

Commonwealth v. Balcom (2024). Judge Dubow authored memorandum opinion.

Holding: The Court vacated defendant's harassment conviction and remanded the case for a new trial. Defendant had been convicted in a bench trial after posting signs near her neighbor's property expressing anti-transgender views.

Analysis: The Court found that the trial court violated the defendant's Sixth Amendment right to confront witnesses by prohibiting her from cross-examining the Commonwealth's sole fact witness, the alleged victim. The Court found that while the trial court had discretion to impose reasonable limits on cross-examination, completely barring such cross-examination was an abuse of discretion and a violation of constitutional rights. Additionally, the Court rejected the claim that the defendant had waived right to a new trial by not objecting, finding that the trial court had improperly told the defendant that, as a pro se defendant, she could not object. "Early in the trial, Appellant asked the court if she could object. The court responded '[n]o, you're not an attorney[,] then reiterated, '[y]ou're not an attorney. You don't get to object[,]'" (p.2). The Court held that this was not a harmless error as the conviction rested entirely on the victim's testimony of which the defendant was unable to cross-examine.

Background: "...Sean O'Donnell ("Victim") lives with his husband Todd Collier, their sons, and their daughter, K.H., **who is transgender**" (p.1) "...Mr. Collier was parking his car on the street near their home after picking up their sons when Appellant, who was in her car, displayed a sign in the rear window of her car that said, 'only women can be mothers N.T. Trial, 4/21/23, at 36; Ex. 3' The next evening, Victim and his family returned home to find that Appellant had placed a large sign on the fence facing their back yard, and K.H.'s bedroom window, that said "'transing" kids is abuse and homophobia[.] N.T. Trial at 24." (p. 2). The sign was only visible to few neighbors. The victim filed a private criminal complaint against the appellant, citing the backyard sign and alleging that she had been harassing his family for two years. As a result, the Commonwealth charged the appellant with harassment.