

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-563-2012
vs. :
: CRIMINAL DIVISION
: AISHA SABUR,
: Appellant : 1925(a) Opinion

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

This opinion is written in support of this court's judgment of sentence dated November 27, 2012 and its Opinion and Order entered February 11, 2013, which denied Appellant's post sentence motions. The relevant facts follow.

On January 29, 2011, Bilal Sabur, Appellant's uncle, shot a man in the leg, during an incident that occurred in the 400 block of Mifflin Place. At the time, Bilal Sabur was living with Nicole Kramer in an apartment at Timberland Apartments, which is located on 750 West Edwin Street in Williamsport. After the shooting, Bilal Sabur ran back to his apartment, and Nicole Kramer assisted him in disposing of the firearm used in the shooting incident.

Nicole Kramer was subsequently arrested for helping Bilal Sabur dispose of the firearm. At or around the time of Ms. Kramer's preliminary hearing, she decided to cooperate with the Commonwealth. She became a witness against Bilal Sabur and testified at his trial.

Before Ms. Kramer agreed to become a witness for the Commonwealth, she

and Appellant were good friends. Thereafter, their relationship changed dramatically.

Appellant was angry that Ms. Kramer was cooperating with the police and providing testimony against her uncle. During recorded conversations and visits with her uncle, who was incarcerated at the Lycoming County Prison, Appellant made statements that she intended to harm and/or intimidate Ms. Kramer. In some of the more illustrative statements, Appellant indicated that she was ready to do some time, she was about to go to war with Ms. Kramer, she was going to kick Ms. Kramer's door in, Ms. Kramer was going to get it, and she was going to f--- Ms. Kramer up.

Unfortunately, Appellant's sister lived close to Ms. Kramer's apartment, and Appellant made a point of making similar statements directly to Ms. Kramer when she would see her. Over the telephone and in person, Appellant called Ms. Kramer names like a rat, a snitch and a bitch, even when Ms. Kramer's children were present, and she threatened to "jump" Ms. Kramer on more than one occasion. These comments were very stressful to Ms. Kramer. She stayed in her apartment to try to avoid Appellant and, when she went outside, she watched where she went and watched her children because she didn't trust Appellant. Ms. Kramer was afraid that either she would get hurt or her children would get hurt.

After several months of harassment and threats, Ms. Kramer contacted the police, and Appellant was charged with one count of retaliation against a witness. The Commonwealth, without objection from Appellant, amended the Information to add a count of stalking, a misdemeanor of the first degree, pursuant to 18 Pa.C.S.A. §2709.1(a)(2).

Appellant waived her right to a jury trial, and a bench trial was held on September 5, 2012. Immediately before the start of trial, the Commonwealth made an oral motion to amend the Information to add two counts of harassment – one graded as a

misdemeanor of the third degree under section 2709(a)(7) and the other a summary offense under section 2709(a)(3), which the court granted. Following the bench trial, the court found Appellant guilty of retaliation against a witness and the two counts of harassment, but acquitted her of stalking.

On November 27, 2012, the court sentenced Appellant to pay the costs of prosecution, to complete 50 hours of community service and to be placed on probation for three years.

On December 6, 2012, Appellant filed a post sentence motion in which she claimed the verdict was against the weight of the evidence and the court erred in admitting the prison recordings as evidence in her trial. The court denied Appellant's post sentence motion in an Opinion and Order entered on February 11, 2013.

Appellant filed a timely notice of appeal. She raises the same issues on appeal that she raised in her post sentence motion and claims that the court erred in denying her post sentence motion.

Appellant first asserts that the court's verdict was against the weight of the evidence. Although she did not specify the basis for her weight claim in her concise statement, in her post sentence motion she claimed that the witnesses for the Commonwealth were not credible and her testimony was not given enough weight. The court cannot agree.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa. Super. 2003). A challenge to the weight of the evidence concedes that there is sufficient evidence to support the verdict. Commonwealth v. Widmer, 560 Pa. 308, 774 A.2d 745, 751(2000). Therefore, the court is not obligated to view the evidence in the

light most favorable to the verdict winner. Id. Nevertheless, a new trial is awarded only when the “verdict is so contrary to the evidence as to shock one’s sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.” Sullivan, 820 A.2d at 806 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

A defendant is not entitled to relief on a weight claim merely because there is a conflict in testimony. Commonwealth v. Sanchez, 614 Pa. 1, 36 A.2d 24, 39 (2011). “Conflicts in the evidence and contradictions in the testimony of any witnesses are for the factfinder to resolve.” Commonwealth v. Lofton, 57 A.3d 1270, 1273 (Pa. Super. 2012), citing Commonwealth v. Tharp, 574 Pa. 202, 830 A.2d 519, 528 (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), citing Commonwealth v. Johnson, 542 Pa. 384, 394, 668 A.2d 97, 101 (1995), cert. denied, 519 U.S. 827, 117 S. Ct. 90 (1996). 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 give them equal weight with all the other facts is to deny justice.” Lofton, 57 A.3d at 1273, citing Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 752 (2000).

Clearly, that was not the case here. This is neither a situation in which the testimony from the Commonwealth witnesses was so inherently unreliable or contradictory that to believe such would be clear conjecture, nor a case where the testimony of Appellant was so clearly of 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 Appellant's uncle, Appellant harassed, verbally assaulted, and verbally threatened her. During her testimony, the court had an opportunity to observe her demeanor. Clearly, she was intimidated by Appellant. Moreover, her body language, her manner of answering of questions and her 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, Appellant'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.

For the most part, Appellant admitted that she made the comments attributable to her on the prison recordings. Nevertheless, she claimed she was just angry, and she never expressed those comments to Ms. Kramer in person, by telephone or via email or letter. While the court does not doubt that Appellant was angry with Ms. Kramer, Appellant's statements that she never expressed such comments to Ms. Kramer simply were not credible when compared to the victim's testimony and demeanor, as well as Ms. Guzman's testimony. Ms. Guzman testified that: (1) Appellant came to Ms. Guzman's apartment two days before her uncle's trial; (2) Appellant asked Ms. Guzman whether Ms. Kramer was going to testify against her uncle; and (3) Appellant said that if Ms. Kramer did, she was "going to get hers."

Under all of these circumstances, the court's verdict was not against the weight of the evidence

Appellant also contends that the court erred in admitting recordings of telephone conversations between Appellant and her uncle while her uncle was incarcerated at

the Lycoming County Prison. Appellant argued that the evidence was not relevant and, even if it was relevant, 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 Appellant and her uncle. The conversations illustrated through Appellant'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 Appellant 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 Appellant 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). "[E]vidence to prove motive...is relevant in a criminal case." Commonwealth v. Gwaltney, 497 Pa. 505, 514, 442 A.2d 236, 241 (1982).

Clearly, the evidence was relevant. It was relevant to Appellant's intent and Appellant's motive. This evidence not only showed Appellant's knowledge of the fact that Ms. Kramer was a witness against her uncle, but that, and not some other disagreement between Appellant and Ms. Kramer, was the reason for Appellant's statements and threats.

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 Appellant. Indeed, the evidence was highly probative, and the court fails to see how there was any danger of undue prejudice.

For the foregoing reasons, Appellant's issues lack merit and her post sentence motion was properly denied.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Kathryn Bellfy, Esquire (APD)
Martin Wade, Esquire (ADA)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)