SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

DOMESTIC VIOLENCE DIVISION

JESSELYN RADACK,	)	**CASE NO. 2018 CPO 1516**
Petitioner	)	
	)	
v.	)	**JUDGE J. MICHAEL RYAN**
	)	
TREVOR FITZGIBBON,		
Respondent		

ORDER

The Domestic Violence Unit of the D.C. Superior Court has the authority to hear cases involving "intrafamily offense[s]" as defined in D.C. Code § 16-1001(5). *Robinson v. United States*, 769 A.2d 747, 751 (D.C. 2001) (citing Administrative Order No. 96-25 (October 31, 1996)). An "intrafamily offense" is defined in § 16-1001(8) as "interpersonal, intimate partner, or intrafamily violence." D.C. Code § 16-1001(8). In order for a relationship to constitute "interpersonal," the parties must either "share[] a mutual residence" or presently or previously be "in a domestic partnership[], divorced or separated [], or in a romantic, dating, or sexual relationship." D.C. Code § 16-1001(6). Moreover, a petitioner may file a petition for a Civil Protection Order if the "petitioner resides, lives, works or attends school in the District of Columbia… or [t]he underlying offense occurred in the District of Columbia." D.C. Code § 16-1001(6). After a hearing, if the Court "finds that there is good cause to believe the respondent has committed or threatened to commit a criminal offense against the petitioner…" then the Court "may issue a protection order." D.C. Code § 16-1005.

In the instant case, Petitioner apparently invokes sexual assault as a jurisdictional basis, however offers no proof of a sexual assault.[1] Respondent's complaint from the Eastern District of Virginia (EDVA) case, however, demonstrates a romantic relationship involving the exchange of sexually explicit text messages during a certain period of time. Moreover, Respondent's testimony corroborated such an ongoing romantic relationship. Accordingly, the Court finds a jurisdictional basis based on the evidence presented at the hearing. Thus, since Petitioner resides and works in the District of Columbia and the parties previously had a romantic relationship, the court finds a jurisdictional basis for Petitioner's claim.

Therefore, the pertinent inquiry is whether there is "good cause" to believe that Respondent "committed or threatened to commit a criminal offense against the petitioner" as per D.C. Code § 16-1005. A preliminary issue is that the "crime" asserted in the petition is alleged to have occurred in Virginia. Although Petitioner resides in the District of Columbia and, accordingly, is permitted to file a petition in the District of Columbia, a more difficult jurisdictional question is whether Petitioner may seek a Civil Protection Order arising from a "crime" that is a "crime" in another state, but not, in the District of Columbia. Such is the situation presented in the instant case. Although both the District of Columbia and Virginia have revenge pornography statutes, each state defines "sexual image" and "private areas" that qualify under the statute differently. In the District of Columbia, the statute only forbids images of the "nipples of a developed female breast," and, accordingly the statute apparently does not prohibit

[1] Whether or not Respondent sexually assaulted Petitioner or, alternatively, the parties engaged in consensual sex is irrelevant to the instant action. The Court finds that there was some type of romantic relationship in light of the text messages admitted (as part of Respondent's EDVA complaint) into evidence. Whether the flirtatious text messages consummated into consensual sexual encounter or a sexual assault occurred does not disrupt the fact that a romantic relationship exist—and, accordingly, such relationship is an independent source of the Court's jurisdiction.

the publication of a breast with the nipples redacted. *See* D.C. Code § 22-3051 (4). Virginia's statute, however, makes no distinction between nipples or other parts of the female breasts—and, correspondingly, redacted nipples and non-redacted nipples. Va. Code Ann.§18.2-386.2. At the hearing and the in the pleadings, the parties made representations that Respondent's complaint in the EDVA civil action—the source of the "publication" of the photos underlying the alleged crime in the instant petition—contained small redactions over the nipples. However, the complaint submitted as evidence at the hearing—which was not objected to by Petitioner's counsel—did not contain such redactions and the nipples were fully visible. Accordingly, the court is unable to discern which version of the complaint was actually submitted in the EDVA lawsuit. Nevertheless, for the purposes of analysis, the court will assume, *arguendo*, that the nipples were redacted, and that Virginia law applies.

Petitioner fails to establish intent or malice as required by Virginia's criminal statute. In order to prove unlawful dissemination of images, the petition must demonstrate both an "intent to coerce, harass, or intimidate" and "malicious[] disseminat[ion]." Va. Code Ann. § 18.2-386.2(A). Respondent credibly testified that he filed the lawsuit in order to clear his name. Respondent did not testify that he intended to publish the photos maliciously or with the "intent to coerce, harass, or intimidate" Petitioner. Petitioner did not testify and did not put forth any evidence of Respondent's malice or intent to "harass or intimidate." The context alone of the instant "dissemination"—*i.e.* a civil action in a federal district court—coincides more with the purpose of obtaining civil relief than with the purpose of "intimid[ating]" Petitioner. The only extant evidence of intent was the testimony under oath by Respondent, which was unrebutted and unimpeached. Petitioner's argument is seemingly grounded in a *per se* malicious intent theory given that Respondent could have filed the complaint under seal. However, Petitioner's

argument—which concedes the relevance and materiality of the images in question to the underlying suit—does not take into account that sealing is an extraordinary measure as an exception to the public's right to trial information.

Accordingly, given that Petitioner has failed to demonstrate "intent," the court need not address the other issues presented—such as i) whether publication in a court database constitutes "dissemination" or ii) whether such actions are "privileged" by a litigation privilege and iii) whether Respondent should have known he was not authorized to distribute the photo given the absence of evidence in the record.

Thus, it is, this 20th day of July, 2018, hereby

ORDERED that Petitioner's petition is **DISMISSED**.

J. MICHAEL RYAN

ASSOCIATE JUDGE

Copies to:

Jeffrey Light, Esq.

Counsel for Petitioner

Jeffrey O'Toole

Steven Biss

Counsel(s) for Respondent