IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PENNSYLVANIA, Plaintiff	:	
v.	:	NO. 00-10,302
MIRIAM LOGUE, Defendant	:	

O P I N I O N
Issued Pursuant to Pa. R.A.P. 1925(a)

Miriam Logue has appealed her conviction of Disorderly Conduct after a non-jury trial before this court. The sole issue preserved for appeal is whether the evidence established that she recklessly caused public inconvenience, annoyance, or alarm when no members of the public were present or harmed.

Findings of Fact

The court finds the testimony of Officer Norman Cowden, Chief of Police for the Borough of Duboistown, to be credible, and finds the following.

On 5 November 1999 at 11:55 A.M., Officer Cowden was driving down Shaffer Street near Riverside Drive in Duboistown when he saw two dogs running loose. From many previous experiences, he recognized the dogs as belonging to Ms. Logue. While passing Mrs. Logue's home, Officer Cowden spotted Ms. Logue so he stopped, rolled down his window on the passenger side, and told her to go get her dogs. She got very upset and started yelling very loudly, accusing the officer of following her around and harassing her. After giving Ms. Logue some warnings, Officer Cowden told her she would be receiving two citations for her dogs running loose. Ms. Logue then called the Officer a rotten son of a bitch and used obscene language. When Officer Cowden warned her that she would be arrested for disorderly conduct, Ms. Logue ran toward the police car, hollering and screaming. She stopped beside

the driver's side and shoved her hands into the window yelling, "If I'm so bad, lock me up." Officer Cowden pushed her away by opening the car door. He told her to hold her voice down and get back, but she failed to do so.

After he succeeded in getting Ms. Logue away from him, Officer Cowden told Ms. Logue that she was pushing things to a misdemeanor disorderly conduct charge, and all he wanted her to do was to get her dogs and go into her house. Ms. Logue continued screaming, and eventually Officer Cowden got back into his car and pulled forward. He then heard her scream, "You rotten no good son of a bitch, you ran over my foot," and saw her hopping around the street. Officer Cowden got out to render aid, but Ms. Logue then walked toward her home, obviously unharmed. The entire incident lasted about ten minutes.

During this incident Ronald Muckelmann, an appliance repairman, was driving down the street on his way to a service call. Mr. Muckelmann was forced to stop and wait because Officer Cowden was in his lane of travel. Although he witnessed the incident, Mr. Muckelmann could not hear what was being said because the windows of his vehicle were rolled up and his radio was on.

Discussion

In determining whether the evidence is sufficient to convict the defendant, a court must view the evidence presented, along with all reasonable inferences, in the light most favorable to the Commonwealth. Commonwealth v. Taylor, 324 Pa. Super. 420, 424, 471 A.2d 1228, 1229-30 (1984).

The statute under which Ms. Logue was convicted is 18 Pa.C.S.A. §5503(a)(2):

> A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: . . .
> (2) makes unreasonable noise;
> (3) uses obscene language, or makes an obscene gesture . . . .

"Public" is defined as:

> Affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

Ms. Logue claims she cannot be convicted of disorderly conduct because there is no evidence that any "public" was present and put at risk, and because she knew no one was around at the time of her misconduct. Therefore, she reasons, she cannot have been reckless in risking harm to others.

The first problem with this argument is that the statute does not require a risk of harm. It requires a risk of inconvenience, annoyance, or alarm. The second problem is that a member of the public was present, Mr. Muckelmann, and that he was inconvenienced and possibly annoyed because he was delayed in getting to his job site because of the incident.

But more fundamentally, Ms. Logue's argument is based on the obviously erroneous belief that a member of the public must be present and affected in order to recklessly create a risk of public inconvenience, annoyance or alarm. Such a conclusion is ridiculous, for the very essence of creating a *risk* of inconvenience, annoyance, or alarm is to create the circumstances under which such a result *might* occur. Naturally, one may recklessly create such a risk by making unreasonable noise while *in public* if, as here, there was a chance that members of the public would arrive during the incident.

Ms. Logue made unreasonable noise and shouted obscenities at midday, while on a public street in a residential neighborhood. Shaffer Street is not some isolated country road; it is a frequently trafficked street on which cars or pedestrians could have arrived at any moment. Furthermore, the incident lasted ten minutes–plenty of time for people to show up.

The requirement of being in public when engaging in the disorderly conduct was emphasized in the case of Commonwealth v. Weiss, 340 Pa. Super. 427, 490 A.2d 853 (1985), where the defendant's

misconduct occurred inside her home, and not in public.[1] Therefore, there was insufficient evidence from which to infer that the defendant consciously disregarded a risk that public alarm or annoyance would result from her conduct. Id. at 435. A similar conclusion was reached in Commonwealth v. Coon, 695 A.2d 794 (1997), where the defendant shot four bullets from his front porch onto his neighbor's property, which was in a rural area, located seven hundred feet from the defendant's residence and two hundred and fifty feet from the closest residence.

In the case before this court, by contrast, the entire incident took place in public. Because Ms. Logue was aware she was on a public street when she created unreasonable noise, the court can certainly infer that she consciously disregarded the risk that her behavior would cause public inconvenience, annoyance, or alarm. She cannot get off the hook simply by arguing that no one happened to be there at the time, or that no one suffered inconvenience, annoyance, or alarm. That only means that no harm of this type occurred–it does not mean that no risk was created.

Nor can Ms. Logue escape conviction because she directed her behavior solely toward the officer, Commonwealth v. Hughes, 270 Pa. Super. 108, 410 A.2d 1272 (1979), or because she believed her behavior was justified. Commonwealth v. Hughes, 270 Pa. Super. 108, 410 A.2d 1272, 1274 (1979).

The record shows that Ms. Logue, her dogs, and the Duboistown law enforcement officials have a lengthy history together. Evidently, Ms. Logue believes she is being unfairly targeted for persecution. That, however, is not relevant to the case before this court. Ms. Logue is clearly guilty of Disorderly Conduct, and must pay the consequences. If Ms. Logue sincerely believes she is the unfair target of law

[1] Contrary to the defendant's assertion in her brief, the Weiss court's holding was not based on the fact that no one was around. In fact, a neighbor who lived fifteen or twenty feet away heard the yelling. The defendant similarly distorts the holding in Commonwealth v. Hock, 728 A.2d 943 (Pa. 1999), by asserting it was based on the fact there were no bystanders present, when in fact the holding centered on the defendant's remark to the police, which did not rise to the level of disorderly conduct.

enforcement, she would be well advised to keep her dogs on leashes and refrain from further entanglements with the police.

BY THE COURT,

Date: 9/19/00

Clinton W. Smith, P.J.

cc: Dana Stuchell Jacques, Esq.
Hon. Clinton W. Smith
Marc Drier, Esq.
District Attorney
Gary Weber, Esq.