

COURT OF APPEALS
DIVISION II

NO. 39001-9-II

09 OCT 21 PM 1:54

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

BY JW
DEPUTY

STATE OF WASHINGTON, Respondent

v.

KEATON CARTER FOX EGIZI, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE BARBARA D. JOHNSON
CLARK COUNTY SUPERIOR COURT CAUSE NO.08-1-01116-0

BRIEF OF RESPONDENT

Attorneys for Respondent:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

MICHAEL C. KINNIE, WSBA #7869
Senior Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

PM 10/19/09

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I. STATEMENT OF FACTS

On October 22, 2008, the defendant pled guilty to one count of Rape in the Third Degree. (Statement of Defendant on Plea of Guilty to Sex Offense, CP 3). That was followed then on January 12, 2009, with sentencing on the felony. The Felony Judgment and Sentence (CP 20) set forth a time of imprisonment of six months and a community custody time of up to twelve months.

Also on January 12, 2009, the court entered a Sexual Assault Protection Order. (CP 36). A copy of the Sexual Assault Protection Order is attached hereto and by this reference incorporated herein. It indicates in its body that it expires on January 12, 2014. However, the Order also indicates that “A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.” (Sexual Assault Protection Order, CP 36, p.1).

When an offender is found guilty of a sex offense, any sentencing condition which restricts an offender’s ability to contact the victim is

referred to as a sexual assault protection order. RCW 7.90.150(6)(a). By the statute's plain language, "[a] final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years" following an offender's sentence and any term of community custody imposed. RCW 7.90.150(6)(c). The State concedes that RCW 7.90.150 reflects the length of protection order to "... two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole."

Clearly in our situation, the two-year period would run long before the ordered expiration date of January 12, 2014.

The State submits that this matter should be returned to the Superior Court for a clarifying order which should simply set termination at two-years following expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole. The State further submits that there is no reason for re-sentencing but merely an order clarifying the term of the sexual assault protection order.

II. CONCLUSION

The State submits that this matter should be remanded to the Superior Court for further proceedings consistent with the clear language of the statute.

DATED this 19 day of Oct., 2009.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNIE, WSBA#7869
Senior Deputy Prosecuting Attorney

APPENDIX
SEXUAL ASSAULT PROTECTION ORDER

28 cc

FILED
JAN 12 2009

Sherry W. Parker, Clerk, Clark Co.

**Superior Court of Washington
County of Clark**

No. 08-1-01116-0

State of Washington,
Plaintiff,

Sexual Assault Protection Order
(Criminal/Felony)
(ORSXP)
(JIS order code: SXP)

v. Keaton C. Egizi
Defendant.

Pretrial
 Post conviction
 Clerk's action required

SID: WA24748828
If no SID, use DOB: 2-28-89

1. The court finds that the defendant has been charged with, arrested for, or convicted of a sex offense as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a violation of RCW 9.68A.090, or a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030. Additional findings on page two.

2. This Sexual Assault Protection Order is entered pursuant to Laws of 2006, ch. 138 §16. This order protects:

A.R.B. (female, DOB: 3-10-93)

(Write protected person's name or if minor you may use initials and DOB. RCW 7.69A.030, 16.52.100, 10.97.130.)

It Is Ordered:

This Pretrial Sexual Assault Protection Order Expires on 1/12/14
This Post Conviction Sexual Assault Protection Order Expires on 1/12/14

(A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence of imprisonment and subsequent period of community supervision, conditional release, probation, or parole.)

Defendant is **Restrained** from:

- A. Having any contact with the protected person(s) directly, indirectly or through third parties regardless of whether those third parties know of the order.
- B. Knowingly coming within or knowingly remaining within 1000 ft (distance) of the protected person's (s) residence school place of employment other: _____
- C. (Pretrial: crimes defined as serious offenses) Obtaining, owning, possessing or controlling a firearm.
- (Conviction) Obtaining, owning, possessing or controlling a firearm.

Additional orders on page two.

Warnings to the Defendant: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

28 cc

Cause No.: 08-1-01116-0

(Pretrial order for crimes not defined as serious offenses in RCW 9.41.010)

It Is Further Ordered:

Defendant is **Prohibited** from obtaining or possessing a firearm, other dangerous weapon or concealed pistol license.

The defendant shall immediately surrender all firearms and other dangerous weapons within the defendant's possession or control and any concealed pistol license to:

Clark Co. Sheriff [name/law enforcement agency].

The the pretrial orders for crimes not defined as serious offenses in RCW 9.41.010 are based upon the court's finding that possession of a firearm or other dangerous weapon by the defendant presents a serious and imminent threat to public health or safety, or to the health or safety of any individual. RCW 9.41.800(4).

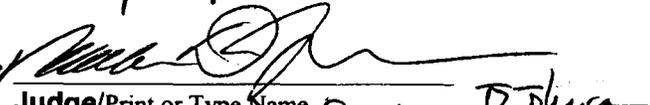
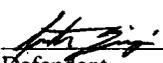
This order is issued in accordance with Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.
The court determines that the defendant's relationship to a person protected by this order is: current or former spouse parent of a common child current or former cohabitant as intimate partner current or former dating partner. Therefore, 18 U.S.C. §§ 2261 (federal violation penalties) may apply to this order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to Clark County Sheriff's Office, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Done in Open Court in the presence of the defendant this date: 1/12/09


Deputy Prosecuting Attorney
WSBA No. 31465
Print or Type Name:
Rudell


Attorney for Defendant
WSBA No. 28847
Print or Type Name:


Judge/Print or Type Name Barbara D. Johnson

Defendant
Print or Type Name:

A Law Enforcement Information Sheet (LEIS) must be completed.

RECEIVED
OCT 21 2009

CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

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

STATE OF WASHINGTON,
Respondent,

v.

KEATON CARTER FOX EGIZI,
Appellant.

No. 39001-9-II

Clark County No. 08-1-01116-0

DECLARATION OF MAILING

STATE OF WASHINGTON)

: ss

COUNTY OF CLARK)

On October 19, 2009, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to counsel for Appellant, containing a copy of the document to which this Declaration is attached.

TO: DAVID PONZOHA CLERK COURT OF APPEALS DIVISION II 950 BROADWAY SUITE 300 TACOMA WA 98402-4454	Lisa E Tabbut Attorney at Law PO Box 1396 Longview WA 98632
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DOCUMENT(S): Verbatim Report of Proceedings - 1 volume

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Abby Rowland
Date: October 19, 2009.
Place: Vancouver, Washington



ARTHUR D. CURTIS
PROSECUTING ATTORNEY

CURT WYRICK
CHIEF DEPUTY

DENNIS M. HUNTER
CHIEF CRIMINAL DEPUTY

RICHARD S. LOWRY
CHIEF CIVIL DEPUTY

SHARI JENSEN
ADMINISTRATOR

October 19, 2009

Lisa E Tabbut
Attorney at Law
PO Box 1396
Longview WA 98632

RE: State of Washington v. KEATON CARTER FOX EGIZI
Court of Appeals No. 39001-9-II
Clark County Cause No. 08-1-01116-0

Dear Ms. Tabbut:

Enclosed please find the Verbatim Report of Proceedings with regard to the above-entitled case. Thank you for sending them to our office for use in preparation of the State's brief.

Sincerely,

Abby Rowland

Abby Rowland, Assistant
Clark County Appellate Unit

cc: Court of Appeals

Encs. 1 volume