

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 21-0487
Warren County No. SRCR025727

STATE OF IOWA
Plaintiff-Appellee

v.

RICK PETRO
Defendant-Appellant

APPEAL FROM
THE DISTRICT ASSOCIATE COURT OF WARREN COUNTY
THE HONORABLE
KEVIN PARKER

FINAL BRIEF FOR APPELLANT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. WHETHER THE EVIDENCE ESTABLISHED PETRO WAS A THREAT TO THE PROTECTED PARTY?

State v. Havaland, 817 N.W.2d 32 (Iowa Ct. App. 2012)

State v. Sinclair, 837 N.W.2d 681 (Iowa Ct. App. 2013)

Vance v. Iowa Dist. Ct. for Floyd Cty., 907 N.W.2d 473, 476 (Iowa 2018)

State v. Pettit, 885 N.W.2d 221 (Iowa Ct. App. 2016)

Iowa Code Ann. § 17A.19 (West)

State v. Johnson, 528 N.W.2d 638, 640 (Iowa 1995)

Shannon v. Baumgartner, 871 N.W.2d 521 (Iowa Ct. App. 2015)

ROUTING STATEMENT

Pursuant to Iowa Rule of Appellate Procedure 6.1101(3), it is appropriate for this case to be transferred to the Court of Appeals.

STATEMENT OF THE CASE

Nature of the Case. Rick Petro was charged by Criminal Complaint with Domestic Assault on August 24, 2009. A no-contact order was entered on this same date. Petro pled guilty to assault on December 15, 2009. Petro was sentenced on January 26, 2010 to Assault. A one-year no-contact order was entered on that same date. (1/26/10 Order; App. 38).

An application to extend the no-contact order was requested on January 14, 2011. A hearing was held on February 8, 2011 and the no-contact order was extended for an additional five-year term – February 8, 2016. (2/8/11 Order; App. 44).

A second application to extend the no-contact order was filed on January 6, 2016. The Court granted the motion *ex parte*. Petro filed a Motion to Reconsider the *ex parte* motion. A hearing was held on April 22, 2016. The Court upheld the extension on the no-contact order on July 7, 2016.

A third application to extend the no-contact order was filed on February 5, 2021. The Court granted the motion *ex parte*. Petro filed a Motion to Reconsider and a hearing was held on March 22, 2021. The Court denied the Motion to Reconsider and extended the no-contact order until February 8, 2026. (Order; App. 44).

Facts. A criminal complaint and no-contact order were filed on August 24, 2009 against Rick Petro. The State alleged in the Trial Information that Petro had assaulted “a current or former spouse, a person who is a parent of defendant’s child(ren) and/or family member of intimate partner residing with defendant (or who has, within one year, resided with the defendant) and while doing so caused the victim bodily injury. (Trial Information; App. 36). Petro ultimately pled guilty to Assault Causing Bodily Injury in violation of Iowa Code 708.2(2) on January 26, 2010. (Petition to plead guilty; App. 37).

Petro was placed on probation. During the course of probation it was alleged that Petro violated the terms of his probation on April 6, 2010 by making statements against the protected party, Suella Petro, to a third party, that were interpreted as a threat. (Probation Violation Report 4/6/10; App. 40). These threats served as the basis for the extension of the no-contact order filed on January 14, 2011. (Application to Extend, 1/14/2011; App. 42).

On April 5, 2011 Petro violated the no-contact order by speaking to Suella during a termination of parental rights proceeding and was found to be in contempt of the Courts Order and ordered to serve two days in jail. (Order of Disposition 4/26/2011; App. 46).

The Court held a contested hearing on April 22, 2016 regarding the motion of the protected party to extend the no-contact order again. Rick Petro

was the only witness in the proceeding. Petro testified that it had been almost seven years since the no-contact order was put in place. (Hearing 4/22/16: pg. 7; App. 7).

Petro further testified that Suella and himself had not had **any** contact since April 6, 2011. Throughout the duration of the multiple no-contact orders being entered, Petro has not had any physical contact with the protected party. (Hearing 4/22/16: pg 10, Ll 5-8; App. 9). Petro has not had any contact via phone, letter, personal or otherwise since April 6, 2011. (Hearing 4/22/16: pg 10-11, Ll 9-5; App. 9-10).

The third extension came for hearing on March 22, 2021. During this proceeding Petro again testified. Petro was fifty-nine years old at the time of the hearing. He has been employed with the same company for five years. (Hearing 3/22/21: pg 14, Ll 1-8; App. 26). Petro was candid regarding his previous violations and took responsibility for his actions in 2010 and 2011. (Hearing 3/22/21: pg 15-16, Ll 5-6; App. 27-28). Petro further testified that the day he violated the no-contact order was the worst day of his life and his emotions were running very high, but that he did not physically do anything to Suella. He just verbally communicated with her. (Hearing 3/22/21: pg 16, Ll 10-24; App. 28).

Petro testified that he would not contact Suella if the order were lifted and that he has not driven by her house or attempted any contact with her in the last ten years. (Hearing 3/22/21: pg 18-19, L1 18-7; App. 29-30).

Petro testified that the town of Carlisle where both Rick and Suella live in has one grocery store, a Dollar General, one hardware store, a post office and a bank. (Hearing 3/22/21: pg 19-20, L1 21-25; App. 30-31). He further testified that if he needs something, hardware, groceries, etc. that he drives clear to Des Moines to avoid potentially running into Suella at one of those places in town. (Hearing 3/22/21: pg 20, L1 1-11; App. 31).

Petro testified that if he needed a prescription filled, there is only one pharmacy and so he tries to avoid all these places to avoid arrest. (Hearing 3/22/21: pg 20, L1 12-19; App. 31).

Petro testified that he has not had any other criminal charges other than this one that resulted in the instant no-contact order. He completed probation and the Batterer's Education classes as required. He attended therapy for six or seven years. He fully addressed any anger issues through therapy and the BEP classes. (Hearing 3/22/21: pg 21-22, L1 7-4; App. 32-33).

Rick testified that the extensions of the no-contact order show up each time he applies for a CDL job. It has disqualified him for employment with Casey's General Store. (Hearing 3/22/21: pg 23, L1 6-23; App. 34).

ARGUMENT

I. WHETHER THE EVIDENCE ESTABLISHED PETRO WAS A THREAT TO THE PROTECTED PARTY

Standard of Review and Preservation of Error:

“We review questions of statutory interpretation as well as challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Hennings*, 791 N.W.2d 828, 832 (Iowa 2010) (sufficiency of the evidence); *State v. Weiderien*, 709 N.W.2d 538, 540 (Iowa 2006) (statutory interpretation). In determining the sufficiency of the evidence, the district court's findings of fact are binding on appeal if supported by substantial evidence. *State v. Hall*, 287 N.W.2d 564, 565 (Iowa 1980)”. *State v. Haviland*, 817 N.W.2d 32 (Iowa Ct. App. 2012).

“We also review the no-contact order extension for correction of errors at law. *See* Iowa R.App. P. 6.907; *State v. Wiederien*, 709 N.W.2d 538, 540 (Iowa 2006).” *State v. Sinclair*, 837 N.W.2d 681 (Iowa Ct. App. 2013).

““Evidence is considered substantial when reasonable minds could accept it as adequate to reach a conclusion.” *State v. Garrity*, 765 N.W.2d 592, 595 (Iowa 2009).” *Vance v. Iowa Dist. Ct. for Floyd Cty.*, 907 N.W.2d 473, 476 (Iowa 2018).

Error was preserved in this case by a motion to reconsider and having a contested proceeding on the extension of the no-contact order.

Law:

“We decided an identical jurisdictional issue in *State v. Sinclair*, where we found this court had jurisdiction to decide an appeal from the extension of a no-contact order. No. 12–1151, 2013 WL 3458146, at *2 (Iowa Ct.App. July 10, 2013). We reasoned:

The question of appellate jurisdiction depends on what authority the district associate judge exercised when extending the no-contact order. Iowa Code section 602.6306(4) (2011) provides where district associate judges are “exercising the jurisdiction of magistrates” appeals are “governed by the laws relating to appeals from judgments and orders of magistrates”; i.e. the district court should hear the issue on appeal. *See* Iowa Code §§ 602.6306(4), 602.6405. Where district associate judges are “exercising any other jurisdiction,” appeals are “governed by the laws relating to appeals from judgments or orders of district judges”; i.e. the Court of Appeals should hear the issue on appeal. *Id.* § 602.6306(4); *see also id.* § 602.5103(2).”

State v. Pettit, 885 N.W.2d 221 (Iowa Ct. App. 2016). The Court has jurisdiction over this appeal.

Iowa Code section 664A.8 provides in relevant part, “The court shall modify and extend the no-contact order for an additional period of five years, *unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family.*” *State v. Pettit*, 885 N.W.2d 221 (Iowa Ct. App. 2016).

““Substantial evidence” means the quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.” Iowa Code Ann. § 17A.19 (West).

““When that record is viewed as a whole” means that the adequacy of the evidence in the record before the court to support a particular finding of fact must be judged in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it, including any determinations of veracity by the presiding officer who personally observed the demeanor of the witnesses and the agency's explanation of why the relevant evidence in the record supports its material findings of fact.” Iowa Code Ann. § 17A.19 (West).

“When interpreting a statute, our primary goal is to give effect to the intent of the legislature. *State v. Walker*, 804 N.W.2d 284, 290 (Iowa 2011). “We seek a reasonable interpretation which will best effectuate the purpose of the statute and redress the wrongs the legislature sought to remedy.” *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995).

The purpose of a no-contact order is to protect victims of certain public offenses from harm or harassment. *See* Iowa Code § 664A.1(1) (defining “No contact order”). Section 664A.8 provides an increased layer of protection by providing victims the opportunity to have their no-contact order extended for additional five year periods if the defendant continues to pose a threat to the safety of the victim.” *State v. Haviland*, 817 N.W.2d 32 (Iowa Ct. App. 2012).

“Consequently, if the defendant proves by a preponderance of the evidence that he or she no longer poses a threat to the protected persons, the court should not extend the no-contact order for an additional five years.” *Vance v. Iowa District Court for Floyd County*, 907 N.W.2d 473, 482 (Iowa 2018).

“A preponderance of evidence supports a finding when such evidence is greater in ‘weight, influence, or force’ than the evidence supporting a different conclusion.” *Shannon v. Baumgartner*, 871 N.W.2d 521 (Iowa Ct.

App. 2015)(citing *Walthart v. Board of Directors of Edgewood-Colesburg Community School Dist.*, 694 N.W.2d 740,744 (Iowa 2005)).

Analysis:

The evidence shows by a preponderance of the evidence that Rick Petro does not pose a continued threat to the safety of the protected party, Suella Petro. The no contact order was put in place over 11 and a half years ago. During the last 11 years, Petro has not had any physical or verbal contact with the protected party. (Hearing 3/22/21: pg 9; L1 ; App. 24).

The violations were two relatively minor, albeit certainly violations of the no-contact order the first year and a half that it was put into place, but nothing more since that time. The two violations that did occur were more than 11 years prior to the hearing on the extension of the no contact order. The last time that Petro was face-to-face with the protective party was in the last court proceeding in April 2016. The first violation, which took place a few months after the no contact order was first put into place, was the result of Petro making inappropriate statements to the in-home worker who was supervising a visit between him and his children. He did not intend to communicate with the protected party. (Hearing 4/22/16: pg 8; App. 23).

The second violation occurred in the court room during a termination of parental rights proceeding. Petro made one statement to the protective

party in the Courtroom. He said “I can't believe you're doing this.” (Hearing 3/22/21: pg 15-16, L1 22-1; App. 27-28).

The statement that he made to the protective party in April 2011 was not threatening in nature, nor abusive. It was just bad judgment when face-to-face with the protective party in a very emotional setting. He did not attack, belittle or behave aggressively in that proceeding to the protective party despite the heightened emotions that were in play. And again, these two violations occurred more than ten years prior to the court extending the current no contact order.

Petro has lived his life in fear during the previous eleven years. He resides in Colfax, a rural town in Iowa. This is the same small town that the protective party resides in. He is afraid of running into her at the grocery store, the post office or the hardware store. He must drive out of county to get basic necessities to avoid potential arrest.

Petro testified that when a recent prospective employer did a background check, it negatively impacted that job prospect. They did not hire him because of the no-contact order remaining in place. (Hearing 3/22/21: pg 23, L1 19-23; App. 34). Petro was an avid hunter prior to his marriage to the protective party. He wants to resume this hobby, but is unable as long as the protective order is in place. He also spoke of an incident where a raccoon

attacked his dog and he had to fight it off with a rake. (Hearing 3/22/21: pg 22-23, L1 18-5; App. 33-34).

This order has detrimentally impacted him since 2009 and it is time for it to be lifted.

The claims made against Rick are clearly insufficient. As stated in *Vance*, “if the defendant can prove by a preponderance of the evidence that he or she no longer poses a threat to the protected persons, the court should not extend the no-contact order for an additional five years.” *Vance v. Iowa District Court for Floyd County*, 907 N.W.2d 473, 482 (Iowa 2018). The Iowa Supreme Court has defined a preponderance of the evidence as “[a] finding when such evidence is greater in ‘weight, influence, or force’ than the evidence supporting a different conclusion.” *Shannon v. Baumgartner*, 871 N.W.2d 521 (Iowa Ct. App. 2015)(citing *Walthart v. Board of Directors of Edgewood-Colesburg Community School Dist.*, 694 N.W.2d 740,744 (Iowa 2005)). Rick has met this burden.

At the March 22, 2021 hearing, Suella was unable to present any evidence that Rick posed as threat to her other than her continued fear. On the contrary, Rick’s sworn testimony provided that he is not a threat to Suella. This is evident by his willingness to cooperate with the court, completion of probationary requirements, completion of batterer’s education

courses and his extensive bout of therapy. Petro has gone to great length's to ensure that the criminal behavior that he was found guilty of in 2009/2010 does not repeat itself. Petro has taken all the proper steps to live a law abiding life and that is self-evident by the fact that Rick has a single conviction for the assault in 2009 and not one single other charge or conviction in his fifty-nine years. This coupled with over ten years on no-contact with Suella is definitive evidence that Petro does not pose a threat to this woman.

The Court relied on a single allegation by Suella to support Petro's continued threat to her safety. Suella claimed that she believed that Petro had sent his parents to her home to take photos. She admitted that she did not have any information to actually support this claim, nor was any presented. (Hearing 3/22/21: pg 9-10, L1 15-1; App. 24-25).

Upon further examination Suella tried to claim that this had occurred in the preceding five years in order to gain the extension she was seeking. However, her claim is readily disproven. Not only was this claim made back in 2016 when she sought the last extension, but an exhibit that was entered indicates that there was this same allegation on October 10, 2011. (Exhibit V3). During the instant proceeding, Suella never claimed that Petro was seen driving past her house while she was in the garage, although her counsel did

allege that incorrect statement on October 2011. You can bet if that had been the case, that she would have made the allegation in court on March 22, 2021. She also did not claim that any messages were passed along to her as alleged in that correspondence. Most telling is that there were never any charges against any party as alleged on the exhibit V3, so the document is of limited evidentiary value and is merely filled with unfounded allegations. That document does prove that this allegation that Petro was involved in violating the no-contact order was made long prior to 2016 and not after as Suella claimed during the hearing. Again, no evidence of any criminal activity in more than a decade.

The court indicated concern that Petro wants to own a firearm for hunting. A claim that Petro wants to be able to go hunting again is certainly not evidence that he is any kind of threat to Suella.

Petro testified candidly and credibly in the hearing. At one point, he even expressed concern that he was looking toward Suella at her counsel and that might be viewed as a violation. (Hearing 3/22/21: pg 26, L1 16-22; App. 35). This is again indicative of his desire to do everything on the straight and narrow. He has lived in fear long enough.

There is nothing more that Petro can possibly do to prove himself. He has an entire history without criminal charges prior to the ones involving

Suella. We have this brief period where he was convicted of a serious misdemeanor assault in 2010. It is not a history of domestic violence, it is one charge and one conviction. Since that date, there has not been any criminal activity, no 236 no-contact orders, nothing to show that he is a threat to anyone at this point. He attended lengthy therapy following this conviction and not because he was ordered to by the court, but because he wanted to. He completed probation. He completed his classes. There has been over a decade since any contact with Suella. Again, all evidence proves that he is not a threat to her safety.

Petro has not acted in a manner that would indicate that he is volatile or has a further propensity towards violence. Petro testified that Suella was not in danger from him. The Court did not make a finding that Petro was not a credible witness or that his statements did not appear to be genuine. That is the evidence before the Court. There was insufficient evidence that Petro was a threat. If this does not prove that Petro is no longer a threat, we would ask the court to tell us, what more can he possibly do?

Petro has paid the consequences for the crime that he committed in 2009. He also had consequences for the violations of the no-contact order in this case. At some point, he has to be allowed to move past this, especially when he has not done anything for the Court to take notice of over the last ten

years. He should not be required to live his life in fear for an additional five years when he has followed the law and Order of the Court. While Suella may state she is still in fear, fear alone is not grounds to continue the order that detrimentally affects Petro's job prospects, his liberty interests, and his constitutional rights. It is time that both parties be able to move past this and resume their lives without the Court being involved.

CONCLUSION

For the above-mentioned reasons, Defendant/Appellant Rick Petro respectfully requests the appellate court reverse the Order of the District Court and dismiss the protective order.

REQUEST FOR ORAL ARGUMENT

Appellant Rick Petro requests his counsel be heard orally by the court regarding all matters addressed herein.

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CERTIFICATE OF SERVICE

I certify that on the 10th day of December, 2021, I served a copy of this document by electronically filing a copy and mailing to all parties that are not on the electronic filing system at their respective addresses as shown below:

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CERTIFICATE OF COST

I certify that the cost of printing this brief was \$1.00.

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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because the brief contains 3,328 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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<u>/s/ Karmen Anderson</u>	<u>12/10/2021</u>
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