

STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE
OF NEW YORK

v.

[REDACTED]

IND [REDACTED]

MEMORANDUM OF LAW

BY:

[REDACTED], ESQ.
Attorney at Law

[REDACTED]
[REDACTED]
[REDACTED]

DATED: [REDACTED], 2023
Buffalo, New York

TO:

Hon. Deborah Haendiges

Erie County District Attorney
25 Delaware Ave.
Buffalo, New York 14202

This memorandum of law is offered in support of the defendant’s motion for an evidentiary hearing to determine the “appropriateness and scope” of the temporary order of protection [TOP] issued ██████████ 2023 (*Crawford v. Ally*, 197 AD3d 27, 29 [1st Dept. 2021]). The indictment charges the defendant with criminal possession of a weapon in the second degree (Penal Law § 265.03[3]). The defendant continues to object to the TOP, which directs him to stay away from his home, his wife, and his children, even though he is not charged with an offense against a member of the same family or household (CPL 530.12[1], [1][a][1]). But as long as the full stay-away condition is in place, the defendant is entitled to a hearing.

“In order to issue a TOP, and thereby deprive a defendant of significant liberty and property interests, there must be an articulated reasonable basis for its issuance” (*Crawford*, 197 AD3d at 33). “[W]hen the defendant presents the court with information showing that there may be an immediate and significant deprivation of a substantial personal or property interest upon issuance of the TOP, the Criminal Court should conduct a prompt evidentiary hearing on notice to all parties and in a manner that enables the judge to ascertain the facts necessary to decide whether or not the TOP should be issued” (*id.* at 34). The statute requires courts to consider whether the order is likely to achieve its purpose in the absence of a full stay-away condition, as well as “conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons” (CPL 530.12[1][a][1]).

Crawford, as a decision of the Appellate Division with no conflicting authority, is binding on this Court. Although it came from the First Department, “[t]he Appellate Division is a single statewide court divided into departments for administrative convenience” (*Mountain View Coach Lines, Inc. v. Storms*, 102 AD2d 663, 664 [2nd Dept. 1984]). As such, “the doctrine of *stare decisis* requires trial courts ... to follow precedents set by the Appellate Division of another department until the Court of Appeals or [their local department] pronounces a contrary rule” (*id.*).

The defendant has the initial burden of “present[ing] the court with information showing that there may be an immediate and significant deprivation of a substantial personal or property interest upon issuance of the TOP” (*Crawford*, 197 AD3d at 34). The burden then shifts to the prosecution to “establish an articulated reasonable basis for the issuance” (*People v. Riley*, 78 Misc3d 327, 328 [Crim Ct, Bronx County 2023]).

The defendant has met his initial burden. The TOP has put him out of his house and out of contact with his seven children. There is “significant emotional harm inflicted upon children by temporarily separating them from their parents” (*Matter of F.W. (Monroe W.)*, 183 AD3d 276, 280 [1st Dept. 2020]), and “[t]he impact of being barred from one’s home, even temporarily, can be far-reaching” (*Crawford*, 197 AD3d at 33). The defendant has complied with all pre-trial conditions set by this Court. There has been no allegation that he has violated the TOP. He has no criminal record. Neither the indictment, nor any other filing before this Court, alleges harm, threats, or substance abuse.

The defendant is entitled to an evidentiary hearing. The evidence will show that the TOP should be modified to prohibit only criminal and offensive conduct toward the protected parties (CPL 530.12[1][a][3]).