

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	Case No.: 0005005254
)	
JOYCE ROMAN)	

Date Submitted: January 31, 2001
Date Decided: February 5, 2001

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ORDER

1. Trial took place in the Court of Common Pleas on January 31, 2001 in the above-captioned matter on an alleged violation of 11 Del. C. § 601, as amended. The Information read as follows:

JOYCE ROMAN, on or about the 6th day of May, 2000, in the County of New Castle, State of Delaware, did intentionally touch another person, either with a member of his body or with any instrument, knowing that he [sic] was thereby likely to cause offense or alarm to such person, by striking Allison Claxton.

2. Prior to trial, without objection by the State, the Court entered pursuant to CCP Crim. R. 29(a) a Dismissal Order entering a Judgment of Acquittal on an alleged violation of 11 Del. C. § 823.

The Facts

3. The following witnesses testified by the State. Alice Faye Claxton ("Claxton") testified on May 6, 2000 that she came in contact with the defendant at her next-door neighbor's house, located at 46 Iowa Road, Wilmington, Delaware, ("the premises") in the County of New Castle at approximately 8:30 on May 6, 2000. Claxton testified that she spoke with Billie Jean Sheridan ("Sheridan"), the owner of the subject premises on that date, at approximately 8:30 who was then uncontrollably "crying and upset." Claxton testified that when she entered the premises and observed the defendant, Joyce Roman ("Roman"), enter the premises with her arms raised and then strike her with an open fist two (2) times, and then push Claxton up against a wall. Claxton testified that she also twisted her foot after the defendant struck her in the face. Claxton further testified she has had no contact with the defendant since May 6, 2000. She testified she felt "stressed and upset" after being struck by Roman and began crying after the incident.

4. Billie Jean Sheridan was duly sworn and testified as follows. Sheridan testified that she had "scant memory" of the incident that allegedly occurred on May 6, 2000 and only overheard Claxton and Roman arguing at the premises. Sheridan testified that she heard the door open but she could not actually see what happened "and then Joyce left." On cross-examination Sheridan testified she was "upset" and had

asked Roman to retrieve items from the shed approximately three (3) times with no return call or response by Roman.

5. Sheridan testified she spoke to the police after calling 911 because she was “freighted and excited” and heard both Claxton and Roman “hollering and screaming three to four times.” Sheridan testified that the New Castle County Police arrived she gave the Police a written statement.

6. Pursuant to D.R.E. 613, the State introduced extrinsic evidence of Claxton’s written statement to the police which included, inter alia, confirmation of the facts set forth in the record as testified by Claxton. The statement also indicated, inter alia, that Sheridan told Police that Roman struck Claxton on or about the face with her open fist after arguing and screaming with her.

7. The defendant, Roman, was duly sworn and testified. She testified that Claxton grabbed her left arm first when she first entered the Sheridan premises and she then pushed Claxton back towards the door. Roman denies ever punching Claxton or hitting her with a closed fist. Roman testified that she “pulled her arms away” and then pushed the door back because Claxton would not let her enter the premises. Roman denied at trial that she ever “got violent” with Claxton. She testified she has known Sheridan for approximately one-half (1/2) years and always had been allowed to enter the premises previous to May 30, 2000 without a problem.

The Law

8. The State has the burden of proving each and every element of the offense beyond a reasonable doubt. 11 Del. C. § 301; *State v. Matusfeske*, Del. Supr., 215 A.2d 443 (1965). In making that determination, the Court may consider all direct and circumstantial evidence.

9. The offense of Offensive Touching is defined as when “a person intentionally touches another person, either with a member of his body or with any instrument, knowing that he is likely to cause offense or alarm to such person.” The question whether the person knows he or she is likely to cause offense or alarm entails a review of all the circumstances, including the victim’s state of mind. However, the ultimate conclusion as to the “character” of the “touching act” may be reached without considering the quality of the victim’s act or acts. *Blaschowitz v. Pennington*, Del. Ch. 1987 LEXIS 401 (1986), C.A. No. 85C-MY-125, Ohara, J. (February 17, 1987).

10. The Court is the trier of fact and the sole judge of the credibility of each fact witness at trial. If the Court finds the evidence to be in conflict, it is the Court’s duty to reconcile these conflicts and if reasonably possible, make one harmonious story of it all. If the Court cannot do this, the Court must give credit to the portion of the testimony, which in the Court’s judgment, is most worthy of credit and disregard any portion of the testimony which in the Court’s judgment is unworthy

of credit. In performing this task, the Court takes into consideration the demeanor of each fact witness, their apparent fairness in giving their testimony, their opportunities and hearing and knowing the facts from which they testified and any basis or interest they may have concerning the nature of the case.

Opinion and Order

11. Based upon the record before the Court, the Court finds the State has proven the instant charge of Offensive Touching beyond a reasonable doubt. 11 Del. C. § 301. The Court basis this finding on the fact of the extrinsic evidence entered into the record pursuant to D.R.E. 613 indicating Sheridan gave a contemporary statement to the New Castle County Police on the date charged in the Information, May 6, 2000, confirming the facts testified at trial by Claxton. Claxton testified that she was struck in the face on two (2) occasions. Claxton was a very credible witness and the Court so finds that her testimony is worthy of most credit in the record and was most convincing and credible.

12. The Court finds all three (3) elements of the offense, 11 Del. C. § 601 enumerated above have been proven beyond a reasonable doubt. 11 Del. C. § 301; *State v. Matushesfke*, Del. Supr., 215 A.2d 443 (1965). Specifically, the Court finds there was (1) an intentional touching of Claxton by the defendant; (2) with a member of Roman's body (her fist); and (3) Roman knew that such intentional touching was likely to

create offense or alarm to another person. 11 Del. C. § 231(b); *Blaschwicz v. Pennington*, supra; *Saeed Hassan v. State*, 1999 Del. Supr., Lexis 544, Herlihy, J. (December 8, 1999). The Court bases the finding of proof beyond a reasonable doubt of the third element on the totality of circumstances presented in the record at trial. 11 Del. C. § 301.

13. The Court hereby enters a finding of GUILTY, imposes a One Hundred Dollar (\$100.00) fine plus 18% to the Victim's Compensation Fund, costs of Thirty Dollars (\$30.00), One Dollar (\$1.00) Video Phone Fee and a blanket NO CONTACT ORDER FOR A PERIOD OF TWELVE (12) MONTHS with Allison Claxton by the defendant.

IT IS SO ORDERED THIS 5th DAY OF FEBRUARY, 2001.

JOHN K. WELCH
ASSOCIATE JUDGE