

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 03/22/2022

TIME: 10:13:00 AM

DEPT: C-61

JUDICIAL OFFICER PRESIDING: Richard S. Whitney

CLERK: Richard Cersosimo

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2021-00032486-CU-PT-CTL** CASE INIT.DATE: 07/30/2021

CASE TITLE: **SAN DIEGO POLICE DEPARTMENT VS C [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Petitions - Other

APPEARANCES

The Court took this special motion to strike the Petition for Gun Violence based upon the argument that Respondent's speech was protected by the First Amendment of the U.S. Constitution. This is also known as an Anti-SLAPP motion against the Gun Violence Petition filed by the San Diego Police Department.

Respondent argues in the Court transcript of 3/17/2022 on Page 16, Line 10 through Page 18, Line 7, as follows:

"This anti-SLAPP motion protects all communications over the internet. The internet is the most widely source -- I've cited for the Court the case of United States -- sorry -- the United States Supreme Court in Reno vs. ACLU, it's 1997 case that the internet is entitled to the highest level of First Amendment protection. Akin to the print media, akin to online hate speech receives as much protection as hate speech pamphlets distributed by the Ku Klux Klan. If the Ku Klux Klan can go out and make statements, why are they not in this courtroom for a gun violence restraining order? More importantly is the Brandenburg case is the case of the Supreme Court that is the case that has to be the determining factor.

When you look at the Brandenburg case, it specifically holds that even the most constitutional guaranties are protected in these User 1 through User 9 conversations. What's important for the Court to understand is that the users were not offended. The listeners of the conversation were not threatened. There was no insightful to violence. There was no eminent threat. There was no identifiable victim, that's the standard that have you to meet in order to have a true threat that takes it outside of the protections of the First Amendment.

If this Court does not grant this motion, my concern is, is that the San Diego Police Department is going to start bringing gun restraining orders against everyone for making one utterance on the internet. Everything that was uttered between User 1 and User 9 that's the subject of the declaration of Salvador is protected, all of the internet chats, and all the cases that we have looked at on both sides of the briefs, you have to have an eminent factor. It's impossible to have an eminent threat of violence on the internet. So when you're saying something like, I'm going to go find the guy that band my Instagram account

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sometime in the indefinite future, and I'm going to something to that guy, that's not an identifiable threat.

This was a pseudo name called the Liberal Terminator. You have a right to be anonymous on the internet and you have a right to make fun of things. This was a situation where the Liberal Terminator based his modus off of The Terminator, which is Arnold Schwarzenegger, and he made a laundry list of everybody in the world that he was going to hypothetically terminate. Does the San Diego Police Department really believe that he's going to go out and terminate?"

Respondent argues there is no causal connection between internet comments of Respondent on the internet with his political assumptions and the purchase of the weapon.

Respondent leans on a U.S. Court of Appeals case to support his position:

Quoted in the Court's transcript: "The most compelling case that I was able to find actually was a military case that I wanted to bring to your attention, it's not in the brief, it's called United States versus Wilcox, 2008. It was the U.S. Court of Appeals. And a military man was advocating white supremacy. He was on the internet. He was making horrible racist statements. And the Court held that it's so important to look at the context of the speech. So when you're assessing, the Court said, a violation of the First Amendment, a proper balance must be struck between the essential needs and the right to speak out as a free American. Necessarily, you must be sensitive to the protection of free thoughts, not free thoughts for those who agree with us, but freedom for the thought with how we hate."

The **Respondent** concludes his argument that even though his comments may be vulgar, they still were not illegal and therefore protected by free speech/First Amendment. The Anti-SLAPP motions are designed to be dispositive of these constitutionally protected gun violence restraining orders.

San Diego Police Department (Petitioner) argues there are multiple reasons, both procedural and substantive, to deny or overrule this Anti-SLAPP motion.

Quoted in the Court's transcript: "Your Honor, there's three independent reasons for this Court to deny this motion. The first which wasn't referenced just now that it's fatally procedurally deficient. Under the statute, it reads that an anti-SLAPP motion maybe brought within 60 days of service of the complaint, in this case a petition because it's a petition.

I've cited case law in my brief. The statute, the plain language of the statute says that the -- the Court has discretion to consider an anti-SLAPP motion outside of that 60-day period but there has to be compelling reasons to do so. No compelling reasons have been given to this Court, your Honor."

"So to go to the fact that claiming that this is protected speech under the statute 425.16(e), there's four circumstances by which an anti-SLAPP motion may -- may apply. I think it's worth noting to look at couple of the other ones. Number one talks about statements made before a legislative executive or judicial proceeding.

Two talks about statements made in connection with something under consideration or review by the legislature executive or judicial body.

And then three talks about statements made in a place open to the public in connection with a public interest issue and as Counsel argued and their brief is peppered with they say over and over these were private chats and it was private and not open to the public. So it can't qualify under three. The only one it

could possibly was the fourth one in saying that this was in furtherance of a constitutional right of free speech. So that privacy issue is important, your Honor."

Petitioner believes that no one has a constitutional right or absolute right to free speech under the circumstances presented here.

Quoted in the Court's transcript: "All I have to show and all the case law says is a minimal level of legal sufficiency of a triable claim, akin to a judgment on a pleadings or a 12(b)(6), or a -- or a motion for summary judgment, the Court has to take the matters alleged in the declarations and the lodgments as true, and then ask yourself, if this is true, is there a claim? Absolutely, your Honor, without a doubt."

Petitioner believes, and the Court concurs, that the speech exhibited by Respondent were threats against defined ethnic groups. Quoted in the Court's transcript: "There are specific threats towards all kinds of groups here that reside in San Diego: Black, Hispanics, Muslims, Jews, LGB – LGBTQ members, women, liberals. Essentially who is nonwhite, except for liberals, is the direct of these -- the target of these threats."

Further quoted in the Court's transcript: "He wants to kill Nig----. We've got to start fighting back, all while revering mass murderers Dillon Roof and Brenton Tarrant, who are -- if you look -- and I draw the Court's attention to this lodgment to page 47, which is the actual last page, it says – he denies this in his motion, but here's his own words right here. Look at this chat and tell me to stop idolizing Dillon Roof. Dillon Roof, who killed nine black parishioners in South Carolina in a church. This is this guy's his as well as Brenton Turner (sic). So that's on the 29th, your Honor."

"So all of these threats made against black people, Hispanics Muslims, with a combination of purchasing this firearm and ammunition constitutes a recent of threat to others under (B)(1)(A). Under (B)(1)(F), the period of – that (B)(1)(F) says, a pattern of violence acts or violent threats, these are violence threats within the past 12 months, including but not limited to threats of violence or acts of violence towards another. And again, your Honor, these occur from December 29th until July of 2021, so that's a pattern."

Petitioner argues the evidence of violent threats against ethnic groups in combination of a handgun purchase further justifies the compelling necessity of a Gun Violence TRO that is not protected speech.

Quoted in the Court's transcript: "We've got violent threats, and then a day later a purchase of a handgun that was later concealed in the respondent's vehicle. So, your Honor, for all these reasons, this is not only a substantial probability of success on the merits, this is like a very strong gun violence restraining order case, your Honor. I've seen lots of these cases. The cases that have been in the news media, talking about things as antifa and the high school shootings and things that were mentioned and broadcast by Channel 8, this is the same ilk of those kind of cases and this is the very purpose underlying theses red flag statutes is like, hey, where there's not another mechanism to prevent gun violence, what do we do? Penal Code Section 18155 is what we do, your Honor. And again, it's not like anyone is trying to say you can't say what you want, or you can't do what you want. It's saying, if you're going to say these things and carry a gun around in your car, that's not the kind of person that should probably possess a gun, and it clearly can be proven under the statute. So with any rebuttal, I would submit."

Petitioner argued further examples of non-protected free speech, as presented by the evidence:

Quoted in the Court's transcript: "In terms of like this is all political hyperbole and he didn't mean it, I'll

refer you to his own words. Respondent wrote: "All Nig---- need to die. I don't know how much longer I can contain my anger. I want a race war to start so I can kill black people." And then he warns, quote, "I'm not even joking," end quote.

He says, "I want to kill anything Nig----. I want to torture them and beat them to death and watch them gurgle and spit on their own blood." And he says, "You gotta always keep your strap ready when in a 10 mile radius of a Nig---." And guess what, he was. He was out with his gun in his car on July 30th 2021.

Another quote: "White needs to start standing the fuck up and organizing and stop hiding behind the keyboard."

These are all indications of threats to an identifiable group of people in forms of all of the different minority groups that I've cited to your Honor.

And finally, he says, "We need to start fighting back when we need to."

On June 21st, 2021, respondent writes after an on slot (sic) of other racist statements he said, quote, "I feel if a Nig--- or spick is racists to me in person or tries picking on me, I will end up killing them and go to jail." That's his own words."

The Court concludes the purchase of a semi-automatic handgun, combined with the evidence of very egregious racial threats, advocacy of violence towards minority groups, vulgar speech, speech that promotes killing other minority groups, are not considered constitutionally protected speech under the First Amendment of the U.S. Constitution. Therefore, the Respondent's Anti-SLAPP motion is overruled and denied in the entirety.

The permanent injunction hearing shall go forward as currently scheduled on 3/28/2022 at 9:00 a.m. in Department 61.



Judge Richard S. Whitney