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Re: *State of Delaware v. Charissem Bennett*
Case No.: 052008615/ MN05-06-4052

Date Submitted: August 18, 2006

Date Decided: August 31, 2006

LETTER OPINION

Dear Counsel:

Trial in the above captioned matter took place on Friday, August 18, 2006 in the Court of Common Pleas, New Castle County, State of Delaware. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's Final Decision and Order.

I. The Facts

Charissem Bennett ("the defendant") was charged by the Information filed with the Clerk of Court by the Attorney General with one Count of offensive touching, an alleged violation of 11 Del. C. § 601(a)(1) of the Delaware Code. The charging documents alleged that "... on or about the 26th day of January, 2005, in the County of New Castle, State of Delaware, [the defendant] did intentionally touch Billy Vanover either with a member of her body or with any instrument, knowing that she was thereby likely to cause offense or alarm to that person." Id.

At trial, Billy Paul Vanover ("Vanover") testified. On January 26, 2005 Vanover was employed as a tow truck operator and at approximately 9:00 a.m. while employed by Lou Van, Inc. He went to a hotel to pick up a motor vehicle that he previously left the day before.

Vanover traveled to Motel 6 to retrieve the vehicle but did not have in his possession any official documents from his employer and was stopped by a security guard. Vanover informed the defendant "I'm towing this motor vehicle" who then requested official documents authorizing him to remove the vehicle from the hotel premises. Vanover produced a handwritten note, but "nothing official" and was told by the defendant, a security guard, "You can't tow this motor vehicle, I'll call for back up." Vanover then stated, "I want your name and your supervisor's name" and testified he believed the defendant brushed her jacket where there was a handgun hooked to her belt. Vanover was instructed to shut his truck down, but when another security guard appeared, Vanover backed up his vehicle and almost struck the second security guard. Vanover then became recalcitrant and disorderly and told the security guards, "It is not my fault you only make \$9.00 per hour." Vanover also made some disparaging statements about the security personnel being abused when they were children. Vanover then went directly to the Clerk's office. The Court observed with the presence of counsel a video of Vanover talking to the Clerk. The tape of the incident depicted Vanover becoming extremely vocal and waving his hands at and about the Clerk and in the room where the Clerk was located. At some point the defendant grabbed Vanover by his shirt and removed him from the premises.

On cross-examination Vanover agreed that he made the disparaging statements to the Security Guards about their pay rates, as well as allegedly being abused as a child. Vanover also conceded that when the Security Guard removed him he stated, "Thanks, I was waiting for you to do that, now I'll have your job." Vanover agreed his voice also became elevated during the exchange with Security personnel and that he never presented a formal tow ticket or paperwork from his employer when he tried to remove the motor vehicle from Motel 6.

Corporal Joseph Michael Parker ("Corporal Parker") presented testimony at trial. He is a Delaware State Trooper having been so employed since July 21, 1995. Corporal Parker appeared

at the Motel 6 at the request of either the Clerk or the defendant who called the police. He interviewed all of the persons present at the scene, including the security guards and Vanover. Vanover informed him he was on a “AAA tow” and brought a flat bed tow truck to the Motel 6 premises to remove a motor vehicle but did not possess any required paperwork. Vanover was told by the Security personnel that “this is not an official document” and was prohibited subsequently from towing the motor vehicle buy security personnel. Vanover also told Corporal Parker that he made the disparaging statements about \$9.00 wages of security personnel and something about being abused as a child. Vanover told Corporal Parker that the security personnel, when he informed Corporal Parker, told Vanover he needed to leave the property. Corporal Parker agreed that the “defendant was disorderly” and that one of the security officers had originally talked to him about filing a criminal trespass complaint. Corporal Parker also observed the video and after interviewing all personnel at the scene, filed the offensive touching charges “because he believed the security guard did not have the authority to place her hands on Vanover.”

Corporal Parker also agreed that he is familiar with the Motel 6 for the last ten (10) years; that it is a high crime area; and that he did not witness the actual episode. Corporal Parker also agreed that Motel 6 is considered private property; not public property. Corporal Parker testified that he interviewed the other officer, Officer Heatherton, who also presented testimony at trial, Heatherton informed him that he was almost struck by the truck Vanover was driving when he backed up without notice; warning lights; or a horn. Corporal Parker also agreed that Vanover was told to leave approximately three (3) times and refused to leave the Motel 6 premises, which is private property. Corporal Parker also agreed that criminal trespass is committed when a person comes into private property, remains and refuses to leave. Corporal Parker agreed that Vanover, after being told three (3) times to leave the private property by the security guards in

question, that Vanover's actions could be considered Criminal Trespass 3rd. When Corporal Parker viewed the video, he agreed that Vanover waiving his arms and increasingly boisterous tone in his voice. Vanover was also acting disrespectfully. When viewing the video tape, it is clear that Vanover was upset according to Corporal Parker he was waiving his hands and his voice was raised and he refused to leave the Motel 6 premises three (3) times.

James Phares Heatherton ("Heatherton") presented testimony at trial. He was employed by the same security company as defendant and was at Motel 6 on January 26, 2005 and recalls the incident. Heatherton confirmed much of what was presented at trial including, but not limited to, that Vanover had no paperwork to document his authority to tow the motor vehicle, that Vanover was told to leave approximately three times; and finally, that Vanover made disparaging comments to both the security guards about their \$9.00 wages and being abused as a child while yelling and becoming increasingly disorderly at the scene.

Heatherton also testified that he requested identification from Vanover and wrote down his license plate number. He observed Vanover waiving his arms; becoming increasingly agitated; and Vanover appeared to be in an elevated threatening state when he appeared in the clerk's office to make complaints against both himself and the defendant.

Heatherton also testified he attempted to file formal charges for criminal trespass and attempted assault when Vanover backed up his truck and almost ran into him without notice, back light warnings or a horn.

The defense presented its case-in-chief. Vanover's cross-examination was considered the direct testimony in its case-in-chief. Aesha Williams ("Williams") affirmed her testimony. Williams was the desk clerk and was employed on the date charged in the Information. Two signs were moved into evidence showing that non-guests were to check in at the clerk's office before entering the private property of Motel 6. Williams confirmed that Vanover did not check

in at the clerk's office in accordance with either sign, which were received into evidence as procedures of Motel 6. She heard Vanover tell the guards "You must be a product of abuse when you were a child." The sign Williams read "All guests and visitors must present valid I.D. at Motel 6 property."

II. The Law

The State has a burden of proving each and every element of the offense beyond a reasonable doubt. 11 *Del. C.* §301; *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965). As established case law indicates "[A] reasonable doubt is not a vague, whimsical or merely possible doubt, but such a doubt as intelligent, reasonable, and impartial men may honestly entertain after a conscious consideration of the evidence or want of evidence in the case." *Matushefske*, 215 A.2d 445. A reasonable doubt "means a substantial, well-founded doubt rising from a candid and impartial consideration of all the evidence or want of evidence." *State v. Wright*, Del. Gen. Sess., 79 A.2d 399 (1911). The State also has the burden of beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 *Del. C.* §232, See *James v. State*, Del. Supr., 377 A.2d 15 (1977); *Thorton v. State*, Del. Supr., 405 A.2d 126 (1979).

11 *Del. C.* § 466 –Same -- Use of Force for the Protection of Property

(a) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(2) To prevent entry upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

III. Discussion

In determining whether the State has met its burden of proving each and every element of defense beyond a reasonable doubt, the Court may consider all direct and circumstantial evidence.

Delaware defines offensive touching as follows:

A person is guilty of offensive touching when he intentionally touches another person, either with a member of his body or with any instrument, knowing that he is thereby likely to cause offense or alarm to such person.

The question whether a person knows that he is likely to cause or offense or alarm entails a view of all the circumstances, including the victim's state of mind.¹ However, the ultimate conclusion as to the "character" of the "touching act" may be reached without considering the quality of the victim's responsive act or acts. [*Blachowicz v. Pennington*, 1987 Del. Ch. LEXIS 401 \(July 17, 1987\)](#); *See also*, *State v. Roger J. Ferguson*, 2003 Del. C.P. LEXIS 14, Welch, J. (February 28, 2003); *State v. Tammy N. Brown*, 1999 Del. C.P. Lexis 42, Welch, J. (May 12, 1999): [defines predicate elements of offensive touching]. As stated in [*Saeed Hassan v. State of Delaware*, 1999 Del. Super Lexis 544, Herlihy \(December 8, 1999\)](#):

"The statute requires, in order for a conviction, for the State to prove the essential elements involved in offensive touching there must be an 'intentional touching'.

The only requirement further for a conviction of offensive touching is that it caused the recipient, in this case [the victim], offense or alarm at the touching. No physical injury is required whatsoever.

There are three elements to the crime of offensive touching: (1) an intentional touching of another; (2) with a member of one's body or any instrument and (3) knowing that such

¹ Defendant did not raise at trial the affirmative defense of self defense, [11 Del.C. § 464\(a\)](#).

intentional touching is likely to create offense or alarm to another person. It is the knowing element which the trial judge did not expressly address or find.

"Knowing" is a concept defined by the Criminal Code under "knowingly" as follows:

A person acts knowingly with respect to an element of an offense when:

- (1) If the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and
- (2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result.

The finding, therefore, that a defendant knew his intentional touching of another was likely to cause offense or alarm is a necessary predicate to a conviction of offensive touching. Lacking that express finding in this case, unlike the express finding of the other two elements of this offense, constitutes error. It is error, as noted, reviewable on *certiorari*." See [*Blachowicz v. Pennington*, 1987 Del. Ch. LEXIS 401, Del. Super., C.A. No. 85C-MY-125, O'Hara, J. \(February 17, 1987\)](#). See: [*Saeed Hassan v. State of Delaware*, supra](#).

The word intentionally is defined in the Delaware Code [11 Del. C. § 231\(a\)](#) as:

A person acts 'intentionally' with respect to an element of an offense when:

- (1) If the element involves the nature of the person's conduct or as a result thereof, it is the person's conscious object engaging conduct of that nature or to cause that result and;
- (2) If the element involves the intended circumstances, the person is aware of the existence of such circumstances or believes or hopes they exist.

The word "knowingly" is defined in [11 Del. C. § 231\(b\)](#) as follows:

(b) "*Knowingly*" A person acts knowingly with respect to an element of an offense when:

- (1) If the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and

(2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result.

The Court notes as a trier of fact it is the sole judge of the credibility of each fact witness. If the Court finds the evidence to be presented in conflict, as in the instant record, it is the Court's duty to reconcile these conflicts, if reasonably possible to make one harmonious story. If the Court cannot do this, the Court must give credit to the portion of the testimony which, in the Court's judgment, is most worthy of credit and disregard any portion of the testimony in which in the Court's judgment is unworthy of credit. In performing this task, the Court takes into consideration the demeanor of each fact witness, the apparent fairness in giving their testimony, the opportunities in hearing and knowing the facts about which each fact witness testified, and any bias or interest each fact witness may have concerning the case.

IV. Opinion and Order

From a careful review and scrutiny of all the trial evidence, it is clear that the victim, Vanover appeared on the subject premises, Motel 6 in New Castle County, unlawfully. Vanover produced no paperwork, documentary evidence, a tow truck receipt, a letter of authorization from his employer or any other customary paperwork required for a truck driver to enter the private property and remove a motor vehicle. Vanover also disregarded the clear signs introduced into evidence by the defense without objection that required he register at the desk and notify Motel 6 clerk and other employees of his presence on their private property. It is also clear that Vanover became increasingly recalcitrant, disorderly and unruly when speaking with security personnel at Motel 6. A review of the tape clearly shows Vanover flailing his arms, increasingly acting in a volatile manner and being disorderly. Corporal Parker also agreed that Vanover's conduct could rise to the level of Criminal Trespass in the 3rd degree.

While the defendant did touch Vanover's person and remove him from the clerk's office when he was disorderly and committing trespass, it is clear that 11 *Del. C.* §466(a)(1) applies to the facts of the instant case. Vanover was requested to leave no less than three (3) times from the property and also committed what could be construed as an attempted assault when he moved his truck backed up near security personnel without warning.

It is clear that the defendant used minimal force to remove Vanover from the subject premises. However, Vanover was on the property unlawfully; was acting disorderly and flailing his arms about and acting out in an excitable state while yelling at the motel clerk. Vanover's comments to security personnel that they were abused as children and that it was not his fault that they make only \$9.00 per hour bolster the conclusion that Vanover a trespasser, but also that he was acting disorderly at the private property at Motel 6.

Applying the statute to the facts of the case, 11 *Del. C.* §466(a)(1), the Court as a matter of law, the Court therefore finds the defendant **NOT GUILTY**.

IT IS SO ORDERED this 31st day of August, 2006.

John K. Welch
Judge

/jb

cc: Theresa Bleakly, Scheduling Supervisor
CCP, Criminal Division