

William M. Windsor
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Madison, SD 57042
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Defendant, Pro Se

**MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY**

State of Montana,	§	Dept. No. 3
Plaintiff,	§	Cause No. DC-14-509
v.	§	
William Michael Windsor,	§	MOTION TO DISMISS
Defendant.	§	CHARGE #3 - WEBSITE

COMES NOW William M. Windsor, Defendant, who files this “Motion to Dismiss Charge #3 - Website,” and shows the Court as follows:

INTRODUCTION

1. William M. Windsor has been simultaneously charged with five protective order violations. (See DC-14-509 Docket # 1, 2, 3, 4, and 5.)
2. There are many reasons why this and all the charges should be dismissed. Other grounds have been or will be presented in separate motions. This motion simply addresses the specific reason why this unique charge must be dismissed.

FACTUAL BACKGROUND

3. The charge reads: “On or about the 2nd day of October, 2014, the above-named Defendant committed the offense of violation of an order of protection when, with knowledge of the order, purposely or knowingly violated a provision of an order provided for in 40-4-121 or an order of protection under Title

40, chapter 15, to wit: “Defendant has not released control of the website www.seanboushie.com to Sean Boushie, a third or subsequent offense.”

4. On August 23, 2015, William M. Windsor was served with a Temporary Order of Protection. It clearly stated twice that it expired on September 16, 2013.

5. The TOP was appealed all the way to the Montana Supreme Court. The Montana Supreme Court remanded the matter to the Missoula Municipal Court on June 10, 2014 (Case # DA-13-0785). No hearing was ever held to make the TOP permanent. Montana law says a temporary order of protection may last for a maximum of 20 days. If the expiration date was stayed due to the appeals, it expired in late June 2014, and there was no order of protection on October 2, 2014.

6. On August 17, 2015, each of the State’s witnesses were interviewed. The witness with knowledge of the website is Sean Boushie. He says he never requested that William M. Windsor release control of the website. He gave no testimony to indicate that anyone else had.

7. No one ever asked William M. Windsor to release control of a website until Judge James A. Haynes did on March 27, 2015. William M. Windsor reached an agreement with the State to remove the content from the websites until this matter is resolved, even though there was no protective order.

ARGUMENT

A. AN EX PARTE TEMPORARY ORDER OF PROTECTION MAY NOT REQUIRE A PERSON TO RELEASE PROPERTY THAT HE DOES NOT CONTROL.

8. The Temporary Order of Protection (“TOP”) on which the charges are based does not require William M. Windsor to release www.seanboushie.com. A true and correct copy of the TOP served on William M. Windsor is attached as Exhibit A hereto.

9. The TOP clearly shows www.seanboushie.co, which was not owned or controlled by William M. Windsor. William M. Windsor could not be expected to give control of something he did not own.

10. As the TOP did not require William M. Windsor to release control of something he had no control over, this did not violate a protective order.

11. This charge must be dismissed.

B. NOWHERE IN THE TEMPORARY ORDER OF PROTECTION DOES IT STATE THAT WILLIAM M. WINDSOR MUST RELEASE ANYTHING PRIOR TO A HEARING, AND THERE WAS NEVER A HEARING.

12. Nowhere does any so-called “order of protection” state that William M. Windsor must release control of the website www.seanboushie.co or www.seanboushie.com to Sean Boushie by any specific date or in any specific manner or prior to notice and an opportunity to be heard. No one ever asked William M. Windsor to do anything in this regard. Exhibit 29 on the Flash Drive in the folder named Missoula Montana Criminal Case filed with the Defendant’s Motion to Quash Bench Warrant in this case is a Motion to Dismiss in which William M. Windsor states that there was never a hearing as required by law, and there were no grounds for a permanent order of protection because it had to be based on a history of violence, and there was none. There was no legal way for William M. Windsor to be permanently required to release his property.

13. This charge must be dismissed.

C. THE TEMPORARY ORDER OF PROTECTION WAS VAGUE.

14. The TOP was vague, as William M. Windsor stated in his sworn Motion on August 26, 2013. [A true and correct copy of the Motion for Modification filed in the underlying case on August 26, 2013 where William M. Windsor asked the court to clarify the TOP is on the Flash Drive -- Exhibit 41 in

the folder named Missoula Montana Criminal Case filed with the Motion to Quash Bench Warrant in this case.] The TOP was never modified to make it clear.

15. There is no explanation of what “released” means. There is no date given for a “release.” There is no indication that this requested relief somehow takes precedence over the very clear law that required a hearing within 20 days.

16. There is no indication that this requested relief somehow takes precedence over William M. Windsor’s personal and business property rights.

17. This charge must be dismissed.

D. WILLIAM M. WINDSOR DID NOT REFUSE TO RELEASE CONTROL OF WWW.SEANBOUSHIE.COM KNOWINGLY AND PURPOSELY WITH THE INTENT TO VIOLATE A PROTECTIVE ORDER AND COMMIT A CRIME.

18. A key element that the State must prove is that William M. Windsor “knowingly and purposely” violated the protective order - that he intended to commit a crime.

19. William M. Windsor did not do anything purposely or knowingly. William M. Windsor is well-versed in certain aspects of Constitutional law, including due process. Due process requires notice and an opportunity to be heard. A person may not have their property taken without notice and an opportunity to be heard. Therefore, William M. Windsor could not be required to release control of his personal property until there was a hearing.

20. William M. Windsor has sworn that he never did anything to knowingly and purposely violate a protective order. William M. Windsor did not even own www.seanboushie.co.

21. This charge must be dismissed.

E. A WEBSITE DOES NOT VIOLATE MONTANA LAWS ON STALKING, SO USE OF A WEBSITE MAY NOT CONSTITUTE A VIOLATION OF A PROTECTIVE ORDER.

22. Montana laws on protective orders are to promote safety and protection of all victims of stalking. Stalking is following someone or mailing, emailing, or having electronic communication with the protected person. Exposing someone online as a cyberstalker and pathological liar who has committed hundreds of crimes online does not fall anywhere in the definition of “stalking.”

23. This charge must be dismissed.

F. STATEMENTS ON A WEBSITE ARE A CONSTITUTIONALLY-PROTECTED ACTIVITY, SO IT MAY NOT BE RESTRICTED BY A PROTECTIVE ORDER.

24. Montana law states very clearly (MCA 45-5-220) that stalking does not apply to Constitutionally-protected activity. Freedom of speech and freedom of the press are the most fundamental of the Constitutionally-protected activities. Blogging or publishing on a website cannot be restricted based upon the First Amendment to the United States Constitution. Similar protection is in the Montana Constitution.

25. The Montana Supreme Court has ruled that blogging by William M. Windsor is a Constitutionally-protected activity. (*Windsor v. Boushie*, DA 13-0618 (Mont. 02/25/2014).)

26. No judge can legally order anyone to not post, print, or display the name of a person.

27. There is no basis whatsoever to take away a website that cites facts and provides evidence.

28. No court has the right to require the media to stop publishing or give its websites to those whom the media is exposing, especially when there can be no

proof that anything that William M. Windsor has published is false. Freedom of the press protects the right to obtain and publish information or opinions without government censorship or fear of punishment. This constitutes prior restraint, and *Near v. Minnesota*, 283 U.S. 697 (1931) holds that prior restraints are unconstitutional, except in extremely limited circumstances such as national security issues.

29. The Montana Supreme Court's previous decision in *Windsor v. Boushie* is that blogging is not stalking and cannot be denied by any order of protection. Therefore, you darned sure can't take away William M. Windsor's website.

"...the offense of stalking does not apply to a constitutionally protected activity, § 45-5-220(2), MCA, and, as the District Court noted, the blogging alleged here involved First Amendment 'free speech' rights with which [Windsor and Boushie] each appear familiar and in which they regularly engage." (*Windsor v. Boushie*, DA 13-0618 (Mont. 02/25/2014).)

30. This charge must be dismissed.

G. ANY PROTECTIVE ORDER THAT DENIES CONSTITUTIONALLY-PROTECTED DUE PROCESS IS VOID AND OF NO EFFECT.

31. SeanBoushie.com has been William M. Windsor's property, and no court has the right to take someone's property without due process of law. This type of relief cannot be ordered on an ex parte basis. Due process requires notice and an opportunity to be heard. William M. Windsor had no notice, and he was never heard. Therefore, William M. Windsor is very confident that he had no such obligation. In fact, Missoula County Montana Judge Karen Townsend seems to agree because the Order (Exhibit 12 in the folder on the Flash Drive named Missoula Montana Criminal Case filed by the Defendant with the Motion to Quash Bench Warrant) did not require William M. Windsor to release the website.

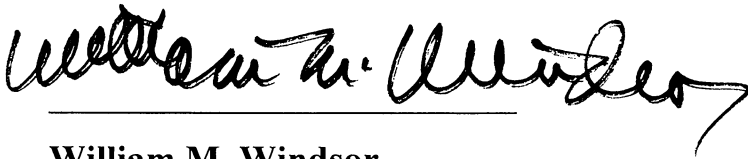
32. This charge must be dismissed.

CONCLUSION

33. William M. Windsor never knowingly and purposely violated a protective order. Jennifer Clark swore to Judge Karen Townsend that William M. Windsor knowingly and purposely refused to release control of his website to violate a protective order, but it was a false sworn pleading by Jennifer Clark.

WHEREFORE, William M. Windsor prays that Charge #3 - Website be dismissed; and for such other relief as the Court feels is appropriate.

This 24th day of August 2015,

A handwritten signature in black ink, appearing to read "William M. Windsor", written over a horizontal line.

William M. Windsor

VERIFICATION

Personally appeared before me, the undersigned Notary Public duly authorized to administer oaths, William M. Windsor, who after being duly sworn deposes and states that he is authorized to make this verification on behalf of himself and that the facts alleged in the foregoing are true and correct based upon his personal knowledge, except as to the matters herein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

I declare under penalty of perjury that the foregoing is true and correct based upon my personal knowledge.

This 24th day of August 2015.

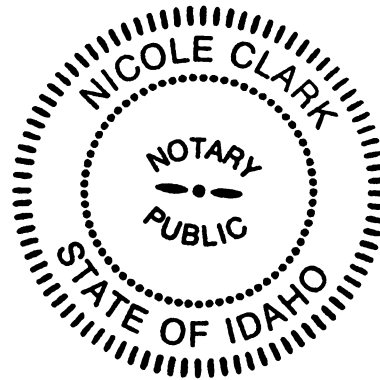


William M. Windsor

Sworn and subscribed before me this 24th day of August 2015.



Notary Public



CERTIFICATE OF CONFERENCE

I hereby certify that I communicated with Jennifer Clark, and she opposes this Motion.

This 25th day of August 2015,

A handwritten signature in black ink, appearing to read "William M. Windsor", written over a horizontal line.

William M. Windsor

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion by email to Jennifer Clark, Deputy County Attorney, at jsclark@co.missoula.mt.us and Christopher Daly.

This 27th day of August 2015,

A handwritten signature in black ink, appearing to read "William M. Windsor", written over a horizontal line.

William M. Windsor

Exhibit

A

Temporary Order of Protection

Case No. OP-2013-00198

- Temporary Ex Parte Order and Notice of Hearing
- Amended Temporary Order and Notice of Hearing

Municipal Court, **Missoula County, Montana.**
 Before the Honorable Judge Warren

Petitioner/Protected Person

First Middle Initial Last
Sean M. Boushie

Petitioner/Protected Person Identifiers

Year of Birth of Petitioner
1960 Male Female

And/Or on behalf of family members:

Other Protected Person/s:

First/Middle Initial/Last Name	Year of Birth	Sex
<u>Wynne H L Boushie</u>	<u>72</u>	M <input checked="" type="checkbox"/> F
		M F
		M F

First/Middle Initial/Last Name	Year of Birth	Sex
		M F
		M F
		M F

Respondent

First Middle Initial Last
William M Windsor

Respondent's Identifiers

Sex	Race	Year of Birth	Height	Weight
<input checked="" type="checkbox"/> M <input type="checkbox"/> F	<u>Cauc</u>		<u>700</u>	<u>5'8"</u>
Eye color	Hair color	Driver's License State		
	<u>White</u>	<u>GA</u>		
Distinguishing Features				
<u>Beard & Mustache</u>				

Respondent's Address:

Petitioner's/Protected Person's Relationship to Respondent: check all that apply

- Married
- Were married, but are now separated
- Divorced
- Currently dating or having an ongoing intimate relationship
- Live together
- Lived together in the past
- Have a child and/or children together
- Family member or former family member of Respondent
- Dated or had an ongoing intimate relationship in the past
- Victim of sexual assault
- Victim of stalking
- Victim of assault
- Victim of other: _____

CAUTION:

- Weapon Involved
- Weapon on Property

The court has jurisdiction over the parties and subject matter. The terms of this Order shall be effective until 09/16/13 at 1159 PM/unless terminated earlier by another Court Order. By Judge Sam Warren

WARNINGS: This Order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and U.S. Territory, and may be enforced on Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, and tribal boundaries to violate this Order may result in federal imprisonment (18 U.S.C. Section 2262). Federal law provides penalties for possessing, transporting, shipping, or receiving any firearm or ammunition (18 U.S.C. Section 922(g)(8)(9)). Violation of this Order may be a criminal offense under applicable Federal or Tribal law and is a criminal offense under Mont. Code Ann. § 45-5-220 or § 45-5-626 and may carry penalties of up to \$10,000 in fines and up to a 5 year jail sentence. It is a misdemeanor under Montana Code Annotated 45-5-220 and/or 45-5-626 for the Respondent, even if invited and after notice of this Order, to violate the provisions of this Order. Further, under Montana Code Annotated §§ 45-2-301 and 302(3), it is a crime for any person to aid and abet a crime, or, not being present, to advise and encourage a crime. Under Montana Code Annotated § 45-2-303, any person who counsels, aids, solicits or incites another to commit a misdemeanor is guilty of a misdemeanor. Therefore, it may be a crime for any person to encourage or invite contact between the Respondent and the Petitioner, except such contact as expressly permitted by the above Order.

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Municipal COURT, MISSOULA, MONTANA

JUDGE Wagner

Sean M. Boushrie
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. Boushrie (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. Boushrie, Ueff 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 1500 feet or other suitable distance _____ feet (not to exceed 1500 feet) away from Petitioner's residence at: 570 Grandview Drive
5. Respondent must stay 1500 feet or other suitable distance _____ feet from Petitioner and the following Protected Persons: Wynne He L. Boushrie
6. Respondent must stay 1500 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.seamboat5150.co
24 To petitioner, Respondent shall not post
25 Petitioner's name on tv

1 **HEARING**

2 A hearing on the Petitioner's request that this Court Order the Order of Protection continue for a specific
3 time or continue permanently will be held before this court on 09/09/13, the 9th day of September,
4 2013, at the hour of 2:30 o'clock P.m., or as soon thereafter as the matter may be heard, in the following
5 courtroom:

4 <i>Municipal Court – City Hall</i>	<i>Justice Court I</i>	<i>Justice Court II</i>	<i>District Court</i>
5 <i>435 Ryman</i>	<i>200 W. Broadway</i>	<i>200 W. Broadway</i>	<i>200 W. Broadway</i>
<i>Missoula, MT</i>	<i>Missoula, MT</i>	<i>Missoula, MT</i>	<i>Missoula, MT</i>

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

8 **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.**

9 **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.**

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

11 **WARNING**

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

13 **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