NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
UCHECHUKWU UMUNNA,	:	
Appellant	:	No. 782 MDA 2012

Appeal from the Judgment of Sentence entered March 16, 2012
in the Court of Common Pleas of York County,
Criminal Division, at No: CP-67-CR-0000656-2012.

BEFORE: PANELLA, OTT, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: Filed: January 3, 2013

Uchechukwu Umunna (Appellant) appeals from the order entered by the trial court following his conviction of indirect criminal contempt[1] for violating an order pursuant to the Protection from Abuse Act.[2] We affirm.

On August 1, 2011, Emily Umunna (Victim) obtained a final Protection from Abuse (PFA) order against Appellant, her husband. The order was to remain in effect for eight months, expiring on April 1, 2012. The parties have one minor daughter (Child). The PFA order prohibited Appellant from having any contact, directly or indirectly, with Victim, and granted Victim primary temporary custody of Child. Under the temporary custody order, Appellant's right to partial custody could be exercised twice a week for two

[1] 23 Pa.C.S. § 6114.

[2] ***See*** 23 Pa.C.S. §§ 6101-6122.

* Retired Senior Judge assigned to the Superior Court.

hours during the first 90 days of the order. The order designated a supervised location and an individual supervisor, both of which could be changed at the agreement of the parties. Any discussions or arrangements regarding custody of Child were to be directed to Victim's mother, Darcey Juzwiak. Typically this was accomplished through the Juzwiak family electronic mail (e-mail) account (family account). The address and password to this account were known to Victim and her mother, as well as the rest of Victim's family.

On March 16, 2012, the trial court held a hearing on a complaint of indirect criminal contempt filed against Appellant for alleged violations of the August 1, 2011 PFA order. The complaint alleged that on March 2, 2012, Appellant sent a threatening e-mail to Victim under the pretense of arranging visitation with Child. The e-mail was sent to the family account and copied to the parties' attorneys. It reads as follows.

> To whom it may concern!
> Given the circumstances, Denny's [restaurant] is the best I can suggest. As for the 45mins [time of visitation suggested by Victim]. That is absolutely unacceptable! Unless you are willing to give me more time with my child on our next visit or spread out into subsequent ones.
> Now, Do not be fooled, [Child] is my Daughter and I have every right to her.
> Enough with the games!
> Make suggestions that work. My point is this, if you have ceaselessly made excuse after excuse why my alternative arrangements to visit with my daughter were no good, you should be in the position to Make a counter offer! Be part of the solution for once!
> As for the unfortunate circumstances of the [family that agreed to supervise custody] not being available as they would want to

> be, they have sickness and family engagements to attend to. I would respect that! They offered to help in this ridiculous situation out of every good intention, respect them! I do and will give them as much room as I can afford to show them gratitude for their help. Mrs. Hahn is recovering from surgery, respect that!
> Know this, in all our lives at some point, we need someone to help. Understand this, you reap what you sow! If there is any shred of Christian decency remaining in you, learn to appreciate other peoples [*sic*] plight in life! It yields wisdom.
> Do not be so presumptuous!
> Now, if you think I have no right to tell you the things I have, know this. You have no right standing between a Father and his Child! I do not care who you are, WRONG IS WRONG! You learn, you move on!
> I realize that my tone might seem harsh to you, and even disrespectful, I apologize! I've had a rough six months. Recently my wife left me, took my only child from me, my world has been turned upside down and I cannot begin to tell you of my experiences. Try to understand! Someday, you might need the understanding I ask of you for yourself!
>
> Sunday, I will be at Denny's [restaurant] at 3pm with the Hahns. [Mrs. Hahn] might be there and need help getting around, that is why her husband will be there to help her. Otherwise, he will have to be there on his own. Let them be! I want to see my baby! If for 45mins then and enjoy the rest of my time with her at a later time, you decide. I want my time with my Daughter!
> 3pm, Denny's [restaurant], Sunday!
> I've made my choice, make yours!
>
> [Appellant]

Appellant's Brief, App. D (line and paragraph spacing, capitalization and punctuation exactly copied from original).

At the ICC hearing, Victim conceded that Appellant is permitted to arrange custody through the family e-mail account. N.T., 3/16/2012, at 9. However, with regard to the March 2, 2012 e-mail, Victim testified that the phrases "you reap what you sow," "now do not be fooled," "absolutely

unacceptable," and "I've made my choice, make yours" held particular significance to her because Appellant used each in the past when he was physically violent with her and Child. ***Id.*** at 7. Under cross-examination, Victim testified that she has never heard Appellant use those phrases in the course of normal conversation with other persons. ***Id.*** at 11. Moreover, Victim testified that during their marriage whenever Appellant was agitated he would refer to her in the third person, or "talk about [her] directly to [her]." ***Id.*** at 8. Thus, the reference to "my wife" contained in the e-mail made her believe the communication was directed to her. ***Id.*** Victim testified that, after reading the e-mail, she was frightened and felt "certain" that Appellant was going to be physically violent again. ***Id.*** at 7-8.

Victim's mother testified that, although she was the designated third-party for custody discussions, she did not believe the March 2, 2012 e-mail was directed to her. ***Id.*** at 18. Victim's mother indicated that Appellant tended "to talk in third person to [Victim] about [Victim]". ***Id.*** Due to the tone of the e-mail and commentary contained therein, Victim's mother believed the e-mail was directed at Victim. She further testified that after reading the e-mail, Victim was "scared and just kind of shaking, and she said she was afraid of [Appellant]. She was afraid that if she went to Denny's [restaurant] that he would physically harm her or [Child]." ***Id.*** at 15.

Following the hearing, the trial court found Appellant guilty of violating the August 1, 2011 PFA order and sentenced him to a term of six months of supervised probation. In addition, the trial court imposed a fine of $300.00 and ordered Appellant to undergo a psychological evaluation and attend domestic abuse counseling. Appellant filed a timely notice of appeal. Both Appellant and the trial court complied with Pa.R.A.P. 1925.

Appellant presents two issues for our review.

> 1. Whether the Commonwealth presented sufficient evidence to demonstrate that Appellant's e-mail contained threatening language that was directed toward the victim?
>
> 2. Whether the Commonwealth presented sufficient evidence to demonstrate that Appellant's indirect contact with the victim placed her in reasonable fear of imminent serious bodily injury?

Appellant's Brief at 4.

> Our standard of review in assessing whether sufficient evidence was presented to sustain Appellant's conviction is well-settled. The standard we apply in reviewing the sufficiency of the 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. In applying [this] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually

> received must be considered. Finally, 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. Brumbaugh, 932 A.2d 108, 109-10 (Pa. Super. 2007) (citations omitted). To establish indirect criminal contempt, the Commonwealth must prove: 1) the order was sufficiently definite, clear, and specific to the contemnor as to leave no doubt of the conduct prohibited; 2) the contemnor had notice of the order; 3) the act constituting the violation must have been volitional; and 4) the contemnor must have acted with wrongful intent. ***Id.*** 932 A.2d at 110 (citation omitted).

Appellant concedes the first two elements of indirect criminal contempt. Appellant's Brief at 14. However, Appellant contends that the final two elements have not been established because (1) Appellant's e-mail was sent for the purpose of arranging visitation, which is permitted contact under the order, and (2) the content of the e-mail is not threatening. Appellant's Brief at 14-15.

The trial court found credible the testimony of Victim and her mother and held that the language of the e-mail, while appearing innocuous, went beyond the necessary language to schedule visitation and "contained a 'code' to which only [Victim] could relate." Trial Court Opinion, 5/9/2012, at 3 (unnumbered). Thus, the trial court determined that Appellant's intent was to threaten Victim. ***Id.*** Based on our standard of review, we are constrained to agree with the trial court's assessment.

With respect to Appellant's second issue on appeal, it is not necessary that Appellant's contact "place [Victim] in reasonable fear of imminent serious bodily injury." Appellant's Brief at 13. Rather, indirect criminal contempt requires that Appellant act of his own volition and with wrongful intent. ***See Brumbaugh, supra.***

For the foregoing reasons, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.