National Domestic Violence Case Summaries

L.C. v. Board of Review, 110 A. 3d 949 (N.J. App. Div. 2015). NEW JERSEY UNEMPLOYMENT BENEFITS LAW DOES NOT REQUIRE DIRECT CAUSATION BETWEEN TERMINATION OF EMPLOYMENT AND ABUSE. L.C. gave 2-weeks' notice that she was resigning a position she'd held for 6 years. Afterward, she filed a claim for unemployment benefits, claiming she had to flee an abusive ex-spouse. The Board of Review held a telephonic hearing, at which two witnesses, L.C.'s supervisor and a friend, both testified without dispute that L.C. had been abused while employed. L.C. testified that due to the situation and her fear of the ex-husband, she resigned and moved. L.C. also filed as evidence a letter from her divorce attorney and police records documenting the domestic violence. The Board found insufficient evidence that L.C. was a victim of abuse, and denied the claim. L.C. appealed.

The New Jersey law governing unemployment benefits requires that: (1) a claimant must establish that he or she is a victim of domestic violence as defined in the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-19; and (2) the claimant must establish that the loss of employment, by quitting or discharge, was causally related to being a victim. Further, "'Notwithstanding any other provisions of this chapter ... no otherwise eligible individual shall be denied benefits because the individual left work or was discharged due to circumstances resulting from the individual being a victim of domestic violence as defined in section 3 of P.L.1991, c. 261 (C.2C:25-19).' N.J.S.A. 43:21-5(j)."

The appellate court held:

1. Police records, as well as letters from attorneys aware of the situation, can be used as evidence that the claimant has been a victim of abuse.
2. The "causation" required in subsection 2 need not be direct causation. Indirect causation, such as abuse which causes the claimant to "terminate a financially stable but abusive relationship" or abuse which causes the claimant to move away from the abuser such that commuting would be "burdensome, leading the person to quit his or her job."
3. "The connection between domestic violence and the separation from work may be indirect, so long as being a victim of domestic violence resulted in circumstances that were a substantial factor in causing a claimant's decision to resign."

(May 1, 2015)

United States v. Bryant, 136 S. Ct. 1954 (2015). TRIBAL COURT CONVICTIONS THAT COMPLY WITH THE INDIAN CIVIL RIGHTS ACT (ICRA) ARE VALID WHEN ENTERED AND THUS DO NOT VIOLATE THE SIXTH AMENDMENT OF THE CONSTITUTION. In response to the high incidence of domestic violence against Native American women, Congress enacted a felony offense of domestic assault in Indian country by a habitual offender. 18 U.S.C. § 117(a). Respondent had multiple tribal-court convictions for domestic assault. When convicted, the respondent was indigent and was not appointed counsel. For most of his convictions, he was sentenced to terms of imprisonment not exceeding one year's duration. Because of his short prison terms, the prior tribal-court proceedings complied with ICRA, and his convictions were therefore valid when entered. Based on domestic assaults he committed in 2011, respondent was indicted on two counts of domestic assault by a habitual offender, in violation of § 117(a). Represented in federal court by appointed counsel, he contended that the Sixth Amendment precluded use of his prior, uncounseled, tribal-court misdemeanor convictions to satisfy § 117(a)'s predicate-offense element and moved to dismiss the indictment. The District Court denied the motion. Respondent appealed.

The habitual offender statute provides, "Any person who commits a domestic assault within ... Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction any assault, sexual abuse, or serious violent felony against a spouse or intimate partner ... shall be fined ..., imprisoned for a term of not more than 5 years, or both...." § 117(a)(1).

The Supreme Court noted that the right to counsel under ICRA is not “coextensive with the Sixth Amendment right.” If a tribal court imposes a sentence in excess of one year, ICRA requires the court to accord the defendant "the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution," including appointment of counsel for an indigent defendant at the tribe's expense. § 1302(c)(1), (2). Because respondent’s tribal-court convictions occurred in proceedings that complied with ICRA and were therefore valid when entered, use of those convictions as predicate offenses in a § 117(a) prosecution does not violate the Constitution. (June 13, 2016)

Elonis v. United States, 135 S. Ct. 2001 (2015). SOME KIND OF INTENT GREATER THAN NEGLIGENCE IS REQUIRED UNDER THE FEDERAL THREATS LAW. The issue in this case was the definition of a “true

threat" for purposes of determining whether the First Amendment protects the speech. Elonis posted on Facebook multiple disturbing threats against his co-workers, his estranged wife, the FBI agent who interviewed him and an undetermined kindergarten. He then argued that without proof that he subjectively intended to threaten his estranged wife and several others, the state may not prosecute him because the First Amendment protects his threatening words. DV LEAP's amicus brief argued that neither the First Amendment nor criminal law requires proof of a specific intent to threaten, that requiring subjective intent would make protection of victims far harder than it already is, and that the ruling in this case will reach not only criminal prosecutions but civil protection orders, which look to criminal law standards. The Court's decision carved a middle path: In a 7-2 decision the majority held that some kind of intent (greater than negligence) is required under the federal threats law as a matter of general criminal jurisprudence. The Court declined to specify the standard other than to say that proof of a defendant's "purpose" or "knowledge" is sufficient. (June 1, 2015)

Voisine v. United States, 136 S. Ct. 2272 (U.S. 2016). FEDERAL BAN ON FIREARMS APPLIES TO MISDEMEANOR CRIMES OF DOMESTIC VIOLENCE INVOLVING RECKLESS USE OF FORCE. Petitioner Stephen Voisine pleaded guilty to assaulting his girlfriend in violation of § 207 of the Maine Criminal Code, which makes it a misdemeanor to "intentionally, knowingly or recklessly cause[ ] bodily injury" to another. When law enforcement officials later investigated Voisine for killing a bald eagle, they learned that he owned a rifle. After a background check turned up Voisine's prior conviction under § 207, the Government charged him with violating § 922(g)(9). On appeal, Voisine argued that he was not subject to § 922(g)(9)'s prohibition because his prior convictions could have been based on reckless, rather than knowing or intentional, conduct and thus did not quality as misdemeanor crimes of domestic violence.

The Supreme Court held that:

> The federal ban on firearms possession applies to any person with a prior misdemeanor conviction for the "use ... of physical force" against a domestic relation. § 921(a)(33)(A). That language, naturally read, encompasses acts of force undertaken recklessly — i.e., with conscious disregard of a substantial risk of harm. And the state-law backdrop to that provision, which included misdemeanor assault statutes covering reckless conduct in a significant majority of jurisdictions, indicates that Congress meant just what it said. Each petitioner's

possession of a gun, following a conviction under Maine law for abusing a domestic partner, therefore violates § 922(g)(9).

(June 27, 2016)

US v. Miers, ___ F. 3d ___ (11th Cir. 2017). DISTRICT COURT DID NOT IMPROPERLY INSTRUCT JURY AS TO INTERSTATE ELEMENT OF INTERSTATE DOMESTIC VIOLENCE OFFENSE. Miers' girlfriend, J.C.M., testified that Miers was a long-distance truck driver who transported goods across the eastern United States. They would often travel together. At the beginning of their sixth trip, on August 15, 2014, Miers became aggressive. Over the course of several days, Miers raped, bound, and physically and verbally abused J.C.M., while continuing the long-distance trip, travelling from New York to Boston, and ultimately to Florida where J.C.M escaped.

Miers argued on appeal that the district court improperly instructed the jury on the interstate travel element of the interstate domestic violence offense. The district court, over defense counsel's objection, instructed the jury as follows:

> "The Government must prove that the Defendant possessed the intent to kill, injure, harass or intimidate J.C.M. concurrently with the interstate commerce. But the Government does not have to prove that this intent was the significant or predominant reason that the Defendant crossed state lines. In other words, the Government only has to prove that the Defendant traveled in interstate commerce and, while doing so, intended to kill, injure, harass or intimidate J.C.M."

The appellate court noted that, "[w]e give the district court wide discretion as to the style and wording employed in the instructions, ascertaining that the instructions accurately reflect the law." United States v. Bender, 290 F. 3d 1279, 1284 (11th Cir. 2002). The court held that the district court did not misstate the law so as to leave a "substantial and ineradicable" doubt that the jury was misguided in its deliberations. The plain language of the statute does not require that the defendant's intent be the significant and predominant reason for the travel. It requires only that the defendant "travel in interstate . . . commerce . . . with the intent to kill, injure, harass, or intimidate." 18 U.S.C. § 2261(a)(1). (April 28, 2017)