

24-cv-06664

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Motion to Appeal CCH-24-587168 (drafted & filed 12/2/24)

INTRODUCTION

1. The Respondent files a Motion to Appeal and asks for the proper implementation of sufficient procedural due process, a requirement instilled under the 14th Amendment of the US Constitution.

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BACKGROUND of CCH-24-587168

CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA
SAN JOSE OFFICE

Samantha Briasco-Stewart is an individual residing in the State of California who Petitioned a civil harassment restraining order (CH-110) against Respondent Bo Shang at the Superior Court of California County of San Francisco on 7/26/24

1. Bo Shang is an individual residing in the State of Massachusetts who Responded to the petition in early August 2024.
2. The Petitioner allegedly did not want to receive numerous communications from the Respondent, but only the CH-110 form and no other evidence was entered by the first hearing date on 8/20/24.
3. The Respondent submitted the CH-120 reply to CH-110 correctly by serving the Petitioner over 10 days before 8/20/24, however on that date, Judge Tong continued the hearing until 9/10/24 because the Petitioner neglected to “go to work” to pick up and review the CH-120 served to her, which the Petitioner was aware of.
4. The Respondent was not able to attend the 9/10/24 hearing due to not serving the Petitioner 10 or more days before the 9/10/24 hearing including a notice to appear by Zoom.
5. The Petitioner and her lawyer, however, was allowed to draft the Petitioner’s 8-page Statement + 25-page Exhibits on 9/6/24, only 4 days before the hearing.
6. The Respondent was served the Statement + Exhibits on 9/8/24, only 2 days before the hearing and thus had no time to respond to it.
7. Judge Tong disregarded the general 10-day service rule and allowed the Petitioner’s very late Statement + Exhibits into the hearing, while the Respondent despite appearing via Zoom on 9/10/24 could not argue because he didn’t serve the appear-by-zoom notice at least 10 days prior to the 9/10/24 hearing.
8. The Respondent hypothesizes that Judge Tong may have granted the clearly unfair procedural favor because she seemed to know by name the two lawyers who either represented or assisted the Petitioner, which if true would be an act of corruption.

CIRCUMSTANCES BEHIND THE APPEALS DEADLINE

1. The civil appeals department at the Superior Court of California County of San Francisco told the Respondent on 11/18/24 that normally the appeals deadline was 60 days from initial judgement, however the Respondent may file a Motion to Appeal anyways and explain why he is appealing roughly 70 days after the initial judgement.
2. The first reason is that the Respondent was not served the 9/10/24 hearing results (CH-130) until 9/26/24 after the Respondent had to make multiple calls to the Superior Court asking what happened on 9/10/24.]
3. The second reason is that the Respondent was accused to have left a voicemail to his probation officer stating that he would not follow a specific pre-trial condition on 9/25/24, however both the YouTube video of the voicemail and its transcription clearly reveals that no such thing occurred.

Nevertheless the State of MA lacks sufficient due process procedures for those falsely accused of committing a “non-bailable pretrial violation” so the Respondent was unable to review the YouTube video and submit it to the court the next day, because the Respondent wasn’t allowed to use his phone.

Thus the Respondent was forced to spend 9/26/24 to 11/20/24 mostly in an MA mental health hospital where he was denied Internet or electronics access. The Respondent did not receive his MacBook without restrictions until 11/14/24.

4. Case CCH-24-587168 wasn’t uploaded to File&ServeXpress, a filing service authorized by the Superior Court in San Francisco by default. While the Respondent made numerous calls to the civil appeals department, he wasn’t able to reach anyone until 11/18/24 when a civil appeals clerk told the Respondent that the case should be open to file on File&ServeXpress by 11/19/24.

PERJURY COUNT 1 – REPEATED WILLFUL & MATERIAL LIES ABOUT THE EXISTENCE OF THREATS OF VIOLENCE

1. If the Respondent was allowed an equally fair chance to respond to the repeated false accusations of threats, then the only statute the Respondent may have violated is CA Civil Procedure 527.6 condition 3 for: knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.
2. However since the Respondent was not allowed fair procedural due process, he is unsure what Judge Tong considered leading to her ruling because there were far more severe statutory violations if the repeated false allegations were considered as true without challenge.
3. Technically the Respondent was under amphetamine poisoning and did not meet the statutory requirement for “knowing and willful” conduct, but the Respondent is happy to accept responsibilities of his actions regardless.

PERJURY COUNT 2 - WILLFUL & MATERIAL LIE ABOUT BLOCKING THE RESPONDENT’S IMESSAGE ACCOUNT

1. The Petitioner swore that she blocked the “numbers” associated with the Respondent’s “texts” and that the Respondent continued to create new numbers. This assertion is easily provably not true, because the Respondent has the first read receipt via a single iMessage account starting on 2/4/24 and the last read receipt received was 9/24/24.

SARCASTIC UNREASONABLE BURDEN INSTILLED ON THE RESPONDENT DUE TO LACK OF SUFFICIENT PROCEDURAL DUE PROCESS

1. The Respondent is suffering severe psychological trauma that he's currently unable to assimilate into American culture by ostensibly purchasing small arms for self defense. Americans uses the rationale of the necessity to form militias and self-defense as the rationale for guaranteeing access to civilian ownership of small arms, and the Respondent would really like to adopt this culture even if statistics show that firearms result in other harm far more frequently than they're used for in legitimate self-defense.
2. The Respondent feels like his rights were unfairly restricted because he cannot adopt a cult-like belief that the United States still relies on civilians to own primitive weapons systems from hundreds of years ago, in order to ensure the security of a free state in the year 2024 and beyond.
3. The Respondent's inability to participate in American culture and tradition due to an unconstitutional violation of procedural due process requirements has made him more prone to reviewing the Department of Defense's 2023 Military and Security Developments Involving the People's Republic of China for more rational ways to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.

ANOTEHR SARCASTIC COMMENT

1. Section 230 immunity was originally drafted and passed by Congress so internet companies of presumably positive value towards society could grow without undue burden. Without discussing legal rationale, I'm wondering whether the United States (whom is ambiguous) believes that Twitch which may be deceptively promoting an unhealthy addiction to gaming for no real purpose, is a good idea. The People's Republic of China does implement sensible health and safety standards for their gaming products, and if the US did the same it may not violate the 1st Amendment rights of Twitch streamers.

RELEVANT LEGAL STANDARDS

(a) (1) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an order after hearing prohibiting harassment as provided in this section.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Course of conduct" is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, facsimile, or email. Constitutionally protected activity is not included within the meaning of "course of conduct."

(2) "Credible threat of violence" is a knowing and willful statement or course of conduct that would place a reasonable person in fear for the person's safety or the safety of the person's immediate family, and that serves no legitimate purpose.

(3) "Harassment" is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be that which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

California Penal Code - CHAPTER 5. Perjury and Subornation of Perjury 118.

(a) Every person who, having taken an oath that he or she will testify, declare, depose, or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he or she knows to be false, and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which the testimony, declarations, depositions, or certification is permitted by law of the State of California under penalty of perjury and willfully states as true any material matter which he or she knows to be false, is guilty of perjury.

This subdivision is applicable whether the statement, or the testimony, declaration, deposition, or certification is made or subscribed within or without the State of California.

(b) No person shall be convicted of perjury where proof of falsity rests solely upon contradiction by testimony of a single person other than the defendant. Proof of falsity may be established by direct or indirect evidence.

(Amended by Stats. 1990, Ch. 950, Sec. 2.)