

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WS

v.
CH,
Appellant

:
: **No. 16-20, 669**
:
: **PFA CONTEMPT**
:
: **APPEAL**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

This opinion is written in support of the Court's Order of August 25, 2017, finding Defendant guilty of indirect criminal contempt for a violation of the PFA that was issued on May 31, 2016, by having access to a weapon in a pole-barn on the property.

The Appellant complains of one error on appeal. To Wit: The Lower Court erred in finding the Defendant did violate the Protection from Abuse as there was a lack of evidence to support the finding of contempt.

Facts of Record

At the time of the contempt hearing, the parties stipulated that there is a valid PFA against the Defendant. N.T. 8/25/2017 at 3.

On May 23, 2016, the Honorable Dudley A. Anderson issued a temporary PFA against Defendant and ordered that Defendant is prohibited from possessing, transferring, or acquiring any firearms for the duration of the order. A Final Protection from Abuse Order was entered into pursuant to the consent of the plaintiff and the Defendant on May 31, 2016. The final Order also indicated that any weapons present at 559 Keller Hollow Road were to be relinquished.

On June 7, 2017, Sheriff's Deputies Tanner Troutman (Troutman) and Cody Barto went to serve a subsequent PFA on Defendant at his residence at 559 Keller Hollow Road Unityville, PA. **Id.** at 12. While on route, they were advised by a sergeant that there may be a firearm on the residence. **Id.** at 19. When arriving at the residence they found a Winchester .22 caliber pump action LOR long rifle, model 270 in a pole barn approximately 200 feet from Defendant's front door. **Id.** at 10. They called the Pennsylvania State Police for assistance at the time of the firearm's discovery. **Id.** at 12.

Trooper Tyler Diggan (Digan) testified on behalf of the Commonwealth. Diggan testified that he found that gun in an outbuilding. **Id.** at 5. He stated that the gun was clearly visible hanging on the wall:

So the outbuilding itself is kind of like an open garage or barn-like building. So as soon as you walk into that big open door in the front, it would be right to your left. So you would walk in, if you turn to your left it was hanging about eye-level on the wall.

Id. at 7.

Further testimony established that the outbuilding was not the property of Defendant but rather of Defendant's grandmother in law. **Id.** at 23. Defendant, however, did store items in the pole barn. **Id.** at 4. Troutman testified that the Defendant told them that he "uses that outbuilding for storage. I believe he mentioned that he had a side to side or a skid steer along with a four-wheeler that belonged to his kids." **Id.** at 14.

Defendant also testified at the hearing. He denied having put the rifle in the pole barn or having knowledge of it being located in the pole barn. **Id.** at 31. He testified that though he uses the pole barn for storage he had never seen the gun in

the pole barn. *Id.* at 33. Though Defendant admitted that he had previously owned an older .22 long rifle that it was relinquished to the Sheriff's deputies pursuant to the PFA and appeared on "that one exhibit of your weapons that were taken". *Id.* at 31.

Troutman read into the record the form Defendant signed when his firearms were initially relinquished as a result of the Temporary PFA Order:

I [Defendant] do hereby certify that I do not currently possess or have access to any firearms (handguns, rifles, shotguns) which I own, borrowed or otherwise have control of. I understand that I have been ordered by a judge to refrain from having in my possession or control any firearm until further order of the Court and that I subject myself to contempt sanctions and/or criminal charges if I disobey a Court order.

N.T. 8/25/2017, at 15-16. (Commonwealth's Exhibit #3).

Matters Complained of on Appeal

Defense Counsel submits one error for the Court to consider:

1. The Lower Court erred in finding the Defendant did violate the Protection from Abuse as there was a lack of evidence to support the finding of contempt.

The standard...appl[ied] 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.

Commonwealth v. Brumbaugh, 932 A.2d 108, 109-10 (citing Commonwealth v. Distefano, 782 A.2d 574, 582 (Pa.Super. 2001) (citations and quotations omitted).

The Defendant contends that the Court erred when it found an indirect criminal contempt of the PFA. “The PFA Act operates to protect victims of domestic violence and permit the courts to respond quickly and flexibly to both early signs and subsequent acts of abuse with the issuance of protection orders.” Commonwealth v. Walsh, 36 A.3d 613, 618 (Pa. Super 2012). Once a PFA order is granted a defendant may be found in indirect criminal contempt if he does not comply with its terms. “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. Baker, 722 A.2d 718 (Pa. Super. Ct. 1998) (affirmed by Commonwealth v. Baker, 766 A.2d 328 (Pa. 2001)).

The order was sufficiently definite, clear, and specific to the contemnor as to leave no doubt of the conduct prohibited. Though the PFA Order does not explicitly state that the Defendant cannot have access to the any firearm for any period of time, the form Defendant signed and submitted as Commonwealth’s Exhibit #3 precludes access to firearm as part of relinquishing firearms to the Sheriff’s deputies. The Court found based on the facts above that Defendant had access to a firearm and that he knew that he was not have access to the firearm. The Court finds that the Defendant knew the conduct was prohibited based upon his signature of the form.

The contemnor had notice of the order. There is no dispute over element two as the parties stipulated to the PFA’s validity. No objection was made to the entry of

Commonwealth's Exhibit #3 that showed Defendant knew he was not to have access to firearms.

The act constituting the violation must have been volitional. The Court found the Defendant incredible in his testimony that he was unaware of the firearm's presence in a pole barn that he used for storage. The Court found that in this case that the Defendant's act was an omission. He knew he could not have access to the firearm in the pole-barn, in which he used to store his property. Rather than arrange for the gun to be removed from the property he allowed it to remain and thus technically violated the PFA.

The contemnor must have acted with wrongful intent. In this case, wrongful intent can be imputed by virtue of the substantial certainty that by choosing to store items in a pole-barn with a firearm hanging on its wall, Defendant would have access to a firearm in violation of the PFA Order.

For the reasons stated above, the Court found a technical violation of the PFA Order and respectfully requests that its Judgment be affirmed.

By the Court,

Nancy L. Butts, President Judge

cc: George Lepley, Jr. Esq. Defense Counsel
DA (NI)
Gary Weber, Esq.