

William M. Windsor
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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 #2 - PUBLISHING

COMES NOW William M. Windsor, Defendant, who files this “Motion to Dismiss Charge #2 - Publishing,” 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 4th day of July, 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 posted an article on his website, www.lawlessamerica.com, authored by himself, which mentioned Sean Boushie once.”

4. Exhibits 9 and 10 in the folder on the Flash Drive named Missoula Montana Criminal Case filed with the Defendant’s Motion to Quash Bench Warrant are true and correct copies of the Affidavit and Information filed in this case.

5. On July 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” one time. This was the quote of defendant Sean D. Fleming in a lawsuit.

6. On August 17, 2015, each of the State’s witnesses were interviewed. The witness with knowledge of the publishing is Sean Boushie. He says he googled his name, found the article, and printed it. He gave no testimony to indicate who published the articles other than to say the LawlessAmerica.com website belongs to William M. Windsor, which is hearsay.

ARGUMENT

A. THE TEMPORARY ORDER OF PROTECTION DOES NOT PROHIBIT PUBLISHING THE NAME “SEAN BOUSHIE” OR ONLINE IN A LEGAL DOCUMENT.

7. The Temporary Order of Protection (“TOP”) on which the charges are based does not prohibit publishing the words “Sean Boushie.” A true and correct copy of the TOP served on William M. Windsor is attached as Exhibit A hereto.

8. Nowhere does any so-called “order of protection” state that William M. Windsor cannot publish the words “Sean Boushie.”

9. Nowhere does any so-called “order of protection” state that William M. Windsor cannot publish an article that contains a legal document filed in a court and made a public record.

10. As the TOP does not prohibit publishing the words or legal documents, the published article cannot violate it.

11. If the TOP was ever valid, it prohibited only a “post.” A published article on LawlessAmerica.com is not a “post.” A post is defined as “to publish a message in an online forum or newsgroup.” There is nothing in the TOP to prohibit William M. Windsor from publishing Sean Boushie’s name on his website – a website that has no forum and is not a newsgroup; all the TOP prohibits is this: “Respondent shall not post Petitioner’s name on liv.” Or “on lit.” William M. Windsor does not even know what “on liv” or “on lit” means.

12. On June 10, 2014, the Montana Supreme Court ruled in DA-13-0785 that the TOP provided that William M. Windsor could not post about Sean Boushie on www.SeanBoushie.com. He hasn’t. The State’s copy of a download of www.SeanBoushie.com shows that nothing was published on the website after August 23, 2013 when William M. Windsor was served with the TOP.

contemplated by § 40-15-201(2)(j), MCA. Finally, the condition requiring Windsor to transfer SeanBoushie.com into Boushie’s name and to refrain from posting about Boushie on the site is also permissible within § 40-15-201(2)(j), MCA, under the circumstances. The

13. This charge must be dismissed.

B. THE STATE HAS NO EVIDENCE THAT WILLIAM M. WINDSOR PUBLISHED THIS ARTICLE.

14. The State has no evidence to show that William M. Windsor published this article. Sean Boushie is the only witness with knowledge of this article, and his knowledge is that he printed it off the Internet. Everything else is hearsay.

15. This charge must be dismissed.

C. THE MONTANA SUPREME COURT HAS RULED THAT BLOGGING CANNOT BE DENIED BY A PROTECTIVE ORDER.

16. The Montana Supreme Court ruled on February 25, 2014 in *Windsor v. Boushie* that William M. Windsor's blogging is not stalking and cannot be denied by any order of protection.

"...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).)

17. This charge must be dismissed.

D. THE TEMPORARY ORDER OF PROTECTION WAS VAGUE.

18. 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.

19. If the TOP was to prohibit publishing the name "Sean Boushie" in a legal document, the TOP should have said so. "On liv" or "on lit" or "on it" should have been clarified. William M. Windsor sought clarification three days after the Top was served, 10 months before this article was published, and the court never addressed the requested clarification.

20. This charge must be dismissed.

E. WILLIAM M. WINDSOR DID NOT PUBLISH THE WORDS "SEAN BOUSHIE" KNOWINGLY AND PURPOSELY WITH THE INTENT TO VIOLATE A PROTECTIVE ORDER AND COMMIT A CRIME.

21. 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.

22. Here's the article that Alleged Crime #2 refers to: Judge asked to charge Sean D. Fleming with Stalking and issue a Protective Order -- http://lawlessamerica.com/index.php?option=com_content&view=article&id=1402:judge-asked-to-charge-sean-d-fleming-with-stalking-and-issue-a-protective-order&catid=139:joeyisalittlekid [Exhibit 67 in the folder on the Flash Drive named Missoula Montana Criminal Case attached to the Motion to Quash Bench Warrant is a true and correct copy of this article.] [Exhibit 21 in the folder on the Flash Drive named Missoula Montana Criminal Case is a true and correct copy of the Petition for Protection against Sean D. Fleming that was filed and is a public record in Michigan.]

23. This was falsely portrayed to Missoula County Montana Judge Karen Townsend. This is not a “post” as can be clearly seen by examining the document. This is a 10-page article written and published on a news website. [Exhibit 17 in the folder on the Flash Drive named Missoula Montana Criminal Case filed with the Motion to Quash Bench Warrant is a true and correct copy of the About Page for the website.] The article is about Sean D. Fleming of Madison Heights Michigan; it has nothing to do with Sean Boushie. It appeared on www.LawlessAmerica.com, not www.SeanBoushie.com. The article is about Sean D. Fleming; it has nothing to do with Sean Boushie. The opening of the article says “Bill Windsor has filed a Petition for a Personal Protection Order against Sean D. Fleming of Madison Heights Michigan. William M. Windsor has sued Sean D. Fleming because he has defamed him hundreds of times, has accused him of countless crimes, including plotting to commit mass murder, and has falsely and maliciously reported him to a wide variety of agencies for crimes that William M.

Windsor has not committed. Sean D. Fleming of Madison Heights, Michigan has stalked William M. Windsor in various ways. Here is the text of the petition for a protection order against Sean D. Fleming that was filed in the Oakland County Michigan Superior Court on July 3, 2014:” Page 2 of the 10 pages refers to a claim made by Sean D. Fleming or some of his co-conspirators that “I have been making up information about Sean Boushie for years...”

24. 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.

25. When William M. Windsor learned in January 2015 that the words “Sean Boushie” appeared in this article, he immediately redacted them. A true and correct copy of the redacted article is Exhibit B hereto.

26. William M. Windsor published at least 150 articles from August 23, 2013 when the TOP was served until January 31, 2015. The words “Sean Boushie” do not appear in any of those articles. William M. Windsor published hundreds of articles on Facebook from August 23, 2013 when the TOP was served until January 31, 2015. The words “Sean Boushie” do not appear in any of those articles. If William M. Windsor intended to publish the words “Sean Boushie,” he could have done so hundreds or thousands of times, but he didn’t. He used “Sushie” or “UNIVERSITYOFMONTANAEMPLOYEE” whenever he referred to him. William M. Windsor did not publish any articles on LawlessAmerica.com from August 23, 2013 to April 14, 2014 waiting for the hearing on a permanent order of protection after publishing over 700 articles in 2012 and 2013.

27. This charge must be dismissed.

F. **PUBLISHING THE WORDS “SEAN BOUSHIE” DOES NOT VIOLATE MONTANA LAWS ON STALKING, SO IT MAY NOT CONSTITUTE A VIOLATION OF A PROTECTIVE ORDER.**

28. 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. Publishing a legal article online does not fall anywhere in the definition of “stalking.”

29. This charge must be dismissed.

G. PUBLISHING ON A WEBSITE IS A CONSTITUTIONALLY-PROTECTED ACTIVITY, SO IT MAY NOT BE RESTRICTED BY A PROTECTIVE ORDER.

30. 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.

31. The Montana Supreme Court has ruled in *Windsor v. Boushie* that blogging by William M. Windsor is a Constitutionally-protected activity.

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

33. No court has the right to require the media to stop publishing, 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.

34. This charge must be dismissed.

35. *Montana Annotated Code 40-4-121* is cited but does not apply as anyone who reads it can see. “TITLE 40. FAMILY LAW CHAPTER 4. TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT - Part 1.

Separation -- Dissolution of Marriage. 40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary restraining order. It provides various things in regard to ‘...a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage....’”

36. William M. Windsor was not ever involved in marriage, child custody, or support with Sean Boushie or Wynette Boushie. Yet Tyler Dugger and Jennifer Clark cited this on each of the five alleged offenses.

37. This charge must be dismissed.

CONCLUSION

38. 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 published Sean Boushie’s name to violate a protective order, but it was a false sworn pleading by Jennifer Clark.

WHEREFORE, William M. Windsor prays that Charge #2 - Publishing be dismissed; and for such other relief as the Court feels is appropriate.

This 24th day of August 2015,



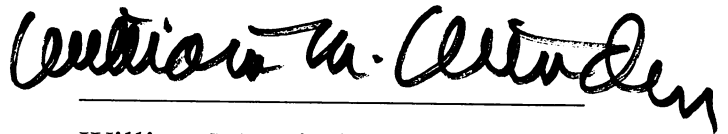
William M. Windsor

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.

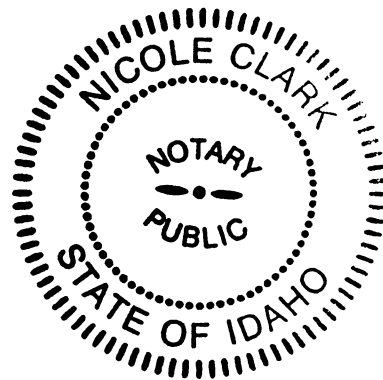


William M. Windsor

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 24th day of August 2015,




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 ~~24th~~^{30th} day of August 2015,



William M. Windsor