

1997

## Utah v. Culley : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

RODERICK CULLEY,

Defendant/Appellant.

Case No. 970672-CA  
Priority No. 2

BRIEF OF APPELLEE

Appeal from the Third District Court,  
Salt Lake County, Murray Department  
Judge Joseph C. Fratto, Jr.

UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO. 970672-CA

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FILED

Court of Appeals

19 1997

Julia D'Alessandro  
Clerk of the Court

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Appellee,

v.

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## **JURISDICTION**

The judgment of the Third District Court, Murray Department, was entered October 16, 1997. The defendant's notice of appeal was filed November 17, 1997. The jurisdiction of this Court is invoked under Utah Code Ann. § 78-2a-3(2)(e).

## **ISSUES PRESENTED**

1. Must the government prove that the defendant was served the protective order issued if:
  - a. service of the protective order is not an element of the offense; and
  - b. with counsel present, the defendant stipulated to the entry of the protective order and throughout the criminal trial, he essentially admitted knowing the conditions of the protective order?

A trial court's factual findings in a criminal bench trial are reviewed under a clearly erroneous standard. City of Orem v. Lee, 846 P.2d 450, 452 (Utah App. 1993), *cert denied*, 857 P.2d 948 (Utah 1993).

2. Did the defendant waive the only issue he presents on appeal by failing to preserve it by a proper objection in the lower court?

An appellate court will not address a constitutional issue for the first time on appeal unless (1) the trial court committed plain error or (2) there are exceptional

circumstances. State v. Gibbons, 740 P.2d 1309, 1311 (Utah 1987); State v. Webb, 790 P.2d 65, 78 (Utah App. 1990).

### **STATUTES INVOLVED**

The texts of the following statutes relevant to the determination of the present case are set forth in the Addendum: Utah Code Ann. §§ 76-5-108; 76-1-501(2); 77-36-2.5; 77-36-2.4(2)(a); 30-6-4.2(4), (8).

### **STATEMENT OF THE CASE**

The Appellant, Roderick Culley, (hereafter, defendant) was charged by Information on February 24, 1997, with violating a protective order (Index of Proceedings (hereafter "R") 1-4). On May 21, 1997, the defendant waived a jury trial (R. 18). The trial court found the defendant guilty of violating a protective order on September 5, 1997. And on October 16, 1997 the defendant was sentenced to one year in the county jail and ordered to pay a fine of \$1,500.00. Both the jail time and the fine were suspended and the defendant was placed on twenty-four months probation. (R. 41.) The defendant filed a notice of appeal on November 17, 1997 (R. 42-43).

The defendant's ex-wife, Lisa Stout brought proceedings against the defendant seeking a civil protective order. On September 26, 1996, a protective order was entered against the defendant by stipulation, following a hearing, prohibiting him from "...telephoning...[Lisa Stout]...except for visitation" (Plaintiff's Exhibit 1, Appellee's



Addendum (hereafter, Add.) a-6-10; Transcript of the Proceedings (hereafter "Trans.") 8). The defendant was personally present at the protective order hearing. He was represented by an attorney and he stipulated to the entry of the order against him. (Trans. 4; Add. a-6).

Two weeks later the defendant began calling Lisa Stout. From October 10, 1996, through January 16, 1997, the defendant waged a telephone campaign against Lisa Stout, in violation of the protective order (Trans. 10). These telephone calls concerned matters other than visitation with the children (Trans. 10). The defendant called to claim that Lisa Stout had lovers, that she was showing pornographic movies to the children (Trans. 10), and he threatened to tell her family she was a whore (Trans. 11). He called and told her she was a baby killer and a murderer (Trans. 11). During the multiple calls, visitation was not discussed (Trans. 11).

On January 16, 1997, Lisa Stout decided she was fed up with the telephone calls (Trans. 11). The defendant called at least three times that day, two of which were around midnight (Trans. 18). The defendant claimed that he was calling at the behest of the parties' daughter to discuss the child's headaches (Trans. 12). Lisa Stout reported the defendant's telephone behavior to police on January 17, 1997 (Trans. 17).

### **SUMMARY OF THE ARGUMENT**

The criminal offense of violation of a protective order does not require that the defendant be served with the protective order. Service is not an element of the offense. It

does not constitute “(a) [t]he conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; [or] (b) [t]he culpable mental state....” Utah Code Ann. § 76-1-501(2) (“Element of the offense” defined). Additionally, the domestic violence statutory scheme does not support requiring service as an element of the offense.

In the alternative, if service of the protective order is an element of the offense, defendant essentially stipulated to this element when he agreed to entry of the protective order at the civil protective order hearing. The purpose of serving the order is to notify the defendant what acts are prohibited. Since the defendant was personally present at the civil protective order hearing, represented by counsel, and agreed to the order, the purpose behind service of the order was satisfied.

Finally, at trial the defendant failed to preserve the issue he now presents and, consequently, has waived his right to raise the issue on appeal.

## **ARGUMENT**

### **I. THE GOVERNMENT IS NOT REQUIRED TO PROVE THE DEFENDANT WAS SERVED THE PROTECTIVE ORDER ISSUED BECAUSE:**

#### **A. Service of the protective order is not an element of the offense.**

Utah Code Ann. § 76-1-501(2) defines “element of the offense” to mean: (a) The conduct, attendant circumstance, or results of conduct proscribed, prohibited, or

forbidden in the definition of the offense; (b) the culpable mental state required. Serving the protective order following the civil protective order hearing does not fit within this definition. Serving the order is neither “conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense,” nor is it “[t]he culpable mental state required.” *Id.* To hold otherwise is to hold that not only must the government prove service beyond a reasonable doubt, but the government must actually supply this element of the crime, since the court must deliver the protective order to the county sheriff, who must, in turn, serve the order. Utah Code Ann. §§ 30-6-4.2(4) and (8).

The concern addressed by serving the protective order is a due process concern. It would be unfair to hold a person criminally responsible for prohibited conduct of which the person was unaware. For example, if a respondent in a protective order fails to show at the civil protective order hearing, he or she must still be notified of the prohibited conduct. Formal service is one way of accomplishing this. However, serving the protective order is unnecessary when, as here, the defendant is present at the hearing that establishes the prohibited conduct. (Trans. 4)

Utah's policy regarding domestic violence is expressed in several statutes. For example, Chapter 6 of Title 30, entitled Cohabitant Abuse Act, provides the process for a victim of domestic violence to obtain a civil protective order restraining a perpetrator from contacting the victim. Certain violations of such an order can result in a class A misdemeanor while others in a contempt proceeding. Utah Code Ann. § 30-6-4.2(5).

After a first domestic violence offense, subsequent offenses carry enhanced penalties.

Utah Code Ann. § 77-36-1.1. Law enforcement officers are required to make warrantless arrests if they have probable cause to believe that a protective order has been violated. Utah Code Ann. § 77-36-2.4. And finally, specific statutory authority is given courts to deny bail to domestic violence pre-trial detainees in subsection (8) of Utah Code Ann. § 77-36-2.5. The legislature explained:

...because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied....

The above statutory framework makes it clear that domestic violence is a serious crime. In an effort to curb domestic violence, the legislative trend has been to make obtaining a civil protective order less cumbersome. Utah State Representative Dillree, in summing up 1995 domestic violence amendments explained that "....the maze that exists out there, the complicated bureaucracy that victims have to go through revictimizes them." [General Session 51st Legislature; Legislative Day No. 37; February 21, 1995; Tape 2, Pg. 1, Afternoon.] See generally, Utah Code Ann. § 30-6-4 through § 30-6-4.2. A ruling that service of a protective order is an element of the offense of violating a protective order, as Defendant urges, would defeat the Legislature's purpose behind the protective order statutory framework. This is especially true here, where Defendant was personally present at the protective order hearing, represented by counsel, and agreed to

entry of the protective order (Add. 2-6; Trans. 4). Additionally, such a holding would place an unmanageable burden on law enforcement responsible for service. Not only would they have to serve those who were absent from the protective order hearing, but those who were present and participated in the proceeding.

The defendant is asking this Court to legislate a requirement into the criminal protective order statute that is not there. Utah Code Ann. § 76-5-108 refers to four different proceedings that can result in protective orders:

Any person who is the respondent or defendant subject to a protective order...issued under *Title 30, Chapter 6, Cohabitant Abuse Act*, or *Title 78, Chapter 3a, Juvenile Courts*, *Title 77, Chapter 36, Cohabitant Abuse Procedures Act*, or a *foreign protective order* as described in Section 30-6-12, who intentionally violates that order *after having been properly served*, is guilty of a Class A misdemeanor (Emphasis added).

Proof of service of a court's ultimate protective order is not required in all foreign protective orders or in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

A foreign protective order must be given full faith and credit in Utah,

if the protective order is similar to a protective order issued in compliance with Title 30, Chapter 6, Cohabitant Abuse Act or Title 77, Chapter 36, Cohabitant Abuse Procedures Act, and includes the following:

- (a) the requirements of due process were met by the issuing court, including subject matter and personal jurisdiction;
- (b) the respondent received reasonable notice and;
- (c) the respondent had an opportunity for a hearing regarding the protective order.

Utah Code Ann. § 30-6-1(8). This definition does not include service of the protective order. Defendant relies upon the language, "after having been properly served," to

suggest that service is an element of the crime in Utah Code Ann. § 76-5-108. Given defendant's interpretation of that language, Utah courts would be unable to give full faith and credit to any protective order issuing from a jurisdiction that does not include service as an element of the offense. In Alabama, for example, "a willful violation of a protective order, restraining order or an injunctive order issued to bring about a cessation of the abuse of a person and which is issued by a court of competent jurisdiction is a class A misdemeanor." Ala. Code 1975 § 30-5A-3. Service of the court's order is not an element of the offense. (Under Alabama law, lack of knowledge of the order violated is an affirmative defense. Ala. Code 1975 § 30-5A-5.) If a defendant is present at an Alabama hearing, subsequent service of the protective order is unnecessary. A violation in Utah of a protective order issued in Alabama, therefore, could result in a conviction without proving service of the order.

Utah Code Ann. § 77-36-2.5, likewise, does not require service of the court's ultimate order. This section provides for a criminal protective order during pre-trial release when an alleged perpetrator of domestic violence is arrested. Under Utah Code Ann. § 77-36-2.5(1) to (8), an arresting officer is to provide written notice to the victim and perpetrator of domestic violence at the time of the perpetrator's arrest. That notice contains information regarding pre-trial conditions of release that the court will either order or that the perpetrator will agree to in writing. *Id.* The written notice itself has no binding effect on the perpetrator. There is no requirement that the arresting officer file return of service of the written notice. *Id.* The statute does not require that the

perpetrator be provided with a copy (service) of any court order ultimately issued. Both examples--foreign protective orders and Utah's criminal protective order statute, Utah Code Ann. § 77-36-2.5 (1) - (8)--that do not require service of the court's order as an element of either offense shows that the Legislature did not intend service of the order as an element of the offense under Utah Code Ann. § 76-5-108.

Furthermore, provisions providing the required elements of a protective order violation which are silent as to service also suggest that it is not an element of the offense. A violation of the criminal protective order under Utah Code Ann. § 77-36-2.5 (5)(b) is defined as follows:

Any person who knowingly violates a court order... shall be guilty as follows:

- (i) if the original arrest was for a felony, an offense under this section is a third degree felony;
- (ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

Service of the order is not an element of this offense.

Similarly, Utah Code Ann. § 77-36-2.4(2)(a) repeats the elements of the offense of violation of a protective order contained in Utah Code Ann. § 76-5-108: "Intentional violation of any...protective order is a class A misdemeanor, in accordance with Utah Code Ann. § 76-5-108...." Service of the protective order is not mentioned because the Legislature never intended to make service of the protective order an element of the crime.

- B. With counsel present at the civil protective order hearing, the defendant stipulated to entry of the protective order and throughout the criminal trial essentially admitted knowing the conditions of the order, making it unnecessary to prove service of the order.**

Even if service of the protective order were an element of the offense, defendant essentially stipulated to this element when he appeared and agreed to entry of the order. (Add. a-6) Because the Defendant was personally present at the hearing, represented by counsel and stipulated to the entry of the protective order, the government should not be required to prove that he was served with the protective order. At trial, the government had the burden of proving each element of the offense beyond a reasonable doubt. In re Winship, 397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970). The government met this burden, since proof was presented that the defendant attended the civil protective order hearing on September 26, 1996, that he was represented by counsel and that he agreed to entry of the protective order. (Trans. p. 4; Add. a-6). It was further proven that after the hearing the defendant made multiple calls to Lisa Stout (Trans. 10-11, 18). There is no doubt that the Defendant knew a protective order had been issued against him.

Throughout the entire process, from pre-trial stage through trial, the defendant never raised the issue of lack of service. In fact, two questions asked of the defendant on direct examination presupposed his knowledge of the protective order's existence and highlight that he was very aware of the order. His attorney asked him, "And as you understood the protective order, you knew you could call for medical problems with the children?" (Trans. 21, ll. 17-19). This question was followed by: "Did you believe you were in violation or attempting to— intending to violate the protective order?" (Trans. 22). These questions, and the defendant's answers, show that the defendant was well



aware of the single exception to the telephone prohibition -- "except for visitation" (Add. a-7).

There was also sufficient evidence regarding his violation of the order. Two weeks after the protective order hearing, the defendant began calling Lisa Stout repeatedly. From October 10, 1996, through January 16, 1997, the defendant waged his telephone campaign. (Trans. 10). These telephone calls concerned matters other than visitation with the children (Trans. 10). For example, the defendant called to claim that Lisa Stout had lovers, that she was showing pornographic movies to her children (Trans. 10), and he called threatening to tell her family she was a whore (Trans. 11). He also called and told her she was a baby killer and a murderer (Trans. 11). During the multiple conversations, visitation was not discussed (Trans. 11). On January 16, 1997, Lisa Stout decided she was fed up with the phone calls (Trans. 11). The defendant called at least three times that day, two of which were around midnight (Trans. 18). The defendant claimed that he was calling at the behest of the parties' daughter to discuss the child's headache (Trans. 12). As a result of the Defendant's repeated calls, Lisa Stout reported the defendant's telephone behavior to the police on January 17, 1997 (Trans. 17).

Consequently, the Defendant was tried for violating the protective order. The trial properly focused on the elements of the offense: whether the defendant (a) intentionally violated (b) a protective order. The evidence at trial showed that he did. Because the government produced sufficient evidence that the Defendant met the elements of the offense, the trial court's failure to rule, *sua sponte*, on the issue of service of the

protective order was not, therefore, clearly erroneous. Accordingly, the trial court properly convicted the defendant.

**II. THE DEFENDANT WAIVED HIS APPEAL OF THE SERVICE ISSUE BECAUSE HE FAILED TO PRESERVE IT THROUGH A PROPER OBJECTION IN THE LOWER COURT.**

At trial, the defendant's failure to properly object to service of the protective order constituted a waiver of his right to appeal that issue. Although characterized as a "sufficiency of the evidence" argument, the heart of defendant's argument is his belief that his due process rights were violated. Specifically, the defendant believes that since service of the civil protective order is an absolute necessity before one can commit the offense of violating that same order, the government was required to show, beyond a reasonable doubt, that he was physically handed the protective order by law enforcement. The defendant's appeal is that the government did not prove this. However, the defendant is barred from raising such an appeal because of his failure to raise the issue at trial.


This Court will not entertain the merits of an issue raised for the first time on appeal. State v. Jameson, 800 P.2d 798 (Utah 1990). Although the government believes there is no constitutional issue raised here, for the reasons given above, this rule applies equally to constitutional issues. Id.

At trial, the defendant had ample opportunity to raise the issue of service. Neither the original Information nor the Amended Information contained any language in the charging statement or in the probable cause statement regarding service of the protective order (R. 1-4; 16-17). Nevertheless, the defendant did not challenge the sufficiency of the charging document, nor did he raise this issue at trial. The defendant's entire trial strategy was inconsistent with the belief that serving the protective order had to be proven as an element of the offense. Instead, his defense was that he did not intentionally violate the order. Further, only in his Brief does the defendant raise the idea, that his lack of intent was fostered, in part, because he was not served the protective order. (Appellant's Brief 9). Indeed, on page 2 of the defendant's Docketing Statement, he concedes that he was served: "[s]pecifically, Culley contends that the prosecutor did not prove that Culley "intentionally" violated the protective order *with which he had been served* (Add. a-12) (emphasis added). Given the evidence of his multiple phone calls (Trans. 10-11, 18) which clearly violated the protective order (Add. a-7), and which were made after he attended the civil protective order hearing with counsel and agreed to entry of the order, it cannot be said that the trial court committed "plain error" in convicting the defendant. State v. Eldredge, 773 P.2d 29 (Utah), *cert. denied*, 493 U.S. 814, 110 S.Ct. 62, 107 L.Ed.2d 29 (1989). Accordingly, because he failed to raise the service issue at trial, he should not be allowed to do so now.

### **CONCLUSION**

Based upon all of the foregoing reasons, the Defendant's judgment of conviction in the Third District Court, Murray Department, should be affirmed.

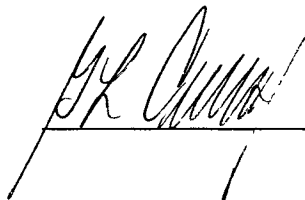
DATED this 13 day of July, 1998.

  
\_\_\_\_\_  
G.L. CRITCHFIELD  
Murray City Prosecutor  
Attorney for Appellee

### **CERTIFICATE OF SERVICE**

I certify that on July 13, 1998, a copy of the foregoing Brief was hand-delivered to the following:

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\_\_\_\_\_

## **ADDENDUM**

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

- (1) Any person who is the respondent or defendant subject to a protective order or ex parte protective order issued under Title 30, Chapter 6, Cohabitant Abuse Act, or Title 78, Chapter 3a, Juvenile Courts, Title 77, Chapter 36, Cohabitant Abuse Procedures Act, or a foreign protective order as described in Section 30-6-12, who intentionally 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.

§ 76-1-501(2) Presumption of innocence -- "Element of the offense" defined.

- (2) As used in this part the words "element of the offense" mean:
  - (a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense;
  - (b) The culpable mental state required.

§ 77-36-2.5 Conditions for release after arrest for domestic violence.

- (1) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release he is ordered by the court or agrees in writing that until the expiration of that time he will:
  - (a) have no personal contact with the alleged victim;
  - (b) not threaten or harass the alleged victim; and

- (c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.
- (2) As a condition of release, the court may order the defendant to participate in an electronic monitoring program described in Section 30-6-4.8, and pay the costs associated with the program.
- (3)
  - (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the requirements described in Subsection (1). Upon waiver, those requirements shall not apply to the alleged perpetrator.
  - (b) A court or magistrate may modify the requirements described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.
- (4)
  - (a) Whenever a person is released pursuant to Subsection (1), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make reasonable effort to notify the victim of that release.
  - (b)
    - (i) When a person is released pursuant to Subsection (1) based on a written agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 30-6-8.
    - (ii) When a person is released pursuant to Subsection (1) based upon a court order, the court shall transmit that order to the statewide domestic violence network described in Section 30-6-8.
  - (c) This subsection does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.
- (5)
  - (a) If a law enforcement officer has probable cause to believe that a person has violated a court order or agreement executed

pursuant to Subsection (1) the officer shall, without a warrant, arrest the alleged violator.

- (b) Any person who knowingly violates a court order or agreement executed pursuant to Subsection (1) shall be guilty as follows:
    - (i) if the original arrest was for a felony, an offense under this section is a third degree felony;
    - (ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.
  - (c) City attorneys may prosecute class A misdemeanor violations under this section.
- (6) An individual who was originally arrested for a felony under this chapter and released pursuant to this section, may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.
- (7) At the time an arrest for domestic violence is made, the arresting officer shall provide both the alleged victim and the alleged perpetrator with written notice containing the following information:
- (a) the requirements described in Subsection (1), and notice that those requirements shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;
  - (b) notification of the penalties for violation of the court order or any agreement executed under Subsection (1);
  - (c) the date and time, absent modification by a court or magistrate, that the requirements expire;
  - (d) the address of the appropriate court in the district or county in which the alleged victim resides;
  - (e) the availability and effect of any waiver of the requirements; and

- (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.
- (8) In addition to the provisions of Subsections (1) through (6), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail. If bail is denied under this subsection, it shall be under the terms and conditions described in Subsections (1) through (6).
- § 77-36-2.4 (2) (a) Intentional violation of any ex parte protective order or protective order is a class A misdemeanor, in accordance with Section 76-5-108, and is a domestic violence offense, pursuant to Section 77-36-1.
- § 30-6-4.2 (4) Following the protective order hearing, the court shall:
  - (a) as soon as possible, deliver the order to the county sheriff for service of process;
  - (b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
  - (c) transmit, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
  - (d) transmit a copy of the order to the statewide domestic violence network described in Section 30-6-8.
- § 30-6-4.2 (8) (a) The county sheriff that receives the order from the court, pursuant to Subsection (5)(a), shall provide expedited service



for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 30-6-8.

- (b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:
  - (i) has contact with the respondent and service by that law enforcement agency is possible; or
  - (ii) determines that under the circumstances, providing service of process on the respondent is in the best interest of the petitioner.

Lisa K Stout  
Petitioner's Name  
309 E 4500 So #2 #7  
Address (may be omitted for privacy)  
Murray UT 84107 *attractions*  
City, State, ZIP  
266-9549 266-4402  
Telephone (may be omitted)

Judge Pat Brian.

IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH

Lisa K Stout,

Petitioner,

vs.

Roderick J. Culley,

Respondent.

PROTECTIVE ORDER

Civil No. 934904083 DA

Judge Comm T Patrick Casey

This matter came for hearing on 9/26/96, before the undersigned. The following parties were in attendance:

☒ Petitioner ☐ Petitioner's attorney  
☒ Respondent ☒ Respondent's attorney Randall Goiter 531-1990

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

☐ 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,

IT IS HEREBY ORDERED:  
(The Judge or Commissioner shall initial  
each section that is included in this Order.)

Th 1. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against Petitioner.



8/16/96

JK 2. The Respondent is restrained from attempting, committing, or threatening to commit abuse or domestic violence against the following minor children and members of Petitioner's family or household:

Elizabeth K. Culley

MacRae R. Culley

JK 3. The Respondent is prohibited from directly or indirectly contacting, harassing, telephoning, or otherwise communicating with the Petitioner, except for visitation

JK 4. The Respondent shall be removed and excluded, and shall stay away, from Petitioner's residence, and its premises, located at:  
309 Ea 4500 So #32 and #7  
and Respondent is prohibited from terminating or interfering with the utility services to the residence.

JK 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. These places are identified by the following addresses:

Hillman Elementary 4425 So 1025 Ea

Nordstrom 6155 So State

Kid Station 730 E 4500 So

JK 6. 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):

JK 7. The Petitioner is awarded possession of the following residence, automobile and/or other essential personal effects:

clothing, books, toys

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

1-12-88 8. An officer from the following law enforcement agency: SLC Sheriff shall accompany Petitioner to ensure that Petitioner safely regains possession of the awarded property.

9. An officer from the same 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.

10. The Respondent is placed under the supervision of the Department of Corrections for the purposes of electronic monitoring. Within 24 hours of the execution of this Order, the Department of Corrections shall place an electronic monitoring device on Respondent and shall install monitoring equipment on the premises of Petitioner and in the residence of Respondent. Respondent is ordered to pay to the Department of Corrections the costs of the electronic monitoring required by this Order. The Department of Corrections shall have access to Petitioner's residence to install the appropriate monitoring equipment.

RESPONDENT'S VIOLATION OF PROVISIONS "1" THROUGH "10" MAY BE A CLASS A MISDEMEANOR.

Petitioner is granted the following temporary relief (provisions "a" through "l") which will (expire/be reviewed by the court) \_\_\_\_\_ days from the date of this order:

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

Elizabeth K. Calley  
MacRae R. Calley

2h x b. Visitation shall be as follows: curbside pickup & delivery

- 1234 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.
- 1234 e. The Respondent is ordered to pay child support to the Petitioner in the amount of \$ \_\_\_\_\_ pursuant to the Utah Uniform Child Support Guidelines.
- 1234 f. The Respondent is ordered to participate in mandatory income withholding pursuant to Utah Code Annotated § 62A-11, Parts 4 and 5.
- 1234 g. The Respondent is ordered to pay one-half of the minor child/ren's day care expenses.
- 1234 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: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Violation of provisions "a" through "l" may subject Respondent to contempt proceedings.

- 1234 11. The Division of Child and Family Services is ordered to conduct an investigation into the allegation of child abuse.
- \_\_\_\_\_ 12. Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. 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 the Appendix to this Order.

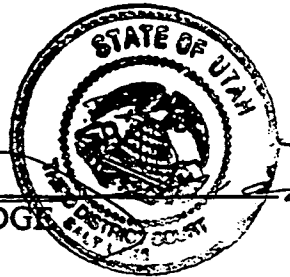
14. Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322, 108 Stat. 1976, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of Columbia, tribal lands, and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

15. Three 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 three-year period, the Petitioner should provide the court with a current address, which address will not be made available to Respondent.

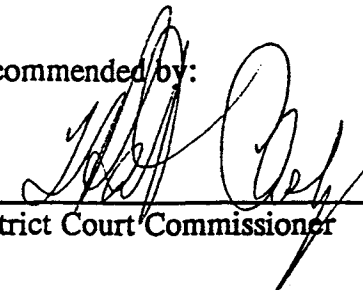
DATED: 9-26-96.

BY THE COURT:

  
DISTRICT COURT JUDGE



Recommended by:

  
District Court Commissioner


9/26/96  
Date

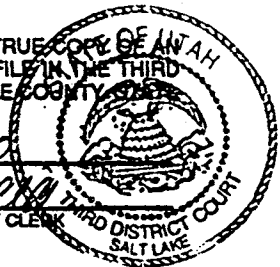
By this signature, Respondent approves the form, and accepts service, of this Protective Order and waives the right to be personally served.

Respondent

Serve Respondent at:

4265 So. 900 Ea.  
Salt Lake City Utah 84124

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH  
DATE 9/26/96  
  
DEPUTY COURT CLERK



D. GILBERT ATHAY (0143)  
MICHAEL R. SIKORA (6986)  
Lawyers for Appellant  
43 East 400 South  
Salt Lake City, Utah 84111  
(801) 363-7074

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IN THE UTAH COURT OF APPEALS

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MURRAY CITY,	:	
Plaintiff/Appellee,	:	DOCKETING STATEMENT
vs.	:	
RODERICK CULLEY,	:	Case No. 970672-CA
Defendant/Appellant.	:	

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1. DATE OF ENTRY OF JUDGMENT OR ORDER APPEALED FROM:  
October 16, 1997.
2. NATURE OF POST JUDGMENT MOTIONS AND DATES FILED: none.
3. DATE AND EFFECT OF ORDERS DISPOSING OF POST JUDGMENT  
MOTIONS AND ORDER OF DETERMINATION OF FINAL JUDGMENT UNDER UTAH  
R. CIV. APP. 54(b): not applicable.
4. DATE OF FILING OF PETITION FOR REVIEW: not applicable.
5. JURISDICTION: Culley was convicted of a Class A  
Misdemeanor. The Utah Court of Appeals has appellate

jurisdiction in this matter pursuant to Utah Code Ann. § 78-2a-3(2)(e).

6. NAME OF TRIAL COURT OR AGENCY: Third District Court, Salt Lake County, Murray Department, the Honorable Joseph Fratto.

7. STATEMENT OF FACTS:

Culley was convicted in a bench trial of violating a protective order, a Class A Misdemeanor. The trial court sentenced Culley to probation and imposed a fine.

At trial, the prosecution presented evidence that Culley was personally served with a protective order, and that the protective order was previously issued upon application by the victim. The victim and Culley share two children, and Culley has custody of the kids.

The victim testified that she received phone calls originating from Culley's home, and she knew the calls came from Culley's house because the victim has a caller ID box on her own phone. There was no specific evidence that Culley, rather than the kids or some other third party, made the phone calls.

8. ISSUES FOR REVIEW AND STANDARDS OF REVIEW:

(a) Culley challenges his conviction on the ground of insufficiency of the evidence. Specifically, Culley contends that the prosecutor did not prove that Culley "intentionally" violated the protective order with which he had been served. He