IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-2069-2013**
v.	:	
	:	
COREY LANIER,	:	**CRIMINAL DIVISION**
Defendant	:	

OPINION AND ORDER

Corey Lanier (Defendant) was charged with summary Harassment.[1] On February 25, 2014, a non-jury trial was held on the summary charge. This Court found the Defendant guilty of Harassment. This Court sentenced the Defendant to 90 days of incarceration. The Defendant was given credit for 86 days that he served prior to the imposition of the sentence. On March 6, 2014, the Defendant filed a Post-Sentence Motion. On April 7, 2014, this Court held a hearing on the motion.

I. Background

Police alleged that on November 30, 2013, the Defendant had an argument with the victim, Melissa Lowmiller (Lowmiller). The argument occurred in the house where the Defendant lived. At the time of the argument, the Defendant and Lowmiller were either in a relationship or had recently ended a relationship. Lowmiller testified that during the argument, the Defendant threw her onto a bed and choked her.

Paula Miller, Lowmiller's mother, testified that she was on the phone with Lowmiller during the argument. Miller testified that she heard Lowmiller gasping, then screaming, then gasping, then screaming. Miller also testified that she heard the Defendant yelling.

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[1] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same." 18 Pa. C.S. § 2709(a)(1).

The Defendant testified about the argument. The Defendant stated that on November 30, 2013, he broke up with Lowmiller, and as a result, Lowmiller started to scream and cry. He further testified that he "didn't want to deal with it anymore," so he grabbed a handful of Lowmiller's belongings and threw it out of a bedroom into the hallway. After he threw Lowmiller's belongings, Lowmiller started to hit him. The Defendant testified that he pushed Lowmiller to get her away from him. Despite the victim's testimony, the Defendant denied choking Lowmiller.

Police were called to the house where the Defendant lived. Officer Brittany Alexander of the Williamsport Bureau of Police testified that she noticed that Lowmiller's face was very red. Alexander also observed that Lowmiller was hysterical and crying. Lowmiller told Alexander that the Defendant had choked her on a bed. Alexander noticed that Lowmiller had red marks on the left, right, and center of her neck. Lowmiller told Alexander that she had neck and back pain.

Lowmiller went to the emergency room. An x-ray of Lowmiller's neck revealed no injuries, but there was testimony that an x-ray would not reveal soft tissue damage. Lowmiller was given pain medication and told not to work the next day.

In his Post-Sentence Motion, the Defendant argues that the evidence is insufficient to show that the physical contact by the Defendant against Lowmiler was with intent to harass, annoy, or alarm. The Defendant also argues that the verdict is against the weight of the evidence because the Commonwealth failed to produce evidence that the Defendant's physical contact with Lowmiller was with the intent to harass, annoy, or alarm. Finally, the Defendant argues that this Court's sentence was excessive.

II. Discussion

A. The Evidence is Sufficient to Show that the Physical Contact was with Intent to Harrass, Annoy, or Alarm

The standard for sufficiency of 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." Commonwealth v. Heberling, 678 A.2d 794, 795 (Pa. Super. 1996). "[I]t is the province of the trier of fact to pass upon the credibility of witnesses . . . . The fact-finder is free to believe all, part, or none of the evidence." Commonwealth v. Rose, 344 A.2d 824, 826 (Pa. 1975). "An intent to harass may be inferred from the totality of the circumstances." Commonwealth v. Lutes, 793 A.2d 949, 961 (Pa. Super. 2002).

The Commonwealth's evidence established that the Defendant had physical contact with Lowmiller. The Defendant was annoyed with Lowmiller at the time of the incident. The Defendant threw Lowmiller's belongings out of the room. The Defendant called Lowmiller a derogatory name. Miller testified that she heard the Defendant yelling through the phone.

In addition, Lowmiller's physical condition shows that the Defendant had physical contact with Lowmiller with the intent to harass, annoy, or alarm. Alexander observed that Lowmiller had red marks on the left, right, and center of her neck. This Court finds that touching somebody forcefully enough to leave marks on a vital area is evidence of intent to harass, annoy, or alarm. Alexander also observed that Lowmiller's face was red and that Lowmiller was crying and hysterical. The Court chose to believe the testimony of the victim over the testimony of the Defendant.

B. The Verdict is not Against the Weight of the Evidence

"The law in this Commonwealth has long been that a new trial may be ordered 'on the ground that the verdict is against the weight of the evidence, 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.'" Commonwealth v. Murray, 597 A.2d 111, 113 (Pa. Super. 1991). "The weight of the evidence is a matter exclusively for the finder of fact . . . ." Commonwealth v. Cox, 72 A.3d 719, 722 (Pa. Super. 2013).

The Defendant testified that his physical contact with Lowmiller was with the intent to get Lowmiller away from him because Lowmiller was hitting him. Even considering the Defendant's testimony, the verdict is not so contrary to the evidence as to shock this Court's sense of justice. Lowmiller had red marks on her neck, which contradicts the Defendant's testimony that he was only pushing her in self-defense. The Defendant testified that he threw Lowmiller's belongings out of the room. The Defendant testified that he called Lowmiller a derogatory name. Miller testified that she heard the Defendant yelling through the phone. The Court was satisfied that the Defendant did not merely act in self-defense but was the aggressor.

C. This Court's Sentence was not Excessive

When sentencing a defendant, "the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." 42 Pa. C.S. § 9721(b). "At least two factors are crucial to such determination – the particular circumstances of the offense and the character of the defendant." Commonwealth v. Martin, 351 A.2d 650, 658 (Pa. 1976). A trial

court must "state, on the record, the reasons for the sentence imposed." Commonwealth v. Riggins, 377 A.2d 140, 149 (Pa. 1977).

Here, the record shows that the Court considered the circumstances of the offense and the character of the Defendant. The Court discussed the violence involved in the offense. The Court stated, "[T]here's never an excuse to lay hands on anybody." N.T. February 25, 2014, p. 85. The Court called the Defendant's physical contact "unacceptable." Id. In addition, the Court considered the Defendant's prior record score of five and the Defendant's criminal history. Id. at 87. The Court was aware of the Defendant's prior convictions for Terroristic Threats, Harassment, and Resisting Arrest. Id. The Court stated, "Because this isn't [the Defendant's] first trip around the park, I'm not going to give him time served." Id. Because the Court considered the violence involved in the offense and the Defendant's criminal history, the Court's sentence was not excessive.

III. Conclusion

The Commonwealth proved beyond a reasonable doubt the elements of Harassment. The sentence imposed by the Court was not excessive. The Court considered the Defendant's history, prior record, and the nature of his prior record before imposing sentence.

ORDER

AND NOW, this _____ day of July, 2014, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion be hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: Robert Cronin, Esq.
Martin Wade, Esq.