

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : | NO. CR – 155 – 2016 |
| | : | |
| vs. | : | CRIMINAL DIVISION |
| | : | |
| KACY WOLF, | : | |
| Defendant | : | Post-Sentence Motion |

OPINION AND ORDER

Before the Court is Defendant’s Post-sentence Motion, filed December 1, 2016. Argument on the motion was heard December 21, 2016, following which the court requested the preparation of the trial transcript. That transcript was completed January 23, 2017 and the matter is now ripe for decision.

Following a non-jury trial,¹ Defendant was convicted of two counts of summary harassment in connection with an incident on October 29, 2015 involving Defendant and two others. In the instant motion, Defendant contends the verdict was against the weight of the evidence and also that her evidence of self-defense was not sufficiently rebutted by the Commonwealth.

The evidence showed that Defendant went to the residence of the two victims, the father of her child and his mother, to attempt to take physical custody of her son,² that she entered the residence without permission and that she was asked to leave. Defendant actually went to the upstairs of the home, was asked to leave “way more than once”³ by her son’s father and when she did not appear to be complying with that request, was physically escorted by him down the hall and

¹ The Commonwealth presented the testimony of the investigating police officer, the parties stipulated to consideration of the preliminary hearing transcript (at that hearing, the two victims testified) and Defendant testified.

² Defendant did not have a custody order which entitled her to take physical custody of her son at that time.

³ N.T. January 26, 2016 at p. 4.

down the stairs. According to the father, at the bottom of the steps she tried to turn around and go back up the stairs and “she lashed out” and hit both he and his mother. N.T. January 26, 2016 at p. 4 and 12. She was then forced out of the house.

Defendant admitted that she had physical contact with both of the victims. She offered the following in support of a defense of “self-defense”:

“I was throwing my arms all over the place. I did strike them both I think in their – on their face. Jared is quite a bit taller than Ang so I’m sure I hit him in his chest, neck area a couple times and I did hit them with a closed fist and an open hand, but they – I was very scared. I was trying to defend myself. I was just – there was a lot going on.”

N.T., November 21, 2016 at p. 11, and that “they were trying to force me out of the house pushing me and hitting me”. *Id.* at p. 10. The court did not find that Defendant was struck, however, only that she was physically escorted off the premises, based on the testimony of the father that Defendant had been told to leave and was “not willing to let herself out respectfully or peacefully so I had to remove her physically”, N.T., January 26, 2016 at p. 12, and Defendant’s testimony that that day she had been “fed up with” the custody situation. N.T., November 21, 2016 at p. 12.

In order to set aside a verdict as against the weight of the evidence, the court must find that the verdict is so contrary to the evidence as to shock one’s sense of justice. Commonwealth v. Dougherty, 679 A.2d 779 (Pa. Super. 1996). After reviewing the transcripts, the court remains convinced that Defendant entered the residence without permission, did not take the opportunity to leave peacefully when asked to do so, presented an agitated and aggressive stance and reacted with punches and slaps to both victims when they attempted to remove

her. That Defendant should be found guilty of harassment is not shocking, and in addition, her evidence of self-defense was not credible. Defendant is not entitled to a new trial or to a judgment of acquittal.

ORDER

AND NOW, this 24th day of January 2017, for the foregoing reasons, Defendant's post-sentence motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq. (Lycoming Reporter)
Hon. Dudley Anderson