

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

BRYANT MORENO

Appellant

No. 2734 EDA 2022

Appeal from the Judgment of Sentence Entered October 4, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): MC-51-CR-0002094-2022

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

BRYANT MORENO

Appellant

No. 2735 EDA 2022

Appeal from the Judgment of Sentence Entered October 4, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): MC-51-CR-0003248-2022

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

BRYANT MORENO

Appellant

No. 2736 EDA 2022

Appeal from the Judgment of Sentence Entered October 4, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): MC-51-CR-0003250-2022

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.	:	
	:	
	:	
	:	
BRYANT MORENO	:	
	:	
Appellant	:	No. 2737 EDA 2022

Appeal from the Judgment of Sentence Entered October 4, 2022
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): MC-51-CR-0005863-2022

BEFORE: BENDER, P.J.E., MURRAY, J., and SULLIVAN, J.

MEMORANDUM BY BENDER, P.J.E.:

FILED JANUARY 23, 2024

Appellant, Bryant Moreno, appeals from the aggregate judgment of sentence of 7½ to 15 months' incarceration, and a concurrent term of 24 months' probation, imposed after the trial court convicted him of four counts of indirect criminal contempt for violating a Protection from Abuse (PFA) order entered under the Protection from Abuse Act, 23 Pa.C.S. §§ 6101-6122.¹ On appeal, Appellant solely challenges the sufficiency of the evidence to sustain his conviction of criminal contempt at docket number MC-51-CR-0003250-2022. After careful review, we affirm Appellant's judgment of sentence at that docket number, as well as his judgments of sentence at the remaining three docket numbers, which he does not challenge herein.

The trial court summarized the pertinent facts and procedural history of this case, as follows:

¹ Appellant was charged and convicted of contempt in four separate cases. He filed separate notices of appeal at each docket number, which this Court *sua sponte* consolidated by order entered February 27, 2023.

a. Underlying PFA Order

This appeal stems from four violations of a final PFA order against Appellant. A PFA petition was filed by Appellant's wife ("[the v]ictim") and a temporary[,] *ex-parte* PFA order was entered on January 28, 2022. A final PFA order was signed by the Honorable Tiffany Palmer on February 4, 2022[,] after an in-person hearing with both Appellant and [the v]ictim present. The order directed Appellant not to abuse, harass, stalk, or threaten, or attempt to threaten to use physical force against the victim. Appellant was also prohibited from having any contact with the victim, either directly or indirectly, at any location, by telephone or by any other means, including through third persons. The order was to expire on August 3, 2022.

b. Violations of the PFA Order

At Appellant's criminal trial, the victim testified that Appellant committed four violations of the final PFA order in the weeks after it was entered. Four days after the order was entered, Appellant drove his car next to the victim's car while she was riding in the passenger seat and attempted to talk to her. (N.T.[,] 8/2/22, at 18-19). He then chased her until the police stopped him. *Id.* at 21-22. Appellant was driving so closely that the victim was afraid Appellant might crash into her car. *Id.* at 22.

The victim called the police and stayed on the phone with them until police arrived and stopped Appellant's car. *Id.* at 23. Upon confirming the existence of the final PFA order, the police arrested Appellant. *Id.* at 25. The victim's boyfriend also testified as an eyewitness and corroborated the victim's testimony. *Id.* at 61-65. This [c]ourt found the testimony of the victim and eyewitness to be credible.

The victim also testified about two other incidents that occurred in the following weeks. The victim testified that she saw Appellant break her car window by hitting it more than three times with a rock. *Id.* at 29. Though Appellant was wearing black coveralls and a black mask, the victim recognized Appellant from the distinct way he walked and by the tattoos on his hands. *Id.* at 31. The next day, the victim was outside of her residence, vacuuming the broken glass from the car[,] when Appellant drove by, put his window down, and told her that she belonged back [in] New York, or he would "do something worse." *Id.* at 27. The victim called the police and made police reports. *Id.* [at e]x[hibit] D-1.

The victim's story was again corroborated by testimony from her boyfriend, who was present with the victim during both of these incidents. **Id.** at 69-72. This [c]ourt found the victim's testimony and that of her corroborating witness to be credible.

The incident leading to the fourth contempt charge occurred one week later, again at the residence the victim shares with her boyfriend. On that day, Appellant approached the victim's car and put a piece of paper on it. He also sent the victim's boyfriend a text message telling him to make sure the victim got the paper. **Id.** at 36-37. The victim filed another police report. **Id.** at 38. The victim testified that the paper Appellant left for her on the car windshield was an attempt to serve her with paperwork for a separate PFA petition that Appellant had filed against her. **Id.** at 55-56. This [c]ourt found the victim's testimony as to this incident to be credible. The defense introduced two police reports filed by the victim and did not present any additional evidence. **Id.** at 100.

At the conclusion of the trial, the undersigned found Appellant guilty of four counts of contempt for violating a PFA order four times. **Id.** at 114-[]16. Sentencing was deferred, and at a sentencing hearing on October 4, 2022, this [c]ourt sentenced Appellant to an aggregate of seven and a half to fifteen months['] incarceration with a concurrent sentence of twenty-four months' probation with immediate parole at the minimum date.

Appellant filed a timely notice of appeal on October 31, 2022.... This [c]ourt issued an order pursuant to Pa.R.A.P. ... 1925(b) directing Appellant to file a Concise Statement of Errors Complained of on Appeal within twenty-one days of November 7, 2022. The deadline for a [Rule] 1925(b) statement lapsed and this [c]ourt wrote a letter to [the] Prothonotary of the Superior Court informing them of the same on December 6, 2022. Appellant filed a *nunc pro tunc* request for extension of time to file a statement of errors upon receipt of the notes of testimony on December 8, 2022. This [c]ourt granted Appellant's *nunc pro tunc* request and directed [A]ppellant to file a Rule 1925(b) statement within fourteen days. Due to granting Appellant's request for an extension, this [c]ourt requested a twenty-one day extension to file its [Rule] 1925(a) opinion. Appellant filed a [Rule] 1925(b) Statement of Errors Complained of on Appeal on December 14, 2022.

Trial Court Opinion (TCO), 3/7/23, at 1-5 (footnote omitted; some spacing altered). The trial court filed its responsive Rule 1925(a) opinion on March 7, 2023.

Herein, Appellant states one issue for our review: "Was not the evidence insufficient to support the conviction on the charge of contempt for violating a protective order in that the Commonwealth failed to prove that Appellant intended to stalk, harass, threaten, attempt to threaten or use any physical force against the complainant, as he merely attempted to serve her with legal papers?" Appellant's Brief at 3.

Initially, we recognize that,

[w]e review a contempt conviction for an abuse of discretion. **Commonwealth v. Haigh**, 874 A.2d 1174, 1177 (Pa. Super. 2005). We rely on the discretion of the trial court judge and are confined to a determination of whether the facts support the trial court's decision. **Id.** at 1176–77. In reviewing whether the evidence was sufficient to support the conviction, "we must determine whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the fact finder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt." **Commonwealth v. Taylor**, 137 A.3d 611, 614 (Pa. Super. 2016) (*en banc*) (citation and quotation omitted). In applying the above test, "we may not weigh the evidence and substitute our judgment for the fact-finder." **Commonwealth v. Brumbaugh**, 932 A.2d 108, 109 (Pa. Super. [] 2007) (citation and quotation omitted). 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." **Id.** at 110.

This Court has repeatedly stated that "[t]he purpose of the PFA Act is to protect victims of domestic violence from those who perpetrate such abuse, with the primary goal of advance

prevention of physical and sexual abuse.” ***Commonwealth v. Lambert***, 147 A.3d 1221, 1226 (Pa. Super. 2016) (citation and quotation omitted). “Where a PFA order is involved, an indirect criminal contempt charge is designed to seek punishment for violation of the protective order.” ***Commonwealth v. Jackson***, 10 A.3d 341, 346 (Pa. Super. 2010) (citation and quotation omitted). A charge of indirect criminal contempt consists of a claim that a violation of an order occurred outside the presence of the court. ***Lambert, supra*** at 1226.

In order 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.” ***Commonwealth v. Walsh***, 36 A.3d 613, 619 (Pa. Super. 2012) (citation and quotation omitted).

Commonwealth v. Felder, 176 A.3d 331, 333–34 (Pa. Super. 2017).

Here, Appellant challenges the sufficiency of the evidence to prove that he acted with wrongful intent when committing the fourth violation of the PFA order, during which Appellant placed legal paperwork on the victim’s car, and then texted her boyfriend to ensure she received those documents. Appellant claims his case is comparable to ***Haigh***, in which we found the evidence insufficient to support Haigh’s conviction of indirect criminal contempt. There,

[Haigh] and his wife of thirty-one (31) years, Christine Haigh, entered into a final PFA order prohibiting [Haigh] from, *inter alia*, having any contact with his wife until February 21, 2005. Less than six months later, [Haigh] was brought before the Honorable Mary Ann Campbell for an indirect criminal contempt hearing on charges that he had violated the PFA order by attempting to contact his wife from prison both by letter and by phone. [Haigh] had been trying to contact his wife because their son had written to let him know that Mrs. Haigh had had a mass removed from her breast. The letter did not say whether the mass was malignant or benign. [Haigh] was brought to the courtroom in shackles by deputy sheriffs. At one point during the hearing on

January 15, 2004, [Haigh], still shackled, shuffled slightly towards his wife, leaned over and asked her[,] "Are you okay on top?" He urged her to write him in prison about her prognosis. Deputy Sheriff David Franke quickly pulled [Haigh] back and charged him with indirect criminal contempt.

Haigh, 74 A.2d at 1175-76 (citations to the record omitted).

In deeming the evidence insufficient to support Haigh's indirect criminal contempt conviction for his statements to Mrs. Haigh in the courtroom, we reasoned:

In the case *sub judice*, the final PFA order prohibited [Haigh] from having any contact with his wife "at any location." Although this language seems unambiguous on its face, context ultimately caused confusion for [Haigh] in that he was literally brought into a form of contact with his wife during the PFA violation hearing. Moreover, both [Haigh] and Mrs. Haigh had the opportunity to speak at this hearing. A reasonable person could have believed, and [Haigh] did believe, that the PFA order was relaxed to some extent in the courtroom context, especially where [Haigh] was shackled and the victim was protected by an armed deputy sheriff. [Haigh] did not believe that he was threatening Mrs. Haigh, and neither she nor any one else in the courtroom heard [Haigh] threaten her or otherwise make any threatening movements or gestures towards her. [Haigh's] questions arose from his concern for the health of his wife of thirty-one years, even though they were estranged at the time. After a thorough review of the record, we conclude, based upon all of the circumstances, that [Haigh] did not act with wrongful intent by engaging in this conversation with his wife in the courtroom. Intentionally acting in such a manner, in the presence of Judge Campbell, the deputy sheriff, the prosecutor and every other person gathered in the court room, would have been nothing short of irrational, and there is nothing in the record to indicate that [Haigh] was in any way irrational on the day of the hearing. In fact, the judge concluded that [Haigh] was sufficiently rational to enter guilty pleas to two prior violations of the PFA at the very same hearing.

It is imperative that trial judges use common sense and consider the context and surrounding factors in making their determinations of whether a violation of a court order is truly

intentional before imposing sanctions of criminal contempt. As we have stated:

[A] determination of criminal contempt is a criminal conviction conferring on the contemnor all the negative characteristics of being a convicted criminal. The right to be free of the stigma of an unfounded criminal conviction is the hallmark of American jurisprudence.

[**Commonwealth v.**] **Baker**, 722 A.2d [718,] 722 [(Pa. Super. 1998) (*en banc*)].

Under the peculiar circumstances of this case, because we conclude that the record does not support the determination that [Haigh] intended to violate the final PFA order *and* because the infraction was both *de minimis* and non-threatening, we are constrained to hold that the trial court did abuse its discretion in convicting [Haigh] of indirect criminal contempt. Accordingly, we vacate [Haigh's] judgment of sentence.

Id. at 1177-78 (emphasis in original; footnote omitted).

In the case *sub judice*, Appellant insists that, "pursuant to **Haigh**, **supra**, [he] did not have the *mens rea* to violate the final PFA order...." Appellant's Brief at 15. He contends that here, as in **Haigh**, "the infraction was both *de minimis* and non-threatening, [and] the evidence was insufficient to find a violation." **Id.** In support, Appellant stresses that

the PFA warned [him] not to stalk, harass, threaten, attempt to threaten or use any physical force against the [victim]. The evidence from both the Commonwealth and the defense indicate that Appellant did none of those things on this particular charge of contempt. Simply attempting to serve legal papers and making sure the [victim] was aware of the papers was non-threatening. If in fact the PFA order was violated, such conduct was *de minimis*.

Id. at 14-15. Accordingly, Appellant concludes that we must reverse his indirect criminal contempt conviction at docket number MC-51-CR-0003250-2022.

We disagree. Initially, the trial court determined that Appellant's conduct

violated paragraph three of the PFA order[,] which prohibited Appellant from having any contact with the victim by telephone or by any other means, including through third persons. The Commonwealth's evidence proved that Appellant put PFA paperwork on the victim's vehicle and sent the victim's boyfriend a text message telling him to make sure the victim got the paperwork.

First, the rules of civil procedure do not permit PFA petitioners to serve their pleadings on respondents because they are not "competent adults" pursuant to 231 Pa. Code Rule 1930.4. Moreover, there is no exception in the PFA statute that permits a defendant subject to a PFA order to violate that order to send a message about pending legal proceedings. Appellant's text message to the victim's boyfriend is prohibited contact with the victim through a third person, which is a violation of the final PFA order. No relief is due.

TCO at 12-13.

Notably, the court did not explicitly address the *mens rea* element of Appellant's conviction, presumably because Appellant did not specifically state what element(s) of his contempt charge(s) the Commonwealth failed to prove in his Rule 1925(b) statement. **See** TCO at 6 (quoting Appellant's Rule 1925(b) statement as setting forth the following issue: "Did this court err and abuse its discretion by finding [A]ppellant guilty of four charges of contempt for violating a PFA where the evidence was not sufficient to support those convictions?"). Thus, we conclude that Appellant has waived his specific challenge to the sufficiency of the evidence to prove the *mens rea* element of his indirect criminal contempt conviction at MC-51-CR-0003250-2022. **See** *Commonwealth v. Gibbs*, 981 A.2d 274, 281 (Pa. Super. 2009) (noting that

this Court has held “that when challenging the sufficiency of the evidence on appeal, the [a]ppellant’s [Rule] 1925 statement must ‘specify the element or elements upon which the evidence was insufficient’ in order to preserve the issue for appeal”) (quoting **Commonwealth v. Williams**, 959 A.2d 1252, 1257 (Pa. Super. 2008)).

In any event, even if preserved, we would deem Appellant’s claim meritless. We agree with the Commonwealth that “[t]his case is distinguishable from **Haigh**, as ‘the peculiar circumstances’ surrounding that case were the basis for this Court’s finding that the Commonwealth failed to show a ‘wrongful intent[.]’” Commonwealth’s Brief at 5 (quoting **Haigh**, 874 A.2d at 1175). The Commonwealth elaborates:

In this case, [Appellant’s] conduct was not *de minimis*, the victim felt afraid based on the totality of [Appellant’s] conduct, and [Appellant’s] previous three violations plainly show that he intended to violate the order by threatening and harassing the victim and her boyfriend. This case is therefore clearly distinguishable from **Haigh**.

Here, [Appellant] dangerously chased the victim and her boyfriend in his car for thirty minutes, before he was finally arrested. Then, he broke the victim’s car window and threatened her and her boyfriend. Just a few days after breaking the victim’s car window, [Appellant] placed divorce papers and PFA paperwork on her car and texted her boyfriend and told him to tell her what he had done. Importantly, as the trial court explained, “there is no exception in the PFA statute that permits a defendant subject to a PFA order to violate that order to send a message about pending legal proceedings.” [TCO at] 13. And this is especially the case where, as here, ... [Appellant’s] action is part of a chain of events that is targeted at harassing and intimidating the victim.

The trial court reasonably found that the context surrounding [Appellant’s] final attempt to communicate with the victim was sufficient to show that he had the wrongful intent necessary for a

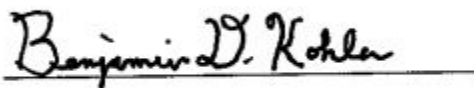
contempt conviction. [Appellant's] challenge to that conviction should be rejected.

Id. at 7-8.

We agree. Appellant's actions in violating the PFA order on the three occasions preceding the instant violation were sufficient to establish that he acted with wrongful intent in placing the legal papers on the victim's car, and then communicating with her, through a third-party, about whether she received those documents. Unlike in ***Haigh***, there was no contextual basis to indicate that Appellant was confused about whether he was permitted to contact the victim in this manner. Instead, Appellant's recent, threatening violations of the PFA order just before the instant, at-issue violation supported that Appellant, at the very least, intended to harass the victim by contacting her in this manner. Therefore, we would conclude the evidence was sufficient to prove the *mens rea* element of his indirect criminal contempt conviction at MC-51-CR-0003250-2022, even had he preserved this claim for our review. As Appellant presents no challenge to his judgments of sentence at the other three docket numbers, we affirm those, as well.

Judgments 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: 1/23/2024