

HON. JAMES A. HAYNES
District Judge

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FILED OCT 29 2015

SHIRLEY E. FAUST, CLERK
By *[Signature]*
Deputy
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MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

STATE OF MONTANA, Plaintiff, vs. WILLIAM M. WINDSOR, Defendant	Cause No. DC 2014-509 Department No. 3 OPINION AND ORDER -- COUNTS I, II, IV DISMISSED
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Defendant William Michael Windsor ("Windsor") was charged by the State of Montana ("State") on October 3, 2014 with having committed five (5) violations of a temporary order of protection issued on August 23, 2013 ("8/23/13 TOP"), alleging as follows:

1. Count I, on or about May 4, 2014 Windsor published an article online "which mentioned Sean Boushie three times."
2. Count II, on or about July 4, 2014 Windsor published an article online "which mentioned Sean Boushie once."
3. Count III, on or about October 2, 2014 Windsor failed to release control of a website to Sean Boushie.¹

¹ The State has lodged a proposed Amended Information which expands the time period in Count III to "between August 24, 2013 through October 2, 2014 (Doc. #122).

4. Count IV, on or about December 30, 2013 Windsor "posted Sean Boushie's name on Twitter."
5. Count V, on or about the 6th day of February, 2014 Windsor "emailed Claudia Denker-Eccles, Associate Counsel for the University of Montana."

Windsor challenges the validity of the 8/23/13 TOP. Windsor also has motions pending to dismiss each of these Counts I-V. (Docs. #99, 100, 102, 104, & 105). Those matters are addressed below.

BACKGROUND

On August 23, 2013, Missoula Municipal Court Judge Sam Warren granted the temporary order of protection at issue to Sean Boushie (and his wife) against William Windsor. *Msla. Mun. Ct. Cause OP 293-00198*. Msrs. Windsor and Boushie had engaged in "cyber-blog" exchanges between Montana and Georgia. Boushie sent Windsor's ex-wife a cease and desist letter when Windsor's cyber-harassment escalated.² This apparently triggered Windsor to travel from Georgia to Montana, carrying a firearm, to confront Boushie at his place of employment (University of Montana) as well as to taunt and intimidate Boushie's wife at their home address. An evidentiary hearing on the 8/23/13 TOP was set for September 9, 2013, pursuant to §40-15-202, MCA. On August 27, 2013, Windsor appealed the 8/23/13 TOP to the Fourth Judicial District Court, Missoula. Also, on August 27, 2013, Windsor filed a motion to continue the evidentiary hearing for September 9, 2013 because of his travel needs. He also filed a motion for discovery, a motion for mental health examination of Sean Boushie, and a request for jury trial.

² Windsor's ex-wife apparently was the legally registered owner of the website, lawlessamerica.com, while Windsor ran the website. Boushie claimed that Windsor also cyber-harassed Boushie on Windsor's other websites, www.seanboushie.com and www.lawlessamerica.org, as well as several facebook accounts, billwindsor1, lawlessamerica, and lawlessamerica-montana.

District Court Judge Karen Townsend assumed jurisdiction of Windsor's appeal, and on September 11, 2013 denied his motions, set a briefing schedule and continued the 8/23/13 TOP "in full force and effect until modified." *Missoula Fourth Judicial District Court Cause No. DV 13-969*.

District Court Judge John Larson assumed jurisdiction September 12, 2013. On October 1, 2013 Judge Larson issued an order extending the briefing schedule and continuing the 8/23/13 TOP in effect. On October 16, 2013 Windsor filed a Petition for Extraordinary Writ and Motion to Stay in the Montana Supreme Court. The Supreme Court denied Defendant's Writ. On November 14, 2013 Judge Larson issued an order affirming the 8/23/13 TOP and remanded the case to Municipal court for further proceedings, stating: "The TOP shall remain in full force and effect until modified, if at all, by that Court." After remand, Windsor filed several motions for discovery and a mental health examination and a demand for jury trial in Municipal Court.

Concurrently, in the District Court, Windsor attempted to file a Motion to Reconsider which Judge Larson denied on November 20, 2013. On November 25, 2013, Windsor entered a notice of appeal in District Court and on December 14, 2013 Windsor filed a Notice of Appeal in the Montana Supreme Court.

On June 10, 2014 the Montana Supreme Court affirmed Judge Larson's decision upholding the 8/23/13 TOP. *Boushie v. Windsor*, 2014 MT 153, 375 Mont. 301, 328 P. 3d 631. A remittitur was filed on July 11, 2014 and the case was returned to Municipal Court on July 14, 2014. On July 15, 2014 Municipal Judge Warren ordered an evidentiary hearing for July 30, 2014, which order included: "The protection order issued on 8/23/2013, is still in full force and effect." On July 28, however, Petitioner Sean Boushie, through his attorney, removed this matter back to the District Court. *Fourth Jud'l Dist. Ct. Cause No. DR 14-503*. On September 23, 2014 the District Court set an evidentiary

hearing date for December 8, 2014 . . . “to determine whether Boushie’s TOP against Windsor should be made permanent.” This order contains no statement about continuing the 8/23/13 TOP in effect until the hearing, however, §40-15-302(3) MCA addresses this issue:

(3) If a temporary order of protection or an order of protection issued by a court of limited jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless modified by the appellate court.

A series of continuances occurred. No evidentiary hearing was never held. On February 12, 2015 Petitioner Boushie requested the dismissal of the 8/23/13 TOP. Judge Larson ordered the 8/23/13 TOP dismissed on February 20, 2015.

A copy of the 8/23/13 TOP is attached.

DISCUSSION

This Court ordered a four day jury trial on the above listed criminal charges to commence on January 4, 2016 (January 4, 5, 6 & 8, 2016). Defendant Windsor has continued to raise a challenge to the validity of the 8/23/13 TOP in this Court since at least January 2015 (Doc. #7). Windsor’s intermittent chirpings on this issue of validity overlook that the Montana Supreme Court has previously discarded this issue as irrelevant.

Windsor’s appeal raises at least six issues with many subparts, most of which are without merit. Rule 12(b)(b) of the Montana Rules of Appellate Procedure provides: “Parties re encouraged to limit the number of issues to 4 or fewer.” From the issues Windsor has presented for our review, we have distilled the relevant issues to two:

1. Did the District Court abuse its discretion in affirming the Municipal Court TOP; denying Windsor’s numerous motions; and remanding to the Municipal Court for further proceedings?

2. Did the District Court err by permanently enjoining Windsor from filing any new pleadings without prior District Court approval; and requiring him to post a \$50,000 bond if such a proceeding is filed against a judge or court employee?

Boushie v. Windsor ¶2.

The Montana Supreme Court upheld the District Court's affirmation of the 8/23/13 TOP as well as the remand to the Municipal Court. ¶17. The Supreme Court also upheld the District Court's finding that Windsor is a vexatious litigant, however, struck the condition that Windsor post a \$50,000 bond. ¶21.

In an effort to place finality on this ongoing validity issue – pre-trial – the Court directed the State and Windsor to file briefs. The *State's Brief RE: Validity of Temporary Order of Protection* (Doc. #133) and Windsor's *Response* (Doc. #147.1) have been filed. The State asserts the 8/23/13 TOP remained continuously in effect until it was dismissed in February 2015. Windsor counters that §40-15-202 MCA requires a hearing "within 20 days from the date the Court issues a temporary order of protection . . . [unless continued for good cause]." Windsor maintains no "good cause" existed or otherwise has been shown.

The State correctly points out that the plain language of §§40-15-202(1) and 40-15-302(3) makes clear that a temporary order of protection remains in effect until a hearing is held or until modified by an appellate court. The Montana Supreme Court previously explained this principle to Windsor when the Court recognized that "a district court has the authority to continue a TOP for an appropriate time period." *Boushie v. Windsor*, 2014 MT 153, ¶10, 375 Mont. 301, 328 P.3d 631.

40-15-202. Order of protection -- hearing -- evidence. (1) A hearing must be conducted within 20 days from the date that the court issues a temporary order of protection. The hearing date may be continued at the request of either party for good cause or by the court. If the hearing date is continued, the temporary order of protection must remain in effect until the court conducts a hearing. At the hearing, the court shall

determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

.....

40-15-302. Appeal to District Court – order to remain in effect.

(3) If a temporary order of protection or an order of protection issued by a court of limited jurisdiction is appealed or removed to an appellate court, the order continues in full force and effect unless modified by the appellate court.

§40-15-302(3), MCA.

When interpreting a statute, the Court looks first to the plain meaning of its words. *State v. Asmundson* 283 Mont. 141, 146, 940 P.2d 104 (1997), citing *State v. Gould*, 273 Mont. 207, 219, 902 P.2d 532, 540 (1995). When the language of a statute is plain, unambiguous, direct, and certain, the statute speaks for itself and there is no need to resort to extrinsic means of interpretation. *Id.* The language in 40-15-202(1) and 40-15-302(3) is clear. When the 8/23/13 TOP was either appealed – or removed to a higher court, the terms of the 8/23/13 TOP continued in effect.

Windsor’s absolutist 20-day and no "good cause" argument also overlooks that both the Municipal Court and the District Court were deprived by Windsor of jurisdiction to hold each of the several evidentiary hearings that were set. Windsor’s actions of his serial filing of appeals caused the evidentiary hearings to be vacated. By statute, however, the 8/23/13 TOP was concurrently and lawfully continued in effect. §§40-15-202; 40-15-302, MCA. The one exception is Boushie’s filing of a notice of removal (rather than an appeal) from Municipal Court to the District Court in late July 2014. The law in Montana, however, is even when an opposing party such as Boushie files a timely notice of removal “the order continues in full force and effect unless modified by the appellate court.” §40-15-302(3).

Windsor cites the case of *State v. Asmundson*. In *Asmundson*, neither of the parties had filed an appeal or a notice of removal. The lower court acted on its own without statutory authority to do so. The statute, §40-4-121, MCA differs significantly from 40-15-202 and 40-15-302. Moreover, since the *Asmundson* decision, §40-4-121, MCA has been heavily amended. The *Asmundson* decision is inapposite. Windsor then attempts to meld the separate concepts of appeal and removal. Or, at best, Windsor attempts confusion when he contends: "Windsor's Notice of Appeal did not include any request to remove." This contention is absurd and is rejected offhand; it merits no more of the Court's time.

This Court easily concludes the 8/23/13 TOP was continually valid until it was dismissed in February 2015. Having determined this issue as a matter of law, the State will be entitled to a jury instruction so stating at trial.

Next, the Court addresses Windsor's motions to dismiss Counts I-V. Windsor is charged in each of Counts I-V with violating a specific provision of the 8/23/13 TOP. Windsor's motions each assert he has received the State's investigation information and compared it to the specific provision he is alleged to have violated. Windsor contends he never engaged in any specifically prohibited conduct. The State generically counters that whether each of Windsor's charged activities constitutes a crime "is a question of fact for the jury." The State asserts an absolute right "to put on its proof and make its arguments to the finder of fact."

The Court disagrees with the State's position in this instance. The Court will have to address, at a minimum, these same issues at the close of the State's presentation of evidence. §46-16-403, MCA. Moreover, the Court must oversee and settle the jury instructions which instruct on the applicable law. §46-16-410, MCA. There will necessarily be at least five jury instructions, each of which will be

tailored to the specific charge alleged in Counts I, II, III, IV and V. The Court, therefore, undertakes a preliminary review of that task here.

Count I. Count I alleges Windsor violated the 8/23/13 TOP on May 4, 2014 by posting "an article on his website, www.lawlessamerica.com, authored by himself, which mentioned Sean Boushie three times." Windsor admits in his *Motion to Dismiss Charge 1 - Publishing* (Doc. #104).

5. On May 4, 2014, an article was published on LawlessAmerica.com about Sean D. Fleming of Madison Heights Michigan. The article reprinted a public legal filing in which Sean D. Fleming used the name "Sean Boushie" three times. These were quotes of a defendant in a lawsuit.

Accepting this admission as true, and assuming the State has sufficient evidence to show that Windsor purposely or knowingly caused this publication, the Court must examine where the 8/23/13 TOP prohibits this conduct. The 8/23/13 TOP, on page 2, prohibits Windsor from "post Petitioners name on l.u" [sic]. Certainly in the context of Boushie's affidavit submitted in support of Boushie's request for the issuance of the 8/23/13 TOP, Boushie complains about Windsor's harassment on the website lawlessamerica.com. Coupled with Windsor's harassing words via the internet were the actions of Windsor bringing a gun from Georgia to Montana, Windsor physically appearing at Boushie's place of employment and Windsor appearing at Boushie's home, which justified the issuance of the 8/23/13 TOP. However, no words in the conditions written into the 8/23/13 TOP specify that Windsor is prohibited from posting an article about Boushie on the website www.lawlessamerica.com.

After the 8/23/13 TOP issued, Windsor then left Montana and returned to Georgia . . . or South Dakota . . . or Texas. Nowhere does the 8/23/13 TOP expressly prohibit Windsor, especially while in Georgia, South Dakota or Texas, from posting the name of Sean Boushie on this internet website in a reprint of a public legal filing. Importantly, nowhere does the 8/23/13 TOP explain the meaning of the prohibition "post petitioner's name on l.u." Even the State's *Response* (Doc. #129) makes no attempt to

explain what this alleged "l.u." prohibition means. The Court concludes, therefore, it will be impossible to fashion a jury instruction to explain this vague and unintelligible prohibition. Count I should be dismissed.

Count II. Count II alleges Windsor violated the 8/23/13 TOP on July 4, 2014 by posting "an article on his website, www.lawlessamerica.com, authored by himself, which mentioned Sean Boushie once." Windsor's *Motion - Dismiss Charge #2 - Publishing* (Doc. #105) raises the same issues and arguments he raised related to Count I, above. The State's *Response* (Doc. #129) is the same. The Court's analysis is the same. Count II should be dismissed.

Count III. Count III alleges that on October 2, 2014 Defendant Windsor violated the 8/23/13 TOP by failing to "release[d] control of the website www.seanboushie.com to Sean Boushie."

Windsor's *Motion to Dismiss Charge #3 - Website* (Doc. #102) contends:

- A) the 8/23/13 TOP orders him to release a website that he does not own;
- B) he was not ordered to release the website prior to a hearing;
- C) this 8/23/13 TOP condition was vague;
- D) he did not act (or fail to act) knowingly or purposely;
- E) the website does not violate stalking laws;
- F) the website is constitutionally protected and not stalking; and
- G) the 8/23/13 TOP violates his constitutionally protected due process right.

The State's *Response* (Doc. #128) counters that Windsor's contentions A-D listed above are "question[s] of fact for a jury," that contention E overlooks that reasonable restrictions are permitted in a temporary order of protection, and that the law behind Windsor's contention F places the burden on Windsor, at trial, "to prove that his activity is constitutionally protected."

Neither party has adequately identified or briefed the salient issue(s). The 8/23/13 TOP requires Windsor to "Release [of] . . . www.seanboushie.com to petitioner" (sic). The Montana Supreme Court has held this is a reasonable condition. *Boushie v. Windsor*, ¶14. ["Finally, the condition requiring Windsor to transfer SeanBoushie.com [sic] into Boushie's name and to refrain from posting about Boushie on the site is also permissible within §40-15-20192)(j), MCA, under the circumstances."]³

This District Court, however, expresses the concern that Windsor (or the website's legal owner) has or may have a property interest in this site (for which compensation may be due), that "release" of a website involves considerations of returning it to the web host who may have registered the domain name, that this "release the website" condition may have been inartfully considered, especially as it does nothing to prevent Windsor's ongoing misuse of the several other websites and facebook accounts listed by Sean Boushie to which Windsor has ongoing access. Finally, Windsor appears to have the defenses that this condition is overly broad since Boushie never sought this "release" in his application for an order of protection, as well as that Boushie abandoned this condition when he asked for and was granted dismissal of the 8/23/13 TOP. The Court therefore should reserve ruling on the dismissal of Court III at this juncture.

Contingent on the Court's determination at a later time of the legal viability of Count III, the State's *Motion to File Amended Information* (Doc. #122) include to the expanded time frames August 24, 2013 through October 2, 2014 alleged for Count III, should be conditionally granted.

³ The Supreme Court apparently interpreted the "i.u." posting prohibition to mean the website seanboushie.com.

Count IV. Count IV alleges Windsor violated the 8/23/13 TOP on December 30, 2013 when he "posted Sean Boushie's name on Twitter."⁴ Windsor's *Motion to Dismiss Charge #4 - Tweet* (Doc. #99) and the State's *Response* (Doc. #127) raise and respond to the same arguments the Court has previously addressed related to Counts I and II. Count IV should be dismissed.

Count V. Count V alleges Windsor violated the 8/23/13 TOP on February 6, 2014 when he "emailed Claudia Denker-Eccles, Associate Counsel for the University of Montana." Windsor's *Motion to Dismiss Charge #5 - Email* (Doc. #100) raises the defense that the 8/23/13 TOP contains no prohibition from emailing documents to an attorney at the University of Montana about a matter in litigation. The State's *Response* (Doc. #126) points out that the 8/23/13 TOP contains a blanket prohibition against Windsor having any form of contact, directly or indirectly, with "U of M Staff." The State says a factual dispute exists whether the legal documents Windsor admits he sent were required to be sent as part of discovery in a separate litigation or were unrelated documents for a lawsuit "in Texas where the University [of Montana] is not a party." Frankly, the Court is having trouble connecting the allegations in Count V to anything related to protecting Sean Boushie. Moreover, the blanket reference to "U of M Staff" appears overly broad. The Court, should reserve ruling on the dismissal of Count V.

The two remaining charges in Counts III and V are misdemeanors. A jury of six (6) persons should be empaneled. §46-17-201, MCA.

⁴ "Twitter" is an online social networking service.

ORDER

NOW THEREFORE, IT IS ORDERED

1. The 8/23/13 TOP has been and was continuously in effect until it was dismissed on February 20, 2015.
2. Defendant Windsor's motions to dismiss Counts I, II and IV are granted. Counts I, II and IV are DISMISSED.
3. The Court RESERVES ruling on the motions to dismiss Count III and Count V.
4. The State's Motion to File Amended Information (Doc. #122) related to Count III is conditionally GRANTED.
5. The Clerk of the District Court is directed to draw sufficient prospective jurors to be able to empanel six (6) jurors at trial.

DATED this 29th day of October, 2015.



HON. JAMES A. HAYNES, District Judge

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Municipal

COURT, MISSOULA, MONTANA

JUDGE Worren

Sean M. Boushik
Petitioner,

vs.
William Windsor
Respondent.

CAUSE NO. OP-2013-00198

TEMPORARY ORDER OF PROTECTION AND ORDER SETTING HEARING

On 08/21, 2013 the Court considered the Petitioner's request for a Temporary Order of Protection.

THE COURT FINDS from the petition that the Petitioner is in danger of harm. The court issues the following order immediately, under Mont. Code Ann. § 40-15-201 (2009), and without notice to the Respondent:

IT IS ORDERED that the Respondent is restrained as follows:

1. Respondent must not threaten to commit or commit acts of violence against Petitioner and the following

Protected Persons: Wynne He L. Boushik

(PCO 01)

2. Respondent shall not harass, annoy, disturb the peace of, telephone, email, contact, or otherwise

communicate directly or indirectly, with Petitioner and the following Protected Persons:

Wynne He L. Boushik, Walf M. Steff

(If the same people are listed in #1, write "see #1"). (PCO 05)

3. The location of my current residence is confidential. (Do not write your address below.)

4. Respondent must stay 500 feet or other suitable distance _____ feet (not to exceed 1500 feet) away

from Petitioner's residence at: 570 Grandview Drive

5. Respondent must stay 500 feet or other suitable distance _____ feet from Petitioner and the

following Protected Persons: Wynne He L. Boushik

6. Respondent must stay 500 feet or other suitable distance _____ feet away from Petitioner's place of

employment at: University of Montana

1 7. Respondent must stay 1500 feet or other suitable distance _____ feet away from Petitioner's and/or
2 Petitioner's child(ren)'s school(s) at: _____

3 _____

4 8. Respondent must stay 1500 feet or other suitable distance _____ feet away from any of the following
5 addresses frequented by Petitioner and/or other Protected Person: _____

6 _____ (PCO 04)

7 9. Respondent shall not take the following child(ren) from Missoula County: _____

8 _____

9 10. Respondent shall not possess these firearms: Taurus Judge (PCO 07)

10 11. Respondent must not take, hide, sell, give away, borrow against, damage, or otherwise dispose of the
11 following property: _____

12 12. Respondent must give Petitioner and/or Protected Person's possession or use of the following items
13 (items may include the residence, automobile and other essential personal property, regardless of
14 ownership): _____

15 13. Law enforcement shall:

16 Remove the Respondent from the residence at: _____

17 Place the Protected Person in possession of the residence at: _____

18 Supervise the removal of:

19 Protected Person's property listed in 12 above.

20 Respondent's items needed for employment and necessary personal effects (at peace officer's
21 discretion) from the residence.

22 14. The Court deems that the following additional relief is necessary to provide for the safety and welfare of
23 the Petitioner or other individuals designated in this Petition. Release of www.searchoakshoe.com

24 To petitioner, Respondent shall not post
25 petitioners name on tv

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HEARING

A hearing on the Petitioner's request that this Court Order of Protection continue for a specific time or continue permanently will be held before this court on 09/09/13, the 9th day of September, 2013, at the hour of 2:30 o'clock P.m., or as soon thereafter as the matter may be heard, in the following courtroom:

Municipal Court - City Hall
435 Ryman
Missoula, MT
Justice Court I
200 W. Broadway
Missoula, MT
Justice Court II
200 W. Broadway
Missoula, MT
District Court
200 W. Broadway
Missoula, MT

This Temporary Order of Protection shall continue in full force and effect until 09/16/13 the 16th day of September, 2013, at the hour of 11:59 o'clock P.m. unless continued at the hearing.

Petitioner: Report all violations of this Order of Protection to law enforcement by calling 911. If you fail to appear for the hearing, this Order may be dismissed.

Respondent: If you fail to appear for the hearing, the Judge's decisions in this case will be made without your presence. This decision could affect your rights to own or possess firearms.

Petitioner and Respondent: You may not agree to violate the terms of this Order.

WARNING

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE UNDER MONT. CODE ANN. 45-4-220 OR 45-5-626 AND MAY CARRY PENALTIES OF UP TO \$10,000 IN FINES AND UP TO A 5 YEAR JAIL SENTENCE.

THIS ORDER IS ISSUED BY THE COURT AND THE RESPONDENT IS FORBIDDEN TO DO ANY ACT LISTED IN THE ORDER, EVEN IF INVITED BY THE PETITIONER OR ANOTHER PERSON. THIS ORDER MAY BE AMENDED ONLY BY FURTHER ORDER OF THIS COURT OR ANOTHER COURT THAT ASSUMES JURISDICTION OVER THIS MATTER.

1 The Sheriff is hereby directed to serve, without cost to the Petitioner, a copy of this Temporary Order of
2 Protection, together with a copy of the Petitioner's petition, upon the Respondent and to file a return of service
3 with the Clerk of this Court. Upon receipt of proof of service of this Order, the Clerk is hereby directed to mail or
4 otherwise promptly deliver a copy of this Order, together with a copy of the proof of service, to the following law
5 enforcement agencies: MISSOULA COUNTY SHERIFF'S OFFICE (Warrants).

6 ISSUED this 23 day of August, 2013, at the hour of 10:45 a.m.

7 Sam Warren
8 JUDGE

9 SHERIFF'S RETURN.

10 I served this Temporary Order of Protection on the Respondent by delivering a copy to him/her at _____
11 o'clock _____ m. on (date) _____, 201__ at (location)

12 DATED this _____ day of _____, 201__.

13 _____
14 Signature of Server