

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 25 – 2013
:
vs. : CRIMINAL DIVISION
:
CHRISTOPHER A. TEMPLES, :
Defendant : Motion for Reconsideration

OPINION AND ORDER

Before the Court is Defendant’s Motion for Reconsideration, filed October 25, 2013. Argument on the motion was heard November 21, 2013.

After a bench trial on October 8 and 24, 2013, Defendant was found guilty of the sole charge against him: harassment, a summary offense, in violation of Section 2709(a)(1) of the Crimes Code. A verdict was entered October 24, 2013. In the instant motion to reconsider that verdict, Defendant contends the court could not have found him guilty of the offense based on facts different from those alleged in the Criminal Complaint. Specifically, the Complaint alleges that Defendant “did kick Donald Crowe in the face and cause a broken jaw”, but the court found Defendant guilty based on evidence that he punched Donald Crowe in the face.¹ Defendant argues that the variance in the conduct charged and the conduct which supported the verdict prejudiced him such that the verdict must be overturned. The court does not agree.

Defendant bases his argument on Commonwealth v. Taylor, 471 A.2d 1228 (Pa. Super. 1984), Commonwealth v. Logan, 501 A.2d 689 (Pa. Super. 1985), and Commonwealth v. Zullinger, 676 A.2d 687 (Pa. Super. 1996).² Defendant’s reliance on these cases is misplaced, however, as these cases all support the proposition that the *Commonwealth’s proof* is limited by the specific factual allegations in the Complaint or citation. Defendant fails to recognize that in the instant matter, there was no variance between the factual allegations of the Criminal Complaint and the proof *offered by the Commonwealth* at trial. The Commonwealth offered

¹ In explaining the verdict, the court stated that it did not find that Defendant kicked Crowe in the face beyond a reasonable doubt but that it was convicting Defendant based on evidence he punched Crowe.

the testimony of the victim's wife, that Defendant kicked the victim in the face, and the victim testified that Defendant kicked him while he was lying on the ground. The variance arose only when Defendant himself testified that although he did not kick Defendant, he did punch him.³

As the Court in Zullinger pointed out, “[a] variance between a citation or indictment and the proof at trial is not fatal if it still gives the defendant sufficient notice and does not cause surprise which is prejudicial to the defense.” Id. at 689. Here, where Defendant himself offered the proof at issue, surprise prejudicial to the defense can hardly be claimed. While the court understands Defendant's argument that he was prejudiced because had he known that he could be found guilty based on facts which differed from those contained in the complaint he might not have testified, surprise based on a misunderstanding of the law does not equate to surprise from proof offered by the Commonwealth. Only the latter can support a claim of prejudice such as would require the reversal of the conviction.

ORDER

AND NOW, this 21st day of November 2013, for the foregoing reasons, the Verdict entered October 24, 2013, is affirmed.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Peter T. Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

² Defendant also cites *Commonwealth v. Kopp*, 591 A.2d 1122 (Pa. Super. 1991), but that case involved a Bill of Particulars, which is subject to a separate rule of procedure, and there is no Bill of Particulars in the instant matter. The court did not consider *Kopp*.

³ Defendant also offered the testimony of his girlfriend that she saw Defendant punch Donald Crowe.