

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ELEANOR CLIFFORD,	:	
	:	
Appellant	:	No. 961 WDA 2013

Appeal from the Judgment of Sentence May 8, 2013,  
Court of Common Pleas, Allegheny County,  
Criminal Division at No. CP-02-CR-0004076-2012

BEFORE: DONOHUE, OTT and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.:

**FILED JUNE 24, 2014**

Appellant, Eleanor Clifford (“Clifford”), appeals from the judgment of sentence entered in the Allegheny County Court of Common Pleas on May 8, 2013 following her conviction of summary harassment in violation of 18 Pa.C.S.A. § 2709(a)(1). Based upon the following, we affirm the judgment of sentence.

The trial court summarized the underlying facts of this case as follows:

This matter arises out of [Clifford]’s arrest on January 26, 2012 at which time she was charged with Aggravated Assault Bodily Injury – Police Officer in violation of 18 Pa.C.S.A. § 2702(a)(3)(c). At the time of trial the Commonwealth amended the charge to one count of Summary Harassment in violation of 18 Pa.C.S.A. § 2709(a)(1). The Commonwealth called Officer Christine Luffey of the City of Pittsburgh Police Department who testified that on January 26, 2012 she was at [Clifford]’s home located at 320 Matilda Street in order to assist in enforcing an order by District Justice Costa related to

the removal of numerous cats from [Clifford]'s residence. A hearing was held at the District Justice's office earlier that day and as a result Officer Luffey and others proceeded to [Clifford]'s residence to complete the removal of the cats. Upon entering [Clifford]'s home, Officer Luffey noted that [Clifford] had released a number of the cats from their cages. In addition, Officer Luffey observed that [Clifford] was upset and acting in an extremely agitated manner. Officer Luffey also saw a half gallon milk jug sitting on a counter near [Clifford]. Officer Luffey testified: 'She (Clifford) picked it up, she unscrewed the cap, took a drink, and, honestly, she had a milk mustache. I did not want to laugh, I really didn't. At that point I turned my head, and I was pretending to look for cats. The next thing I felt was, boom, off the side of my right jaw. At that point I was stunned. I looked down, and I saw a milk jug in front of my feet.' Officer Luffey testified that [Clifford] was the only other person in the room at the time. After being struck on the jaw, Officer Luffey then placed [Clifford] under arrest. Officer Luffey testified that although she was not injured, she was stunned and others who saw her shortly thereafter noted that the right side of her jaw was reddened. At the close of the Commonwealth's case, [Clifford] [sic] Motion for Judgment of Acquittal was denied.

[Clifford] then testified and acknowledged that an order had been entered by District Justice Costa to have the cats removed from her house and that Officer Luffey was in her house to enforce the order. [Clifford] acknowledged picking up the milk jug, but claimed only that she took a drink from it and then set the jug or carton on a nearby counter. [Clifford] seemed to imply that perhaps Officer Luffey was splashed by some water or other liquid that was on the counter when she placed the carton on the counter. [Clifford] denied hitting Officer Luffey with the milk jug or purposely splashing her. [Clifford] also offered portions of a video taken by a local news station related to the removal of the cats from her

house which she contended demonstrated there was no red mark on Officer Luffey's face. After consideration of all of the evidence, [Clifford] was found guilty.

Trial Court Opinion, 12/23/13, at 1-3.

Clifford was sentenced to 90 days of probation and ordered to undergo a mental health evaluation. On June 7, 2013 Clifford filed a timely notice of appeal, and on June 26, 2013 the trial court entered an order directing her to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. § 1925(b). Clifford filed her concise statement of matters complained of on appeal on July 16, 2013. The trial court filed its Pa.R.A.P. § 1925(a) opinion on December 23, 2013.

On appeal, Clifford presents the following issue for our review: "Was the evidence sufficient to establish the summary conviction for harassment as there was no evidence that Ms. Clifford acted with the intent to annoy or harass anyone?" Appellant's Brief at 5.

A claim challenging the sufficiency of the evidence is a question of law and the scope of review is plenary. ***Commonwealth v. Widmer***, 744 A.2d 745, 751 (Pa. 2000). "In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense." ***Commonwealth v. Cox***, 72 A.3d 719, 721 (Pa. Super. 2013)

(quoting ***Commonwealth v. Koch***, 39 A.3d 996, 1001 (Pa. Super. 2011)). When performing this review, “we may not reweigh the evidence or substitute our own judgment for that of the fact finder.” ***Id.*** The Commonwealth may rely solely on circumstantial evidence to support a conviction, and the trier of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence. ***Commonwealth v. Hutchinson***, 947 A.2d 800, 806 (Pa. Super. 2008). Additionally, “in applying the above test, the entire record must be evaluated and all evidence actually received must be considered.” ***Id.***

Section 2709 of the Crimes Code provides: “A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (1) strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same.” 18 Pa.C.S.A. § 2709(a)(1). The intent to harass may be inferred from the totality of the circumstances. ***Commonwealth v. Lutes***, 793 A.2d 949, 961 (Pa. Super. 2002).

Clifford challenges only the intent requirement of Section 2709(a)(1), arguing that she lacked the necessary intent to harass, annoy, or alarm, as required by the statute. Appellant’s Brief at 11. Here, the facts of the record, when viewed in the light most favorable to the Commonwealth, establish that Clifford was extremely agitated and upset at the time of the

incident with Officer Luffey due to the confiscation of numerous cats at her residence. N.T., 5/7/13, at 6-7. When Officer Luffey entered the premises to assist with removing the cats, she found Clifford ranting and raving around the kitchen. **Id.** at 7. Officer Luffey testified that she observed Clifford take a drink of milk out of a half gallon jug. **Id.** After averting her eyes to keep from laughing at Clifford's "milk moustache," Officer Luffey felt something strike her right jaw. **Id.** at 8. Officer Luffey noticed that the milk jug Clifford had been drinking from was lying at her feet. **Id.** The trial court found Officer Luffey's testimony credible. Trial Court Opinion, 12/23/13 at 3. As previously noted, the finder of fact is free to believe all, part, or none of the evidence and to determine the credibility of witnesses. **Hutchinson**, 947 A.2d at 806. Considering the totality of the circumstances, we find the evidence of record sufficient to support the inference that Clifford struck Officer Luffey with the milk jug with the intent to harass, annoy, or alarm her.

Clifford discusses several cases to support her position, but we find her arguments unpersuasive. Three of the four cases Clifford references concern convictions for summary harassment under Section 2709(a)(3), which is not implicated here, and the final case involves an entirely different crime. **See** Appellant's Brief at 12-21 (citing **Commonwealth v. Wheaton**, 598 A.2d 1017 (Pa. Super. 1991); **Commonwealth v. Bender**, 375 A.2d 354 (Pa.

Super. 1977; **Commonwealth v. Battaglia**, 725 A.2d 192 (Pa. Super. 1999); **Commonwealth v. Hock**, 728 A.2d 943 (Pa. 1999)).

Clifford relies on the following quote from **Commonwealth v. Battaglia**, 725 A.2d 192 (Pa. Super. 1999), as the “crux” of her argument: “[W]e cannot conclude the purpose of that act was to harass, annoy or alarm the officer. The officer may have been annoyed in fact, but there is no evidence, in the context of the situation or otherwise, to show appellant's purpose was to cause annoyance.” Appellant’s Brief at 18 (quoting **Battaglia**, 725 A.2d at 195). She argues that as in **Battaglia**, the fact that Officer Luffey was annoyed by Clifford’s conduct does not, by itself, establish that Clifford acted with the intent to annoy. **Id.**

Our review of **Battaglia** reveals that it is distinguishable from the present case. In **Battaglia**, the appellant was convicted of summary harassment pursuant to Section 2709(a)(3) for committing a “course of conduct” with the intent to harass, annoy, or alarm a person. Appellant was arrested after refusing to collect foliage he had blown into a neighbor’s yard with a leaf blower. **Id.** at 193. Appellant’s conviction for summary harassment was allegedly supported by three acts: he told a police officer he was going to “fucking sue”, he grabbed a pen from the officer's hand, and he “did not follow direction given.” **Id.** at 194. In reversing the conviction, this Court found that there was no basis upon which to conclude that the appellant grabbed the pen from the officers’ hand with the intent required

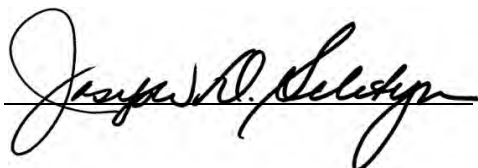
for summary harassment. We concluded that the appellant's act of grabbing the pen out of the officer's hand was *de minimus* physical contact and that there was "no evidence, ***in the context of the situation or otherwise***, to show appellant's purpose was to cause annoyance" when grabbing the pen from the officer's hand. ***Id.*** (emphasis added).

Unlike the circumstances in ***Battaglia***, in the present case there is evidence to establish that in the context of the situation, Clifford's actions were done to annoy, harass or alarm Officer Luffey. Specifically, the evidence establishes that Clifford was upset that Officer Luffey was present in her home and attempting to remove her cats. It was within the context of that situation that Clifford threw the milk jug at Officer Luffey and struck her in the jaw. N.T., 5/7/13, at 7-8. This evidence supports the reasonable inference that Clifford threw the milk jug with the intent to harass, annoy, or alarm Officer Luffey.

In conclusion, after reviewing the evidence in the light most favorable to the Commonwealth, as verdict winner, we conclude that the evidence is sufficient to sustain Clifford's conviction for summary harassment.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph R. Selinger". The signature is written in a cursive style with a horizontal line underneath the name.

J-A16003-14

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 6/24/2014