

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)
)
)
)
)
v.)
)
JAMES F. CROUSE)
)
Defendant.)
)

Case No.: 1403020668

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Department of Justice
102 West Water Street
Dover, DE 19901
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Mr. James F. Crouse
1313 Frederica Rd.
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Pro Se Defendant

Submitted: July 14, 2015
Decided: July 27, 2015

DECISION ON STATE’S MOTION IN LIMINE

Defendant, James F. Crouse, has been charged with Non-Compliance with Conditions of Bond in violation of title 11, section 2113(c)(2) of the *Delaware Code*. In particular, the Information that was filed with the Court by the Attorney General states that Crouse, “on or about the 19th day of March, 2014, in the County of Kent, State of Delaware, did knowingly and unlawfully breach a condition of his release by failing to comply with a Judge’s order issued November 20, 2013, to have no contact with the Town of Frederica and its employees.”

In pertinent part, title 11, section 2113(c)(2) of the *Delaware Code* provides that if an accused “. . . knowingly breaches any condition of release, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows: (2) If the person was released in connection of one or more charges of misdemeanor prior to trial, the person shall be fined not more than \$500 or imprisoned not more than 1 year or both.”

In preliminary discussions prior to trial for this matter, the defendant has admitted that he contacted the Town of Frederica by calling the town’s phone number and leaving multiple voice mails while a no contact order was in effect with respect to it. However, he contends that his contact is protected by his First Amendment right to free speech. In this regard, his argument appears to be two fold. First, that the no contact order in and of itself was invalid when it prohibited him from contacting his town government. Second, the no contact order is not valid to the extent that it prohibits him from expressing his political views on issues facing his town government. The State has moved in limine that he be prohibited from proceeding with this defense.¹

The First Amendment to the United States Constitution provides that “Congress shall make no law . . . abridging the freedom of speech.” U.S. Const. amend. I. The Constitution’s protection of free speech is made applicable to the states through the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Gitlow v. New York*, 268 U.S. 652 (1925).

Free and open political debate is a bedrock principle on which the United States was founded. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). “The

¹ The State, as the moving party, has the burden to prove that the defendant should be prohibited from asserting his First Amendment defense at trial.

constitutional safeguard . . . was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Id.* at 269 (citing *Roth v. United States*, 354 U.S. 476, 484 (1957)) (internal quotation marks omitted). “[D]ebate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *Id.* at 270.

Despite the strong constitutional preference for vigorous political debate, the Delaware Supreme Court has held that the State may regulate undesirable conduct, even if the regulation consequentially and adversely affects the right of free speech. *State v. Ayers*, 260 A. 2d 162, 168 (Del. 1969). The Court explained that “[t]he fact that free speech is inseparably mixed up with the regulated conduct, does not constitute a constitutional interdict against the regulation.” *Id.* (citing *Cox v. Louisiana*, 379 U.S. 536 (1965)).

The issue facing this Court is not new. The Delaware Superior Court addressed the same issue in the case of *Rambo v. Fraczkowski*, 350 A.2d 774 (Del. Super. 1975). In that case, contempt charges were brought against petitioners for the alleged violation of a bail condition that was set by the Municipal Court of Wilmington, Delaware. The petitioners had been arrested and charged with misdemeanor offenses for certain activities during the course of a teachers’ strike. As a condition of bond for their release pending trial, the Municipal Court imposed a curfew under which they were prohibited from leaving their residences between the hours of 8:00 AM and 4:00 PM, Monday through Friday, except to go to their regular employment in the public school system. The petitioners allegedly violated this condition and criminal charges were brought against them in the Municipal Court.

Subsequent to the time of the alleged violation of their curfew order as contained in their bond for release, a hearing was held by Superior Court to consider an application for a Writ of Habeas Corpus which the petitioners filed seeking to have the curfew condition vacated. After hearing argument as to whether the condition was unconstitutional, the Superior Court ordered the condition “vacated as void because the Judge abused his discretion.” *Rambo*, 350 A.2d at 775. The petitioners then argued that because the bail condition was ultimately held to be “void,” they could not be charged for criminal contempt charges for violating it. The Delaware Superior Court denied the petitioners’ argument in that regard.

In *Rambo*, the Delaware Superior Court followed “[t]he great weight of authority” which permits disobedience of a court order “with impunity” only where the court that issued the order lacks either (1) jurisdiction over the parties or (2) the power to enter an order of the general type which is entered (i.e. subject matter jurisdiction). *Id.* The *Rambo* court also found that there must be the availability of an adequate and effective remedy for the orderly review of the challenged ruling and that the order must not require an irrevocable and permanent surrender of a constitutional right. *Id.*

In the present matter, the Court of Common Pleas in and for Kent County had issued a no contact order as a condition of bond for the defendant’s release for misdemeanor criminal charges. The Court had subject matter jurisdiction and personal jurisdiction over the defendant at that time. The Court had subject matter jurisdiction because the defendant had been arrested for misdemeanor criminal offenses that occurred at a Town Council meeting in Kent County, Delaware, over which it had jurisdiction. It also had the authority to set bond for pre-trial release and conditions of bond. See 11 *Del. C.* §§ 2104 and 2108. Additionally, the Court had personal jurisdiction over the

defendant as the defendant was present in Delaware when charged and bond was set, along with its conditions, including the no contact order. If the defendant disagreed with the no contact order for any reason, including constitutional grounds, he had the obligation to challenge it, by asking for modification or its vacation, in an orderly fashion by filing a formal motion with the Court pursuant to Court of Common Pleas Criminal Rule 47, or by seeking relief through a Writ of Habeas Corpus in the Delaware Superior Court. However, the defendant did neither. Additionally, the no contact order was not overly restrictive in that it did not require the defendant to permanently surrender his constitutional right of free speech and his ability to petition the government for redress of his grievances. The order was limited to a short duration; only while the charges against him were pending. Therefore, he was subject to the no contact order at the time he violated it, regardless of whether the no contact order violated his First Amendment Right to free speech.²

CONCLUSION

As a result of the Court's findings of fact, which are based upon the entire record, including all direct and circumstantial evidence, and the references therefrom, and the Court's conclusions of law, the Court finds that the defendant's contact with the Town of Frederica while a valid no contact order was in effect was not protected by his First Amendment right to free speech. Therefore, any defense he raises in this regard during trial is not relevant. As such, the State's motion in limine to exclude from trial the

² Since the Court has determined that the defendant was subject to the no contact order regardless of whether the no contact order in and of itself was a violation of his constitutional right to free speech, the Court will not address the issue of whether the imposition of the no contact order itself violated the defendant's First Amendment right to free speech.

defendant's defense that his contact with the Town of Frederica, while an active no contact order was in effect with it, was protected by his First Amendment right to free speech is GRANTED.

IT IS SO ORDERED THIS 27th DAY OF JULY, 2015.

A handwritten signature in cursive script, reading "Charles W. Welch", is written above a horizontal line.

CHARLES W. WELCH, JUDGE