

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

GARY KING, SR. A/K/A GARY HANKS

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2240 EDA 2013

Appeal from the Judgment of Sentence July 11, 2013
In the Court of Common Pleas of Montgomery County
Criminal Division at No(s): CP-46-MD-0000559-2013

BEFORE: SHOGAN, J., OTT, J., and PLATT, J.*

MEMORANDUM BY OTT, J.:

FILED JUNE 17, 2014

Gary King, Sr. a/k/a Gary Hanks appeals from the judgment of sentence imposed on July 11, 2013, in the Court of Common Pleas of Montgomery County. Following a non-jury trial, the trial judge found King guilty of indirect criminal contempt¹ of a Protection From Abuse (PFA) order and sentenced him to a term of time served to three months' imprisonment. The sole issue raised by King in this appeal is a challenge to the sufficiency of the evidence.² Based upon the following, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ 23 Pa.C.S. § 6114 ("Contempt for violation of order or agreement.").

² "To establish indirect criminal contempt, the Commonwealth must prove: 1) the Order was sufficiently definite, clear, and specific to the contemnor as to leave no doubt of the conduct prohibited; 2) the contemnor had notice of the Order; (3) the act constituting the violation must have been volitional; (*Footnote Continued Next Page*)

The trial court has aptly summarized the facts and procedural history relevant to this appeal, and therefore we do not restate the background here. **See** Trial Court Opinion, 9/17/2013, at 1–3. King contends the Commonwealth failed to prove beyond a reasonable doubt that the woman who called police on March 14, 2013 to report a disturbance was the same Laniece Phillips who was the subject of the PFA order, and that the address where police were summoned, was, in fact, the residence of Laniece Phillips. Specifically, King contends the only evidence presented to establish that the woman at the address where police responded on March 14, 2013, was Laniece Phillips — the same person identified in the PFA order — was the testimony of Officer Raymond Emrich, Jr., who testified that he knew Laniece Phillips’s voice and recognized her voice when she identified herself to another police officer. **See** King’s Brief at 15. King also argues that the Commonwealth presented “no lease, utility bills, account information, or other documentation showing that Laniece Phillips resided at [the address] on 14 March 2013 and that it was the same Laniece Phillips who is the subject of [the] PFA order.” **Id.** at 15–16.

The trial court has provided a thorough and well-reasoned discussion of King’s sufficiency challenge. **See** Trial Court Opinion, **supra** at 3–5

(Footnote Continued) _____

and 4) the contemnor must have acted with wrongful intent.” **Commonwealth v. Brumbaugh**, 932 A.2d 108, 110 (Pa. Super. 2007).

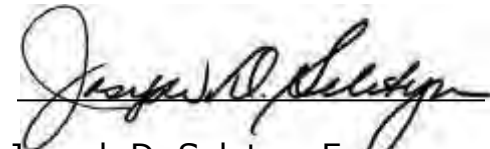
(explaining: (1) "The law does not require the Commonwealth to `preclude every possibility of innocence or establish the defendant's guilt to a mathematical certainty.'" (quotations and citation omitted); (2) "The [trial court] found Officer Emrich to be a credible witness and his personal belief that he knew Laniece Phillips to be sound, based upon past and present circumstances which included [King's] admission that he should not have been there."; and (3) "[King] presented no legal authority to support his assertion that a police officer cannot adequately know a person's identity unless that person presents personal identification and documentation, [and the] court's independent research found no authority for that position.").

We agree with the trial court's analysis. "[A] witness may testify to a person's identity from his voice alone" and "the weight to be accorded voice identification testimony is a question for the trier of fact." **Commonwealth v. Jones**, 954 A.2d 1194, 1197-1198 (Pa. Super. 2008), *appeal denied*, 962 A.2d 1196 (Pa. 2008) (quotations and citations omitted). Moreover, King admitted to Officer Emrich that "he wasn't supposed to be there." N.T., 7/11/2013, at 11. At the police station, King also informed Officer Emrich, that Officer Emrich "didn't have to read [him the PFA] anymore because he had already read it." **Id.** at 8. On this record, there is no basis to disturb the trial court's conclusion that the Commonwealth presented sufficient evidence to prove beyond a reasonable doubt that King's actions on March

14, 2013 constituted indirect criminal contempt of the PFA order.³ Accordingly, we adopt the trial court's able opinion as dispositive of the issue raised in this appeal. The parties are directed to attach a copy of the trial court's opinion in the event of further proceedings.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/17/2014

³ To the extent that King's argument challenges the credibility of Officer Emrich's testimony, such claim constitutes a challenge to the weight of the evidence. A challenge to the weight of the evidence must be raised with the trial judge in a motion for a new trial. Pa.R.Crim.P. 607(A). Here, King did not preserve a weight claim as required by Rule 607(A), and, therefore, any such claim must be deemed waived. **See Commonwealth v. Walsh**, 36 A.3d 613, 622 (Pa. Super. 2012) (finding waiver under Pa.R.Crim.P. 607(A) where appellant's motion for new trial following conviction of indirect criminal contempt did not include weight claim).

IN THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PA
CRIMINAL DIVISION

MD-559-13

COMMONWEALTH OF PENNSYLVANIA : CP-46-MD-0000559-2013
: PHILA. PFA 1110V8013
v. :
: INDIRECT CRIMINAL
GARY KING, SR. a/k/a GARY HANKS : CONTEMPT

2013 SEP 17 PM 2:41
CLERK OF COURTS
OFFICE
MONTGOMERY COUNTY
PENNA.

OPINION

BERTIN, J.

SEPTEMBER 17, 2013

Defendant Gary King, Sr. a/k/a Gary Hanks has filed a notice of appeal from the judgment of sentence entered by this court on July 11, 2013. On that date, the undersigned sentenced defendant to a term of incarceration of time-served to three months in the Montgomery County Correctional Facility after finding him guilty of indirect criminal contempt for violating a protection from abuse order

I. BACKGROUND AND PROCEDURAL HISTORY

On November 3, 2011, The Court of Common Pleas, Philadelphia County entered a final protection from abuse order against defendant that protected Laniece Phillips, a former sexual partner and parent of a child with defendant. The Philadelphia order excluded defendant from the premises of any residence where Ms. Philips may live. Exhibit C-1, p. 2. (Item No. 2). The Philadelphia order also prohibited defendant from contacting Ms. Phillips. Exhibit C-1, p. 2. (Item No. 3). *See also* Exhibit C-1, p. 2. (Item No. 4). The Philadelphia order was made effective until November 2, 2014.

Sometime in the middle of February, 2013, defendant was released from prison and Ms. Phillips brought him home to live with her at 536 Astor Street, Norristown, PA. There were

domestic conflicts and the Norristown Police responded to calls over the span of approximately one month. On those occasions, Ms. Phillips identified herself to the police and became known to Patrolman Raymond Emrich, Jr.

On March 14, 2013, the relationship between defendant and Ms. Phillips had soured such that Ms. Phillips excluded defendant from her residence and she telephoned the Norristown police to report that the defendant was creating a public disturbance. On that date, March 14, 2013, police arrived at 536 Astor Street to find defendant outside the residence attempting to communicate with Ms. Phillips by knocking on the doors and the window and also by yelling. Defendant was attempting to communicate with Ms. Phillips to learn why she was excluding him. The police arrested defendant at the scene for violating the Philadelphia protection from abuse order and defendant admitted to the police that he wasn't supposed to be there. N.T. 7/11/13, p. 11.

These facts were developed by the Commonwealth at a bench trial before the undersigned on July 11, 2013. The Commonwealth presented one witness, that being one of the police officers at the scene, Patrolman Raymond Emrich, Jr., who was the arresting officer but not the officer who spoke with Ms. Phillips. Defendant at the hearing cross-examined Officer Emrich to impeach his representation to the court that he knew Ms. Phillips and that he knew that she lived at 536 Astor Street. Apart from that, defendant presented no additional evidence.

On July 11, 2013, the undersigned found defendant guilty of indirect criminal contempt for violating the Philadelphia protection from abuse order and sentenced defendant to a term of incarceration of time-served to three months in the Montgomery County Correctional Facility.

Defendant filed a notice of appeal on August 5, 2013 and a concise statement of matter

complained of on appeal on August 21, 2013, in accordance with the court's order entered August 9, 2013.

Defendant's concise statement provides, as follows:

1. Appellant King contends that the learned trial court's verdict finding him guilty of indirect criminal contempt (ICC) of a protection from abuse order relating to one Laniece Phillips is not supported by legally sufficient evidence of record in that:

a. While Norristown Police found Appellant King outside of a residence located at 536 Astor Street in the Borough of Norristown, Pennsylvania, on 14 March 2012, the Commonwealth failed to provide sufficient, competent evidence that said residence was the residence of Laniece Phillips.

b. The Commonwealth failed to provide sufficient, competent evidence that Laniece Phillips was at the residence at 536 Astor Street in Norristown at or near the time that Appellant King was seen there by Police; and

c. The Commonwealth failed to provide sufficient, competent evidence that the individual with whom police spoke at 536 Astor Street in Norristown on 14 March 2012 was, in fact, Laniece Phillips, the person who is the Protected Person named in the protection from abuse order against Appellant King issued by the Court of Common Pleas of Philadelphia County.

Concise Statement, 8/21/13, p. 2.

II. DISCUSSION

When reviewing a claim that a criminal conviction rests upon insufficient evidence, the appellate court's standard of review is as follows:

A challenge to the sufficiency of the evidence is a question of law, subject to plenary review. When reviewing a sufficiency of the evidence claim, the appellate court must review all of the evidence and all reasonable inferences drawn therefrom in the light most favorable to the Commonwealth, as the verdict winner. Evidence will be deemed to support the verdict when it establishes each element of the crime charged and the commission thereof by the

accused, beyond a reasonable doubt. The Commonwealth need not preclude every possibility of innocence or establish the defendant's guilt to a mathematical certainty. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Teems, --- A.3d ---, 2013 WL 3361240, *2 (Pa.Super. 2013) (quoting *Commonwealth v. Toland*, 995 A.2d 1242, 1245 (Pa.Super.2010) (citations omitted)).

In the matter now on appeal, defendant was convicted of indirect criminal contempt. “To establish indirect criminal contempt, it must be shown that (1) the order was sufficiently clear to the contemnor as to leave no doubt of the conduct prohibited; (2) the contemnor had notice of the order; (3) the act must have been one prohibited by the order; and (4) the intent of the contemnor in committing the act must have been wrongful.” *Commonwealth v. Padilla*, 885 A.2d 994, 997 (Pa.Super. 2005) (citing *Commonwealth v. Baker*, 722 A.2d 718, 721 (Pa.Super.1998) (*en banc*), *aff'd*, 766 A.2d 328 (Pa. 2001)), *appeal denied*, 897 A.2d 454 (Pa. 2006). At trial, the Commonwealth presented credible evidence to prove elements (1) and (2) and defendant does not challenge that on appeal. Rather, defendant intends to argue on appeal, as he did at trial, that the Commonwealth did not prove elements (3) and (4) because Officer Emrich’s personal belief that he knew Laniece Phillips was based on his witnessing and hearing her repeatedly identify herself to other police officers without his ever having inspected some form of personal identification or documentation. From that position, defendant argued that the Commonwealth had the duty to rule out the possibility that the woman residing at 536 Astor Street who called police was an imposter pretending to be Laniece Phillips, and not actually Laniece Phillips. N.T. 7/11/13, pp. 17-20.

This argument on appeal lacks merit as it did at trial. As noted above, the law does not place on the Commonwealth the burden to “preclude every possibility of innocence or establish

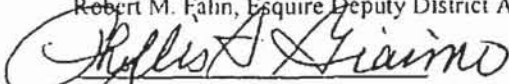
the defendant's guilt to a mathematical certainty." *Teems, supra.*, at *2. The undersigned found Officer Emrich to be a credible witness and his personal belief that he knew Laniece Phillips to be sound, based upon the past and present and present circumstances which included defendant's admission that he should not have been there. Defendant presented no legal authority to support his assertion that a police officer cannot adequately know a person's identity unless that person presents personal identification or documentation. This court's independent research found no authority for that proposition.

Accordingly, for the reasons set forth above, it is respectfully requested that the judgment of sentence entered on July 11, 2013 should be affirmed.

BY THE COURT:


EMANUEL A. BERTIN, J.

Notices mailed 9/17/13:
Timothy Peter Wile, Esquire, Assistant Public Defender, Chief, Appellate Division
Robert M. Falin, Esquire Deputy District Attorney, Chief, Appellate Division


Secretary

APPENDIX B

Pa. R.A.P. 1925(b) Statement of Errors Complained
of on Appeal filed 21 August 2013