

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

FLOYD WYNN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 232 EDA 2013

Appeal from the Judgment of Sentence December 19, 2012
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0000672-2012

BEFORE: PANELLA, OLSON and PLATT,* JJ.

MEMORANDUM BY OLSON, J.:

FILED OCTOBER 11, 2013

Appellant, Floyd Wynn, appeals from the judgment of sentence entered on December 19, 2012, following his bench trial convictions for stalking and harassment.¹ We affirm.

We briefly summarize the facts and procedural history of this case as follows. Appellant and the victim were married and living together in New Mexico. In December 2011, the victim ended the relationship after Appellant took money from the victim's bank account to gamble. The victim's employer transferred her to Delaware County, Pennsylvania. Before leaving New Mexico, the victim obtained a Protection from Abuse (PFA) order prohibiting Appellant from any contact with her. Appellant continued calling

¹ 18 Pa.C.S.A. §§ 2709.1 and 2709, respectively.

and texting the victim, attempted to contact her on Facebook, confronted her while she was cleaning out her house in New Mexico and took her car keys. Police eventually intervened. In January 2012, the victim drove cross-country and checked into a hotel in Concordville, Pennsylvania. She received a message from Appellant asking her to send him money, because he was in Virginia with a flat tire. Believing Appellant was following her, the victim directed hotel staff to deny that she was staying there. Subsequently, Appellant called the hotel, asked if the victim were staying there, came to the hotel despite being told no, and then waited for the victim near her car in the hotel parking lot. When Appellant confronted the victim, she ran back into the hotel and called the police. Police arrested Appellant on January 11, 2012.

On October 24, 2012, the trial court held a bench trial wherein it convicted Appellant of the aforementioned charges. On December 19, 2012, the trial court sentenced Appellant to one to two years of incarceration, followed by three years of probation. This timely appeal resulted.²

On appeal, Appellant presents two issues for our review:

1. Whether the evidence was insufficient as a matter of law to establish Appellant[’s] guilt beyond a reasonable

² Appellant filed a notice of appeal on December 19, 2012. On January 15, 2013, the trial court entered an order directing Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied. The trial court filed an opinion pursuant to Pa.R.A.P. 1925(a) on May 7, 2013.

doubt on the charge of stalking when the Commonwealth failed to prove [Appellant's] intent was to cause [the victim] substantial emotional distress when Appellant[']s repeated communications to [the victim] consisted of no threats, rather a request for monetary help, pleas for forgiveness, and the single speaking aloud of [the] victim[']s name.

2. Whether the evidence was insufficient as a matter of law to establish Appellant[']s guilt beyond a reasonable doubt on the charge of harassment when the Commonwealth failed to produce sufficient evidence that Appellant[']s intent was to harass, annoy or alarm [the] victim [] when [Appellant's] repeated communications to [the] victim [] consisted of no threats, rather a request for monetary help, pleas for forgiveness, and the single speaking aloud of [the] victim[']s name.

Appellant's Brief at 4.

Because both of Appellant's issues challenge the sufficiency of evidence to support his convictions, we will examine them together. Appellant argues the Commonwealth failed to present evidence to prove his intent to cause the victim substantial emotional distress to support his stalking conviction. *Id.* at 9. Likewise, he argues the Commonwealth failed to prove his intent to harass, annoy, or alarm the victim. *Id.* at 11. He points to specific instances where he attempted to communicate with the victim to show that he merely requested help, apologized and asked for forgiveness, and called out to the victim in a parking lot. *Id.* at 10-12.

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 this 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.

Commonwealth v. Rushing, 71 A.3d 939, 966-967 (Pa. Super. 2013)

(citation and brackets omitted).

Stalking is defined as:

(a) Offense defined.-- A person commits the crime of stalking when the person[]:

* * *

(2) engages in a course of conduct or repeatedly communicates to another person under circumstances which demonstrate or communicate either an intent to place such other person in reasonable fear of bodily injury or to cause substantial emotional distress to such other person.

18 Pa.C.S.A. § 2709.1.

Appellant was convicted of harassment under 18 Pa.C.S.A. § 2709(a)(7). Harassment is defined, in pertinent part, as follows:

(a) Offense defined.--A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person:

* * *

(4) communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures;

(5) communicates repeatedly in an anonymous manner;

(6) communicates repeatedly at extremely inconvenient hours; or

(7) communicates repeatedly in a manner other than specified in paragraphs (4), (5) and (6).

18 Pa.C.S.A. § 2709.

"An intent to harass may be inferred from the totality of the circumstances." ***Commonwealth v. Cox***, 2013 PA Super 221, at *1; ***see also Commonwealth v. Reynolds***, 835 A.2d 720, 726 (Pa. Super. 2003) ("Intent can be proven by circumstantial evidence and may be inferred from the defendant's conduct under the attendant circumstances.").

At trial, the Commonwealth presented the testimony of the victim, Appellant's wife at the time. The victim's employer transferred her from New Mexico to Concordville, Pennsylvania where she was due to start on January 9, 2012. N.T., 10/24/2012, at 27-28. On or about December 26, 2011, the victim found out that Appellant "wiped out [her] bank account and blew it at the casino." ***Id.*** at 29. On December 28, 2011, the victim packed all of her belongings and told Appellant he was not moving with her. ***Id.*** at 30-32. The victim told Appellant "we are done." ***Id.*** at 32, 35. "[He] kept trying to talk to [her] and [she] kept telling him I don't want to talk to you. We're done. We're – we're finished." ***Id.*** at 35. When Appellant took the victim's car keys, police intervened. ***Id.*** at 36. The victim obtained a PFA in

New Mexico on January 3, 2012, unbeknownst to Appellant, and the victim did not contact Appellant from that point forward. **Id.** at 39. She changed her telephone number, so Appellant could not contact her. **Id.** at 40. Appellant sent her a text message after she had left New Mexico, stating he was in Virginia on his way to Pennsylvania and had blown a tire. **Id.** at 41-42. Appellant also called the victim, she answered it not recognizing the caller's identification, and disconnected the call as soon as she recognized Appellant's voice. **Id.** at 42. Appellant also sent the victim e-mails and messages on Facebook. **Id.** at 43. The victim did not tell the victim where she was staying in Pennsylvania and when she saw him in the hotel parking lot she immediately went back inside and called the police. **Id.** at 45-47. The victim described her various emotions regarding the numerous contacts with Appellant as stunned, angry, and scared. **Id.** at 49.

An employee from the hotel where the victim was staying in Pennsylvania also testified. He testified that the victim gave "strict instructions not to let anyone know that she was at the hotel." **Id.** at 17. Appellant called the hotel, identified himself and asked to speak with the victim. **Id.** at 21. The hotel employee told Appellant she was not there. **Id.** at 17-18, 21-22. Appellant came to the hotel anyway and asked to see the victim when "he saw her car out in front of the hotel." **Id.** at 18. Appellant told the hotel clerk not to let the victim know Appellant was looking for her. **Id.** at 24.

Based upon our standard of review, the foregoing evidence established that the victim made clear to Appellant that she did not want him to contact her and that she was leaving New Mexico for Pennsylvania. The victim rebuked all of Appellant's attempts to contact her. Appellant persisted anyway and followed her cross-country. Appellant engaged in repeated communications to harass and annoy the victim. Such actions satisfy all of the elements to support a conviction for harassment. Moreover, the victim testified that Appellant caused her substantial emotional distress. While Appellant argues he was only requesting help, apologizing, and calling out to the victim, the evidence supports an inference that he intended to stalk the victim. The victim repeatedly rejected Appellant's pleas to correspond and he continued to contact her by using different tactics. Appellant even asked the hotel employee not to alert the victim to Appellant's location. Appellant would have this Court view the evidence in the light most favorable to him. That we cannot do. Based on the foregoing testimony, we conclude that the Commonwealth presented sufficient evidence to support Appellant's convictions. Accordingly, Appellant's issues fail.

Judgment of sentence affirmed.

J-S52026-13

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/11/2013