

Case No: CV2015-00024

APPELLANT Patrick Fox [REDACTED] Burnaby, BC V5G 1T3 Canada 604-[REDACTED] Pro Se	APPELLEE Desiree Capuano 250 E. Placita Lago Del Mago Sahuarita, AZ 85629 520-288-8200 Pro Se
--	--

APPELLANT'S MEMORANDUM

STATEMENT OF THE CASE:

On July 23, 2015 Ms. Capuano filed a Petition for an Order of Protection against Mr. Fox, in the Sahuarita Municipal Court. Based on Ms. Capuano's sworn statements, the Municipal Court issued the Order of Protection. A copy of the Order of Protection was served on Mr. Fox on October 31, 2015. Mr. Fox thereafter requested a contested hearing in the Sahuarita Municipal Court, and a hearing was set for December 16, 2015. Ms. Capuano and Mr. Fox both testified at the hearing. Upon completion of the hearing, the Municipal Court ordered the Order of Protection remain in effect, and ordered a Notice of Possible Brady Indicator (PBI) be issued against Mr. Fox. Mr. Fox timely filed a Notice of Appeal.

STATEMENT OF FACTS:

On July 23, 2015, Ms. Capuano, filed a Petition for Order of Protection in the Sahuarita Municipal Court, against Mr. Fox (Appendix A: Petition). Ms. Capuano's petition clearly

declared two pending Family Court matters – one in Maricopa County Superior court for Dissolution of Marriage; and one in Los Angeles County Superior Court for Child Custody and Support. In her petition, Ms. Capuano alleged Mr. Fox told her “he discussed shooting [her] with [their] son and said that he would if there was no risk of going to jail”; “He states that he has a gun license and owns multiple firearms”; and “He shows [her] the border in Canada that he uses to cross into the United States”. Ms. Capuano also alleged Mr. Fox has posted various information about her on a public website which Mr. Fox hosts.

On that same day, the Sahuarita Municipal Court granted Ms. Capuano's petition and issued an Order of Protection against Mr. Fox (Appendix B: Orders). The Order prohibited Mr. Fox from having contact with Ms. Capuano; from going to or near Ms. Capuano's residence; from possessing firearms; and further required Mr. Fox to surrender his firearms to law enforcement with 24 hours of being served a copy of the Order.

A copy of the Order of Protection was served on Mr. Fox on October 31, 2015, by the Royal Canadian Mounted Police (RCMP) at Mr. Fox's residence in Burnaby, British Columbia, Canada. In early December 2015, Mr. Fox requested a hearing in the Sahuarita Municipal Court to contest the Order. A hearing was set for December 16, 2015.

At the hearing, on December 16, 2015, the Municipal Court informed Ms. Capuano it did

not have authority to issue an Order of Protection because there is a pending Family Court matter before the Superior Court (12/16/15 Hearing Record (hereinafter "H.R.") at 2:17-4:35). Ms. Capuano testified that the Family Court matter was, in fact, pending (H.R. at 2:31-2:41). Mr. Fox also testified that the child custody proceeding has been pending before the Superior Court since September 2011 (H.R. at 4:09-4:17). The foregoing notwithstanding, the Court proceeded with the hearing, explaining "this case was set...prior to notification to the court that there was something pending..." (H.R. at 6:59-7:14).

Ms. Capuano testified regarding her claim that Mr. Fox told her he discussed shooting her, with their son. Although Ms. Capuano testified that she received an email from Mr. Fox, informing her of the discussion between Mr. Fox and their son, in January, she did not know when the discussion actually occurred (H.R. at 13:03-13:19). According to Ms. Capuano's testimony, the email did not contain a statement from Mr. Fox, to her, saying he would shoot her – only that he he had told their son "if the risk of jail time were not there he would" (H.R. at 10:42-10:50). Ms. Capuano further testified, that other than that email, she has not received any threats of harm from Mr. Fox (H.R. at 11:55-12:23). Mr. Fox also testified that he had never threatened Ms. Capuano or said that he would shoot her (H.R. at 44:25-44:58). Ms. Capuano did not offer, as evidence, any of the emails she claimed to have received from Mr. Fox, or other documentation she claimed to have, to support her allegations.

The remainder of the testimony offered, related exclusively to the content, essentially

text and photographs, of a website created and maintained by Mr. Fox, about Ms. Capuano. Ms. Capuano's fundamental argument was that Mr. Fox was harassing her by publishing what she considered to be personal information about her, and speaking critically and offensively about her, on a public website. Mr. Fox testified that, to the best of his knowledge, all of the information about Ms. Capuano, which he published on the website was true and correct (H.R. at 46:29-46:46). Ms. Capuano did not allege that there had been any unwanted or harassing contact from Mr. Fox.

After hearing all testimony, the Municipal Court found that there was “clear evidence of domestic violence” against Ms. Capuano, by Mr. Fox, during the preceding year. The Court clarified that it's finding of domestic violence was based only on harassment (H.R. at 57:32-57:39) – not threatening. The Court did not enter a finding that Mr. Fox was a credible threat to the physical safety of Ms. Capuano, or that Mr. Fox had, at any time, attempted to harm or use physical force against Ms. Capuano. The Court ordered the previously issued Order of Protection remain in effect, and a Notice of Positive Brady Indicator be issued (H.R. at 57:45-57:54).

STATEMENT OF ISSUES PRESENTED FOR APPEAL:

1. Whether the Municipal Court had authority or jurisdiction to issue an order of protection when it had prior knowledge of a pending Family Court proceeding between the parties?
2. Whether the Municipal Court misconstrued and incorrectly applied the “directed

at a specific person” element of the statutory definition of “harassment”, thereby finding evidence of prior harassment from statements published to the public?

3. Whether a finding of prior acts of harassment, to support the issuance of an order of protection, may be based on the *content* of statements published in a public forum?
4. Whether a Notice of Positive Brady Indicator may be issued when there is no finding that the Defendant poses a credible threat to the physical safety of the Plaintiff?

REASONS WHY THE LOWER COURT RULED INCORRECTLY:

1. **Whether the Municipal Court had authority or jurisdiction to issue an order of protection when it had prior knowledge of a pending Family Court proceeding between the parties?**

The Municipal Court erred in issuing an order of protection when it was clearly stated on the petition that a family court proceeding was pending between the parties. The Municipal Court further erred when it proceeded with the contested hearing in this matter and subsequently entered an order keeping the order of protection in place, knowing there was a pending family court proceeding between the parties.

A.R.S § 13-3602(P) provides, “the Superior Court shall have exclusive jurisdiction to issue orders of protection if it appears from the petition that there is

a pending family court matter between the parties”; “a municipal court shall not issue an order of protection if it appears from the petition that there is a pending family court matter between the parties”; and “if a municipal court determines, after it issues an order of protection, that there is a pending family court matter between the parties, it shall stop further proceedings and transfer the matter to the superior court”.

Nothing in the language of A.R.S. § 13-3602(P), requires the pending family court proceedings to be specifically in the *Arizona* Superior Court.

The petition filed by Ms. Capuano, clearly declares a pending dissolution proceeding before the Maricopa County Superior Court; and, a pending child custody proceeding before the Los Angeles County Superior Court. Although the first hearing in this matter is not on the record, it is presumed the Municipal Court reviewed the petition prior to issuing the order of protection. Therefore, the Municipal Court could not have not known of the pending family court matters when it issued the order of protection.

Assuming *arguendo*, the Municipal Court had *not* been previously notified of the pending family court matters, prior to the December 16, 2015 hearing, it unequivocally acknowledged them, as well as it's statutory lack of authority to issue the order of protection at the December 16, 2015 hearing.

The wording of A.R.S. § 13-3602(P) is both plain and clear – the Municipal Court statutorily lacked jurisdiction to issue an order of protection in this matter because it was clearly stated on the petition that there were two pending family court matters between the parties.

2. Whether the Municipal Court misconstrued and incorrectly applied the “directed at a specific person” element of the statutory definition of “harassment”, thereby finding evidence of prior harassment from statements published to the public?

The Municipal Court erred in applying the “directed at” requirement of the definition of harassment to include public statements, made by Mr. Fox in a public forum, to the general public, and not specifically to Ms. Capuano.

The statutory definition of “harassment”, under A.R.S. § 13-2921(E), provides, in relevant part “...‘harassment’ means conduct that is directed at a specific person...”.

When the conduct in question is speech, as it is in the current matter, that requires the speech to be made directly from the harasser to the person alleging harassment. Speech made to another party, or made generally to the public, which the person alleging harassment happens to overhear, but which was not directed at them, or specifically intended for them to hear, does not rise to the

level of harassment. *State v. Brown*, 85 P.3d 109, 112 207 Ariz. 231 (Ct. App. 2004), (The focus of the offense of harassment is on the contact between particularized people).

In *LaFaro v. Cahill*, 56 P.3d 56, 59 203 Ariz. 482 (Ct. App. 2002), the Court considered the “directed at” requirement of the statutory definition and held that speech made to other parties does not meet the “directed at” requirement, even if the Plaintiff happens to overhear it.

Although LaFaro may have overheard a segment of that conversation, Cahill's communication does not satisfy the statutory definition of harassment, which requires a harassing act to be 'directed at' the specific person complaining of harassment... While Cahill was talking about LaFaro and expressing his opinion of the recall effort, his comments were 'directed at' Martelli, not LaFaro.

Likewise, in the instant matter, the statements made about Ms. Capuano, by Mr. Fox, were made in a public forum, and intended to be received by the public at large, not specifically by Ms. Capuano. Moreover, Ms. Capuano could not possibly have been subjected to the statements against her will because she would have to deliberately go to the website in order to read them.

There is not yet a published precedent in this jurisdiction dealing specifically with the question of whether statements published by a party on a public website *about* another party, but directed to the general public, not specifically *to* the other party, constitute harassment. However, this question has been directly addressed in other jurisdictions, and those courts have consistently held that

such statements, published on a website, do not meet the “directed at” requirement. *Chan v. Ellis*, 770 S.E.2d 851, 296 Ga. 838 (2015) (The publication of commentary directed only to the public generally does not amount to “contact”... That a communication is *about* a particular person does not mean necessarily that it is directed *to* that person).

Significantly, Ms. Capuano does not allege any harassment based on contact between Mr. Fox and herself.

3. Whether a finding of prior acts of harassment, to support the issuance of an order of protection, may be based on the *content* of statements published in a public forum?

Even in the event the Municipal Court did not err in its application of the “directed at” requirement, as discussed above, then the Municipal Court erred in considering the specific *content* of the published statements.

First, Ms. Capuano concedes that none of the content on the website suggested any threat of harm to her.

In *State v. Brown*, the Court held that the focus of harassment is on the *contact* between the parties, not on the *content* of the speech, *State v. Brown*, 85 P.3d 109, 112 207 Ariz. 231 (Ct. App. 2004) (The focus of the offense of harassment is

on the contact between particularized people, not on the character of the speech). Further, in *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 29 L. Ed. 2d 1, 91 S. Ct. 1575 (1971), Petitioners had been actively distributing pamphlets, containing information and content about Respondent which would be harmful to his reputation and business affairs, near respondent's home and place of business. However, the Supreme Court held that Petitioner's public dissemination of the potentially harmful information about Respondent was protected under the First Amendment:

This Court has often recognized that the activity of peaceful pamphleteering is a form of communication protected by the First Amendment...The claim that the expressions were intended to exercise a coercive impact on respondent does not remove them from the reach of the First Amendment. Petitioners plainly intended to influence respondent's conduct by their activities; this is not fundamentally different from the function of a newspaper. Petitioners were engaged openly and vigorously in making the public aware of respondent's...practices. Those practices were offensive to them, as the views and practices of petitioners are no doubt offensive to others. But so long as the means are peaceful, the communication need not meet standards of acceptability.

Although *Org. for a Better Austin* differs from the instant matter in the specific medium utilized to publish the information – there they used pamphlets, here Defendant used a website – the intent and purposes of the respective Petitioners remains the same: to peacefully inform the public of what Petitioners consider to be Respondents' offensive conduct.

While the current order of protection does not enjoin Mr. Fox from continuing to publish statements or information about Ms. Capuano, the mere existence of a domestic violence order of protection against him carries with it many collateral

consequences – thereby, effectively punishing Mr. Fox for merely exercising his right to free speech, under the First Amendment. *Savord v. Morton*, 330 P.3d 1013, 1016, 235 Ariz. 256 (Ct. App. 2014) (the issuance of an order of protection is a very serious matter... Once issued, an order of protection carries with it an array of "collateral legal and reputational consequences" that last beyond the order's expiration.)

4. Whether a Notice of Positive Brady Indicator may be issued when there is no finding that the Defendant poses a credible threat to the physical safety of the Plaintiff?

The Municipal Court erred in issuing a Notice of Positive Brady Indicator and prohibiting Mr. Fox from possessing or purchasing firearms, because there was no credible evidence presented to support a finding that Mr. Fox poses a credible threat to the physical safety of Ms. Capuano.

The Municipal Court's finding of prior acts of domestic violence were limited to acts of harassment. Moreover, the Municipal Court's finding of harassment was limited specifically to public speech – speech which was *not* directed at Ms. Capuano. And, according to Ms. Capuano's own testimony, her allegation that Mr. Fox told their son he would shoot her, was premised on an impossible condition – that there would be “no risk of jail time”. A threat which is based on a condition does not rise to the level of a “true threat”, *Watts v. United States*, 394

U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) – particularly when that condition could not possibly come about. Nevertheless, the Municipal Court did not consider that specific allegation credible and did not include it in its findings to support keeping the order of protection in place. Ms. Capuano further testified Mr. Fox never threatened her with harm, or actually harmed her.

In order to support a prohibition on the possession or purchasing of firearms, under A.R.S. § 13-3602(G)(4), there must be a finding that “the defendant is a credible threat to the physical safety of the plaintiff”. There is no evidence on the record to support such a finding. In *Mahar v. Acuna*, 287 P.3d 824, 230 Ariz. 530 (Ct. App. 2012), the Court addressed similar circumstances, where the record provided no evidence the Defendant was a credible threat to the physical safety of the Plaintiff. Given the lack of such evidence, the Court in *Mahar* ordered the Brady notice be vacated.

CONCLUSION

For the foregoing reasons, appellant requests the court vacate the Order of Protection and the Notice of Positive Brady Indicator.

Respectfully submitted this 8th day of February, 2016.

Patrick Fox

CERTIFICATE OF MAILING

I CERTIFY that I mailed a copy of this Memorandum to the Sahuarita Municipal Court.

Date: February 9, 2016

By: _____
Patrick Fox, Appellant

Appendix A: Petition

Sahuarita Municipal Court- 360 W. Sahuarita Center Way, Sahuarita, Az. 85629 520-344-7150

<u>Desiree Capuano</u> Plaintiff / Plaintiff Employer (Work Injunction ONLY) Birth Date: <u>10/01/80</u> Agent's Name (Work Injunction ONLY)	<u>Patrick Fox</u> Defendant Address <u>Burnaby, BC V5G 1T3</u> City, State, Zip Code, Phone	Case No. <u>CV 2015-00024</u> <div style="border: 1px solid black; padding: 5px; text-align: center;"> This is <u>not</u> a court order. </div> PETITION for <input checked="" type="checkbox"/> Order of Protection <input checked="" type="checkbox"/> Injunction Against Harassment <input type="checkbox"/> Workplace Injunction
--	---	---

DIRECTIONS: Please read the Plaintiff's Guide Sheet before filling out this form.

- Defendant/Plaintiff Relationship: ☒ Married now or in the past ☐ Live together now or lived together in the past
☒ Child in common ☐ One of us pregnant by the other ☐ Related (parent, in-law, brother, sister or grandparent)
☐ Romantic or sexual relationship (current or previous) ☐ Dating but not a romantic or sexual relationship
☐ Other: _____
- ☒ If checked, there is a pending action involving maternity, paternity, annulment, legal separation, dissolution, custody, parenting time or support in Maricopa (annulment) Superior Court,
 Case #: EC 2011-093719 (annulment) Los Angeles (custody)
TD 035397 (custody) (COUNTY)
- Have you or the Defendant been charged or arrested for domestic violence OR requested a protective order?
☐ Yes ☒ No ☐ Not sure
 If yes or not sure, explain: _____
- I need a court order because: (PRINT both the dates and a brief description of what happened.)

Tell the judge what happened and why you need this order. A copy of this petition is provided to the defendant when the order is served. (Do not write on back or in the margin. Attach additional paper if necessary.)

Dates

7/18/15	My physical address, email address, employment info, etc was added to a website he hosts
7/20/15	He was arrested and charged with criminal harassment against me
7/21/15	additional pictures and information was added to the website <u>www.desireecapuano.com</u>
7/18/15	a very aggressive email was sent to me using profanity and insults
7/18/15	Received 9 emails from about information that
7/20/15	would be made public by him

June 27th 2015 - He states he will contact my supposed employer and direct them to the website

January 11th, 2015 - He tells me that he discussed shooting me with our son and said that he would if there was no risk of going to jail

January 27th, 2015 - He tells me that he intends to hire someone to have sex with me so he can get "intimate" pictures for his website

January 28th, 2015 - He tells me that his primary goal in life is for me to experience as much misery as possible

July 18th, 2015 - He threatens to put my social security number on the website. I don't know how he would have it.

December 17th, 2014 - He states that he has a gun license and owns multiple firearms

May 18th, 2015 - He shows me the border in Canada that he uses to cross into the United States

Appendix B: Orders

DESIREE CAPUANO	M-1046-CV-201500024	HEARING ORDER <input checked="" type="checkbox"/> Order of Protection <input type="checkbox"/> Injunction Against Harassment <input type="checkbox"/> Injunction Against Workplace Harassment Issued Date: 7/23/2015 (mm/dd/ccyy)
Plaintiff	Case No.	
Birth Date: 10/1/1980		
V.		
PATRICK FOX	AZ010051J	
Defendant		

- ☐ The request for:
- ☐ A protective order is ☐ granted ☐ denied ☐ withdrawn.
 - ☐ A hearing is denied.
 - ☐ A motion to continue is denied.
 - ☐ A motion to modify is denied.
- ☐ The Court continues the hearing set for ____/____/____ (Date). See Notice of Hearing.
- ☐ The Court cancels the hearing set for ____/____/____ (Date).
- ☐ On Plaintiff's motion, the Court dismisses the protective order listed above.

At time of hearing:

Plaintiff: ☒ Appeared ☐ Failed to Appear but did not have Notice ☐ Failed to Appear but had Notice
Defendant: ☒ Appeared ☐ Failed to Appear but did not have Notice ☐ Failed to Appear but had Notice

- ☐ The Court dismisses the protective order listed above.
- ☐ A protective order is ☐ denied ☐ granted ☐ Brady applies.
- ☒ The protective order listed above remains in effect. ☒ Brady applies.

☐ As attached, the Court modifies the protective order listed above. ☐ Brady applies.

12/16/15
Date

[Signature]
Judicial Officer

CERTIFICATE OF TRANSMITTAL

Copy ☒ mailed ☒ provided personally to Plaintiff on 12/16/15 by [Signature]
Copy ☒ mailed ☐ provided personally to Defendant on 12/16/15 by [Signature]
Copy ☒ mailed ☐ delivered ☒ faxed to Sheriff on 12/16/15 by [Signature]

SAHUARITA MUNICIPAL COURT
360 W SAHUARITA CENTER WAY, SAHUARITA, AZ 85629 PH - 520-344-7150

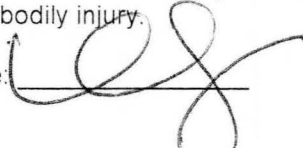
DESIREE CAPUANO Plaintiff Birth Date: 10/01/1980 vs PATRICK FOX Defendant	CASE NO: M1046CV201500024 Court ORI #: AZ010051J	NOTICE TO SHERIFF OF BRADY INDICATOR OP/IAH Issue Date: 07/23/2015
---	---	---

Notice is hereby given to the Sheriff of this County that the protective order issued in the above-referenced case appears to meet the criteria established in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. § 922). If the Sheriff determines the criteria established in the VCCLEA are met, the protective order should be assigned a positive Brady Record Indicator in the Protective Order File of the National Crime Information Center database.

The defendant may be disqualified from purchasing or possessing a firearm or ammunition based upon the following:

- ☐ The plaintiff and the defendant are intimate partners. As defined in 18 U.S.C. § 921(a)(32), "intimate partner" means with respect to a person, the spouse of a person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who lives or has lived in an intimate relationship with the person.
- ☐ The protective order was issued or affirmed after a hearing of which the defendant received actual notice and at which the defendant had an opportunity to participate.
- ☒ The defendant is subject to a protective order that restrains him or her from harassing, stalking, or threatening an intimate partner or child of an intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to himself or herself or a child in common.
- ☒ The protective order:
 - includes a finding that the defendant represents a credible threat to the physical safety of such intimate partner or child; OR
 - explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

DATE: 12/16/2015

Judicial officer Signature: 

CERTIFICATE OF TRANSMITTAL

Copy ☐ mailed ☐ delivered ☐ faxed to Sheriff on 12/16/15 by me

Copy ☐ mailed ☐ provided personally to Plaintiff on 12/16/15 by me

Copy ☐ mailed ☐ provided personally to Defendant on 12/16/15 by me

ORDER OF PROTECTION

[] Amended Order

Case No. M-1046-CV-201500024

Court ORI No. AZ010051J

County PIMA

State AZ

Former Case No. _____

PLAINTIFF

DESIREE CAPUANO

First Middle Last

PLAINTIFF IDENTIFIERS

10/1/1980

Date of Birth of Plaintiff

And/or on behalf of minor family member(s) and other Protected Person(s): (List name and DOB.)

V.

DEFENDANT

PATRICK FOX

First Middle Last

Defendant/Plaintiff Relationship MARRIED NOW OR IN THE PAST

Defendant's Address : _____
BURNABY, BC V5G1T3 BURNABY, UN

DEFENDANT IDENTIFIERS

SEX	RACE	DOB	HT	WT
M	W		5' 4"	130
EYES	HAIR	Arizona Prohibits Release of Social Security Numbers		
BRO	BRO			
DRIVER'S LICENSE #		STATE	EXP DATE	

CAUTION: [X] Weapon Alleged in Petition

[] Estimated Date of Birth

WARNINGS TO Defendant: This Order shall be enforced, even without registration, by the courts of any state, the District of Columbia, any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. § 2265). Crossing state, territorial, or tribal boundaries to violate this Order may result in federal imprisonment (18 U.S.C. § 2262). As a result of this order, it may be unlawful for you to possess or purchase a firearm or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney. **Only the Court, in writing, can change this Order.**
This Order is effective for one year from date of service. VERIFY VALIDITY (call Holder of Record):

PIMA COUNTY SHERIFF'S DEPARTMENT - (520)351-4625

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter.

[] Defendant received actual notice of this Hearing and had an opportunity to participate.

Additional findings of this Order and warnings are set forth on the next page(s).

THE COURT, finding reasonable cause to believe that Defendant may commit an act of domestic violence or has committed an act of domestic violence within the past year (or good cause exists to consider a longer period), **HEREBY ORDERS:**

NO CRIMES. Defendant shall not commit any crimes, including but not limited to harassment, stalking, or conduct involving the use, attempted use, or threatened use of physical force that would reasonably be expected to cause bodily injury, against Plaintiff or Protected Persons.

[X] **NO CONTACT.** Defendant shall have no contact with **Plaintiff** except through attorneys, legal process, court hearings, and as checked: [] Phone [] Email/Fax [] Mail [] Other: _____

[] **NO CONTACT.** Defendant shall have no contact with **Protected Person(s)** except through attorneys, legal process, court hearings and as checked: [] Phone [] Email/Fax [] Mail [] Other: _____

THE COURT FURTHER ORDERS:

☐ RESIDENCE. Plaintiff is granted exclusive use and possession of the residence listed below.

☐ LAW ENFORCEMENT STANDBY. Defendant may return once with a law enforcement officer to obtain necessary personal belongings. Neither law enforcement nor this protective order can resolve conflicts over property, title, furniture, finances, real estate, or other ownership issues.

PROTECTED LOCATIONS. Defendant shall not go to or near the Plaintiff's or other Protected Person's:

☒ Residence (leave blank if confidential):

250 E PLACITA LAGO DEL MAGO, SAHUARITA, AZ, 85629;

☐ Workplace (leave blank if confidential):

☐ School / Other:

☒ **FIREARMS.** Pursuant to A.R.S. § 13-3602(G)(4), the Court finds that Defendant poses a credible threat to the physical safety of the Plaintiff or Protected Persons. Therefore, Defendant shall not possess, receive, or purchase firearms and shall surrender same within 24 hours of service to: law enforcement

OTHER ORDERS.

07/23/2015

Date

Judicial Officer

MARIA M. AVILEZ

Printed Name

Warning

This is an official Court Order. If you disobey this Order, you will be subject to arrest and prosecution for the crime of interfering with judicial proceedings and any other crime you may have committed in disobeying this Order.

ADDITIONAL WARNINGS TO Defendant: Violations of this Order should be reported to a law enforcement agency, not the Court. Both parties must notify this Court if an action for dissolution (divorce), separation, annulment or paternity/maternity is filed. This is NOT a parenting time (visitation) or custody order. You must file those requests separately in Superior Court. If you disagree with this Order, you have the right to request a hearing, which will be held within 5 to 10 business days after your written request has been filed in the Court that issued this Order. Nothing the Plaintiff does can stop, change, or undo this Order without the Court's written approval. You must appear in Court to ask a judge to modify (change) or quash (dismiss) this Order. **Even if the Plaintiff initiates contact, you could be arrested and prosecuted for violating this protective order. If you do not want the Plaintiff to contact you, you have the right to request a protective order against the Plaintiff. However, orders are not automatically granted upon request. Legal requirements must be met.**

PCO Codes: 1,4,5,7,8.

Sahuarita Municipal Court, Pima County, Arizona

Case No: CV2015-00024

APPELLANT

Patrick Fox

[REDACTED]
Burnaby, BC V5G 1T3
Canada
604-[REDACTED]
Pro Se

APPELLEE

Desiree Capuano
250 E. Placita Lago Del Mago
Sahuarita, AZ
85629
520-288-8200
Pro Se

APPELLANT'S MEMORANDUM

STATEMENT OF THE CASE:

On July 23, 2015 Ms. Capuano filed a Petition for an Order of Protection against Mr. Fox, in the Sahuarita Municipal Court. Based on Ms. Capuano's sworn statements, the Municipal Court issued the Order of Protection. A copy of the Order of Protection was served on Mr. Fox on October 31, 2015. Mr. Fox thereafter requested a contested hearing in the Sahuarita Municipal Court, and a hearing was set for December 16, 2015. Ms. Capuano and Mr. Fox both testified at the hearing. Upon completion of the hearing, the Municipal Court ordered the Order of Protection remain in effect, and ordered a Notice of Possible Brady Indicator (PBI) be issued against Mr. Fox. Mr. Fox timely filed a Notice of Appeal.

STATEMENT OF FACTS:

On July 23, 2015, Ms. Capuano, filed a Petition for Order of Protection in the Sahuarita Municipal Court, against Mr. Fox (Appendix A: Petition). Ms. Capuano's petition clearly