

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH	:	No. CR-563-2012
v.	:	
	:	
AISHA N. SABUR,	:	
Defendant	:	

OPINION AND ORDER

On September 5, 2012 following a non-jury trial, the Court found Defendant guilty of Retaliation against a Witness, a misdemeanor of the second degree; Harassment, a misdemeanor of the third degree; and Harassment, a summary offense. The Court adjudicated Defendant not guilty of Stalking, a misdemeanor 1 offense.

Defendant was sentenced on November 27, 2012 to two (2) years of probation on the Retaliation of a Witness Count and a consecutive one-year of probation on the misdemeanor 3 Harassment Count.

Defendant filed a Post-Sentence Motion on December 6, 2012 which was argued before the Court on January 22, 2013. Defendant claims that the Court's verdict was against the weight of the evidence. Defendant further claims that the Court erred in allowing recordings of phone calls between Defendant and her uncle while her uncle was incarcerated at the Lycoming County Prison. With respect to Defendant's weight claim, she argues that the witnesses for the Commonwealth were not credible and that her testimony was not given enough weight. (Motion in Arrest of Judgment, Paragraph 9).

"Conflicts in the evidence and contradictions in the testimony of any witnesses are for the factfinder to resolve." Commonwealth v. Lofton, 2012 PA Super 267, *5 (December 7, 2012), citing Commonwealth v. Tharp, 574 Pa. 202, 830 A.2d 519, 528 (Pa.

2003). Indeed, the “weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses.”

Commonwealth v. Small, 559 Pa. 423, 435, 741 A.2d 666, 672 (1999).

Defendant is not entitled to relief on a weight claimed merely because there is a conflict in testimony. Commonwealth v. Sanchez, 36 A.3d 24, 39 (Pa. 2011). Relief on a weight of the evidence claim is reserved for extraordinary circumstances, when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice and the reward of a new trial is imperative so that right may be given another opportunity to prevail.” Id., citing Commonwealth v. Blakeney, 596 Pa. 510, 946 A.2d 645, 653 (2008).

Simply put, the role of the court in a weight claim is to determine whether “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the other facts is to deny justice.” Lofton, supra. at *5-6, citing Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 752 (2000).

Clearly, that was not the case here. This is not a situation in which the testimony from the Commonwealth witnesses was so inherently unreliable or contradictory that to believe such would be clear conjecture. This is not a case where the testimony of Defendant was so clearly of a greater weight that to ignore such would be to deny justice.

The victim, Nicole Kramer, credibly testified that on numerous occasions, in response to her either agreeing to testify or testifying against Defendant’s uncle, Defendant harassed, verbally assaulted, physically assaulted and verbally threatened her. During her testimony, the Court had an opportunity to observe her demeanor. Clearly, she was intimidated by Defendant. Moreover, her body language, answering of questions and eye contact all

demonstrated to the Court that she was being credible.

Additionally, Ms. Kramer's complaints were corroborated by both Agent Stiles and another Commonwealth witness, Cassandra Guzman. Finally, Defendant's own words to her uncle evidenced that she was aware that Ms. Kramer was testifying against her uncle, that she was upset with Ms. Kramer for doing so and that she intended to harm and/or intimidate Ms. Kramer as a result.

Under all of these circumstances, the Court's verdict was not against the weight of the evidence and Defendant's Motion with respect to such will be denied.

Defendant argues further that the Court erred in admitting recordings of telephone conversations between Defendant and her uncle while her uncle was incarcerated at the Lycoming County Prison. Defendant argues that the evidence was not relevant and even if so, its probative value was outweighed by the danger of unfair prejudice.

The evidence at issue concerned recordings of telephone calls and at least one visitation conversation between Defendant and her uncle. The conversations illustrated through Defendant's own words that she was aware that Nicole Kramer was testifying against her uncle, that she was angry and upset with Nicole Kramer for doing so and that she intended to harm and/or intimidate Ms. Kramer. Among the more illustrative statements were the Defendant claiming that she was "about to go to war with these bitches," that she was "ready to do some time," that she was going to "fuck her up," that "she was gonna get it," and that the Defendant was going to "kick that fucking door in."

Relevant evidence is "evidence that tends to make a fact in issue more or less probable." Commonwealth v. Mitchell, 588 Pa. 19, 902 A.2d 430, 465 (2006). Clearly, the

evidence was relevant. It was relevant to Defendant's intent and Defendant's motive. "[E]vidence to prove motive...is relevant in a criminal case." Commonwealth v. Gwaltney, 497 Pa. 505, 514, 442 A.2d 236, 241 (1982). It also goes to prove Defendant's knowledge of the fact that Ms. Kramer was a witness against her uncle.

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. Pa. R. E. 403. "Unfair prejudice" is "a tendency to suggest a decision on an improper basis or to divert the jury's attention from its duty of weighing the evidence impartially. Pa. R. E. 403, comment. The evidence in this case did not suggest a decision on any improper basis. It did not suggest a decision based upon any sympathy for the victim or animus toward Defendant. Indeed, the evidence was highly probative, and the Court fails to see how there was any danger of undue prejudice.

Accordingly, Defendant's Motion on these grounds will also be denied.

ORDER

AND NOW, this ___ day of February 2013, following an argument, Defendant's Post Sentence Motion in the nature of a Motion in Arrest of Judgment and Motion for a New Trial is DENIED.

By the Court,

Judge Marc F. Lovecchio

cc: Martin Wade, Esquire
Jeana Longo, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file