

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1416 - 2011  
:   
vs. :   
:   
PAUL DAVID CRISSMAN, :   
Defendant :

OPINION IN SUPPORT OF ORDER OF FEBRUARY 13, 2013,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this court’s Order of February 13, 2013, which imposed a six month sentence of incarceration on one count of simple assault (physical menace), and a consecutive two-year period of probation supervision on one count of recklessly endangering another person. Defendant was also fined \$100 on a summary count of disorderly conduct, all of which punishment was imposed following Defendant’s conviction by a jury of the simple assault and recklessly endangering counts, and this court’s finding of guilt on the disorderly conduct (create hazard) charge. In his Statement of Matters Complained of on Appeal, Defendant contends the evidence was insufficient to sustain the convictions, and the conviction of the disorderly conduct charge violated double jeopardy principles.

In addressing a challenge to the sufficiency of the evidence, the court is to view all of the evidence admitted at trial in the light most favorable to the Commonwealth as verdict winner, and the verdict will be upheld if there is sufficient evidence to enable the fact-finder to find every element of the crimes charged beyond a reasonable doubt. Commonwealth v. Adams, 882 A.2d 496 (Pa Super. 2005). A charge of simple assault (physical menace) requires proof that a defendant attempted, by physical menace, to put another in fear of imminent serious bodily injury. 18 Pa.C.S. Section 2701(a)(3). A charge of recklessly endangering another person requires proof that a defendant recklessly engaged in conduct which placed or may have placed another person in danger of death or serious bodily injury. 18 Pa.C.S. Section 2705. Finally, a charge of disorderly conduct (create hazard) requires proof that a defendant recklessly created a risk of public inconvenience, annoyance or alarm by creating a hazardous condition by an act which served no legitimate purpose. 18 Pa.C.S. Section 5503(a)(4).

At trial, the Commonwealth presented the testimony of one Jacob June, who lived next

door to Defendant, that on one day in October 2011, he was standing outside, next to his dirt bike when he saw Defendant shoot a gun, heard the gunshot, and saw debris flying from the ground about twenty feet from him. Jacob testified that Defendant had pointed the gun in his direction, although not directly at him. He testified that after he ran inside the house to tell his mother, he looked out his mother's bedroom window five to six minutes after the shot and saw Defendant walking around in the area where the debris had been flying. Jacob testified that at the time of the gunshot, Defendant was about 200 feet away from him. Defendant's sister testified that she had been on the back porch tying her shoes when she heard a gunshot which sounded really close. Jacob's mother testified that she was taking a nap, the kids woke her up and told her what happened, and that she looked out her bedroom window and saw Defendant walking around. The Commonwealth also presented the testimony of a trooper with the Pennsylvania State Police Forensic Services Unit and a forensic scientist, which established that particles that are characteristic of gunshot residue were identified on samples taken from both of Defendant's palms. The court believes that this evidence was sufficient to enable the jury to find every element of simple assault and recklessly endangering beyond a reasonable doubt, and also for the court to find beyond a reasonable doubt that Defendant created a hazardous condition which recklessly created a risk of public alarm.

With respect to Defendant's contention that principles of double jeopardy prevented this court from finding him guilty of disorderly conduct after he was convicted of simple assault and recklessly endangering, the court does not agree. Each of the offenses requires proof of a fact not required by the other and the law defining each of such offenses is intended to prevent a substantially different harm or evil. *See* 18 Pa.C.S. Section 110(1)(iii)(A). Specifically, simple assault requires proof that Defendant attempted to put the victim in *fear* of imminent serious bodily injury, recklessly endangering requires proof that Defendant *placed* or may have placed the victim *in danger* of death or serious bodily injury, and disorderly conduct requires proof that Defendant created a hazardous condition which created a risk of *public alarm* (the court considered the victim's sister to have been affected separately from the victim). Further, the law defining disorderly conduct is intended to prevent harm to the public, while the laws defining simple assault and recklessly endangering are intended to prevent harm to specific persons. The court therefore believes Defendant's convictions of all three offenses

was appropriate.

Dated: July 22, 2013

Respectfully submitted,

Dudley N. Anderson, Judge

cc: DA  
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Hon. Dudley N. Anderson