

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
LAKISHA CHERRY	:	
	:	
Appellant	:	No. 1482 MDA 2025

Appeal from the Judgment of Sentence Entered September 22, 2025
In the Court of Common Pleas of Franklin County
Civil Division at No(s): 2025-02824

BEFORE: PANELLA, P.J.E., NICHOLS, J., and NEUMAN, J.

MEMORANDUM BY PANELLA, P.J.E.: **FILED SEPTEMBER 28, 2026**

Lakisha Cherry appeals from the judgment of sentence entered in the Court of Common Pleas of Franklin County for her conviction of indirect criminal contempt ("ICC"), 23 Pa.C.S.A. § 6114(a). Cherry challenges the sufficiency of the evidence. After careful review, we affirm.

The trial court briefly summarized the procedural history.

This case stems from a Final Protection [From] Abuse Hearing that took place on August 4, 2025 in which the Honorable Judge Zook had just dictated and signed the final order and concluded the hearing on this matter. [The PFA order, stated on the record, in pertinent part, "prohibit[ed] [Cherry] from contacting [Baker] in any fashion, including through third parties, by telephone or by any other means." N.T., 8/4/25, at 16.] As the parties were gathering their belongings, the Defendant, Lakisha Cherry, allegedly communicated with the protected party, Laneice Ann Baker, stating "No, it's for you. Fucking lying bitch," in front of

Judge Zook.^[1] This conduct violated the final order that had just been issued and Judge Zook ordered that [Cherry] be arrested and taken into custody for violation of Title 23 Pa.C.S.[A. §] 6113 and 6114.

On August 11, 2025, an Order was put into effect which [recused] Judge Zook from presiding over the [ICC] hearing. [Cherry] filed a Motion for Reconsideration on August 13, 2025, and the [ICC] matter was reassigned to the docket of the Honorable Todd M. Sponseller the following day. On September 9, 2025, [Cherry's] Motion for Reconsideration was dismissed for want of jurisdiction. The [trial] court held a hearing on [ICC] on September 22, 2025. [At the hearing, Franklin County Deputy Sheriff Stuart Hannah testified that, at the conclusion of the hearing, "some words were being exchanged" between Baker and Cherry and Cherry was heard saying "something back as to you fucking bitch." N.T., 9/22/25, at 6-7. He further testified that Cherry had glanced in Baker's direction, although he did not know if she was looking "straight at" Baker, and that Cherry said it at a "normal conversation" volume, but due to the small size of the courtroom and the presence of the microphones "it could be heard." *Id.* at 8-9. Cherry and her mother, Barbara Cherry, both testified that Cherry had directed her statement to her mother. *See id.* at 11, 19-20. Further, despite the court proceedings being audio recorded and later transcribed, Cherry denied ever saying "it's for you fucking lying bitch." *Id.* at 11-14.] The [trial] court found [Cherry] guilty and sentenced her to 3 months' probation and a fine of \$300.

¹ This was recorded in the transcript as follows:

THE COURT: Court is adjourned.

MS. BAKER: (Inaudible comment.)

MS. CHERRY: No, it's for you. Fucking lying bitch.

THE COURT: Place her under arrest for indirect criminal contempt.

N.T., 8/4/25, at 19.

Trial Court Opinion, 12/8/25, at 1-2 (unnecessary capitalization and footnote omitted).

Cherry appealed and both she and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925. **See** Pa.R.A.P. 1925(a)-(b).

Cherry raises the following issues for our review.

1. Did the trial court err as a matter of law in finding [Cherry] guilty where the evidence presented at trial was insufficient to convict [Cherry] of [ICC] as there was no evidence that [Cherry's] actions occurred outside the presence of the court as required by definition?
2. Did the trial court err as a matter of law in finding [Cherry] guilty where the evidence presented at trial was insufficient to convict [Cherry] of [ICC] as the Commonwealth failed to establish that [Cherry] actually communicated the allegedly offending statement to the protected party?
3. Did the trial court err as a matter of law in finding [Cherry] guilty where the evidence presented at trial was insufficient to convict [Cherry] of [ICC] as the Commonwealth failed to establish that the Order was sufficiently clear as to put [Cherry] on notice that her conduct would violate the Order?

Appellant's Brief, at 4.

Our standard of review for evaluating a challenge to the sufficiency of the evidence is well established.

In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, is sufficient to prove every element of the offense beyond a reasonable doubt. As an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder. Any question of doubt is for the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.

Commonwealth v. Smith, 288 A.3d 126, 131 (Pa. Super. 2022) (citation omitted).

“In general, contempt is direct when committed in the court’s presence and indirect when committed beyond its presence.” ***In re Davis***, 302 A.3d 166, 171 (Pa. Super. 2023) (internal quotation marks and citation omitted). “[M]isconduct occurs in the presence of the court if the court itself witnesses the conduct or if the conduct occurs outside the courtroom but so near thereto that it obstructs the administration of justice.” ***Commonwealth v. Moody***, 125 A.3d 1, 12 (Pa. 2015) (internal quotation marks, emphasis, and citation omitted).

“Where a PFA order is involved, an ICC charge is designed to seek punishment for violation of the protective order.” ***Commonwealth v. Wilson***, 227 A.3d 928, 933 (Pa. Super. 2020) (brackets and citation omitted).

To establish [ICC], 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.

Commonwealth v. Boyer, 282 A.3d 1161, 1167 (Pa. Super. 2022) (citation omitted).

In her first issue, Cherry asserts that she could not be convicted of ICC because her statement was made “in the presence of the court.” Appellant’s Brief, at 10. According to Cherry, that may have qualified her conduct as direct

criminal contempt, but a conviction for ICC can only be sustained if the conduct occurs outside the presence of the court. **See id.** at 10-11. We are unpersuaded.

Cherry was convicted under 23 Pa.C.S.A. § 6114(a).

(a) General rule.--Where the police, sheriff or the plaintiff have filed charges of [ICC] 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 [ICC] and punish the defendant in accordance with law.

23 Pa.C.S.A. § 6114(a).

The fatal flaw in Cherry's argument is her confusion between a description of ICC and the actual elements of the offense. It is axiomatic that to sustain a conviction the Commonwealth must present evidence "sufficient to prove every **element** of the offense[.]"² **Smith**, 288 A.3d at 131 (emphasis added). The self-evident corollary that is still worth stating is that the Commonwealth's burden of proof does not extend outside the elements of the offense. **See Commonwealth v. Thur**, 906 A.2d 552, 564 (Pa. Super. 2006).

Certainly, Pennsylvania courts have repeatedly described ICC as happening outside of the presence of the court. **See In re Davis**, 302 A.3d at 171. However, this is to distinguish ICC from direct contempt, which has as

² Additionally, once a defendant properly raises an affirmative defense, the Commonwealth has the burden to disprove the affirmative defense beyond a reasonable doubt. **See Commonwealth v. Mouzon**, 53 A.3d 738, 740 (Pa. 2012).

one of its elements that the conduct occurred in the presence of the court.³ **See Commonwealth v. Perkins**, 292 A.3d 1144, 1147 (Pa. Super. 2023). That does not mean that the Commonwealth has the burden to establish that a violation of a PFA order occurred outside the presence of the court. In other words, while it is true that conduct that occurs outside the presence of the court constitutes ICC, that is not one of the elements that the Commonwealth must prove to sustain a conviction of ICC.

In support of her argument, Cherry cites to **Commonwealth v. Haigh**, 874 A.2d 1174 (Pa. Super. 2005). **See** Appellant's Brief, at 10-11. In **Haigh** the defendant was convicted of ICC for asking his wife of thirty-one years about her ongoing cancer treatment while they were both in the courtroom for a separate ICC charge. **Haigh**, 874 A.2d at 1175-76. In light of the "peculiar circumstances" of the case, we held that the evidence was

³ Our Supreme Court has previously distinguished between direct criminal contempt and ICC with the following description:

Where that disobedience or misbehavior occurs in the actual presence of the court or has the capacity of directly affecting the proceeding then in progress, it may be properly classified as a direct or the most grievous type of contempt. **All other behavior** which may have a more remote impact upon the dignity of the court and its ability to fulfill its responsibilities are classified as [ICC].

Commonwealth v. Marcone, 410 A.2d 759, 763 (Pa. 1980) (emphasis added).

insufficient to establish that the defendant acted with wrongful intent and reversed the conviction. ***Id.*** at 1175.

To her credit, Cherry recognizes that this Court reversed the ICC conviction in ***Haigh*** on that basis, not on the argument she presents. ***See*** Appellant's Brief, at 11. However, to support her position she notes that the court in ***Haigh*** additionally highlighted that "in actuality, Appellant's conversing with his wife while *in the courtroom* does not even fit within the definition of *indirect* criminal contempt, which addresses contemptuous actions ***outside the presence of the court.***" ***See id.*** at 11 (quoting ***Haigh***, 874 A.2d at 1177, n.4 (emphasis in original)). Because the ***Haigh*** Court decided the case on the basis that the defendant did not act with wrongful intent, the statement quoted by Cherry is dicta and therefore, is not precedential authority. ***See In re Huff***, 334 A.3d 232, 245 n.11 (Pa. 2025). Cherry does not cite any other cases, nor are we aware of any, where an ICC conviction for violation of a PFA order was reversed because the Commonwealth failed to prove that the violation occurred outside the presence of the court. This stands to reason since, as stated above "outside the presence of the court" is not an element of ICC the Commonwealth must prove, but is instead a description of when the violation of the court order usually occurs. Therefore, because the Commonwealth did not have the

burden to prove that Cherry violated the PFA order outside the presence of the court to convict her of ICC, Cherry's first issue is without merit.⁴

In her second issue, Cherry asserts that the Commonwealth failed to establish that she acted with wrongful intent. Specifically, she argues that there was no evidence that Baker heard her comment and that it was reasonable to believe that the order was not yet effective. **See** Appellant's Brief, at 12-13. The Commonwealth argues that there was sufficient evidence to infer that Cherry contacted Baker with her statement. **See** Appellee's Brief, at 10. We agree with the Commonwealth.

As previously explained, the court entered the order on the record precluding Cherry from any contact with the victim, after which Cherry spoke with the victim and called her an expletive, which could be heard throughout the courtroom. Additionally, the trial court found Cherry and her mother's contrary testimony unpersuasive. Based on the evidence presented, the trial court's finding that Cherry directed her statement at Baker, and therefore, contacted Baker in violation of the PFA order, is supported by the record. Such a clear violation of the PFA order demonstrates that Cherry acted with wrongful intent. **See *Commonwealth v. Wilson***, 227 A.3d 928, 939 (Pa.

⁴ We note that we have not determined whether or not the violation of the PFA order, which took place in the courtroom immediately after court was adjourned, occurred in the presence of the court. Such a determination would only be necessary for a direct criminal contempt conviction, which is not before us.

Super. 2020) (“wrongful intent can be imputed by virtue of the substantial certainty that one’s actions would place one in contact with PFA petitioner in violation of the PFA Order.” (brackets and citation omitted)). Therefore, Cherry’s second issue is meritless.

In her final issue, Cherry argues that the evidence presented only established that she made the statement generally, which is not covered by the PFA order’s prohibition against her “contacting” Baker. **See** Appellant’s Brief, at 13-15. She points to her own testimony that she directed her statement to her mother. **See id.** at 14. This argument is similarly without merit.

The trial court succinctly dispelled Cherry’s argument.

[W]e find that [Cherry] was not making that comment to her mother; rather, she was directing that comment to Ms. Baker, the protected party. As such, whether the PFA Order was clear enough to provide notice that speaking to her mother in the same room as the alleged victim is not relevant in this matter.

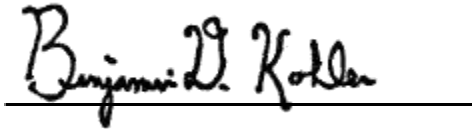
Trial Court Opinion, at 7.

As previously discussed, the deputy sheriff’s testimony was sufficient to support the trial court’s finding that Cherry directed the statement at Baker. Such a statement clearly constitutes “contact” in violation of the PFA order. To the extent that Cherry wishes for this Court to credit her testimony that she directed the statement to her mother, it is not our role to re-weigh the evidence. **See Smith**, 288 A.3d at 131. Therefore, this issue is also meritless.

For the foregoing reasons, we affirm.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 09/28/2026