IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

STACY MOORE	:	**No. CP-14-FC-21-20,402**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
JOHN BARCLAY,	:	
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 Order entered on July 7, 2021.

By way of background, on May 14, 2021 by agreement without admission, a Protection From Abuse (PFA) order was entered against Appellant, John Barclay. The order stated that Appellant "shall not abuse, stalk, harass, threaten, or attempt or threaten to use physical force against [Appellee] or any other protected person in any place where they might be found" and evicted and excluded Appellant from a residence in Linden, Pennsylvania. The order permitted Appellant to return to the garage of the residence on Sunday, May 16, 2021 between 1:00 and 2:00 p.m. to retrieve certain property. Appellee and her children would not be present at the residence during this period, but a third party could.

On May 16, 2021 between 1:00 and 2:00 p.m., Appellee went to Weis Markets while Appellant retrieved as much of his property from the garage as would fit in his truck. When Appellant left the property a few minutes before 2:00 p.m., the third party called Appellee and informed her that Appellant had left. Appellee left the market, got into

her vehicle, and began driving toward the residence.

As Appellee was driving home, she observed Appellant in his red Dodge Ram truck in the opposite lane of travel. Appellant's truck veered suddenly into Appellee's lane of travel. Appellee went off the road and onto the shoulder to avoid Appellant's truck. Appellant's truck sharply turned back into its lane, sped up, and drove away. Appellee stopped and called the police.

The police charged Appellant with indirect criminal contempt of the PFA order. Following a hearing held on June 3, 2021, the court found Appellant in contempt. On July 7, 2021, the court sentenced Appellant to pay the costs of prosecution and a $300 fine. Additionally, the court extended the PFA order for two years, ordered Appellant to return the garage door opener to Appellee by mail, and ordered Appellant to hire a mover to retrieve the remainder of his property from the garage.

On August 6, 2021, Appellant filed a notice of appeal. The court directed Appellant to file a concise statement of errors complained of on appeal, and Appellant complied. In his statement, Appellant challenged the sufficiency of the evidence. Specifically, Appellant asserted:

> The evidence submitted at Appellant's Protection From Abuse Contempt proceeding was insufficient to meet the Commonwealth's burden of proving that Appellant violated the terms of the Protection Order beyond a reasonable doubt.

The court cannot agree.

In determining the sufficiency of the evidence, the court must view the evidence and all inferences derived therefrom in the light most favorable to the Commonwealth as the verdict winner. *Commonwealth v. Felder*, 176 A.3d 331, 333 (Pa.

Super. 2017); *Commonwealth v. Miller*, 689 A.2d 238, 240 (Pa. Super. 1997). Credibility determinations are within the sole province of the fact-finder, who is free to believe all part or none of the evidence. *Felder*, 176 A.3d at 334; *Miller*, 689 A.2d at 240 n.2.

The parties' versions of the incident were quite similar. The only real differences were the extent to which Appellant's truck approached or entered Ms. Moore's lane of travel and whether the encroachment was intentional or accidental.

Ms. Moore testified that both front tires of Appellant's truck came into her lane, and she went off the road onto the shoulder. Transcript, 06/03/2021, at 12-13. Appellant was angry and gave her a dirty look. Id. at 14. She was scared that Appellant was going to hurt or kill her. Id. at 16. She also testified that Appellant wanted to see her wreck her vehicle because he doesn't want her to have anything; he wants to destroy her. Id.

Appellant claimed that the incident was an accident. He stated that his belongings had been pushed into a detached garage and it was "a pretty big mess." Id. at 31. Although he denied being angry, he was upset his daughter's plants were put outside and they were in pretty bad condition. Id at 32-34, 44-45. He said that there was a spare tire on the front of the truck and it was not driving very well. Id. at 36. He was trying to call his daughter to talk about her plants. Id. at 35. The area had poor cell service and the call dropped. Id. As he was trying to get his phone to redial, he was coming around a right turn and several items in the cab of the truck fell into him causing his driver's side tires to be on the centerline of the roadway. Id. at 35-36. He looked up, saw a flash coming at him, swung over into his lane completely and realized that it looked like Ms. Moore's Jeep Grand Cherokee in the other lane. Id. at 36-37. He estimated Ms. Moore was traveling around 70 miles per hour. Id. at 36. He stated, "I didn't mean to be in the other lane anyway at all. But

things were falling over on me. I'm grabbing the phone. I'm—I'm very distraught at that point in time." Id. at 37.

The court found Ms. Moore's testimony credible. The court did not find Appellant credible. There were inconsistencies in his testimony and his version simply did not make sense to the court.

Appellant testified that he was trying to get the plants to his daughter as quickly as he could, but then he stated that Ms. Moore was going around 70 miles per hour but he wasn't going terribly fast. Id. at 35-36. The court questioned Appellant about this inconsistency. Id. at 41-41. Appellant explained that he wanted to get there as quickly as possible but he wasn't driving fast. In fact, he was trying to drive somewhat gingerly but he was frustrated with the phone and things falling on him. The court was not convinced by this explanation.

At some points in his testimony Appellant indicated that the call with his daughter was dropped (i.e., terminated) because cell service in the area was bad, but at other points he claimed that he physically dropped his phone just before the items in the cab began falling into him. Id. at 35, 36.

Appellant claimed that his tires were only on the centerline and that he did not enter Ms. Moore's lane of travel but then he stated he didn't mean to be in the other lane. Id. at 35-37.

Appellant claimed that the incident occurred while he was traversing a right turn, but he could not identify a right turn. Id. at 42.

Appellant was admittedly upset. Although he claimed he was not angry, his editorializing spoke otherwise.

Finally, as argued by the Commonwealth, the set of circumstances and coincidences in Appellant's version were far too unrealistic.

The court found that Appellant's actions were not accidental, but rather were intentional. He was angry and upset, he saw Ms. Moore's vehicle, and he swerved his truck into Ms. Moore's lane of travel.

The order clearly stated that Appellant shall not abuse, stalk, harass, threaten, or attempt or threaten to use physical force against Ms. Moore or any other protected person in any place where they might be found. The definition of the term 'abuse' includes placing another in reasonable fear of imminent serious bodily injury. 23 Pa. C.S.A. §6102. Ms. Moore credibly testified that she was scared that Appellant was going to hurt or kill her. Transcript, 06/03/2021, at 16. Essentially, Appellant ran Ms. Moore off the road. By doing so, he placed her in reasonable fear of imminent serious bodily injury.

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: K. Michael Sullivan, Esquire (ADA)
Tyler Calkins, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)