whether the evidence presented, when “viewed in a light most favorable to the prosecution[,] established that a rational fact finder could have found the defendant guilty beyond a reasonable doubt”¹ “In making this determination, [t]he fact that most of the State's evidence [is] circumstantial is irrelevant; the Court does not distinguish between direct and circumstantial evidence.”²

DISCUSSION

Defendant argues that the jury’s verdict should be overturned because the State was required to prove that a face-to-face confrontation occurred as an element of aggravated menacing. Defendant relies on *Evans v. State*³ to support his contention. There, the defendant was found guilty of Aggravated Menacing after a police officer testified that the defendant pointed a gun at him.⁴ The Delaware Supreme Court applied the elements of Aggravated Menacing as set out in 11 *Del. C.* § 602 and found that the officer’s testimony constituted sufficient

¹ *Tilden v. State*, 513 A.2d 1302, 1307 (Del. 1986) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)).

² *Monroe v. State*, 652 A.2d 560, 563 (Del. 1995) (internal citations omitted).

³ 2009 WL 367728 (Del. Feb. 13, 2009) (TABLE).

⁴ *Id.*

evidence to support the conviction.⁵ The only difference between the facts in *Evans* and the facts in the case at bar is that the defendant in *Evans* pointed a gun directly at the officer, whereas the defendant in this case pointed the gun toward his driver's side window. Thus, *Evans* is inapposite here because the Court in did not announce a requirement that the gun be pointed directly at the officer and Delaware's statute requires only that the firearm be displayed.

No Delaware statute or court decision requires that the State prove that a face-to-face confrontation occurred as an element of aggravated menacing. Instead, as Defendant correctly states in his motion for acquittal, the crime of aggravated menacing has three essential elements: (1) the defendant displayed what appeared to be a deadly weapon; (2) in doing so, the defendant placed another person in fear of imminent physical injury; and (3) the defendant acted intentionally.⁶

Corporal Murphy's trial testimony reflects that Defendant pulled a gun from his center console and pointed it toward the driver's side door as he waited for Corporal Murphy to approach. Upon observing these actions, Corporal Murphy un-holstered his weapon and ordered the Defendant to drop the gun because he

⁵ *Id.*

⁶ Under 11 *Del. C.* § 602, “[a] person is guilty of aggravated menacing when by displaying what appears to be a deadly weapon that person intentionally places another person in fear of imminent physical injury.”

believed the Defendant would fire the weapon if he approached the Driver's window. Therefore, there was ample evidence in the record to support the Defendant's conviction for Aggravated Menacing. Accordingly, the PFDCF conviction is also supported by the record because the Defendant was holding a firearm when he committed the crime of Aggravated Menacing.

CONCLUSION

For the foregoing reasons, the Defendant's Motion for Judgment of Acquittal is **DENIED**.

/s/ Charles E. Butler
Judge Charles E. Butler