

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
BURLINGTON COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FO-03-0454-20

STATE OF NEW JERSEY,

Plaintiff,

v.

J.T.,

Defendant.

APPROVED FOR PUBLICATION

February 1, 2022

COMMITTEE ON OPINIONS

Decided: July 15, 2020

Kristine Adler, Assistant Prosecutor, for plaintiff (Scott A. Coffina, Burlington County Prosecutor, attorney).

Nathan J. Mammarella, Esq., for defendant (Rosenberg Perry & Associates, LLC, attorneys).

FIKRY, J.S.C.

At issue in this case is the question of whether a defendant charged with contempt for allegedly violating a temporary restraining order (TRO) can be found to have "purposely or knowingly" violated that TRO by having initiated a communication to a protected party prior to the entry and service of the TRO on the defendant.

A related question is whether under these circumstances, a defendant subject to a TRO has an affirmative obligation to attempt to recall or withdraw a communication sent to a protected party prior to the entry and service of the TRO on the defendant.

For the reasons set forth herein, the court finds the answer to both questions to be in the negative, and accordingly the complaint is dismissed.

I. Factual Background

The relevant facts are not in dispute. Defendant and B.L.B.,¹ the plaintiff in the underlying domestic violence matter, were involved in a dating relationship that ended in December 2019.

B.L.B. obtained a TRO against defendant on January 31, 2020. At trial, defendant admitted that he had been served with a copy of the TRO on January 31, 2020.

Defendant testified that one week prior to the entry of the TRO, on January 24, 2020, he had ordered a floral arrangement for B.L.B., which was scheduled to be delivered to B.L.B. along with a card the day before Valentine's Day, February 13, 2020. Defendant testified that when he was notified by the vendor that the delivery had been made that he contacted the

¹ Initials are used herein to protect the confidentiality of the parties in the underlying domestic violence matter pursuant to R. 1:38-3(d)(9) and (10).

company to seek confirmation that he had placed the order prior to the entry of the TRO. Defendant did not inquire as to whether delivery of the order could have been stopped, and admits that he made no effort to cancel the order after entry of the TRO.

B.L.B. received the flowers and card on February 13, 2020. She testified that upon receipt of the package and card, she felt nervous and fearful at the possibility that defendant was nearby or watching her, and she reported the incident to the police.

II. Analysis

Defendant was charged with contempt pursuant to N.J.S.A. 2C:29-9b(2).

The statute provides, in relevant part:

In all other cases a person is guilty of a disorderly persons offense if that person purposely or knowingly violates an order entered under the provisions of the "Prevention of Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States.

[N.J.S.A. 2C:29-9b(2) (emphasis added).]

Defendant testified he ordered the flowers on January 24, 2020, prior to the entry and service of the TRO on January 31, 2020. The flowers were not delivered to B.L.B. until February 13, 2020.

The TRO provides, in relevant part: "You are prohibited from having

any oral, written, personal, electronic, or other form of contact or communication with Plaintiff." (Emphasis added). The State contends that defendant had both the opportunity, and the obligation, to cancel the delivery after being served with the TRO. Defendant argues that the TRO did not notify him of any such obligation, and that accordingly, he cannot be found guilty of contempt.

The State bears the burden of proving each element of the offense beyond a reasonable doubt. N.J.S.A. 2C:1-13(a). In the context of the contempt charge brought against defendant pursuant to N.J.S.A. 2C:29-9b(2), the prosecution must establish that defendant purposely or knowingly violated the TRO.

N.J.S.A. 2C:2-2b defines "purposely" and "knowingly":

(1) Purposely. A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. A person acts purposely with respect to attendant circumstances if he is aware of the existence of such circumstances or he believes or hopes that they exist. "With purpose," "designed," "with design" or equivalent terms have the same meaning.

(2) Knowingly. A person acts knowingly with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of that nature, or that such circumstances exist, or he is aware of a high probability of their existence. A person acts knowingly with respect to a result of his conduct if he

is aware that it is practically certain that his conduct will cause such a result. "Knowing," "with knowledge" or equivalent terms have the same meaning.

The undisputed facts of this case do not support a finding that defendant purposely or knowingly violated the TRO. To the contrary, when defendant ordered the flowers on January 24, 2020, the TRO did not yet exist. As a consequence, defendant could not have sent the flowers while having the conscious object of violating the TRO, or with an awareness that his actions would violate the court's Order. Because defendant could not have possessed the requisite mental state that must be established for contempt to be found, the complaint is dismissed.

The State further argues that defendant should be imputed with responsibility for cancelling the flower order upon receiving service of the TRO prohibiting him from having contact with B.L.B. No such language is contained within the TRO, however.

Defendant argues that application of the rule of lenity precludes the imposition of an obligation not contained in the TRO, citing State v. D.G.M., 439 N.J. Super. 630, 642 (App. Div. 2014). In D.G.M., the Appellate Division reversed a contempt conviction based on the alleged violation of a "no contact or communication" provision in a domestic violence Final Restraining Order (FRO) where the defendant sat nearby and briefly filmed the victim at their

child's soccer game. The Appellate Division concluded:

Before he could be fairly convicted, defendant had the right to know where the line existed between permitted and prohibited conduct. Although we are satisfied there is a host of prohibited conduct that a defendant would understand to be prohibited despite the generalities employed in the FRO, the precise conduct found by the judge to support the conviction—the filming of Joan—is not as assuredly encompassed by the Act, or the FRO entered here, as most other conduct normally considered by our domestic violence courts. Because the Act does not further define the terms contained in N.J.S.A. 2C:25-29(b)(7), and because of the dearth of decisional law that would convey that this type of conduct is prohibited, the doctrine of lenity must preclude defendant's conviction here.

[Ibid.]

The main issue in D.G.M. differs from the case at bar since there is no question that here, defendant's action in sending flowers and a card to B.L.B. would have been expressly prohibited by the TRO had the communication taken place after defendant had been served. Nevertheless, the basis for the Appellate Division's decision to reverse the contempt conviction in D.G.M. is instructive as to the question of whether an obligation not set forth in the TRO may be imposed on defendant. Since the TRO did not notify defendant that he was obligated to attempt to recall any communications to the protected party he may have initiated prior to service of the TRO, that were not yet delivered, the addition of such a requirement after the fact would be an improper basis for

conviction.

The court acknowledges and accepts the victim's testimony that receipt of the items sent by defendant caused her to be nervous and fearful, and this decision should not be misconstrued as diminishing or deprioritizing the impact of defendant's actions on the victim. Clearly, it is well-established that the basic protection the Prevention of Domestic Violence Act seeks to afford victims of domestic violence is the right to be left alone. State v. Hoffman, 149 N.J. 564, 585-86 (1997). In this case however, the requisite elements of contempt have not been established, and the complaint must necessarily be dismissed.