

2007

Utah v. Peterson : Brief of Appellant

Utah Court of Appeals

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Teral Tree; Attorneys for Appellee.

John T. Caine; Richards, Caine, Allen & Pace; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

:

Plaintiff/Appellee

:

Vs.

:

:

Case No. 20070169

JOSEPH CRAIG PETERSON

Defendant/Appellant

:

BRIEF OF APPELLANT

The Appeal is from a jury finding of guilty of Violation of a Protective Order Utah Code Annotated 76-5-108 a Class A Misdemeanor.

DEFENDANT IS NOT CURRENTLY INCARCERATED

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ATTORNEYS FOR APPELLEE

ATTORNEY FOR APPELLANT

FILED
UTAH APPELLATE COURT
AUG 27 2007

IN THE UTAH COURT OF APPEALS

STATE OF UTAH	:	
 Plaintiff/Appellee	:	
 Vs.	:	
	:	Case No. 20070169
JOSEPH CRAIG PETERSON		
 Defendant/Appellant	:	

BRIEF OF APPELLANT

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
vs.	:	
JOSEPH CRAIG PETERSON,	:	District Court Case No. 061902882
Defendant/Appellant.	:	Appellate Court No. 20070169

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

The Appeal is from a jury finding of guilty of Violation of a Protective Order Utah Code Annotated 76-5-108 a Class A Misdemeanor.

**STATEMENT OF THE ISSUES ON APPEAL AND STANDARD OF
REVIEW**

POINT 1

WAS THE DEFENDANT DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 7 AND 12 OF THE UTAH CONSTITUTION WHEN HIS ATTORNEY FAILED TO SUBPOENA WITNESSES WHICH WOULD HAVE ASSISTED IN HIS DEFENSE.

POINT II

WHETHER THE COURT SUA SPONTE SHOULD HAVE DISMISSED THE CASE AFTER THE STATE COMPLETED ITS CASE IN CHIEF.

Standard of Review: The appellate court must determine as a matter of fact and law whether Defendant was denied his right to effective assistance of counsel. In *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674 (1984), the United States Supreme Court articulated a two part test which was adopted by the Court in *State v. Templin*, 805 P.2d 182 (Utah 1990) to determine whether counsel was ineffective. The Court held that first the Defendant must show that counsel's performance was deficient. This required showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed by the Defendant by the Sixth Amendment. Second the Defendant must show that the deficient performance prejudiced the Defense. This requires showing that counsel's errors were so serious as to deprive the Defendant of a fair trial a trial of whose result is reliable. Id. at 466 U.S. at 687.

With respect to the trial judge's decision not to dismiss the case after the State presented their case, the trial court's legal conclusion should be reviewed for correctness according to no deference to the trial court's conclusion.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UNITED STATES CONSTITUTION

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION

ARTICLE I, SECTION 7 [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

ARTICLE I, SECTION 12. [RIGHTS OF ACCUSED PERSONS.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify

against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule. (emphasis added)

UTAH CODE ANNOTATED

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Court Act of 1996, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protection order enforceable under Title 30, Chapter 6a, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section **77-36-1** and subject to increased penalties in accordance with Section **77-36-1.1**.

STATEMENT OF THE CASE

The Defendant was charged in a single count information with the offense of Violation of a Protective Order a Class A Misdemeanor in violation of Utah Code Annotated 76-5-108. (R.001-002). The Defendant was tried before a jury on December 8, 2006 before the Honorable Scott Hadley. (R. 020-022) The jury returned with a guilty verdict and on January 29, 2007 the Defendant was sentenced to a probationary sentence including a 90 day jail sentence.(R.065)

(R.070-072) Defendant filed his notice of appeal on February 23, 2007. (R. 075). On or about the 17th day of April 2007 pursuant to Rule 23b of the Utah Rules of Appellate procedure the Defendant requested and made a motion that this court remand the current case to the trial court for a fact finding hearing to determine whether counsel was ineffective. On or about the 1st day of May 2007 the State filed their opposition to the Appellants request to remand and on or about May 11, 2007 the court by a written order denied the motion to remand. (Exhibit C)

STATEMENT OF THE FACTS

The Defendant was charged in a single count Information with the offense of Violation of a Protective Order a Class A Misdemeanor in violation of Utah Code Annotated 76-5-108. At the trial the prosecutor elicited testimony from Jamie Garcia a detective with the Ogden City Police Department, who testified that Faye Peterson (the Defendants wife) came to the police station on February 16, 2006 to file a report of a violation of a protective order. (R.083 pg. 75 line 18-20). The allegation was that on February 14, 2006 the Defendant through his sister had sent her Valentine's cards. Garcia then talked with the Defendant Craig Peterson on March 30, 2006 where he admitted to sending the Valentine Card to Peggy through his sister. The State also called Peggy Peterson who acknowledged that she had received Valentine's cards through the Defendants sister on February 14, 2006. (R. 083 pg. 62 line 3-10) During defense counsels cross-examination Peggy

Peterson acknowledged that the only reference to the protective order had to do with the Petitioner not picking up the children from her home and shall not return the children to his home and she acknowledged that that was true. (R.083 pg. 67 line 11-18) also that the new protective order simply said “stay away from you and your parents”. This order deletes you and says just the “parents.” (R. 083 pg. 67 line 19-25) The prosecution also called Faye Clark the Defendants sister (R. 083 pg. 69 line 23-25 and Pg. 70 line 1-2) She acknowledges that the Defendant gave her a bag with Valentines cards and a flower in it to give to Peggy which she did on the day before Valentine’s. (R. 083 pg 71 line 1-10)

The only witness called by the Defense was the Defendant who testified that at the time he sent flowers and a card through his sister to his wife, to the question, “do you believe you were violating the law or did you intend to?” the answer was “I had no thought, or intention of violating the law. We’d been through her attorney, Patrick Kelly, for all through January on reconciliation. I thought we were really close to Peggy returning home. Just another gesture, a Valentine moment.” (R. 083 pg. 89 line 9-16) Under cross examination by prosecutor David Weiskopf the Defendant tried to testify extensively on what his attorney Robert Neeley had told him that he could do with respect to the second protective order in light of the mediation and other matters including reconciliation. Weiskopf (R.083 pg.89 line 21-25 pg. 90 line 1-24) peppered the

Defendant with questions concerning the absence of Neeley and made inquiries as to why he wasn't subpoenaed and although the court allowed the testimony, but not for the truth of what was said and only allowed the testimony to come in through the Defendant with respect to the Defendant state of mind but not whether the statement from Mr. Neeley was true. (R.083 pg. 87 line 11-18) Following closing arguments the jury then found the Defendant guilty of the offense. The initial issue to be resolved on the appeal is whether the trial judge should have Sua Sponte dismissed the case after the presentation of the prosecutions evidence on the basis that there was a second protective order which clearly set forth that the Defendant was not specifically barred from either from contacting his wife directly and indirectly.

In addition, Defense counsels failure to subpoena both the Defendants divorce counsel Robert Neeley and other witnesses which would have impeached the Defendants wife credibility was ineffective assistance of counsel, and both these failures in the trial were significant that the outcome of the trial would have been different.

SUMMARY OF ARGUMENTS

The Defendant's trial attorney failed to make a motion to dismiss at the end of the State's evidence. For these reasons, the Defendant asks this Court to find

that his trial counsel was ineffective and that the trial court committed plain error for failing to dismiss the case at the conclusion of the State's evidence.

ARGUMENT

POINT I

THE DEFENDANT WAS DENIED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTIONS 7 AND 12 OF THE UTAH'S CONSTITUTION WHEN HIS ATTORNEY FAILED TO SUBPOENA ANY WITNESSES TO SUPPORT THE DEFENDANT'S TESTIMONY.

The United States Supreme Court has recognized that the right to counsel is the right to the effective assistance of counsel, *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674 (1984). In *Strickland* the Supreme Court established a two part test to determine whether counsels assistance was ineffective, first the Defendant must show that counsel performance was deficient, this requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the Defendant by the Sixth Amendment, *Id.* at 687. In a case that is even more on point in *Kimmelman v Morrison*, 477 U.S. 365 (1986) the court considered that counsels failure to conduct discovery was ineffective, "in this case however, we deal with the total failure to conduct pretrial discovery and one as to which counsel offered only implausible explanations. Counsels

performance at trial while generally credible enough suggests no better explanation for this apparent and pervasive failure to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”

In this case this court did not allow remand to allow the trial court to investigate the Defendants allegations, but clearly calling no witnesses including the Defendants divorce counsel upon whom the Defendant relied so heavily and who the State was allowed to question the Defendant in front of the jury as to why he did not do this, damaged the Defendants defense.

Defendant had asked counsel to subpoena a number of witnesses including Neeley and others who could corroborate his statements that Peggy Peterson in the underlying protective order were either invalid or un-true. The second prong of the two part test articulated in *Strickland* is that the Defendant must show the deficient performance prejudiced the defense. This requires showing that counsels errors were so serious as to deprive the Defendant of a fair trial a trial whose result is reliable. Id. at 687. In *State v Templin* 805 P.2d 182 (UT 1990) The Utah Supreme Court held that to meet the second part of the *Strickland* test the Defendant must show that there is a reasonable probability that but for counsels unprofessional error the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. at 187 In making the determination that counsel was ineffective this

Court should consider the totality of the evidence, taking into account such factors as whether the errors effect the entire evidentiary picture or have an isolated effect and how strongly the verdict is supported by the record.

In the present case it is clear that the absence of the Defendant's divorce counsel Mr. Neeley was critical to these considerations, particularly in light of the fact that the prosecutor played so much emphasis on Neeley's absence and on the Defendants failure to bring him to court in front of the jury during his cross-examination of the Defendant. In addition, because the court only allowed the statements through the Defendant with respect to what Mr. Neeley told him during the period of time in question to come in for his state of mind and not for the truth of the matter the jury obviously had no alternative but to find the verdict of guilty. This error effected the entire evidentiary picture and therefore fell within the two prong test of *Strickland v Washington* as upheld by *Kimmelman*.

POINT II

WHETHER THE JUDGES FAILURE TO DISMISS THE CASE SUA SPONTE AFTER THE STATES CASE IN CHIEF WAS AN ABUSE OF DISCRETION.

During the presentation of the States case the State introduced both protective orders and (See Exhibits A-B). Although defense counsel made no motion to dismiss after the prosecution rested the court was aware that the second protective order modified the first and one of the key modifications was that unlike

the first order the Defendant was not barred from contacting his wife. He was barred from contacting her parents, but not his wife. Both these orders were in effect at the time of the February 14th Valentine card. The States entire case was based on the indirect contact that was covered in the first order wherein the standard provision of no contact between the Defendant and his wife either directly or indirectly was claimed to be violated because of the indirect contact by having the Defendants sister who testified in the states case in chief, deliver the Valentine's Cards to Defendant's wife. There was no allegation that the Defendant contacted his wife directly or that the cards contained threats or any other kind of comments that caused her to be fearful. The second order did not prevent such indirect contact and therefore the Court recognizing this should have dismissed the case given the fact that there is no way the Defendant could have violated the order by the conduct prosecuted by the state.

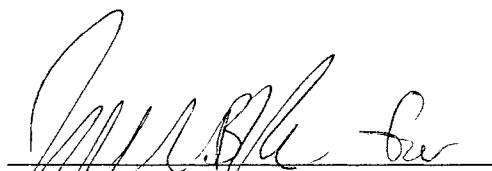
Where a motion was not presented at trial the court is governed by *State v Dunn* 850 P.2d 1208 (Utah 1983), *State v. Holgate*, 10 P.3d 346, 350 (Utah 2000). This is the plain error statute which requires proof that the motion was not made that the court should have granted the same from the bench and the failure to do so was prejudicial to the Defendant. In this case the failure to a Sua Sponte motion was obvious and was clearly prejudicial to the Defendant because it required the defense to move on with the case with the Defendant taking the stand which

clearly damaged his position in front of the jury. The Court failed to meet the standards of *Holgate* and *Dunn* and therefore should be reversed.

CONCLUSION

The Defendant has assigned error in this case in two different aspects. The first that his counsel was ineffective when he did not subpoena his divorce attorney to testify in the trial and the second error is that the Judge did not dismiss the case after the state concluded its case in chief. Both of these positions are supported by the law set forth herein and the facts and this Court is urged to reverse Defendants conviction for violation of a protective order and set aside any further requirements of his sentence.

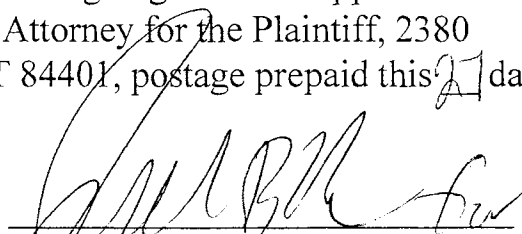
DATED this 21 day of August, 2007.



JOHN T. CAINE
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to _____, Weber County Attorneys Office, Attorney for the Plaintiff, 2380 Washington Boulevard, 2nd Floor Ogden, UT 84401, postage prepaid this 21 day of August, 2007.



JOHN T. CAINE
Attorney at Law

ADDENDUM C

FILED
UTAH APPELLATE COURTS
MAY 11 2007

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,)	
)	
Plaintiff and Appellee,)	ORDER
)	
v.)	Case No. 20070169-CA
)	
Joseph Craig Peterson,)	
)	
Defendant and Appellant.)	

Before Judges Greenwood, Billings, and Davis.

This appeal is before the court on a motion for remand under rule 23B of the Utah Rules of Appellate Procedure.

A remand is available only upon "a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective" including facts that show "the claimed deficient performance of the attorney" and "the claimed prejudice suffered by the appellant as a result of the claimed deficient performance." Utah R. App. P. 23B(a) & (b).

The purpose of rule 23B is "for appellate counsel to put on evidence he or she now has, not to amass evidence that might help prove an ineffectiveness of counsel claim." State v. Johnston, 2000 UT App 290, ¶7, 13 P.3d 175. "It allows supplementation of the record, in limited circumstances, with nonspeculative facts not fully appearing in the record that would support the claimed deficient performance and the resulting prejudice." Id. (emphasis in original). "A remand is not necessary if the facts underlying the ineffectiveness claim are contained in the existing record. Id. at ¶9.

To the extent Appellant seeks to remand to determine whether trial counsel was ineffective for failing to call certain witnesses, Appellant's motion is too speculative. As we stated in State v. Johnston, 2000 UT App 290:

to obtain a [r]ule 23B remand, a defendant must not only submit affidavits specifying who the uncalled witnesses are and that they are available to testify at an evidentiary hearing, he must ordinarily submit affidavits from the witnesses detailing their testimony. In other words, a defendant must present this court with the evidence he intends to present on remand and explain how that evidence supports both prongs of Strickland v. Washington, 466 U.S. 668, 687 (1984). To grant a [r]ule 23B remand on less would permit remands on speculative facts in contravention to the express language of [r]ule 23B. Likewise, it would permit [r]ule 23B to be used as a discovery tool rather than as a means to make a record of facts now known to defendant which bear on his ineffective assistance claim, but which do not otherwise appear of record.

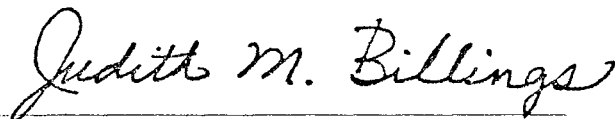
Id. at ¶11. Appellant not only fails to set forth affidavits of the witnesses who would have purportedly testified at trial, but fails to detail their testimony. As a result, remand is inappropriate.

To the extent Appellant seeks remand regarding the existence of a subsequent protective order in the divorce action, Appellant's motion is based upon facts of record. "If the facts already appearing in the record are sufficient to make the claim, a remand is not needed." Id. at ¶23. Accordingly, no remand is required.

IT IS HEREBY ORDERED that the motion to remand is denied.

DATED this 11th day of May, 2007.

FOR THE COURT:



Judith M. Billings, Judge

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2007, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

JOHN T CAINE
RICHARDS CAINE & ALLEN
2550 WASHINGTON BLVD
STE 300
OGDEN UT 84401

DAVID E WEISKOPF
WEBER COUNTY ATTORNEY'S OFFICE
2380 WASHINGTON BLVD STE 230
OGDEN UT 84401

Dated this May 11, 2007.

By Janet Alexander
Deputy Clerk

Case No. 20070169
District Court No. 061902882

ADDENDUM D

SECOND DISTRICT COURT

2007 JAN 29 A 11:14

SECOND DISTRICT COURT - OGDEN
WEBER COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 061902882 MO
	:	
JOSEPH CRAIG PETERSON,	:	Judge: SCOTT M HADLEY
Defendant.	:	Date: January 23, 2007

PRESENT
Clerk: marykd
Prosecutor: DAVID E WEISKOPF
Defendant
Defendant's Attorney(s): ROBERT V PHILLIPS

DEFENDANT INFORMATION
Date of birth: October 25, 1944
Video
Tape Number: H012307 Tape Count: 915

CHARGES

1. VIOLATION OF PROTECTIVE ORDER - Class A Misdemeanor
Plea: Not Guilty - Disposition: 12/04/2006 Guilty

SENTENCE JAIL

Based on the defendant's conviction of VIOLATION OF PROTECTIVE ORDER a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s) The total time suspended for this charge is 365 day(s).

SENTENCE, JUDGMENT, COMMITMENT



CD19435454

061902882 PETERSON, JOSEPH CRAIG

JAN 29 2007

Case No: 061902882
Date: Jan 23, 2007

SENTENCE JAIL RELEASE TIME NOTE

The defendant may have immediate release to the DRP Program at Kiesel.

SENTENCE FINE

Charge # 1 Fine: \$2500.00
 Suspended: \$2500.00

 Total Fine: \$2500.00
 Total Suspended: \$2500.00
 Total Surcharge: \$0
Total Principal Due: \$0
 Plus Interest

ORDER OF PROBATION

The defendant is placed on probation for 18 month(s).
Probation is to be supervised by Ogden Second District Court.
Defendant is to report to the Weber County Jail.
Defendant is to report by January 24, 2007 by 7:00 a.m..

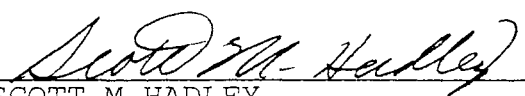
The defendant is placed on court probation for a period of 18 months with the following conditions:

- 1) The defendant shall enter, complete, and pay the costs of a Thinking for a Change class or Cognitive Restructuring class through New Horizons.
- 2) The defendant shall serve 90 days in the DRP program at Kiesel.
- 3) The defendant shall have no contact with the victim Peggy Peterson or go near her residence within 1000 feet.
- 4) The defendant shall submit to DNA testing, paying all costs.
- 5) The defendant shall commit no like offenses.

PROBATION ENDS: 7/22/08

Case No: 061902882
Date: Jan 23, 2007

Dated this 29 day of Jan., 2007.


SCOTT M HADLEY
District Court Judge

ADDENDUM A

Name: Peggy D. Peterson
 Address: 170 N Washington Blvd Apt 908
 Ogden, UTAH 84404
 Telephone: 801-399-1866 (home) -- (work)

IN THE SECOND JUDICIAL DISTRICT COURT
 OF WEBER COUNTY, STATE OF UTAH
 Ogden Courthouse, 2525 Grant Avenue, Ogden Utah 84401

Peggy D. Peterson,
 Petitioner

vs.

Joseph Craig Peterson,
 Respondent.

*
 * EX PARTE PROTECTIVE
 * ORDER
 *

Case No. 054901856

Judge: Morris

NOTICE TO THE RESPONDENT: YOU CAN BE ARRESTED FOR VIOLATING THIS ORDER EVEN IF ANY PERSON PROTECTED BY THE ORDER INVITES OR ALLOWS YOU TO VIOLATE THE ORDER'S PROHIBITIONS. ONLY THE COURT CAN CHANGE THE ORDER. YOU MAY BE HELD IN CONTEMPT FOR IGNORING OR ALTERING THE TERMS OF THE ORDER.

NOTICE TO THE PETITIONER: YOU CANNOT WAIVE, ALTER, IGNORE OR DISMISS THIS ORDER WITHOUT FURTHER COURT ACTION. YOU MAY BE HELD IN CONTEMPT FOR IGNORING OR ALTERING THE TERMS OF THIS ORDER.

*no only was
 restic violence
 due by Genese
 & Ray and Ray*

Wrong

The Court having found that Petitioner is a cohabitant of Respondent and having found that the Court has jurisdiction over this matter, and having reviewed Petitioner's Verified Petition for Protective Order, from which it appears that domestic violence or abuse has occurred or that there is a substantial likelihood of immediate danger of abuse or domestic violence to Petitioner by the Respondent in that Respondent presents a credible threat to the physical safety of

Wrong = lived with Peg at least months after Claimed I left her in Jan Dec 04. Also Peg came 2 do after Peg + I separated June 18, 25 all Peg and I met w.

Falsification

Petitioner, and pending further hearing in this matter,

09/22/2005

Ex Parte Protective Order

Page 1

PURSUANT TO UTAH CODE SECTION 30-6-4.2 THE PETITIONER IS GRANTED AN EX PARTE PROTECTIVE ORDER.

(The Judge shall initial each section that is included in this Order.)

THE COURT MAKES THE FOLLOWING ORDERS IN THE CRIMINAL PORTION OF THIS EX PARTE PROTECTIVE ORDER: This order is effective from the date and time served on the Respondent, until, after further hearing on this matter, the Respondent is served with a protective order, the protective order is denied, or this matter is dismissed.

30 days on
 SMH X 1. The Respondent is restrained from attempting, committing, or threatening to commit domestic violence or abuse against the Petitioner and shall not stalk, harass, or threaten, or use or attempt to use physical force that would reasonably be expected to cause physical injury to the Petitioner. *I never or have, but Ray & G did and Peggy let them.*

SMH X 2. The Respondent is restrained from attempting, committing, or threatening to commit domestic violence or abuse against the designated family and household members and shall not stalk, harass, or threaten, or use or attempt to use physical force that would reasonably be expected to cause physical injury to those parties. The designated minor children and members of Petitioner's family or household are:

may agree in future on other parties
 Joseph Craig Peterson, II (age 2), Mariah Peterson (age 1), Raymond Steele Jensen (age 76), Genae LaRue Jensen (age 70)

SMH X 3. The Respondent is prohibited from directly or indirectly contacting, harassing, telephoning, e-mailing, or otherwise communicating with the Petitioner. *except to go parties to discuss visitation*

SMH X 4. The Respondent is ordered excluded and shall stay away from Petitioner's residence and its premises located at: 170 N Washington Blvd Ogden UT and any subsequent residence of Petitioner known to the Respondent, and Respondent is prohibited from terminating or interfering with the utility services to the residence. *I never was*

Joke
 SMH X 5. The Respondent is ordered to stay away from the school, place of employment, and/or other places, and their premises, frequented by Petitioner, the minor children and the designated household and family members. This includes any subsequent school, place of employment or other places known to the Respondent, which are frequented by the Petitioner or the minor children and the designated family and household members. The current addresses include:

Ogden-Weber ATC 200 N Washington Blvd

Joke
 Wangsgards Grocery Store 2nd and Washington

*but
Peg has falsified*

- X 6. Under state law pursuant to this order, the Court having found that Respondent's use or possession of a weapon may pose a serious threat of harm to Petitioner, the Respondent is prohibited from purchasing, using, or possessing a firearm or any of the following weapons:

0

- SMH X 7. The Petitioner is awarded temporary possession of the following residence, automobile and/or other essential personal property: 1996 Honda Civic ~~Rototiller, garden chairs, parents gardening tools, composter, aquadromes Washer and Dryer, furniture, (sofa hide a bed, 2 pink chairs, entertainment center my clothes, jewelry, personal information, filing cabinet children's clothing, kitchen-microwave, pots, pans and dishes, scrub brush, plastic storage drawers, piano bench, bookcase CM RUSSELL picture, phones, slow cooker, these are things that either I or my parents have bought.~~ I'm also asking to exchange the Kitchen Stove.

This order is subject to subsequent orders concerning the listed property in future civil proceedings.

Peg took away my house hold things and placed them in these Peg wa now?

RESPONDENT'S VIOLATION OF THE CRIMINAL PORTION, PROVISIONS "1" THROUGH "7" OF THIS ORDER IS A CRIMINAL OFFENSE PUNISHABLE AS A CLASS A MISDEMEANOR UNDER UTAH CODE ANN. SECTIONS 30-6-4.2 AND 76-5-108.

IF RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "7" OF THIS ORDER IS A SECOND OR SUBSEQUENT DOMESTIC VIOLENCE OFFENSE, ENHANCED PENALTIES MAY BE IMPOSED UNDER UTAH CODE SECTIONS 77-36-1.1 and 77-36-2.4.

THE COURT ORDERS THE FOLLOWING RELIEF IN THE CIVIL PORTION OF THIS EX PARTE PROTECTIVE ORDER. The civil portion is effective from the date and time served on the Respondent, until, after further hearing on this matter, the Respondent is served with a protective order, the protective order is denied or this matter is dismissed.

- SMH X 8. The Petitioner is granted temporary custody of the following minor child/ren: Joseph Craig Peterson, II, Mariah Peterson,

Peg has since 18 June 05 = true me so wrongly

When a minor child is included in an ex parte protective order, the Petitioner may provide a copy of the order to the principal of the school where the child attends.

If the Respondent fails to return custody of a minor child as ordered in this order, the Petitioner may obtain a writ of assistance from the court.

SMH X 9. The Respondent shall have visitation as follows:

Prohibit Respondent from visiting or making any contact with the minor children.
until investigation into allegation of child abuse by

- case to Pet
falsified

THE DIVISION OF CHILD AND FAMILY SERVICES

They haven't come or called to even
make an appointment with me,
it's almost a month since Judge Scott M. Hall
signed the order.

SMH X 10. The Respondent is restrained from using drugs and/or alcohol prior to or during visitation.

SMH X 11. The Respondent is restrained from removing the parties' minor children from the state of Utah.

I don't

have
her for

VIOLATION OR FAILURE TO COMPLY WITH THE CIVIL PORTION, PROVISIONS "8" THROUGH "11" OF THIS ORDER, MAY SUBJECT PERSONS TO CONTEMPT PROCEEDINGS.

SMH X 12. The Division of Child and Family Services is ordered to conduct an investigation into the allegation of child abuse.

They have damaged my children and I'm mad as much

 X 13. A Guardian ad Litem is appointed to represent the best interests of the children.

SMH X 14. An officer from the following law enforcement agency: Weber
County Sheriff Dept shall accompany Petitioner to ensure that
Petitioner obtains custody of the children and/or that the Petitioner safely regains
possession of the awarded property.

 15. An officer from the following law enforcement agency: _____
_____ shall facilitate Respondent's removal of
Respondent's essential personal belongings from the parties' residence. The law
enforcement officer shall contact Petitioner to make these arrangements. Respondent may
not contact the Petitioner or enter the residence to obtain any items.

SMH X 16. Law enforcement agencies with jurisdiction over the protected locations shall have
authority to compel Respondent's compliance with this Order, including the authority to
forcibly evict and restrain Respondent from the protected areas. Information to assist with
the identification of the Respondent is attached to this order.

 17. The Respondent and the Petitioner are ordered to bring proof of current income to
the hearing. The proof should include year-to-date pay stubs or employer statements, and
complete tax returns for the most recent year.

 18. Other:

19. Unless otherwise modified by the Court, this Order is effective from the date and time served on Respondent, until, after further hearing in this matter, the Respondent is served with a Protective Order or a Protective Order is denied.

20. The Respondent is ordered to appear at a hearing on:

Date: October 5, 2005
Time: 9:00 am
Room: 2 B
Address: 2525 Grant

Notice to Petitioner: A copy or notice of this order should be given by you to anyone who has a legal interest in the individuals protected by this order, such as those with custody or parent-time rights, guardians, conservators, or family members who may be impacted by this order.

DATED: 9-23-05 TIME: 4:25 p.m.

BY THE COURT:

Scott M. Hadley
DISTRICT COURT JUDGE

Serve Respondent at:

Street: 680 S 7600 E
City/Town: Huntsville
State/Zip: UTAH 84317

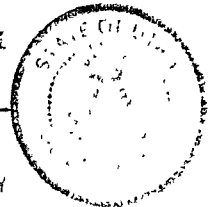
STATE OF UTAH
COUNTY OF WEBER } ss.

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE

DATED THIS 23 DAY OF Sept 2005

PAULA GARR
CLERK OF THE COURT

BY M. Berck DEPUTY



In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this proceeding should call the Clerk of the Court immediately upon receipt of this notice.

IF YOU NEED AN INTERPRETER, PLEASE NOTIFY THE COURT (five days before your hearing, if possible). In all criminal cases and in some other proceedings, the court will arrange for the interpreter and will pay the interpreter's fees. In most civil matters, the court cannot pay for the interpreter but can give you a list of certified approved interpreters. You must use an interpreter from the list.

ADDENDUM B

10/24/2005 3:04:318214
10/24/2005 3:07:00

SECOND DISTRICT COURT

2005 OCT 21 A 9:53

Name: Peggy D. Peterson
Address: 170 N Washington Blvd Apt 908
Ogden, UTAH 84404
Telephone: 801-399-1866(home) --(work)

IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY, STATE OF UTAH
Ogden Courthouse, 2525 Grant Avenue, Ogden Utah 84401

Peggy D. Peterson,
Petitioner

vs.

Joseph Craig Peterson, Sr.,
Respondent.

*
*
*
*
*
*

PROTECTIVE ORDER

OCT 21 2005

Case No. 054901856

Judge: Morris

NOTICE TO THE RESPONDENT: YOU CAN BE ARRESTED FOR VIOLATING THIS ORDER EVEN IF ANY PERSON PROTECTED BY THE ORDER INVITES OR ALLOWS YOU TO VIOLATE THE ORDER'S PROHIBITIONS. ONLY THE COURT CAN CHANGE THE ORDER. YOU MAY BE HELD IN CONTEMPT FOR IGNORING OR ALTERING THE TERMS OF THE ORDER.

NOTICE TO THE PETITIONER: YOU CANNOT WAIVE, ALTER, IGNORE OR DISMISS THIS ORDER WITHOUT FURTHER COURT ACTION. YOU MAY BE HELD IN CONTEMPT FOR IGNORING OR ALTERING THE TERMS OF THE ORDER.

This matter came for hearing on 10/20/05, before the undersigned. The following parties were in attendance:

☒ Petitioner

☐ Respondent

☒ Petitioner's attorney

☒ Respondent's attorney

Justin Stringfellow
Robert Nealey

Protective Order DVN



HD18697140

054901856

PETERSON, JOSEPH CRAIG

Protective Order

Page 1

10/24/2005 3:07:008278
10/24/2005 3:04:318215

The Court having reviewed Petitioner's Verified Petition for Protective Order and:

ABT having received argument and evidence,

___ having accepted the stipulation of the parties

___ having entered the default of the Respondent for failure to appear, and it appearing that domestic violence or abuse has occurred and/or there is a substantial likelihood of immediate danger of abuse or domestic violence to the Petitioner by the Respondent

**PURSUANT TO UTAH CODE SECTION 30-6-4.2 THE PETITIONER IS GRANTED A
PROTECTIVE ORDER:**

(The Judge or Commissioner shall initial
each section that is included in this Order.)

THE COURT MAKES THE FOLLOWING ORDERS IN THIS CRIMINAL PORTION OF THE PROTECTIVE ORDER. Two years after the date of this order, the Respondent may request a hearing to dismiss the criminal portion of this order. The Petitioner is entitled to receive notice from the Court. Therefore, within 30 days prior to the end of the two year period, the Petitioner must provide the Court with a current address, which address will not be made available to the Respondent, if the Petitioner wants to receive notice.

ABT X 1. Upon the court finding that the Respondent presents a credible threat to the safety of the Petitioner and/or the designated minor children and family and household members, the Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against Petitioner and shall not stalk, harass, or threaten or use or attempt to use physical force that would reasonably be expected to cause physical injury to the Petitioner.

ABT X 2. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against the designated minor children and family and household members and shall not stalk, harass, or threaten or use or attempt to use physical force that would reasonably be expected to cause physical injury to those parties. The designated minor children and members of Petitioner's family or household are:

Joseph Craig Peterson, II (age 2), Mariah Peterson (age 1), ~~Joseph Craig Peterson, II (age 2), Mariah Peterson (age 10),~~ Raymond Steele Jensen (age 76), Genae LaRue Jensen (age 70)

Parties may agree on other 3rd party

- ABT X 3. The Respondent is prohibited from directly or indirectly contacting, harassing, telephoning, e-mailing, or otherwise communicating with the Petitioner. *except 3rd party contact may occur only to discuss welfare + visitation of minor child*
- ABT X 4. The Respondent shall be removed and excluded, and shall stay away, from Petitioner's residence, and its premises, located at: 170 N Washington Blvd Ogden UT and any subsequent residence of Petitioner known to the Respondent, and Respondent is prohibited from terminating or interfering with the utility services to the residence. *Resp.'s so to be 3rd party*

- ABT X 5. The Respondent is ordered to stay away from the school, place of employment, and/or other places, and their premises, frequented by the Petitioner, the minor children and the designated household and family members. This includes any subsequent school, place of employment or other places known to the Respondent, which are frequented by the Petitioner or by the designated family and household members. The current addresses include:

Ogden-Weber ATC 200 N Washington Blvd

~~Wangsgards Grocery Store 2nd and Washington~~

- X 6. Under state law pursuant to this order, the Court having found that Respondent's use or possession of a weapon may pose a serious threat of harm to Petitioner, the Respondent is prohibited from purchasing, using, or possessing a firearm and/or the following weapon(s):

10/24/2005 2:07:00Z
10/24/2005 3:04:31Z

 X 7. The Petitioner is awarded possession of the following residence, automobile and/or other essential personal effects: 1996 Honda Civic
Rototiller, garden chairs, parents gardening tools, composter, aquadromes
Washer and Dryer, furniture, (sofa/hideabed, 2 Pink chairs, entertainment center
my clothes, jewelry, personal information, filing cabinet children's clothing, Kitchen book-
microwave, pots, pans and dishes, scrub buster, plastic storage drawers, piano bench, CM case
RUSSELL picture, phones, slow cooker, these are things that either I or my parents have
bought. I'm also asking to exchange the kitchen stove

This award is subject to orders concerning the listed property in future civil proceedings.

ABT X 8. An officer from the following law enforcement agency: Weber
County Sheriff Dept shall accompany Petitioner to ensure that
Petitioner safely regains possession of the awarded property.

 9. An officer from the following law enforcement agency: _____
_____ shall facilitate Respondent's removal of
Respondent's essential personal belongings from the parties' residence. The law
enforcement officer shall contact Petitioner to make these arrangements. Respondent may
not contact the Petitioner or enter the residence to obtain any items.

**RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "7" OF THIS ORDER
IS A CLASS A MISDEMEANOR UNDER UTAH CODE SECTIONS 30-6-4.2(5) and 76-
5-108.**

**IF RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "7" OF THIS
ORDER IS A SECOND OR SUBSEQUENT DOMESTIC VIOLENCE OFFENSE,
ENHANCED PENALTIES MAY BE IMPOSED UNDER UTAH CODE SECTIONS 77-
36-1.1 AND 77-36-2.4.**

812916:29:3 09/21/05 192806:20:3 09/21/05

Petitioner is granted the following temporary relief in the Civil Portion of this Protective Order (provisions "a" through "I") which will (expire/be reviewed by the court) _____ days from the date of this order:

 X a. The Petitioner is granted custody of the following minor children:

Joseph Craig Peterson, II, Mariah Peterson,

When a minor child is included in a protective order, the Petitioner may provide a copy of the order to the Principal of the school where the child attends.

If the Respondent fails to return custody of a minor child as ordered in this order the Petitioner may obtain a writ of assistance from the Court.

 X b. Visitation shall be as follows:

Prohibit Respondent from visiting or making any contact with the minor children.

UNTIL INVESTIGATION INTO OF CHILD ABUSE BY

THE DIVISION OF CHILD AND FAMILY SERVICES

19/24/2005 5:07:00PM 19/24/2005 5:07:00PM

- ☒ c. The Respondent is restrained from using drugs and/or alcohol prior to or during visitation.
- ☒ d. The Respondent is restrained from removing the parties' minor child/ren from the state of Utah.
- ☐ e. The Respondent is ordered to pay child support to the Petitioner in the amount of \$ _____ pursuant to the Utah Uniform Child Support Guidelines.
- ☐ f. The Respondent is ordered to participate in mandatory income withholding pursuant to Utah Code Annotated § 62A-11, Parts 4 and 5.
- ☐ g. The Respondent is ordered to pay one-half of the minor child/ren's day care expenses.
- ☐ h. The Respondent is ordered to pay one-half of the minor child/ren's medical expenses including premiums, deductibles and co-payments.
- ☐ i. The Respondent is ordered to pay Petitioner spousal support in the amount of \$ _____.
- ☐ j. The Respondent is ordered to pay Petitioner's medical expenses, suffered as a result of the abuse in the amount of \$ _____.
- ☐ k. The Respondent is ordered to pay the minor child/ren's medical expenses, suffered as a result of the abuse in the amount of \$ _____.
- ☐ l. Other: _____

Notice to Petitioner: If, at any time, you receive services through the Office of Recovery Services (ORS) and you want to keep your location information confidential, you must provide a copy of your current protective order to ORS.

VIOLATION OF PROVISIONS "a" THROUGH "l" MAY SUBJECT RESPONDENT TO CONTEMPT PROCEEDINGS.

10/21/2005 10:23:59 AM

☒ 11. The Division of Child and Family Services is ordered to conduct an investigation into the allegation of child abuse.

☒ 12. A Guardian ad Litem is appointed to represent the best interests of the children.

☐ 13. Other:

14. Under federal law, the Respondent may be prohibited from purchasing, owning, transporting, using or possessing a firearm or ammunition. A violation of this prohibition may be a separate federal crime. There is an exemption for police and military personnel while on actual duty and those individuals should contact their immediate supervisors for further instructions.

15. Law enforcement agencies with jurisdiction over the protected locations shall have authority to compel Respondent's compliance with this Order, including the authority to forcibly evict and restrain Respondent from the protected areas. Information to assist with identification of the Respondent is attached to this Order.

16. Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and United States Territories.

17. Two years after the date of this order, a hearing may be held to dismiss the remaining provisions of the order. Within 30 days prior to the end of the two-year period, the Petitioner should provide the court with a current address, which address will not be made available to Respondent.

Notice to Petitioner: A copy or notice of this order should be given by you to anyone who has a legal interest in the individuals protected by this order, such as those with custody or parent-time rights, guardians, conservators, or family members who may be impacted by this order.

DATED: 10-21-05

BY THE COURT:

Scott M. Hadley

DISTRICT COURT JUDGE

Recommended by:

Wendy R. [Signature] 10/20/05
District Court Commissioner Date

By this signature, Respondent approves the form, and accepts service, of this Protective Order and waives the right to be personally served.

R. J. Craig Peterson
Respondent

Serve Respondent at:

Street: **680 S 7600 E**
City/Town: **Huntsville**
State/Zip: **UTAH 84317**