

STATE OF NEW YORK : COUNTY OF NIAGARA
SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK

vs.

PEOPLE’S RESPONSE TO
DEFENDANT’S NOTICE OF
MOTION AND AFFIDAVIT
MOTION FOR A JUDGMENT
PURSUANT TO ARTICLE 78
Newfane Docket No. 22080008

TRACY A. MURPHY.

Defendant.

STATE OF NEW YORK:
COUNTY OF NIAGARA:ss
CITY OF LOCKPORT:



LAURA T. JORDAN, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice law before the Courts of the State of New York.
2. I am an Assistant District Attorney, in and for the County of Niagara, State of New York, and am fully familiar with the facts of this case.
3. I am the Assistant District Attorney assigned to handle the above-captioned matter.
4. The People respond to the Notice of Motion and supporting Affidavit of Christina N. Neitzey, Esq., attorney for defendant TRACY A. MURPHY, as follows:
5. Unless otherwise stated herein, this response is made upon information and belief, the sources of which are my investigation of the confidential file of the District Attorney’s Office, records of all proceedings heretofore had, a reading of the moving papers filed herein, and conversations with witnesses hereto.

6. Sometime between July 15, 2022 and July 16, 2022, the complainant, Scott Gregson, noticed that two of his cows were missing. Mr. Gregson checked his fence and saw that it was still intact. On Friday, July 22, 2022, Mr. Gregson was contacted by an investigator with the Niagara County SPCA who informed him that his cows were located on the property of Asha's Farm Sanctuary, owned by defendant.
7. On July 25, 2022, New York State Trooper Andrew Mazurek accompanied Mr. Gregson to defendant's Sanctuary. Defendant refused to give the cows back to Mr. Gregson and told Trooper Mazurek and Mr. Gregson to come back with a warrant.
8. On August 2, 2022, a search warrant was executed at defendant's Sanctuary. The two cows were located on her property and returned to Mr. Gregson. Defendant was placed under arrest and arraigned on August 2, 2022 on one count of Grand Larceny in the Third Degree, in violation of §155.35 of the Penal Law of the State of New York.
9. At defendant's arraignment, which was conducted by the centralized arraignment part (CAP Court) and presided over by Judge Pamela Rider, defendant was released on her own recognizance, conditioned on her "ceas[ing] social media posts while [her] case is pending."
10. On December 26, 2022, defendant filed a motion with the Town of Newfane Court seeking to remove this initial gag order.
11. On January 19, 2023, the People filed a response to the gag order motion.
12. On January 24, 2023, the People reduced the charge to one count of Petit Larceny, in violation of §155.25 of the Penal Law of the State of New York. Additionally,

the Court heard oral argument on the gag order motion. The People consented that defendant should be able to post generally on social media about her sanctuary, but opposed her posting specifically about this pending case. Defendant opposed any restrictions on her social media posts, but consented not to post Mr. Gregson's address.

13. On February 21, 2023, the Town of Newfane Court issued an Order denying defendant's motion and indicated that defendant should cease all social media posts and take down her billboards.

14. On February 22, 2023, defendant filed a motion pursuant to Criminal Procedure Law §170.25, requesting an adjournment of the proceedings in the Town of Newfane so that they may pursue the filing of a motion requesting that this misdemeanor matter be moved to superior court under this section.

15. On May 12, 2023, defendant filed a motion pursuant to Criminal Procedure Law §170.25 with Niagara County Court seeking removal of this action from the Town of Newfane Court to County Court.

16. The People opposed defendant's motion and submitted their response on June 28, 2023. The motion is still currently pending before Hon. John J. Ottaviano.

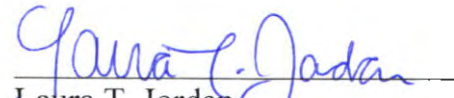
17. Defendant has now filed an Article 78 Petition seeking to vacate the Town of Newfane Court's Order in its entirety.

18. "A prior restraint on speech is a law, regulation or judicial order that suppresses speech on the basis of the speech's content and in advance of its actual expression" (*Karantinidis v Karantinidis*, 186 AD3d 1502 [2nd Dept 2020]).

19. Any imposition of prior restraint, whatever the form, bears a “heavy presumption against its constitutional validity, and a party seeking to obtain such a restraint bears a correspondingly heavy burden of demonstrating justification for its imposition” (*Karantinidis* at 1502, quoting *Ash v Board of Mgrs. of 155 Condominium*, 44 AD3d 324, 325 [1st Dept 2007]).
20. “An injunctive order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and the essential needs of the public order” (*Karantinidis* at 1502, see *Carroll v President and Comm’rs of Princess Anne*, 393 US 175, 183 [1968]). “The order must be tailored as precisely as possible to the exact needs of the case” (*id.*).
21. The People’s concern regarding defendant posting on social media about this case specifically is due to the previous threats made towards Mr. Gregson and his family. When this case began, Mr. Gregson received telephone calls and visits to his property by members of the animal rights community and supporters of defendant. People left messages on his telephone telling him that he should be killed and that his children should be raped and killed. The issuance of the initial gag order quieted these threats against Mr. Gregson and the People are concerned that should defendant be allowed to post again on social media about this case, those threats would again occur.
22. Consequently, the People were, and still are, concerned that the posts on social media about this case by defendant are “likely to produce a clear and present danger

of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest” (*Rosenberg Diamond Dev. Corp. v Appel*, 290 AD2d 239 [year], quoting *Terminiello v Chicago*, 337 US 1, 4 [year]). Under these circumstances, a prior restraint on defendant posting about this case would be narrowly tailored to the exact needs of this case (*Walsh v Russell*, 214 AD3d 890, 891 [2nd Dept 2023]).

WHEREFORE, the People respectfully request the Court enforce the gag order to the extent that it prohibits defendant from posting specifically about this case, together with any further relief the Court deems just and proper.


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