

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

JOAN ELIZABETH BROMLEY,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MARCO LEON-ACUNA,	:	
	:	
Appellant	:	No. 244 EDA 2013

Appeal from the Order Entered December 13, 2012
In the Court of Common Pleas of Delaware County
Civil Division No(s): 11-80871

BEFORE: SHOGAN, ALLEN, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED AUGUST 27, 2013**

Appellant, Marco Leon-Acuna, appeals from the order entered in the Court of Common Pleas of Delaware County holding him in indirect criminal contempt for violations of a protection from abuse (“PFA”) order.¹ Appellant argues the evidence was insufficient to sustain the finding that he acted with wrongful intent. We affirm.

Appellant and Complainant were married and have a child, but divorced in 2010. On August 11, 2011 the trial court granted Complainant

* Former Justice specially assigned to the Superior Court.

¹ 23 Pa.C.S. § 6114.

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Joan Elizabeth Bromley's request for a final PFA order against Appellant. The order specified:

[Appellant] is completely evicted and excluded from [Complainant's residence] or any other residence where [Complainant] or any other person protected under this order may live. Exclusive possession of the residence is granted to [Complainant]. **Appellant shall have no right or privilege to enter or be present on the premises of [Complainant]** or any other person protected under this order.

Final PFA Order, 8/11/11, at 2 (emphasis added). The PFA order was entered by agreement and effective for a two-year period until August 11, 2013.

On October 24, 2012, Appellant went to Complainant's residence around 10:00 P.M. Once there, he took a soccer ball from the backyard and placed it on top of Complainant's boyfriend's vehicle, which was parked in the driveway of the residence. The following morning, Complainant discovered the soccer ball on her boyfriend's vehicle and reviewed video recordings from security cameras she installed at her residence. The video recordings showed Appellant crawling on the ground and then placing the soccer ball on the car. The Commonwealth, on October 26, 2012, filed a charge of indirect criminal contempt against Appellant.

At a bench trial on December 13, 2012, the security video was introduced into evidence and played for the trial court. Complainant identified Appellant as the individual seen in the video. Appellant testified in his defense and admitted to being on the premises. He explained that he

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and his son used to hide the soccer ball in the yard, and that he placed the soccer ball on the car “so that the next day when he saw the ball, he—when he woke up and saw the ball, [sic] he would remember me.” N.T., 12/13/12, at 14.

On cross-examination by the Commonwealth, Appellant acknowledged that he was aware of the PFA order against him and that it prohibited him from being present on the premises. *Id.* at 16. He further stated he was crawling on the property because Complainant and her boyfriend were in the kitchen and he did not want to be seen. *Id.* at 15.

The trial court found Appellant guilty of indirect criminal contempt for violation of the PFA order and sentenced him to time served.² Appellant filed this timely appeal and complied with the trial court’s order to submit a Pa.R.A.P. 1925(b) statement.

On appeal, Appellant presents the following question:

Whether the evidence was insufficient to sustain the conviction for Indirect Criminal Contempt of a Protection from Abuse Order since the Complainant failed to establish that [Appellant] acted with wrongful intent?

Appellant’s Brief at 4. Appellant argues that the evidence presented at trial failed to establish, beyond a reasonable doubt, that he acted with wrongful intent. He contends that “he was not acting with wrongful intent or ill will” and “his actions were nothing more than a harmless and heartfelt birthday

² Appellant’s preliminary arraignment was November 6, 2012. He was released from custody in this case on December 13, 2012.

gesture from father to son.” *Id.* at 9-10. Relying on ***Commonwealth v. Haigh***, 874 A.2d 1174 (Pa. Super. 2005), Appellant argues that the trial court erred in convicting him of indirect criminal contempt.

“When reviewing a contempt conviction . . . we are confined to a determination of whether the facts support the trial court decision. We will reverse a trial court’s determination only when there has been a plain abuse of discretion.” ***Commonwealth v. Brumbaugh***, 932 A.2d 108, 111 (Pa. Super. 2007) (citation and quotation marks omitted).

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant’s guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. 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.

A charge of indirect criminal contempt consists of a claim that a violation of an Order or Decree of court occurred outside the presence of the court. Where a PFA order is involved, an indirect criminal contempt charge is designed to seek punishment for violation of the protective order. As with those accused of any crime, one charged with indirect criminal contempt is to be provided the safeguards which statute and criminal procedures afford. 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; and 4) the contemnor must have acted with wrongful intent.

Id. at 109-10 (citations and quotation marks omitted).

The relevant part of section 6114, contempt for violation of order or agreement, is:

(a) General rule.—Where the police, sheriff or the plaintiff have filed charges of indirect criminal contempt against a defendant for violation of a protection order issued under this chapter, a foreign protection order or a court-approved consent agreement, the court may hold the defendant in indirect criminal contempt and punish the defendant in accordance with law.

23 Pa.C.S. § 6114(a).

As stated above, Appellant relies on **Haigh**. In that case, this Court vacated a judgment of sentence for indirect criminal contempt for insufficient evidence of wrongful intent. **Haigh**, 874 A.2d at 1178. The defendant's wife had obtained a PFA order against him, prohibiting any contact. **Id.** at 1175. The defendant had learned from his son that his wife had a mass removed from her breast. **Id.** at 1176. On January 15, 2004, the defendant

was in court for attempting to contact his wife by phone and letter from jail, in violation of the PFA order. **Id.** at 1175-76. While in the courtroom, shackled and under guard by armed deputies, the defendant leaned over, asked his wife, "Are you okay on top?" and urged her to write him. **Id.** at 1176. About a week later, on January 22, 2004, the trial court convicted the defendant of indirect criminal contempt for this contact in the courtroom with his wife. **Id.** On appeal, this Court found that the trial court erred in convicting the defendant, because, viewing the totality of the circumstances, the evidence failed to show that he "intended to violate the final PFA order and because the infraction was both *de minimis* and non-threatening." **Id.** at 1178.

We note the decision in **Brumbaugh**, in which this Court affirmed the contemnor's conviction for indirect criminal contempt where the contemnor agreed to travel to a party in the same car as an individual whom he was ordered not to contact. **Brumbaugh**, 932 A.2d at 109. The contemnor, a twenty-year old male, was prohibited by a PFA order from any contact with the victim, a sixteen-year old girl. **Id.** The victim identified the contemnor as a former boyfriend. **Id.** While the PFA order was in effect, the victim called and invited the contemnor to go to a birthday party. **Id.** After the party, police stopped the vehicle in which they were both riding. **Id.** On appeal, we concluded that the contemnor's "act was clearly volitional, or knowingly made, and wrongful intent [could] be imputed by virtue of the

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substantial certainty that by choosing to accept the victim's invitation to travel with her in the same vehicle to a party, he would be in contact with her in violation of the PFA Order." **Id.** at 111.

Instantly, Appellant's own testimony established that he knew the PFA order prohibited him from entering Complainant's premises, that he nonetheless entered onto the property, and that he crawled on his hands and knees to avoid detection. Thus, irrespective of his alleged motivations for entering and being present on the property, there was ample evidence for the trial court to find that Appellant committed a violation of the PFA order with wrongful intent. **See Brumbaugh**, 932 A.2d at 111. Moreover, to the extent Appellant contends that under **Haigh**, his presence on the property was *de minimis*, or non-threatening in light of the absence of physical contact with Complainant, we find no basis to disturb the factual findings of the trial court that he entered Complainant's property and moved the soccer ball in order to "continue stalking and harassing [Complainant] in violation of the PFA order." Trial Ct. Op., 3/13/13, at 3; **see Brumbaugh**, 932 A.2d at 111.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Brumbaugh", written over a horizontal line.

Prothonotary

Date: 8/27/2013

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