

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/6/2021 4:53 PM  
BY ERIN L. LENNON  
CLERK

100062-6  
No. 81021-9-I

**SUPREME COURT OF THE STATE OF WASHINGTON**

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Ron Smith, Petitioner,

v.

Shayna Harris, Respondent,

and

Harmony Earth, Child

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**PETITION FOR REVIEW**

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Ron Smith, Pro Se

721 F Pl. NE

Auburn, WA 98002

(206) 502 3694

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## TABLE OF AUTHORITIES

TITLE 18, U.S.C., SECTION 242

1,2,3 Washington Constitution

**Procedural Rights of Due Process of the Fifth and Fourteenth Amendments**

RCW [26.44.030](#)(11)

Chapter [74.13](#) RCW

RCW [13.34.050](#)

### **I. Identity of Petitioner**

Ron Smith is the Petitioner herein, was the appellant in the Court of Appeals, and Defendant in the Superior Court against Shayna Harris appellee (Shayla Harris as written in cps report).

### **II. Citation to Court of Appeals Decision**

Petitioner seeks review of Division One's unpublished decision in Smith v Harris,  
No. 81021-9-I, June 7, 2021

### **III. Issues Presented for Review**

- (1)** The issues I ask the courts to review is whether, in trial courts, that the Judge Mathews violated my constitution right **TITLE 18, U.S.C., SECTION 242** under the color of law
- (2)** Whether the lower courts violated **1,2,3 Washington Constitution** and also my **procedural rights of due process of the Fifth and Fourteenth Amendments** to the United States Constitution?
- (3)** Under RAP 13.4 (b)(3) If a significant question of law under the constitution of the State of Washington or of the United States is involved

#### IV. Statement of the Case

On 11/18/19 Shayna filed a DVPO against me for herself and our daughter. The APD immediately removed our daughter from my home of 5+ years based on false allegations that Shayna Harris alleged against me. Everyone seems to ignore that fact that Shayna Harris was not an active parent and moved on to live her own life as I raised our daughter. There was no criminal/cps investigation prior to the removal of my care. It wasn't until after the removal of our daughter that a cps case was conducted and there were no findings of abuse, so cps closed investigation, yet still my daughter was not returned home to me.

We went to trial, case # 19-2-30546-1KNT and the Judge still made a judgment to solidify one-year DVPO for Shayna adding my daughter on as well. During this trial, The Judge Mathews refused to ask a question to Shayna Harris, depriving me my right as defending myself as I asked questions pro se. Had he not violated my right, I would have begun to unfold the layers of abandonment/neglect and abuse caused to my daughter by her mother, Shayna Harris. Which would have ultimately broken-down Harris's false narrative to paint me as abusive to her and

our daughter. It would have shed light as to why our daughter was in my care and not hers to begin with.

## **V. Authority**

### **Considerations for Granting Review.**

**(A).** It states in the copy my statement of arrangements, the Judge Mathews apologizes to me for not asking the question that I asked him to ask the appellee Harris. This was the very instance that The Judge Mathews violated his oath and duty as referee to maintain a fair trial. Thus, violating

#### **TITLE 18, U.S.C., SECTION 242 under the color of law.**

**(B).** The lower courts, went about everything pertaining to taking my daughter from my home from allegations, in which Shayna Harris admitted to being false later and after the damage been done is very concerning.

\*[RCW 26.44.030\(11\)](#), upon the receipt of a report alleging that abuse or neglect has occurred, the law enforcement agency or the department must investigate and provide the protective services section with a report in accordance with [chapter 74.13 RCW](#), and where necessary to refer such report to the court.



A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to **RCW [13.34.050](#)**. The law enforcement agency or the department investigating such a report is hereby authorized to photograph such a child for the purpose of providing documentary evidence of the physical condition of the child.

The lower courts, APD, CPS, schools, counselors have **NOT** reported any concerns or abuse pertaining to our daughter for her to be removed from my home. There were no investigations done until cps conducted one after the removal of my daughter. Once the CPS (f.a.r) investigation was complete; it was founded that there was no abuse nor domestic violence from me.

Harris, the appellee, wooed the courts with accusations of abuse from me by using a 2008 police report that I was found not guilty of by my peers. I moved on with my life from that point and stayed away from Shayna Harris, started a new family as I raised our daughter without her being an active parent. Shayna absolutely presented no solid evidence other than her allegations to support her

claims, yet I submitted many exhibits/documents to support mine. Yet still, the lower courts ruled in her favor.

## **VI. Conclusion**

I would like the courts to overturn the decisions every lower court has made to my favor on the grounds of my constitutional/civil rights being violated outside of proper procedural due process. The lower courts said I was issued proper procedural due proper, but I disagree, because my daughter was taken on the exact same day that Shayna Harris filed for restraining order 11/18/19.

I did not receive any hearing or investigations prior to the above mention date. After the CPS investigation, CPS found there was no wrong doing from as they investigated everyone, including our daughter. It wasn't until my daughter was coaxed, manipulated and abused by her mother Shayna Harris that I hurt our daughter.

Next, The Judge Mathew Williams did not honor his oath by upholding his position as referee during the trial on 1/3/20, he in fact violated **TITLE 18, U.S.C., SECTION 242** under the color of law.



Now, Shayna Harris wanted a DVPO and the lower courts believed her based on the preponderance of evidence or lack thereof. I say this to say either way, adding my daughter to her DVPO, was only a sham for parental control to hide the fact that she was not an active parent for years. She just came back into our lives causing problems. Harris and I both have not been involved with each other for many, many years. It was irresponsible for the courts to allow an absent parent to just come with allegations and allow her to take custody of our daughter, without taking parenting classes, drug assessments, investigation and scheduled visits before just taking custody from me. The courts put my daughter in a vulnerable position and isolated my daughter from her true family that has been nourishing/providing while Shayna Harris was not.

Respectfully submitted, Ron Smith Pro Se



8/6/21

## **VII. Appendix**

**(1) ORDER FOR PROTECTION, No. 19-2-30546-I KNT**

**(2) ORDER DENYING MOTION FOR RECONSIDERATION, No. 81021-9-I**

**(3) Opinion Information Sheet**

**(4) Division 1 Unpublished Opinion**

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FILED  
2020 JAN 03  
KING COUNTY  
SUPERIOR COURT CLERK

CASE #: 19-2-30546-1 KNT

**Superior Court of Washington  
For King County**

Shayna M. Harris 3/31/81  
Petitioner (First, Middle, Last Name) DOB

Ronald A. Smith, Jr. 9/5/80  
Respondent (First, Middle, Last Name) DOB

**Order for Protection**  
No. 19-2-30546-1 KNT

Court Address 401 Fourth Ave N., Kent, WA 98032  
Telephone Number: (206) 296-9300  
(Clerk's Action Required) (ORPRT)

**Names of Minors:**  No Minors Involved  
(List first, middle and last name/s and age/s)  
Hannah Earle 13

**Respondent Identifiers**

Sex	Race	Hair
<u>M</u>	<u>black</u>	<u>black</u>
Height	Weight	Eyes
<u>5'8"</u>	<u>200</u>	<u>brown</u>

Respondent's Distinguishing Features:

Access to weapons:  yes  no  unknown

**The Court Finds Based Upon the Court Record:**

The court has jurisdiction over the parties, the minors, and the subject matter. Respondent had reasonable notice and an opportunity to be heard. Notice of this hearing was served on the respondent by  personal service  service by mail pursuant to court order  service by publication pursuant to court order  other The Respondent was served by the Auburn Police on 11/18/19

Respondent received actual notice of the hearing. Respondent  appeared  did not appear.

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

**Respondent and the victim are:**

- Intimate Partners** because they are:  current or former spouses or domestic partners,  parents of a child-in-common,  age 16 or older and are/were in a dating relationship, and are currently residing together or resided together in the past,  age 16 or older and are/were in a dating relationship, but have never resided together.
- Family or household members** because they are:  current or former adult cohabitants as roommates,  adult in-laws,  adults related by blood,  parent and child,  stepparent and stepchild,  grandparent and grandchild

Respondent committed domestic violence as defined in RCW 26.50.010.

**Credible Threat:**  Respondent represents a credible threat to the physical safety of the protected person/s.

Additional findings may be found below. The court concludes that the relief below shall be granted.

**Court Order Summary** (additional provisions are listed on the following pages):

- Respondent is restrained from committing acts of abuse as listed in provisions 1 and 2, on page 2.
- No-contact provisions apply.  Prohibition and surrender of weapons apply.

**This order is effective immediately and for one year from today's date, unless stated otherwise**

JAN 3, 2021



here (date):

**It is Ordered:**

<p><input checked="" type="checkbox"/> 1. Respondent is <b>restrained</b> from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking <input checked="" type="checkbox"/> petitioner <input checked="" type="checkbox"/> the minors named in the table above [ ] these minors only:</p> <p>(Respondent: If you and the petitioner are current or former spouses or domestic partners, parents of a child-in-common, age 16 or older and are/were in a dating relationship, and are currently residing together or resided together in the past, age 16 or older and are/were in a dating relationship, but have <i>never</i> resided together, you will not be able to own or possess a firearm, other dangerous weapon, ammunition, or concealed pistol license under state or federal law for the duration of the order.)</p>
<p><input checked="" type="checkbox"/> 2. Respondent is <b>restrained</b> from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, locations, or wire or electronic communication of <input checked="" type="checkbox"/> petitioner <input checked="" type="checkbox"/> the minors named in the table above [ ] only the minors listed below [ ] members of the victim's household listed below [ ] the victim's adult children listed below:</p>
<p><input checked="" type="checkbox"/> 3. Respondent is <b>restrained</b> from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3<sup>rd</sup> party or contact by Respondent's lawyer(s) with <input checked="" type="checkbox"/> petitioner <input checked="" type="checkbox"/> the minors named in the table above [ ] these minors only:</p> <p>If both parties are in the same location, respondent shall leave.</p>
<p><input checked="" type="checkbox"/> 4. Respondent is <b>excluded</b> from petitioner's <input checked="" type="checkbox"/> residence <input checked="" type="checkbox"/> workplace <input checked="" type="checkbox"/> school; <input checked="" type="checkbox"/> the day care or school of <input checked="" type="checkbox"/> the minors named in the table above [ ] these minors only:</p> <p>[ ] Other [ ] Petitioner's address is confidential. <input checked="" type="checkbox"/> Petitioner waives confidentiality of the address which is: 309-5<sup>th</sup> Ave S; Rent, WA 98032</p>
<p>[ ] 5. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately <b>vacate</b> the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.</p> <p>[ ] This address is confidential. [ ] Petitioner waives confidentiality of this address which is:</p>
<p><input checked="" type="checkbox"/> 6. Respondent is <b>prohibited</b> from knowingly coming within, or knowingly remaining within <u>200 feet</u> (distance) of: petitioner's <input checked="" type="checkbox"/> residence <input checked="" type="checkbox"/> workplace <input checked="" type="checkbox"/> school; <input checked="" type="checkbox"/> the day care or school of <input checked="" type="checkbox"/> the minors named in the table on page one [ ] these minors only:</p> <p><input checked="" type="checkbox"/> Other: # 4</p>

7. Petitioner shall have possession of essential personal belongings, including the following:

8. Petitioner is granted use of the following vehicle:  
 Year, Make & Model \_\_\_\_\_ License No. \_\_\_\_\_

9. Other:

**Protection for minors:** This state  has exclusive continuing jurisdiction;  is the home state;  has temporary emergency jurisdiction  that may become final jurisdiction under RCW 26.27.231(2);  other: \_\_\_\_\_

10. Petitioner is **granted** the temporary care, custody, and control of  the minors named in the table above  these minors only:

The respondent will be allowed visitations as follows: The minor child can initiate <sup>telephone or e-mail</sup> contact with the respondent. The respondent may have professionally supervised visits with the child once | month for two hours.

\_\_\_\_\_

\_\_\_\_\_

Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.

To comply with the Child Relocation Act, anyone with majority or substantially equal residential time (at least 45 percent) who wants to move with the child **must notify** every other person who has court-ordered time with the child. Specific exemptions from notification may be available if the court finds unreasonable risk to health or safety. Persons entitled to time with the child under a court order may object to the proposed relocation. See RCW 26.09, RCW 26.10 or RCW 26.26 for more information.

11. Respondent is **restrained** from interfering with petitioner's physical or legal custody of  the minors named in the table above  these minors only:

12. Respondent is **restrained** from removing from the state  the minors named in the table above  these minors only:

**Additional requests:**



13. Respondent shall participate in treatment and counseling as follows:  
 domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: a state agency  
 parenting classes at: PO - DV Div  
 drug/alcohol treatment at: \_\_\_\_\_  
 other: comply w/ CPS recommendations.

14. Petitioner is granted judgment against respondent as provided in the Judgment, WPF DV 3.030.

15. Parties shall return to court on \_\_\_\_\_, at \_\_\_\_\_ .m. for review.

**Protection for pets:**

16. Petitioner shall have exclusive custody and control of the following pet(s) owned, possessed, leased, kept, or held by petitioner, respondent, or a minor child residing with either the petitioner or the respondent. (Specify name of pet and type of animal): \_\_\_\_\_

17. Respondent is **prohibited** from interfering with the protected person's efforts to remove the pet(s) named above.

18. Respondent is **prohibited** from knowingly coming within, or knowingly remaining within \_\_\_\_\_ (distance) of the following locations where the pet(s) are regularly found:  
 petitioner's residence (You have a right to keep your residential address confidential.)  
 \_\_\_\_\_ Park  
 other: \_\_\_\_\_

**Prohibit Weapons and Order Surrender**

The Respondent must:

- not access, possess or obtain any firearms, other dangerous weapons, or concealed pistol licenses; and
- comply with the **Order to Surrender Weapons** filed separately.

(Note: Also use form All Cases 02.050.)

**Findings** – The court (check all that apply):

**must** issue the orders referred to above because:

the first restraint provision is ordered above, and the court found on page one that the Respondent had *actual notice*, represented a *credible threat*, and was an *intimate partner*.

Respondent: If the court checked this box, then effective immediately, and continuing as long as this protection order is in effect, **you may not possess a firearm** under state law. Violation is a felony. RCW 9.41.040(2).

the court finds by clear and convincing evidence that the restrained person:

- has used, displayed, or threatened to use a firearm or other dangerous weapon in a felony; or
- is ineligible to possess a firearm under RCW 9.41.040.





**Law Enforcement Assistance**


- Law enforcement shall assist petitioner in obtaining:
  - Possession of petitioner's  residence  personal belongings located at:  the shared residence  respondent's residence  other: \_\_\_\_\_
  - Custody of the above-named minors, including taking physical custody for delivery to petitioner.
  - Possession of the vehicle designated in paragraph 7, above.
  - Other: \_\_\_\_\_
- Other: \_\_\_\_\_

***This order is in effect until the expiration date on page one.***

If the duration of this order exceeds one year, the court finds that an order of one year or less will be insufficient to prevent further acts of domestic violence.

Other: \_\_\_\_\_


Dated: JAN 03 2020 at 11:45 a.m./p.m.

  
Judge/Clerk **MATTHEW WILLIAMS**  
MATTHEW WILLIAMS

I acknowledge receipt of a copy of this Order:

> Refused to sign  
Signature of Respondent/Lawyer WSBA No.

Ronald Smith  
Print Name

  
Signature of Petitioner/Lawyer WSBA No.

Shayna Harris  
Print Name

**Petitioner or Petitioner's Lawyer must complete a Law Enforcement Information Sheet (LEIS).**

**Petitioner:** The law allows you to register for certain notifications regarding this protection order and its status. Visit [www.RegisterVPO.com](http://www.RegisterVPO.com) or call 1-877-242-4055 for more information or to sign up. If you feel that you are in danger, call 9-1-1 immediately.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

SHAYNA M. HARRIS ,  
Respondent,  
v.  
RONALD A. SMITH,  
Appellant.

No. 81021-9-1

ORDER DENYING MOTION  
FOR RECONSIDERATION

The appellant, Ronald Smith, has filed a motion for reconsideration of the opinion filed in the above matter on June 7, 2021. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

*Andrus, A.C.J.*  
\_\_\_\_\_  
Judge

DO NOT CITE. SEE GR 14.1(a).

Court of Appeals Division I  
State of Washington  
Opinion Information Sheet

Docket Number: 81021-9

Title of Case: Shayna M. Harris, Respondent V. Ronald A. Smith,  
Appellant

File Date: 06/07/2021

SOURCE OF APPEAL  
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*Judgment or order under review*

Date filed: 01/03/2020

Judge signing: Honorable Matthew Williams

JUDGES  
-----

Authored by Beth Andrus

Concurring: John Chun

James Verellen

COUNSEL OF RECORD  
-----

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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

SHAYNA M. HARRIS,	)	No. 81021-9-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	UNPUBLISHED OPINION
	)	
RONALD A. SMITH, JR.	)	
	)	
Appellant.	)	
_____	)	

ANDRUS, A.C.J. — Ronald Smith appeals the trial court’s order granting his former partner’s petition for a domestic violence protection order (DVPO), protecting herself and their teenage daughter. Smith challenges the DVPO on the basis that the trial court considered inadmissible evidence, the order violates federal and state child dependency statutes, and that he was denied procedural due process. We disagree and affirm the order.

FACTS

Shayna Harris filed a petition for a DVPO on November 18, 2019, seeking to restrain her former partner, Ronald Smith, from having contact with her and their teenage daughter, H.E. In the petition, Harris alleged that H.E., who was living with Smith at the time, went missing on November 15, 2019 and Smith refused to

call the police due to his criminal activities. Harris alleges that, when H.E. returned home, she exhibited symptoms of sexual assault, such as isolating herself, withdrawing, and not paying attention to her personal hygiene, and told Harris she was scared to speak to anyone about her father. Harris further alleged that Smith had repeatedly assaulted her, threatened her with bodily harm, trashed her house, and prevented her from seeing H.E. Harris recounted one instance where Smith refused to let Harris see H.E. unless Harris engaged in acts of prostitution for Smith's financial benefit. In another instance, when H.E. came to Harris's house in January 2019, Smith threatened to beat Harris and have her evicted if Harris did not return H.E. to Smith. Harris and Smith do not have a parenting plan governing custody of H.E.

On December 2, 2019, Smith submitted a declaration in response to Harris's petition, alleging that he was H.E.'s sole care provider for seven years and that Harris had repeatedly abandoned H.E. so that she could "run the streets. . . . with different men." Smith denied Harris's accusations of neglect or abuse of H.E.

On December 16, 2019, the court ordered the Department of Children, Youth, and Family (DCYF) or Child Protective Services (CPS) to provide the court with information regarding any investigation into H.E. or her parents. It ordered Family Court Services (FCS) to provide a report to the court regarding any DCYF or CPS investigation. FCS provided the court with a summary of its contact with CPS in a December 31, 2019 status report. In this report, FCS informed the court that CPS had an open "Family Assessment Response" (FAR) investigation based on Harris's allegation that H.E. suffered from a skin condition that Smith was not



adequately treating and H.E. fled her father's home because the home was unsafe. The CPS investigator reported to FCS that H.E. expressed she felt safe at both parents' homes and denied Smith touched her inappropriately. H.E. did report, however, that Smith had in the past hit her with a belt and a clothes hanger. CPS indicated it had insufficient information to indicate that there were safety risks or concerns with either parent at that time.

At the January 3, 2020 hearing on Harris's petition, Harris described several incidents where Smith was violent and abusive to her in the presence of H.E. During one incident in 2007, when Harris attempted to prevent Smith from taking H.E., Smith kicked down the door to Harris's house before smashing her head through the side mirror of a neighbor's car. Harris reported the incident to the police, but the charges were ultimately dismissed. Harris later received section 8 housing, but when she informed Smith that he could not live there with her and H.E., he destroyed the apartment and Harris was evicted. In 2014, Smith, without informing Harris, transferred H.E. to a different elementary school and prevented Harris from contacting H.E. for a year. Harris also testified that H.E. had told her that Smith had slapped and choked H.E. and had witnessed prostitution in the house. Harris testified that H.E. has been diagnosed with post-traumatic stress disorder as a result of living with Smith.<sup>1</sup>

Smith, appearing pro se, also testified at the hearing and generally denied all allegations of abuse and neglect. Smith admitted that he had been previously arrested for domestic violence for incidents occurring in the presence of his

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<sup>1</sup> It appears that Harris also submitted a supplemental declaration in which she supplied additional mental health records and police reports. Those materials are similarly not in the record before us.

children. It also appears that Smith submitted under seal a psychiatric evaluation of Harris dating from June 2003, a CPS summary report of a referral from July 2002, and a police report from the Kent Police Department from September 2019 in which the police indicated Harris had called police to report that she was the victim of an assault by her then boyfriend, Darnell or Donald Wallace, and was being forced to prostitute for him.

Smith also called his sister, Sheila, to testify at the protection order hearing. She stated she had never witnessed any domestic violence between Smith and Harris and that H.E. reported that she was afraid of a man Harris was involved with.

In making its oral ruling, the court indicated it had considered all of this testimony as well as the December 31, 2019 FCS status report, the "JABS" history with respect to both Harris and Smith,<sup>2</sup> H.E.'s declaration, and police reports from the Kent and Des Moines Police Departments.

Based on this evidence, the trial court found by a preponderance of the evidence that Smith had committed domestic violence against both Harris and H.E. and entered a protection order restraining Smith from contacting either individual for a period of one year. The order provides that H.E. may initiate contact with Smith via telephone or email and allows Smith two hours of supervised in-person contact with H.E. per month. The order also includes an order to surrender

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<sup>2</sup> "JABS" refers to the Judicial Access Browser System which provides judicial officers access to data stored in the Judicial Information System (JIS) database. WASHINGTON JUDICIAL ETHICS OPINION 13-07, 2013 WL 5780438. JABS uses a web browser to display case history information on certain kinds of cases filed in superior, district and municipal courts in Washington. *Id.* The JIS database serves as a statewide clearinghouse for criminal history information, domestic violence protection orders and outstanding warrants. <http://www.courts.wa.gov/jis/>

weapons and a requirement that Smith participate in domestic violence perpetrator treatment.

### ANALYSIS

Smith challenges the trial court's findings and the terms of the protection order. We review a superior court's decision to grant a protection order for abuse of discretion, In re Marriage of Stewart, 133 Wn. App. 545, 550, 137 P.3d 25 (2006).

Smith first argues that the trial court considered inadmissible evidence in the form of H.E.'s declaration and police reports from Smith's prior domestic violence cases. Although neither H.E.'s declaration nor the police reports are in the appellate record, we can identify no abuse of discretion in the trial court's evidentiary rulings.

First, the rules of evidence do not apply to protection order proceedings initiated under chapter 26.50 RCW. ER 1101(c)(4); Gourley v. Gourley, 158 Wn.2d 460, 467, 145 P.3d 1185 (2006). Failing to follow the rules of evidence cannot be an abuse of discretion if those rules are inapplicable to the proceeding.

Second, Smith fails to articulate why considering H.E.'s declaration was an abuse of discretion. He claims that the court did not adhere to the "formal requirements for a valid court declaration pertaining to a minor," but does not identify what these requirements are, nor explain how H.E.'s declaration failed to meet them. He also argues that H.E. "may not have written that declaration in the first place," but offered no evidence to support this allegation.



Smith similarly fails to demonstrate how the admission of the police reports concerning his past domestic violence arrests violates ER 103 and 104.<sup>3</sup> He only argues that the charges in those cases are over ten years old and were ultimately dismissed. But this argument attacks the weight of the evidence, not its admissibility.

Finally, neither H.E.'s declaration nor the police reports are in the record on review. The party seeking review has the burden of perfecting the record so that the reviewing court has before it all of the relevant evidence. State v. Vazquez, 66 Wn. App. 573, 583, 832 P.2d 883 (1992). An insufficient record on appeal precludes review of the alleged errors. Allemeier v. University of Wash., 42 Wn. App. 465, 472-73, 712 P.2d 306 (1985), review denied, 105 Wn.2d 1014 (1986). Smith has failed to provide this court with an adequate record to review his arguments relating to H.E.'s declaration and the police reports and we decline to review this assignment of error.

Smith next argues that the court's order violated provisions of the Juvenile Court Act, chapter 13.34 RCW. But the Juvenile Court Act governs cases related to the dependency of a child and the termination of the parent-child relationship; it is inapplicable to the question of whether the trial court properly granted a domestic violence protection order under chapter 26.50 RCW. His citation to 42 U.S.C. § 671(a)(15)(B)'s requirement that state foster care plans include reasonable efforts to preserve families to be eligible for federal funding is also inapposite to the present issue.

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<sup>3</sup> Smith does not argue that the police reports violate ER 404(b)'s prohibition of evidence of past crimes to show action in conformity therewith.

Smith lastly argues that the court's order denied him his due process rights under the Fifth and Fourteenth Amendments to the United States Constitution. We reject this argument as well.

We review Smith's constitutional challenge de novo. Shoop v. Kittitas County, 149 Wn.2d 29, 33, 65 P.3d 1194 (2003); Aiken v. Aiken, 187 Wn.2d 491, 501, 387 P.3d 680 (2017). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (quoting Armstrong v. Manzo, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)). The level of procedural protection required varies based on circumstance. Id. at 334.

Smith asserts that he was denied due process because the court did not allow him to directly cross examine Harris. But chapter 26.50 RCW "does not require a trial judge to allow live testimony or cross-examination in every protective order proceeding. Instead, whether live testimony or cross-examination is required will turn on the Mathews balancing test." Aiken, 187 Wn.2d at 499.

In evaluating the process due in a particular situation, [Washington courts] consider (1) the private interest impacted by the government action, (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) the government interest, including the additional burden that added procedural safeguards would entail.

Aiken, 187 Wn.2d at 501-02 (quoting Mathews, 424 U.S. at 335). Our Supreme Court has repeatedly held that a parent's interest in making decisions regarding the care, custody, and control of their children does not outweigh the government's

compelling interest in preventing domestic violence. Id. at 502-03; Gourley, 158 Wn.2d at 468. Turning to the second Mathews factor, we conclude that the procedural safeguards employed by the court were sufficient.

First, although the court did not allow Smith to confront Harris directly, it did allow Smith to cross examine her by identifying on the record each question he wanted to ask with the court rephrasing them in an appropriate manner. For instance, Harris testified that Smith had in the past exerted control over her finances, trashed her home, and caused her to be evicted from transitional or section 8 housing. During cross examination, Smith asked: "Did Shayna Harris call [the] police any other times when she is saying that I trashed her house, controlled her money -- I mean did she call the police during those times?" After laying foundation for the question, the court asked Harris: "And if I understand correctly, either in the context of the YWCA, that transitional housing, or the section 8 -- the incident at the section 8 -- were the police ever called about those?" Harris admitted she did not call the police about those incidents.

Smith contends that this procedure violated his due process rights because the court did not ask "the particular questions [he] had for Shayna Harris." But the record does not support this contention. The court did ask Harris the questions Smith posed, both during cross examination, and when Smith called Harris to the stand as his own witness. Other than questions Harris objected to as irrelevant, there was only one question the court declined to ask Harris. In relation to Harris's allegations that Smith "pimped prostitutes," Smith asked "is Shayna herself actually a prostitute?" The court refused to pose this question to Harris, stating that the



question “would absolutely trigger her right against self-incrimination and she has already testified in terms of what her -- what her recollection was of what happened back in 2004, so I am not -- and I apologize but I am not going to ask that.” Nothing in the record supports Smith’s argument that his ability to cross examine Harris was so hampered as to deny him due process.

Washington courts have repeatedly recognized the Domestic Violence Prevention Act (DVPA) offers respondents in a DVPO proceeding sufficient procedural protections. Aiken, 187 Wn.2d at 502; Gourley, 158 Wn.2d at 468-69.

The provisions of the DVPA

satisfy the two fundamental requirements of due process—notice and a meaningful opportunity to be heard by a neutral decision maker. The procedural safeguards include: (1) a petition to the court setting forth facts under oath, (2) notice to the respondent, (3) a hearing before a judicial officer where the petitioner and respondent may testify, (4) the opportunity to file a motion to modify a protection order, (5) a requirement that a judicial officer issue any order; and (6) the right to appeal.

State v. Karas, 108 Wn. App. 692, 699-700, 32 P.3d 1016 (2001) (citing Spence v. Kaminski, 103 Wn. App. 325, 334, 12 P.3d 1030 (2000)). Smith enjoyed the protection of each of these procedural safeguards in the present case.

Smith was timely served with Harris’s petition and had reasonable notice and opportunity to be heard. He submitted his own declaration in response, appeared and testified at the hearing, and called his own witnesses to support his case. Moreover, the risk of the erroneous deprivation of Smith’s constitutional interests is mitigated by the DVPO’s limited one-year term. See Mathews, 424 U.S. at 341 (holding that the possible length of wrongful deprivation of a property

interest is an important factor in assessing the impact of official action on the private interests).

Smith has failed to show how these numerous safeguards were so deficient as to deprive him of due process. Our Supreme Court has repeatedly upheld these procedural protections in the DVPO context and we adhere to those holdings here.

We affirm the trial court's order granting the petition for a DVPO.

Andrus, A.C.J.

WE CONCUR:

Chun, J.

Verellen, J.

**RONALD SMITH - FILING PRO SE**

**August 06, 2021 - 4:53 PM**

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