



LEGAL UPDATE

No Violation of Stay Away Order For Being in General Vicinity of Residence

Commonwealth v. Carino, SJC decision (December 9, 2025).

RELEVANT FACTS

In March 2022, an abuse prevention order pursuant to M.G.L. c. 209A issued requiring the defendant to not abuse the plaintiff and to have no contact with her or her children. He was also ordered to stay away from the plaintiff's residence which was a multi-unit building. While the order required him to stay away from the entire building, it did not specify a minimum distance.

The plaintiff's building was in the middle of a residential block with houses on both sides of it. There are also houses behind the plaintiff's building on a street that runs parallel to hers. The plaintiff's backyard abutted the backyard of a house on the parallel street. This will be referred to as the rear house. The rear house had a driveway on the side of the building with a shed at the end of it.

On July 23, 2022, while the order was still in effect, the defendant was seen by officers walking along the parallel street in the direction of the plaintiff's residence. The defendant was arrested when he got to the entrance of the driveway of the rear house. At the time of arrest, the defendant was approximately 200 ft behind the plaintiff's residence on the opposite block. The defendant later admitted that he owed the plaintiff some money and that he intended to drop money off for her. He said he was trying to see whether the children were in the backyard. He said if the children were there, he would have left because he would have assumed the plaintiff was home.

The defendant was charged with violating the 209A order. The Commonwealth proceeded on the theory that the defendant violated the stay away order. The defendant was convicted after trial.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

DISCUSSION

To prove a violation of an abuse prevention order, the Commonwealth must prove three elements:

1. A valid order was entered by a judge and was in effect on the date of the alleged violation;
2. The defendant violated the order; and
3. The defendant had knowledge of the order.

When the order requires the defendant to stay away from a residence or workplace, the court has determined in prior cases that the defendant can violate the order in one of three ways:

1. Entering the property on which the residence or workplace are located;
2. Taking actions that directly intrude on the workplace or residence; or
3. Where the defendant positions himself sufficiently close to the place that they would be able to abuse or contact the plaintiff if the plaintiff were on the property, entering it, or leaving it.

The issue in this case is the third option: whether the defendant positioned himself sufficiently close enough to the property that he could abuse or contact the plaintiff if she were home or if she was entering or leaving her residence.

Based upon the facts admitted at trial, a reasonable jury could have found that the defendant was familiar with the plaintiff's property and that he believed he would be able to see it from the area of the driveway of the rear house. Based upon photographs entered into evidence, the jury could have also found that at least part of the plaintiff's home would have been visible from somewhere along the parallel street. In addition, the jury could have found that the defendant was arrested at the area of the parallel street that was closest to the plaintiff's residence.

There was no testimony about how the defendant could have contacted or abused the plaintiff had she been home. No one testified that the defendant would have been able to see her coming or going from the property or even that he could see any portion of her property from where he was. While the Commonwealth did introduce an aerial photo and a picture from the vantage point of the rear house driveway, without additional testimony, any inference that the defendant could see the plaintiff's house from where he was stopped would be based on improper speculation.

The court also rejected the Commonwealth's argument that the jury could infer from the photographs that the defendant could have contacted the victim by yelling or otherwise making himself known, regardless of whether he could see the property. Because there was no evidence presented to support this theory, any such inference would be impermissible speculation.

"We cannot uphold the defendant's conviction of violating the 209A order based on the evidence that he not only was in the vicinity of the victim's residence but also was moving toward it while intending to violate the order.

The conviction was reversed.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.