

# RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE  
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3088-21**

STATE OF NEW JERSEY,

Plaintiff-Appellant,

v.

ADAM BRENSINGER,

Defendant-Respondent.

---

Submitted June 6, 2023 – Decided July 28, 2023

Before Judges Gilson and Gummer.

On appeal from the Superior Court of New Jersey,  
Chancery Division, Family Part, Somerset County,  
Docket No. FO-18-0208-22.

John P. McDonald, Somerset County Prosecutor,  
attorney for appellant (Lauren E. Bland, Assistant  
Prosecutor, of counsel and on the brief).

Respondent has not filed a brief.

PER CURIAM

The State appeals from an April 27, 2022 order dismissing a charge of disorderly persons contempt of a domestic violence restraining order, N.J.S.A. 2C:29-9(b)(2), based on a finding that the charge was de minimis under N.J.S.A. 2C:2-11(b). We determine that the assignment judge abused his discretion in dismissing the charge and reverse.

In evaluating a de minimis motion, courts must accept as true the allegations in the criminal complaint or indictment and view the facts in the light most favorable to the State. See State v. Evans, 340 N.J. Super. 244, 249 (App. Div. 2001). Accordingly, we accept as true the following facts. On January 13, 2022, a final restraining order (FRO) under the Prevention of Domestic Violence Act of 1991 (the PDV Act), N.J.S.A. 2C:25-17 to -35, was entered against defendant. The FRO, which was served on defendant that same day, prohibited him from having any contact or communications, including electronic contact or communications, with R.P., the victim.<sup>1</sup>

Just before midnight on February 27, 2022, R.P. received an email notification stating that defendant had requested to join her LinkedIn network. The notification stated: "Hi [R.P.], I'd like to join your LinkedIn network." The

---

<sup>1</sup> We use initials for the victim to protect her privacy interests and the confidentiality of the domestic violence record. R. 1:38-3(d)(9) and (10).

notification identified defendant as the requestor and stated that he was an "[e]lectrician" and identified the company where he worked.

LinkedIn is a business and employment-focused social media platform that works through websites and mobile apps. It is owned by Microsoft and describes itself as the world's largest professional networking and career development network. It allows members to create profiles and connect with other members in an online social network. See About LinkedIn, LinkedIn, <http://about.linkedin.com> (last visited July 20, 2023).

R.P. did not allow defendant to join her network, and the next day she reported the contact to the police. Shortly thereafter, defendant was charged via a complaint warrant with contempt of the FRO. When arrested, defendant admitted that he had a LinkedIn account but denied attempting to join R.P.'s network.

Defendant, represented by counsel, moved to dismiss the contempt charge as de minimis. The assignment judge heard oral argument on April 27, 2022. That same day, the judge issued a written statement of reasons and an order granting the motion to dismiss the complaint as de minimis.

The judge relied on subsection (b) of N.J.S.A. 2C:2-11, which allows an assignment judge to dismiss a charge if defendant's conduct "[d]id not actually

cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction." The judge found that "[d]efendant's actions [did] not constitut[e] a violation of the FRO. Although [d]efendant attempted to contact the victim, no actual personal contact or conversation occurred." The judge also reasoned:

Defendant did not relate any message to the victim. Defendant and the victim never saw each other, nor did they ever engage in conversation. This [c]ourt will not impose severe punishment for minor infractions. The de minimis motion is hereby [granted].

The State now appeals, arguing that the assignment judge abused his discretion in dismissing the contempt charge as de minimis. We agree and reverse.

The de minimis statute provides:

The assignment judge may dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, [the judge] finds that the defendant's conduct:

- a. Was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;
- b. Did not actually cause or threaten harm or evil sought to be prevented by the

law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

c. Presents such other extenuations that it cannot reasonably be regarded as envisaged by the Legislature in forbidding the offense. The assignment judge shall not dismiss the prosecution under this section without giving the prosecutor notice and an opportunity to be heard. The prosecutor shall have a right to appeal any such dismissal.

[N.J.S.A. 2C:2-11.]

In deciding a de minimis motion under subsection (b), the focus is "not whether the defendant is innocent or guilty of the offense charged, but whether 'the nature of the conduct charged and the attendant circumstances' indicate that the offense was too trivial to warrant prosecution." Evans, 340 N.J. Super. at 249 (quoting N.J.S.A. 2C:2-11). When determining triviality, the court should consider all relevant circumstances, though the most important factor is the risk of harm the defendant's conduct poses to society. Id. at 253.

A person is guilty of contempt "if that person purposely or knowingly violates any provision in an order entered under the provisions of the [PDV Act]." N.J.S.A. 2C:29-9(b)(1). To establish criminal liability for contempt, the State must prove beyond a reasonable doubt: "(1) a restraining order was issued

under the [PDV] Act; (2) the defendant's violation of the order; (3) that defendant acted purposely or knowingly; and (4) the conduct that constituted the violation also constituted a crime or disorderly persons offense." State v. Chenique-Puey, 145 N.J. 334, 341-42 (1996) (citing N.J.S.A. 2C:29-9(b)). If the conduct constituting a violation "would otherwise not constitute a crime, [it] is treated as a criminal disorderly persons offense." State v. E.J.H., 466 N.J. Super. 32, 37 (App. Div. 2021); see also N.J.S.A. 2C:29-9(b)(2).

In contempt proceedings, "the primary consideration is vindication of the authority of the court . . . [as] court orders must be obeyed." In re Adler, 153 N.J. Super. 496, 501 (App. Div. 1977) (internal quotation marks omitted). As our Supreme Court has explained:

Restraining orders are entered for purposes of shielding a victim who needs protection and who is compelled to seek judicial assistance to obtain that security; thus, we have insisted on full compliance with restraining orders no matter the flaws a defendant may discern in their form or entry.

[State v. Gandhi, 201 N.J. 161, 189 (2010).]

The Court has also explained that "[a]n abuser who spontaneously appears or makes surprising communications without any legitimate purpose enhances the victim's apprehension. The fears of a domestic violence victim and the turmoil

she or he has experienced should not be trivialized." State v. Hoffman, 149 N.J. 564, 586 (1997).

An assignment judge is vested with "discretion to dismiss certain charges [on de minimis grounds] to avoid an absurd application of the penal laws." Evans, 340 N.J. Super. at 248. Accordingly, we review a decision to dismiss on de minimis grounds for an abuse of discretion. Ibid. We "may find an abuse of discretion when a decision 'rest[s] on an impermissible basis' or was 'based upon a consideration of irrelevant or inappropriate factors.'" State v. S.N., 231 N.J. 497, 515 (2018) (alteration in original) (quoting State v. C.W., 449 N.J. Super. 231, 255 (App. Div. 2017)). We "can also discern an abuse of discretion when the trial court fails to take into consideration all relevant factors and when its decision reflects a clear error in judgment." Ibid. (quoting C.W., 449 N.J. Super. at 255). Similarly, "when the trial court renders a decision based upon a misconception of the law, that decision is not entitled to any particular deference and consequently will be reviewed de novo." Ibid. (quoting C.W., 449 N.J. Super. at 255).

The assignment judge here improperly made fact findings in dismissing the contempt charge as de minimis. The judge found that defendant's actions did not constitute a violation of the FRO. The judge also found that "[d]efendant

did not relate any message to the victim[, d]efendant and victim never saw each other, [and] they [n]ever engage[d] in a conversation." Those are improper findings of facts on a de minimis motion. The role of the assignment judge in considering a de minimis motion is to assume that defendant is guilty of the charged offense and then determine whether the nature and the conduct charged, in light of the attendant circumstances, establishes that the offense was too trivial to warrant prosecution. Evans, 340 N.J. Super. at 249.

Subsection (b) of N.J.S.A. 2C:2-11 directs the assignment judge to consider whether the defendant's conduct "actually cause[d] or threaten[ed] the harm or evil sought to be prevented by the law defining the offense." Domestic violence restraining orders prohibit abusers from having contact or communications with their victims to protect the victims. See Gandhi, 201 N.J. at 189; Hoffman, 149 N.J. at 584-85. Accordingly, when defendant sought to communicate with R.P., he was engaged in precisely the type of activity that the PDV Act is designed to prevent. Moreover, it was not relevant whether defendant had a direct contact or conversation with the victim; the relevant fact was that he sent her a message that he wanted to have contact with her. Both the Supreme Court and we have repeatedly found contempt charges appropriate where the defendant seeks to send a message to the victim, either through an




intermediary or by leaving a message or a voicemail. See, e.g., Hoffman, 149 N.J. at 587-90 (holding defendant violated the contempt statute by "sending . . . two mailings" to the victim); E.J.H., 466 N.J. Super. at 39 (reinstating contempt charge after finding defendant "was aware of the high probability" that the victim would hear comments and observe a gesture directed at her through a security camera).

We also reject the judge's reasoning that defendant's conduct was too trivial to warrant a contempt conviction. Domestic violence victims have often suffered prolonged abuse before they obtain a restraining order. Accordingly, any type of communication should not be presumed trivial because ultimately that communication must be evaluated in light of the victim's fear and the turmoil she or he has experienced. See Hoffman, 149 N.J. at 586.

In summary, we conclude that the judge abused his discretion in concluding that defendant's conduct was de minimis. Ultimately, it remains the State's burden to establish each element of the charge of disorderly persons contempt beyond a reasonable doubt. The State should have that opportunity at a contempt hearing.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION