

STATE OF NEW YORK

COUNTY OF ST. LAWRENCE

TOWN COURT

TOWN OF POTSDAM

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THE PEOPLE OF THE STATE OF NEW YORK

vs.

**DECISION AND ORDER**

ORAL NICHOLAS HILLARY,  
Docket#: 15095094

Defendant

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The Defendant is before the court charged with Criminal Contempt in the Second Degree (PL § 215.50-3). The complaint alleges that on September 18, 2015 the defendant conducted business, via a drive thru lane at the place of employment of the protected party named in a stay away Order of Protection issued by St. Lawrence County Court Judge Hon. Jerome Richards on February 2, 2015. The Order shows an expiration date of February 1, 2016.

On May 2, 2018 the court received a Notice of Motion from defense counsel, with proof of service upon the People, seeking an Order dismissing the Misdemeanor/Information as facially insufficient. People Response was received, with proof of service upon defense counsel, on May 24, 2018. At question within the Motion is the facial sufficiency of the charging instrument pursuant to NYS CPL§ 100.40.

NYS CPL §100.40 establishes, in part, that for an accusatory instrument to be facially sufficient its contents must provide reasonable cause to believe that the defendant committed the offense charged and (c): non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof.

The Information/Complaint filed with the court in this case establishes under

**(B) UPON INFORMATION AND BELIEF:**

On the above stated date, time and location the defendant did violate an order of Protection issued to Tandy L. Cyrus (06/15/78) (formerly known as Tandy Collins) issued by the St. Lawrence County Court. The defendant did so by going to the place of employment of Tandy L. Cyrus; SeaComm Federal Credit Union. This information is based on the investigation of your complainant, a copy of the order of protection, a copy of the NYS Domestic Incident Report numbered 15P-04675, and the sworn statement of Tandy L. Cyrus....

A copy of the mentioned Order of Protection was attached to the Information/Complaint and is attached for reference to this Order. The Order of Protection directs the defendant to stay away from, 1) Home of; 2) school of; 3) business of; 4) place of employment of

- A) Tandy Collins
- B) Casey Collins
- C) Aaron Collins

There is no definitive physical location/address or school or business names for 1-4 above listed within the contents of the Order.

The Order also directs the defendant to refrain from any communication with the three (3) before named parties. The Order provides that the defendant was advised in Court of issuance and contents of the Order. Additionally, the Order provides that the defendant was personally served a copy in Court. There is no contention within defense motion regarding the issuance and receipt of the Order. What is contended is the question of rather the Order of Protection – as written and issued, (without any physical address of the 1) home, 2) school, 3) business of, 4) place of employment); when attached to the pending Information/Complaint' lends to the facial sufficiency requirement as set forth in CPL 100.40.

In *People v. Bright* 71 N.Y. 2d 376, 382, 526; the Court established rational of adequate notice to ensure “that no man shall be criminally responsible for conduct which he could not reasonably understand to be proscribed”.

In *McCormick v. Axelrod*, 59 N.Y. 2d 574, 466 the Court wrote; “in order to find that contempt has occurred in a given case it must be determined that a lawful order of the court **clearly expressing an unequivocal mandate was in effect.**” id p. 583

In *People v. Zito* the Court concluded that sufficiently detailing the “stay away” portion of the order “would ensure that police, courts and individuals can clearly discern what acts or conduct constitute punishable violations”.

In *People v. Inserra*, 4 N.Y. 3d 30, the Court stated, “we must decide whether a defendant’s name on the signature line of an order of protection adequately supports an allegation that the defendant knew of the order’s contents. “We hold that it does.”

A protection order must meet the *Bright* standards for vagueness ensuring both defendant and law enforcement clearly understand the places where that “stay away” part of the order applies.

In the matter before this court the need for clarity and specificity are compounded three-fold as there are three named, “protected parties” with the order of protection in question. There is no contention by defense counsel that the defendant received and signed a copy of the order. In consideration of the *Inserra* ruling; this court unfortunately did not issue the order and as such was not part of the communication between the Judge and defendant at the time of issuance, as such consideration can only be given to the written order on its face. Even if factual, verbal confirmation of the understanding of the contents within the order were established, it does not change the order facially. There lies within the submissions of either party nothing that

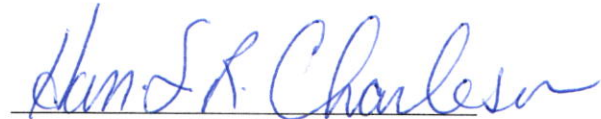
establishes a burden upon the defendant to develop a more clearly defined order. That burden is solely the courts. The potential for the protected party (s), (times three in this case), to have a change in home, school, business or place of employment at any time while a current order is in force leaves the "specter of punishing someone unjustly for violating an order of protection." (People v. Zito id., p.22)

The fact that the "stay away" portion of the order did not list the locations and/or names of the protected parties home, school, business or place of employment; (any or all of the three (3) potential protected party's addresses), renders the factual allegation that the defendant knew the location of the victim's place of employment groundless making the information facially insufficient in accordance with CPL 100.40.

The Defense motion to dismiss the charge of Criminal Contempt in the Second Degree, PL 215.50(3) is granted. The forgoing constitutes the Decision and Order of the Court.

SO ORDERED,

Dated: July 11, 2018

A handwritten signature in blue ink, reading "Samuel R. Charleson", written over a horizontal line.

Samuel R. Charleson  
Town Justice  
Potsdam Town Court

ORI No: NY044013J  
Order No: 2015-00  
NYSID No:  
CJTN No:

At a term of the County Court, County of St. Lawrence  
at the Courthouse at 48 Court Street, Canton, State of New York

PRESENT: HON. JEROME J. RICHARDS

PEOPLE OF THE STATE OF NEW YORK,  
-against-

Oral Nicholas Hillary

Defendant  
Date of Birth: 06/28/1974

ORDER OF PROTECTION

Non-Family Offense C.P.L. 530.13  
(Not involving victims of domestic violence)  
 Youthful Offender (check if applicable)  
Part \_\_\_\_\_ Index/Docket No.  
Indictment No. 2015-015

Charges: Murder 2nd

Ex parte (check one)  
 Defendant Present in Court

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND CONTINUE IN EFFECT UNTIL YOU REAPPEAR IN COURT.

INTERIM PROBATION.

TEMPORARY ORDER OF PROTECTION. Whereas good cause has been shown for the issuance of a temporary order of protection [as a condition of  recognizance  release on bail  adjournment in contemplation of dismissal].

ORDER OF PROTECTION. Whereas defendant has been convicted of \_\_\_\_\_

AND the Court having made a determination in accordance with section 530.13 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior:

(Check Paragraphs and Subparagraphs that Apply):

Stay away from  [name(s) of protected persons] Tandy Collins (DOB: 06/15/1978) Casey Collins (DOB: 11/23/1974) Aaron Collins (DOB: 02/09/04)

- and/or from the  home of Tandy Collins, Casey Collins, Aaron Collins
- school of Tandy Collins, Casey Collins, Aaron Collins
- business of Tandy Collins, Casey Collins, Aaron Collins
- place of employment of Tandy Collins, Casey Collins, Aaron Collins
- other \_\_\_\_\_ Tandy Collins, Casey Collins, Aaron Collins

Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with [specify protected person(s)] Tandy Collins, Casey Collins, Aaron Collins, directly, indirectly or through any third person.

Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats or any criminal offense or interference with the victim or victims of, or designated witnesses to, the alleged offense and such members of the family or household of such victim(s) or witness(es) as shall be specifically named [specify]:

Refrain from intentionally injuring or killing without justification the following companion animal(s) (pet(s)) [specify type(s) and, if available, name(s)]:

Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following: \_\_\_\_\_ Such surrender shall take place immediately, but no later than [specify date/time:] \_\_\_\_\_ at \_\_\_\_\_

Specify other conditions defendant must observe for the purposes of protections: No contact.

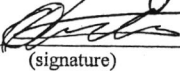
IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby  suspended or  revoked (note: final order only), and/or  the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes). NOTE: If this paragraph is checked, a copy of this form must be sent to: New York State Police, Pistol Permit Section, State Campus Building #22, 1220 Washington Avenue, Albany, New York 12226-2252.

IT IS FURTHER ORDERED that this order of protection shall remain in effect until and including February 1, 2016.

DATED: February 2, 2015



HON. JEROME J. RICHARDS  
ST. LAWRENCE COUNTY JUDGE

  
(signature)

Defendant advised in Court of issuance and contents of Order.

Order personally served on Defendant in Court

Order to be served by other means [specify]: \_\_\_\_\_