

State of Minnesota
Steele County

District Court
Third District

Court File Number: **74-CR-11-254**

Case Type: Crim/Traf Mandatory

Notice of Filing of Order

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State of Minnesota vs KEITH LEE KELLING

You are notified that an order was filed on this date.

Dated: June 28, 2011

Kristine Maiers
Court Administrator
Steele County District Court
111 E. Main Street
Owatonna MN 55060
507-444-7700

cc: DANIEL ANDREW MCINTOSH

JUN 29 2011

STATE OF MINNESOTA
COUNTY OF STEELE

DISTRICT COURT
CRIMINAL DIVISION
THIRD JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

File No. 74-CR-11-254

vs.

ORDER

Keith Lee Kelling,
Defendant.

The above-entitled matter came on for hearing before the Honorable Casey J. Christian of the Steele County District Court on February 16, 2011, for Mr. Kelling's Rule 8 appearance and pursuant to the State's motion for issuance of a Domestic Abuse No Contact Order.

Jennifer Dunn-Foster, Assistant Steele County Attorney, appeared on behalf of the state. Attorney Joel D. Eaton, appeared on behalf of Defendant, Keith Lee Kelling, who was also present.

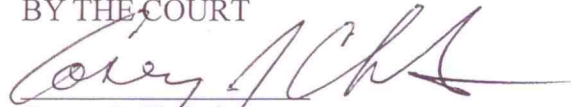
Based upon the record, the Court makes the following:

ORDER

1. The State's Petition for a Domestic Abuse No Contact Order is **DENIED** because Minnesota Statute Section 629.75 is unconstitutionally vague in violation of due process.
2. The attached Memorandum is incorporated herein by reference.

DATED: 6/23/11

BY THE COURT


Casey J. Christian
District Court Judge
Third Judicial District

Court Administrator
Steele County, MN

FILED

Date 6-28-11

By 

Deputy

MEMORANDUM

I. INTRODUCTION.

Effective August 1, 2010, the statutory provision related to Domestic Abuse No Contact Orders was amended and moved from Minnesota Statute Section 518B.01, subd. 22 to Minnesota Statute Section 629.75. The substance of the amended language is found in Minn. Statute Section 629.75, subd. 1(b) and (c), which states:

(b) A domestic abuse no contact order may be issued as a pretrial order before final disposition of the underlying criminal case or as a postconviction probationary order. *A domestic abuse no contact order is independent of any condition of pretrial release or probation imposed on the defendant. A domestic abuse no contact order may be issued in addition to a similar restriction imposed as a condition of pretrial release or probation.*

...

(c) *A no contact order under this section shall be issued in a proceeding that is separate from but held immediately following a proceeding in which any pretrial release or sentencing issues are decided.*

(emphasis added). The prior Domestic Abuse No Contact Order provision found in Minnesota Statute Section 518B.01, subd. 22 did not contain the emphasized language above. Furthermore, prior to the amendment of the statute, Domestic Abuse No Contact Orders were often issued as a condition of release. The district court would determine whether to issue a Domestic Abuse No Contact Order as a condition of release by considering whether “(1) release of the person poses a threat to the alleged victim, another family or household member, or public safety; or (2) there is a substantial likelihood the person will fail to appear at subsequent proceedings.” Minn. Stat. § 629.72, subd. 2. In fact, Minnesota Statute Section 629.72, subd. 2. requires that “[b]efore releasing a person arrested for or charged with a crime of domestic abuse, harassment, violation of an order for protection, or violation of a Domestic Abuse No Contact Order, the judge shall make finding on record, to the extent possible, concerning the determination made in accordance with the factors specified in clauses (1) and (2) [above].” However, the new language found in Minnesota Statute Section 629.75, subd. 1(b) and (c) clearly states that a Domestic Abuse No Contact Order is “independent of any condition of pretrial release,” “may be issued in addition to a similar restriction imposed as a condition of pretrial release,” and is “issued in a proceeding that is separate from ... a proceeding in which any pretrial release or sentencing issues are decided.” It appears that by adding this language and moving the provision to Section 629.75, the

