SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1803-15T2

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSEPH HOO,

Defendant-Appellant.

Argued December 12, 2017 – Decided January 11, 2018

Before Judges Fisher, Sumners and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Bergen County, Municipal Appeal No. 003-03-15.

Jane M. Personette argued the cause for appellant (Law Offices of Brian J. Neary, attorneys; Brian J. Neary, of counsel; S. Emile Lisboa, IV, on the brief).

Suzanne E. Cevasco, Assistant Prosecutor, argued the cause for respondent (Gurbir S. Grewal, Bergen County Prosecutor, attorney; Suzanne E. Cevasco, of counsel and on the brief).

PER CURIAM

After a municipal trial, followed by a trial de novo in the Law Division, defendant was convicted of disorderly conduct, N.J.S.A. 2C:33-2(a)(2), and sentenced to a one-year period of probation,[1] a $506 fine, and $33 in court costs.

The evidence found credible reveals that on Thanksgiving Day 2013, defendant — miffed at not being invited for dinner — drove to the victim's New Milford home for an explanation. Defendant exited his vehicle and approached the premises yelling and waving a machete. Defendant's brother convinced defendant to put away the machete, and defendant complied, but he continued to loudly berate and threaten the victim with statements such as, "I will get you, you better watch your back."

Police were called. Defendant had started to drive away from the area as police arrived. His vehicle was stopped, and defendant was required to exit his vehicle. He was patted down in light of the information the officers had received about a machete. A detective walked around defendant's minivan and observed a machete and two baseball bats in plain view as he looked through the rear window. The machete and other irrelevant items were seized.

[1] According to the order under review, the one-year probationary term was completed by the time the Law Division judge imposed sentence.

Defendant moved to suppress the machete, arguing it was recovered through an unconstitutional warrantless seizure; the suppression motion was denied by both the municipal judge and the Law Division judge.

Although charged with other offenses, the Law Division judge convicted defendant only of a violation of N.J.S.A. 2C:33-2(a)(2), which provides that an actor is guilty of a petty disorderly persons offense, "if with purpose to cause public inconvenience, annoyance or alarm" the actor "[c]reates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor."

In appealing, defendant argues:

> I. THE COURT SHOULD VACATE APPELLANT'S CONVICTION FOR VIOLATION OF N.J.S.A. 2C:33-2(a)(2), AS THERE IS NO EVIDENCE OF PUBLIC INCONVENIENCE, ANNOYANCE, OR ALARM, AND THEREFORE NO BASIS FOR SAID VIOLATION AND CONVICTION.
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> II. THE COURT MUST EXCLUDE FROM EVIDENCE ANY ITEMS OBTAINED FROM MR. HOO'S VEHICLE BECAUSE THE OFFICERS' SEARCH OF MR. HOO'S CAR WAS WITHOUT PROBABLE CAUSES, A WARRANT OR CONSENT.
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> III. THE COURT MUST VACATE APPELLANT'S CONVICTIONS BECAUSE FINDINGS OF FACT WERE TAINTED BY MUNICIPAL COURT JUDGE'S ADMITTED BIAS.

We find insufficient merit in these arguments to warrant discussion in a written opinion. R. 2:11-3(e)(2). We add only the following few comments.

We reject defendant's first point because there can be no doubt that the act of shouting and threatening another while waving or brandishing a machete violates N.J.S.A. 2C:33-2(a)(2). Defendant appears not to dispute that concept so much as he argues an alternative version of the facts – that he only briefly wielded a machete. We are satisfied that, however brief, the mere appearance of a machete in these circumstances was sufficient to "cause public inconvenience, annoyance or alarm." And we find meritless the argument that because the argument took place on private property there could not be, as a matter of law, a "public" inconvenience. The event did not take place behind closed doors but out in the open and, therefore, had the capacity to concern and unnerve nearby members of the public.

Although the evidence adduced at the suppression hearing more than adequately laid a foundation for application of the plain-view exception, and our standard of review mandates deference to such findings, State v. Locurto, 157 N.J. 463, 470-71 (1999), we need not consider defendant's second point except to add the admission of the machete as an exhibit at trial had no bearing on the outcome. The pivotal finding didn't turn on the actual

admission of the machete itself but on the testimony that defendant wielded or brandished a machete during the event in question.

We also reject defendant's third point. Defendant would have us conclude the municipal judge was biased and that his bias infected the Law Division's later findings in convicting defendant on de novo review. Defendant argues the municipal judge was biased because he referred to the matter, on earlier occasions when it was called but unready to be tried, as "the machete case" or "the machete incident." In another instance, the municipal judge stated that he was called about the matter as he "arrived at [his] destination for Thanksgiving dinner" and, by that time, the event was "already on CBS news, on the radio"; he further stated that "after the notoriety that this matter got, [the public cannot] be told that [t]he [c]ourt will give the minimums on this."

We find no evidence of bias arising from the fact that the judge referred to this matter by a shorthand label, such as "the machete case." It would be unreasonable to assume from such comments that the judge was biased any more than a judge could be accused of bias for referring to a pending matter as "a murder case" or "a robbery case." No objective view of such comments, when uttered prior to the accused's conviction, would suggest a bias.

The municipal judge's comment about it being untoward to "give the minimums on this" because the matter received some notoriety is a little more disconcerting. But defendant appealed and received a de novo trial in the Law Division. Whatever the municipal judge may have mistakenly expressed was rendered harmless by the fact that a Law Division judge, who defendant does not argue was biased, reviewed the matter de novo. Moreover, the Law Division judge expressed his disagreement with the municipal judge's utterances in this regard; we are, consequently, satisfied that defendant received a fair trial before an unbiased judge.

Affirmed.