

CR13-0200821 –T : SUPERIOR COURT
CR14-0675616 -T

STATE : JUDICIAL DISTRICT OF
MIDDLETOWN

V. : OCTOBER 24, 2014

EDWARD TAUPIER

STATE’S BRIEF REGARDING THE PROTECTIVE ORDER

This brief addresses two issues that were raised at the October 17, 2014 hearing regarding the continued need for a criminal protective order for the defendant’s wife and two children. The hearing was requested by the defendant’s former counsel, John Donovan, pursuant to *State v. Fernando A*, 294 Conn 1 (2008). *Fernando A*, requires the court to hold a subsequent evidentiary hearing in which the state must prove “by a fair preponderance of the evidence” that the order is still needed provided the defendant requests a Fernando hearing “at the initial hearing.” *Fernando A*, 294 Conn 1, 7, 12-13. Before receiving evidence regarding the ongoing need for the protective order, the court, Honorable David P. Gold presiding, asked the parties to brief the following two threshold issues:

1. Did the court have the authority to issue the September 4, 2014 protective order in either of the two criminal cases?
2. Did the defendant waive his right to have a hearing if he did not make a request for a subsequent hearing at the *initial* hearing?

I. Procedural Background

a. Case CR13-0200821

In the criminal case bearing docket number CR13-0200821, the defendant, Edward Taupier, was arrested via warrant on May 22, 2013, and charged with one count of voyeurism with malice under General Statutes § 53a-189a(a)(1) and one count of disseminating voyeurism material under General Statutes § 53a-189b. The charges stemmed from the defendant surreptitiously videotaping his wife while she was completely naked and posting it on the internet via a website called VIMEO.¹ The video was posted on July 30, 2012.

The defendant was initially arraigned on the two Class D felony charges in the Middletown Superior court on June 11, 2013. On September 4, 2014, the State sought a criminal protective order for the defendant's wife, Tanya Taupier and her two minor children. One of the defendant's counsel, Jeffrey Jelly, neither objected to the protective order nor requested a *Fernando* hearing to contest it in the future. Absent objection, the court issued a criminal protective order under CR13-020082.²

On September 15, 2014, the defendant's other counsel, John Donovan, filed a written request for a *Fernando* hearing. The hearing date was scheduled for October 17, 2014. On that date, the court granted four motions to quash subpoenas that the defendant issued. The court asked the parties to file simultaneous briefs by October 24, 2104 regarding the validity of the protective order and whether or not the

¹ The defendant and his wife are presently going through acrimonious divorce proceedings that are yet to be finalized. The wife had no knowledge of the nude video and never consented to its internet dissemination.

² It is unclear but the order may have been issued initially with no docket number and then later with both docket numbers. The State's has a copy of the order for both cases.

defendant had waived his right to a hearing if he failed to initially request it on September 4, 2014. Responsive briefs are due on October 31, 2014.

b. Case CR14-0675616

In the criminal case bearing docket number CR14-0675616, the defendant, Edward Taupier, was arrested via warrant on August 29, 2014, with a cash bond of \$35,000, which he posted on August 30, 2014. He was charged with one count of threatening in the first degree under General Statutes § 53a-61aa and one count of harassment in the second degree under General Statutes § 53a-183(a)(2). The charges stemmed from an email the defendant had disseminated to multiple persons regarding family court Judge Elizabeth Bozzuto. Although the email was not sent directly to Judge Bozzuto, one of the recipients who was alarmed by the content, reported it to a Hartford legal aid attorney and then later to the police. Judge Bozzuto was one of the judges who presided over the divorce/child custody proceedings in Hartford in the civil matter of *Tanya Taupier v. Edward Taupier*, docket number HHD-FA12-4065159.

On September 2, 2014, the defendant was arraigned in Hartford. On that same day, the State made an oral motion to increase the defendant's bond. The motion was based in part upon the fact that police had seized fifteen (15) firearms, ten thousand-three hundred and sixty nine (10,369) rounds of ammunition and sixty-four pistol/rifle magazines of various calibers from the defendant's Cromwell home via a risk warrant on August 29, 2014. Honorable Joan Alexander increased the defendant's bond to \$75,000, which he posted. The defendant's conditions of release included: 1) bond to be posted at court; 2) electronic monitoring (24/7 lockdown except for court

appearances or medical emergencies); 3) No contact with Judge Bozzuto or her children, stay 1,000 feet from her residence; 5) do not possess firearms; 6) surrender passport to the clerk's office; and 7) submit to random searches of person, residence, vehicle, etc. The case was then transferred to Middletown court.

II. Argument

a. Issue # 1 – Did the court have the authority to issue the protective order in either case?

After researching the relevant statutory and case law, the undersigned counsel for the State unfortunately finds no authority to support the issuance of a criminal protective order for Tanya Taupier and her two children under either of the defendant's two cases. General Statutes § 46b-38c (d) and (e) allow a Superior Court judge to issue a protective order for the victim in cases of "family violence." "Family violence" and "family violence crimes" are defined under General Statutes § 46b-38a (1) and (3), respectively. A court may also issue a protective order for the victim under General Statutes § 54-1k if a person is arrested for the following crimes: stalking, harassment, sexual assault, risk of injury to or impairing the morals of a child. Much to the State's surprise and chagrin, neither of these provisions appears to cover the victim, Tanya Taupier and her two children.

General Statutes § 54-82r, which allows a protective order to issue for a witness is also inapplicable to the two cases involving the defendant. Section 54-82r allows the imposition of a protective order after an evidentiary hearing if the court "finds by a preponderance of the evidence that harassment of an identifiable witness in a criminal case exists or that such order is necessary to prevent and restrain the commission of a

violation of section 53a-151 or 53-151a.” Sections 53a-151 and 53a-151a involve tampering with a witness or threatening a witness.

General Statutes § 46b-38c (d) provides in pertinent part as follows:

In all cases of family violence, a written or oral report that indicates whether the parties in the family violence case are parties to a case pending on the family relations docket of the Superior Court and includes recommendation of the local family violence intervention unit shall be available to the judge at the first court date appearance to be presented at any time during the court session on that date. A judge of the Superior Court may consider and impose the following conditions to protect the parties, including, but not limited to: (1) Issuance of a protective order pursuant to subsection (e) of this section. . . .

General Statutes § 46b-38c (e) provides in pertinent part as follows:

A protective order issued under this section may include provisions necessary to protect the victim from threats, harassment, injury or intimidation by the defendant, including but not limited to, enjoining the defendant from (1) imposing any restraint upon the person or liberty of the victim, (2) threatening, harassing, assaulting, molesting, or sexually assaulting the victim, or (3) entering the family dwelling or the dwelling of the victim. . . .

General Statutes § 46b-38a (1) defines “family violence” as follows:

“Family violence” means any incident resulting in physical harm, bodily injury or assault, or an act of threatened violence that constitutes fear of imminent physical harm, bodily injury or assault, including, but not limited to, stalking or a pattern of threatening, between family or household members. Verbal abuse or argument shall not constitute family violence unless there is present danger and the likelihood that physical violence will occur.

General Statutes § 46b-38a (3) defines “family violence crime” in pertinent part as follows:

“Family violence crime” means a crime as defined in section 53a-24³, other than a delinquent act as defined in section 46b-120, which, in addition to its other elements, contains as an element thereof an act of family violence to a family or household member

³ General Statutes § 53a-24 provides that “[t]he term “crime” comprises felonies and misdemeanors.”

In applying the statutory provision of 46b-38a (1), (3), and 46b-38c (d) and (e), it's evident that despite the fact that Tanya Taupier is the victim of the voyeurism case, those crimes don't meet the definition of "family violence" or "family violence" crimes. Additionally, she's not a victim in the threatening case involving Judge Bozzuto and all of the provisions outlining protective orders pertain to the victim, his or her "family or household member" under General Statutes § 46b-38a (2), or the victim's pet. Moreover, "the ship had sailed" on issuing a protective order in the voyeurism case because even if it did apply, 46b-38c (d) requires the court to impose the protective order "at the first court date appearance."

General Statutes § 54-1k (a) provides in pertinent part as follows:

Upon the arrest of a person for a violation of subdivision (1) or (2) of subsection (a) of section 53-21, section 53a-70, 53a-70a, 53a-70c, 53a-71, 53a-72a, 53a-72b or 53a-73a, or any attempt thereof, or section 53a-181c, 53a-181d or 53a-181e, the court may issue a protective order pursuant to this section. Upon the arrest of a person for a violation of section 53a-182b or 53a-183, the court may issue a protective order pursuant to this section if it finds that such violation caused the victim to reasonably fear for his or her physical safety.

The voyeurism charges (Sections 53a-189a and 53a-189b) in docket number CR13-0200821 are not covered under General Statutes § 54-1k (a). Accordingly, a protective cannot be issued in that case under those provisions. While there is a threatening charge in docket number CR14-0675616, the identified victim in that case is Judge Bozzuto, not Tanya Taupier and her two children. Thus, section 54-1 k (a) doesn't apply in that case either. In short, a criminal protective order should not have issued in either case.

Despite the fact that no full protective order can be issued for Tanya and her two children, to date, she fears for her safety as well as her children's. In the past the

defendant has made threats to kill her, the two children and then kill himself. A large amount of firearms and ammunition was seized from his residence less than two months ago on August 29, 2014. On August 23, 2014, he sent an alarming email concerning Judge Bozzuto. The content was disturbing and contained very detailed information about Judge Bozzuto's home. The email described the location and layout of her residence. The email outlined the dimensions of the residence's outside area which would provide ideal 'cover and concealment' at 245 yards away from her master bedroom at the nearby cemetery. The e-mail described in detail a bullet's trajectory from a shooting distance of 250 yards. The email said "unless you sleep with level 3 body armor or live on the ISS (international space station) you should be careful of actions." The e-mail also described the defendant as having 60 round firearm magazines "falls to the floor and im dying (sic) I change out to the next 30rd"

Pursuant to 54-64f(b), the court may impose "different or additional conditions upon the defendant's release" if after an evidentiary hearing, the court "finds by clear and convincing evidence that the defendant has violated reasonable conditions imposed on the defendant's release it may impose different or additional conditions upon the defendant's release.

Past pretrial supervision reports indicated that the defendant had been noncompliant with the charging requirements of his GPS. Recent reports do show full compliance. In the future, the State will likely seek an added condition of the defendant's release to limit contact with Tanya and his children to only the arranged child visits. The State recognizes that today, the court carved out exceptions to the protective order to allow for child visitation as set by the terms of the family court.

2. Did the defendant waive his right to have a hearing if he did not make a request for a subsequent hearing at the *initial* hearing?

Given the fact that the protective order should not have issued in either case, the question of whether the defendant waived his right to a *Fernando* hearing appears moot. If for some reason the court finds the order to be valid, the State would submit that the defendant waived his right to contest the order by not requesting a *Fernando* hearing on the initial date of its issuance on September 4, 2014.

In **State v. Fernando A**, 294 Conn 1, 18 (2008), our state supreme court held as follows:

[W]e conclude that §§54-63c(b) and 46b-38c permit the trial court to issue a criminal protective order at the defendant's arraignment after consideration of oral argument and the family services report. We also conclude that the trial court is required to hold, **at the defendant's request made at arraignment**, a subsequent hearing within a reasonable period of time wherein the state will be required to prove the continued necessity of that order by a fair preponderance of the evidence, which may include reliable hearsay, and the defendant will have the opportunity to proffer relevant evidence to counter the state's case in support of the criminal protective order through his own testimony or that of other witnesses. (Emphasis added)

While the request for a protective order wasn't made at the arraignment, the *Fernando A* court also concluded "that the trial court is required to hold, at the defendant's request made at the initial hearing, a subsequent hearing within a reasonable time . . ." *Id.* at 7. Under *Fernando A*, the defendant's written request for a hearing made on September 15, 2014, ten days after the initial order was issued, is untimely. Accordingly, he has waived any right to have a hearing.

THE STATE OF CONNECTICUT

By: _____

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CERTIFICATION

I hereby certify that a copy of the foregoing was emailed to counsel for the defendant, Rachel Baird, Esq., 8 Church Street, Suite B Torrington, CT 06790 rbaird@rachelbairdlaw.com on October 24, 2014.

BRENDA HANS, Assistant State's Attorney