

**FOR PUBLICATION**

**SUPERIOR COURT OF THE VIRGIN ISLANDS  
APPELLATE DIVISION OF ST. CROIX**

**COLLIN ORLANDO WILLIAMS,**

**Appellant,**

**v.**

**DONNA D. BELLOT,**

**Appellee.**

**CASE NO. SX-17-RV-001**

**ON APPEAL FROM THE MAGISTRATE  
DIVISION**

**RE: CASE NO. SX-17-DV-036**

**Cite as: 2019 VI SUPER 10**

**Appearances:**

**COLLIN ORLANDO WILLIAMS**

Frederiksted, VI 00840

*Pro se Appellant*

**DONNA D. BELLOT**

Frederiksted, VI 00841

*Pro Se Appellee*

**MEMORANDUM OPINION**

**HINDS ROACH, Judge**

¶1 **THIS MATTER** is in the Appellate Division on appeal from the Magistrate Division. Donna D. Bellot (“Ms. Bellot”) filed a domestic violence complaint against Collin Orlando Williams (“Mr. Williams”). After a hearing, the Magistrate Court found for Ms. Bellot and enjoined Mr. Williams for two years from having contact with Ms. Bellot or possessing a firearm. Mr. Williams appealed, claiming he was only acting in self-defense. He also objects to the duration of the permanent restraining order (“PRO”) and the firearm restriction because of the consequences to his job as a peace officer. For the reasons stated below, the finding that Mr. Williams committed domestic violence will be affirmed because it is supported by the record. However, the Court cannot meaningfully review the Magistrate Court decision to impose a two-year PRO or to prohibit Mr. Williams from possessing a firearm because the court failed to state any findings after the close of the evidence or explain its reasoning in writing. Accordingly, the PRO must be reversed in part and this matter remanded for further proceedings.

**BACKGROUND**

¶2 Ms. Bellot and Mr. Williams used to be intimate. But not in the romantic sense. They “were just having sex.” (Hr’g Tr. 5:4, Feb. 14, 2017.) But Ms. Bellot “thought [they] were heading towards” a

relationship. Id. at 5:9. Mr. Williams did not. He led Ms. Bellot to believe that they were “going towards a relationship,” however. Id. at 6:1. So, she agreed to take out a loan for him, so he could purchase a car. The “agreement” was “to be in this commitment” “for whatever amount of time . . . [it] is going to take to pay off” the car. Id. at 6:5-6. Once the car was “paid off,” either of them could “break off the relationship,” “[i]f it came to that.” Id. at 6:7-9.

¶3 Whether Ms. Bellot purchased the car for Mr. Williams or gave him the money to buy the car is unclear, but a vehicle was purchased in June 2016 and title and registration were in Ms. Bellot’s name (hereinafter “the car”). Mr. Williams began using the car in July 2016. The next month, Ms. Bellot left island for school, returning in January 2017. While she was away, Mr. Williams made “all the payments” on the car loan. Id. at 6:25. After she returned, Mr. Williams told her he had been “suspended from work.” Id. at 8:12. She “later on found out he was actually fired.” Id. at 8:13. She tried to get the car back, but Mr. Williams refused.

¶4 Sometime before February 3, 2017, the record is unclear, Ms. Bellot and Mr. Williams went for a drive in the car. Ms. Bellot drove. Mr. Williams sat in the passenger seat. Mr. Williams was a peace officer and had his firearm with him, “in the car on the passenger side, in between the hand rest and the seat.” Id. at 14: 19-20. The drive ended at her house. She parked the car in the yard, but then popped the hood and got out of the car and “tried to pull something from the engine” so the car could not be “drive[n] out of the yard.” Id. at 9:7-8. Mr. Williams grabbed her arm to stop her. Ms. Bellot then started “pull[ing] his stuff out” of the car. Id. at 9:15. Mr. Williams “grabbed [her] out of the car and he pushed [her]” Id. at 9:16. They continued fighting. Ms. Bellot tried to get back into the car, but Mr. Williams pulled her out again. This “happened a few times.” Id. at 9:22. Then, Mr. Williams “tried getting in the car, and [Ms. Bellot] tried to keep him from closing the door and driving off.” Id. at 9:23-24. At that point, Mr. Williams got out and shoved Ms. Bellot to the ground. “I tried to keep him from moving, from leaving with the car,” Ms. Bellot testified, “and he threw me onto the ground again. And then he tried to squeeze my throat and . . . said, ‘Then woman will say is men.’” Id. at 10:11-15. Ms. Bellot then “tried to punch [Mr. Williams] in the groin.” Id. at 10:20. At some point during the scuffle Mr. Williams was able to fix the car (or the part Ms. Bellot pulled did not render it inoperable) because Mr. Williams then “sped down [the] driveway and almost hit” Ms. Bellot and her dog. Id. at 10:23-24. Ms. Bellot opened the gate, so he could drove off.

¶5 Ms. Bellot went to the police station to file a report. The record is unclear when that occurred. At the police station she “told the officer all [she] wanted was the car and to be done with the situation.” Id. at 11:13-14. “If he brings me the car,” Ms. Bellot said, “I’ll be done with the situation.” Id. at 11-24-25. Mr. Williams did bring her the car. But he was not done with the situation. He wanted his money back. Ms. Bellot’s response was to take her to small claims court. Instead, she took him to domestic violence court.

¶6 Ms. Bellot filed a civil domestic violence complaint with the Family Division of the Superior Court on February 6, 2017. She alleged that Mr. Williams had assaulted and threatened her and sought a temporary and a permanent restraining order. The Clerk’s Office assigned the case to a Superior Court magistrate judge, who issued an *ex parte* temporary restraining order (“TRO”) the same day and scheduled a hearing for February 14, 2017. Mr. Williams was served with summons, a copy of the complaint, and the TRO on February 6, 2017. The TRO was entered the next day, February 7, 2017. The marshal who

served Mr. Williams also took possession of his firearm.

¶7 At the hearing, Ms. Bellot and Mr. Williams testified and Ms. Bellot moved into evidence a series of color photocopies made from her cell phone, showing text messages she exchanged with Mr. Williams between Thursday, February 2, 2017 and Monday, February 6, 2017. Ms. Bellot pointed the Magistrate Court to certain text messages, including one Mr. Williams sent, stating that “he’s not going to just let it slide.” (Hr’g Tr. 16:24.) Mr. Williams did not deny sending the text message. He said he was “just respond[ing] to what she was saying,” he said. Id. at 20:17-18.

¶8 After the hearing, the Magistrate Court announced its decision from the bench, ruling in favor of Ms. Bellot. The court restrained Mr. Williams from contact with Ms. Bellot for two years and barred him from possessing a firearm. The order was entered three days later, February 17, 2017, and remains in effect until February 14, 2019.

¶9 On February 28, 2017, Mr. Williams submitted a letter to the Magistrate Division to request an appeal. The Clerk’s Office construed his letter as a petition for review filed in the Appellate Division. The Clerk’s Office then informed Mr. Williams of the requirements associated with internal appeals from the Magistrate Division, including the filing fee, obtaining a transcript, and filing a brief on review. Mr. Williams filed a request for a transcript of the February 14, 2017 hearing, which was submitted on March 24, 2017. By order entered March 28, 2017, this Court notified both parties that the transcript had been submitted and all that remained was for them “to file their respective briefs on appeal.” (Order 1, entered March 28, 2017.) Both Mr. Williams and Ms. Bellot were served with the March 28, 2017 Order. However, neither party responded.

### DISCUSSION

¶10 The Magistrate Division of the Superior Court of the Virgin Islands has original jurisdiction to “issue temporary and permanent restraining orders in domestic violence cases.” 4 V.I.C. § 123(a)(5). Appeals in domestic violence cases are “filed in the Superior Court.” 4 V.I.C. § 125. Parties have “ten (10) days after entry of the order sought to be reviewed” to seek review in the Appellate Division. Super. Ct. R. 322.1(b)(2)(A).<sup>1</sup> Mr. Williams’s letter, filed on February 28, 2017, was timely. See Super. Ct. R. 322.1(b)(1)(B) (“[T]he Clerk shall accept any paper or notice filed after the decision of a magistrate and shall deem the same to be a petition for review, despite its form, title, or its informality, so long as the substance evidences an intent to appeal a magistrate decision.”). Therefore, this matter is properly before

---

<sup>1</sup> Superior Court Rule 322 was amended effective December 1, 2018. See generally In re: Amendments to Rule Gov. Appeals from Mag. Div., S. Ct. Prom. No. 2018-005, 2018 WL 6012609 (V.I. Nov. 15, 2018). Because the Promulgation Order did not specify whether the amendment applies to appeals pending at the time, the Court assumes that it does not and applies the rules in effect when this appeal was filed since the amended rule differs from the prior rules. Cf. Toussaint v. Stewart, 67 V.I. 931, 940 (2017) (amended rule applied when it “utilize[s] the same language” as the prior rule) (citations omitted).

the Appellate Division on appeal from the Magistrate Division.

### Standard of Review

¶11 “In reviewing decisions from the Magistrate Division, the Appellate Division . . . functions as an appellate court reviewing the factual determinations of the magistrate court for clear error and its legal findings, statements of law, and the application thereof under a plenary standard.” Wild Orchid Floral & Event Design v. Banco Popular de P.R., 62 V.I. 240, 247 (Super. Ct. App. Div. 2015) (citing Super Ct. R. 322.3(b); In re: Estate of Small, 57 V.I. 416, 429 (2012)). “Because cases in the Magistrate Division are decided without a jury, the magistrate court hears the testimony and considers the evidence before finding the facts and applying the law. And when the law is unsettled, the magistrate court must determine what law should apply before finding what facts are relevant.” Carlos Warehouse v. Thomas, 64 V.I. 173, 180 (Super. Ct. App. Div. 2016) (citing Estate of Small, 57 V.I. at 428-29; Wild Orchid, 62 V.I. at 252-53). The Appellate Division cannot ignore these standards of review because it “would render the proceedings that occurred in the Magistrate Division a complete nullity, and . . . signal to the magistrates . . . that the work they dedicated to constructing the record is a complete waste of time.” Henry v. Dennery, S. Ct. Civ. No. 2012–0130, 2013 WL 206128, \*2 (V.I. Jan. 11, 2013). Instead, like an appellate court, the Appellate Division can either affirm or reverse the magistrate court or remand where appropriate. Super. Ct. R. 322.3(c). Cf. David v. People, SX-15-RV-007, 2016 V.I. LEXIS 15, \*27-29 (Super. Ct. App. Div. Feb. 22, 2016) (affirming conviction but reversing sentence and remanding for compliance with 14 V.I.C. § 104).

### Arguments on Review

¶12 In his letter, Mr. Williams wrote: “I . . . [am] humbly requesting for minimal duration to possible removal of the permanent restraining order issued against me . . . as . . . this order prevents my ability to fulfill my oath as an officer of the U.S. Virgin Islands.” (Appellant’s Letter 1 filed Feb. 28, 2017 (hereinafter “Pet.”).) He then detailed his personal and professional background and states that he has “a clean record and outstanding character” and has “been very conscientious and safety-minded” in his “role as a peace officer.” Id. He argues that his “reaction during the altercation” was “never intended [to] hurt or harm” Ms. Bellot but was “a mere self defense mechanism” so that he could “flee the vicinity unharmed.” Id. He concludes by “humbly requesting . . . reconsideration<sup>2</sup> on revisiting this order[] in

---

<sup>2</sup> Although Mr. Williams asked for reconsideration and addressed his letter to the magistrate judge, he also paid the filing fee associated with filing for review in the Appellate Division and requested and paid for the transcript. “Typically, a reconsideration motion is directed to the same judicial officer who issued the underlying decision, if only to give that judicial officer a chance to correct her or his own clear error or to consider any changes in the law.” Xavier v. Treasure Bay V.I. Corp., 67 V.I. 251, 266 (Super. Ct. App. Div. 2017). Although “[r]econsideration and appeal certainly share the same end in that both result in further review of an earlier decision,” “they reach that end through different means and with different consequences.” Id. at 264-65. One difference is the additional cost and delay that can accompany an appeal. Here, Mr. Williams’s letter uses words such as “motion” and “consideration” and “revisit” but also “appeal,” which might have resulted in two courts considering his letter at the same time. But see People v. Reyes, 68 V.I. 432, 443-44 (Super. Ct. App. Div. 2018) (discussing the divestiture rule which avoids waste of time when two courts consider the same issue). Here, the Magistrate Court did not act on

order for [him] to fulfill [his] commitment . . . [to] the people of the United States Virgin Islands.” Id. He also cites 18 U.S.C. § 922 and states that he is now “prohibited from shipping or transporting or possessing any firearm or ammunition,” which “prohibits” him “significantly from adequately performing [his] career duties, responsibilities and the opportunity to advance [his] career.” Id.

¶13 From his letter, construed as a brief on appeal,<sup>3</sup> the Court discerns three issues: an objection to the sufficiency of the evidence, an objection to the duration of the PRO, and an objection to the firearm restriction. Each is addressed below.

### Sufficiency of the Evidence

¶14 Mr. Williams first claims that he was acting in self-defense and that he did not intend to injure Ms. Bellot when they fought outside her home. Although Mr. Williams did not use the words “self-defense” at the hearing, his testimony does lend support since self-defense does have to be *raised* before the trial court, but “the words self defense need not be *uttered*.” Fahie v. People, 59 V.I. 505, 511-12 (2013) (emphasis added) (quotation marks, brackets and citation omitted).

¶15 Civil domestic violence actions are “quasi-criminal in nature.” Bernhardt v. Bernhardt, 51 V.I. 341, 350-51 (2009) (*per curiam*). So, courts look to criminal law to determine what acts constitute domestic violence. See Drew v. Drew, 37 V.I. 61, 65 (D.V.I. App. Div. 1997) (*per curiam*) (“A court may turn to another section of the Code for guidance where one section fails to define a term that the other section defines.” (citation omitted)), aff’d 176 F.3d 471 (3d Cir. 1999).<sup>4</sup> Courts applying Virgin Islands law have implied, but not directly held, that a defendant in a civil domestic violence action can raise self-defense. Cf. Brown v. Gillard, D.C. Civ. App. No. 1999/148, 2003 U.S. Dist. LEXIS 3153, \*10 n.4 (D.V.I. App. Div. Jan. 21, 2003) (rejecting self-defense claim on appeal by defendant in a civil domestic violence case because defense was not raised at trial) (“As with all other affirmative defenses, the person claiming the defense of lawful violence bears the burden of proof on that issue.” (citation omitted)). Assuming self-

---

Mr. Williams’s letter and Mr. Williams did not object when the Clerk’s Office notified him that an appeal was opened. Given the possibility that two divisions within the same court might act on a document simultaneously, the better practice is for the Clerk’s Office to notify the parties (many of whom are *pro se*) of the difference between reconsideration and appeal to ensure that appeal to the Appellate Division, not reconsideration by the Magistrate Division, is the relief being requested.

<sup>3</sup> Although neither party filed a brief on appeal, Mr. Williams did raise objections in his letter, which the Court construes as his brief. Accord Super. Ct. R. 322(b)(2) (“The notice of appeal shall identify the party initiating the appeal, designate the decision or order appealed from, and contain a concise position statement of . . . the issues the party wishes to present for appeal, together with a brief argument in support of the party’s position.”).

<sup>4</sup> As a reported decision of the Appellate Division of the District Court of the Virgin Islands, Drew is binding on the Superior Court of the Virgin Islands, particularly the Magistrate Division but, presumably also the Appellate Division. Cf. Smith v. Henley, 65 V.I. 179, 196 n.16 (Super. Ct. 2016) (citing Hamed v. Hamed 63 V.I. 529, 535 (2015), and noting that decisions of the Appellate Division of the District Court regarding “statutory interpretation rather than the common law” should still be binding).

defense can be raised in a civil domestic violence action,<sup>5</sup> and looking to the criminal code for guidance, title 14 instructs that “[a]ny person about to be injured may make resistance sufficient to prevent . . . an illegal attempt by force to take or injure property in his lawful possession.” 14 V.I.C. § 41(1). But “[t]he right of self-defense does not extend to the infliction of more harm than is necessary for the purpose of defense.” 14 V.I.C. § 43.

¶16 Here, Ms. Bellot and Mr. Williams had an agreement, or in other words, a contract. When Mr. Williams agreed to make regular payments to Ms. Bellot for the use of her car, the parties essentially entered into a lease or a rent-to-own agreement. Cf. Judi’s of St. Croix Car Rental v. Weston, 49 V.I. 396, 397 (2008) (*per curiam*) (discussing “a rent-to-own agreement . . . for the purchase of an automobile then valued at approximately \$5,000.”). Ms. Bellot testified that she “tried to get the car back” but Mr. Williams “wouldn’t give [her] the key.” (Hr’g Tr. 8:20-21.) Once she got the car back in the yard, she started to pull wires from the engine, attempting to render it inoperable. But even though the title was in her name, Mr. Williams had the right to use the car so long as he made timely payments. And Mr. Williams “ma[de] all the payments I had asked him for,” Ms. Bellot said. Id. at 6:25-7:1. He did miss one payment in December 2016, and when Ms. Bellot found out, she told him, “I have it covered until you give me the money, but at the same time I need to know what’s going on.” Id. at 8:2-4. A month later, the situation changed; the agreement became “a burden” and Ms. Bellot “was just over it, just over all of it. So, [she] tried to get the car back.” Id. at 8:18-20 (paragraph break omitted).

¶17 This testimony clearly establishes a quasi-lease agreement between the parties. Even though it may not have been in writing (again the record is unclear), the lessee (Mr. Williams) defaulted (missed a payment) and the lessor (Ms. Bellot) attempted to retake possession of the goods (the car). Missing a payment on the car loan can constitute an act of default. But Ms. Bellot may also have excused his default when she said she had it covered. Cf. 11A V.I.C. § 2A-107. Assuming she did not excuse the default, Virgin Islands law would have allowed her to resort to self-help to repossess her car, but only if it could

---

<sup>5</sup> The Virgin Islands Domestic Violence Act creates a cause of action for domestic violence, but does not address what defenses, if any, can be raised in domestic violence actions. Some jurisdictions exclude self-defense from the definition of domestic violence and thereby permit the defense to be raised. See, e.g., Peters-Riemers v. Riemers, 624 N.W.2d 83, 86 (N.D. 2001) (“[A]cts committed in self-defense are statutorily excluded from the definition of domestic violence.”). Other jurisdictions have held, at least in the context of tort law, that self-defense is not a defense to battery. See, e.g., Estill v. Waltz, 2002-Ohio-5004, ¶ 24 (Ct. App.) (“Self-defense presumes intentional, willful use of force to repel force or escape force. A person claiming self-defense concedes that he or she intended to commit the act, but asserts he or she was justified in doing so. . . . The essential character of the underlying tort as an intentional, willful use of force constituting a battery remains unchanged.” (quotation marks, emphasis, and citations omitted)). But see Richardson v. McGriff, 762 A.2d 48, 56 (Md. 2000) (“Self-defense is a defense to the common law tort of battery.” (citing Baltimore Transit Co. v. Faulkner, 20 A.2d 485, 487 (Md. 1941))). Cf. Gibbins v. Berlin, 162 S.W.3d 335, 340-41 (Tex. Ct. App. 2005) (recognizing that self-defense is a justification in criminal law and a plea in confession and avoidance in civil law and, consequently, an affirmative defense, that “is considered as acknowledging the *existence* of prima facie liability but asserting a proposition which, if established, *avoids* such liability.” (emphasis added) (quotation marks and citation omitted)). The question need not be decided here. The Court does note, however, that courts have not yet addressed what defenses (if any) are available in civil domestic violence actions.

“be done without breach of the peace.” Id. § 2A-525(3). If not, Ms. Bellot had to come to court and proceed through the “judicial process.” Id.

¶18 Three questions are raised by the testimony: whether Mr. Williams defaulted by missing a payment, whether Ms. Bellot excused the default, and whether she could retake possession of the car without breaching the peace.<sup>6</sup> See Cornelius v. Bank of Nova Scotia, 67 V.I. 806, 822 (2017) (“A breach of the peace takes place when either an assault is committed on an individual or public alarm and excitement is caused. Mere annoyance or insult is not enough.” (citation omitted)). If Mr. Williams was still in lawful possession of the car, Ms. Bellot was not acting lawfully when she started to pull wires from the engine and remove his property from it. In that instance, Mr. Williams would have been justified in using “resistance sufficient to prevent . . . an illegal attempt by force to take or injure property in his lawful possession.” 14 V.I.C. § 41(1). Unfortunately, facts were not found that would allow this Court to conduct a meaningful review. Cf. Wessinger, 56 V.I. at 487 (“As many courts have made clear, a full and fair compliance with th[e] requirement” that the trial court “state the findings and conclusions that support its action” “is of the highest importance to a proper appellate review” (quotation marks, citations, and footnotes omitted)).

¶19 Ordinarily, when a trial court fails to “state sufficient findings of fact after the close of the evidence or in an opinion or a memorandum of decision filed by the court,” the “error [c]ould require a remand.” Dennie v. Swanston, 51 V.I. 163, 168 n.1 (2009) (*per curiam*) (quotation marks, ellipsis, and citations omitted). But only if the error precludes the appellate court from affirming on another ground. “[U]nder the ‘right result, wrong reason’ doctrine, where the record otherwise supports the trial court’s judgment, an appellate court may affirm that judgment for reasons other than those relied upon by the trial court, even if the trial court’s reasons are erroneous.” Antilles School, Inc. v. Lembach, 64 V.I. 400, 438 n.23

---

<sup>6</sup> Breach of the peace is a question of fact. Cf. Teeter Motor Co. v. First Nat’l Bank of Hot Springs, 543 S.W.2d 938, 941 (Ark. 1976) (“There is no *evidence* of force or intimidation by the appellee. We agree with the chancellor that the repossession here, in conformity with both statutory authority and the contractual provision, did not constitute a breach of the peace.” (emphasis added)); Thompson-Young v. Wells Fargo Dealer Servs., Inc., No. 1-13-2479, 2014 Ill. App. Unpub. LEXIS 1610, \*9 (Ct. App. July 24, 2014) (“[B]reach of the peace means conduct which incites or is likely to incite immediate public turbulence, or which leads to or is likely to lead to an immediate loss of public order and tranquility. Violent conduct is not a necessary element. Instead, the probability of violence at the time of or immediately prior to the repossession is sufficient. Ultimately, whether a given act provokes a breach of the peace depends on the accompanying circumstances of each particular case.” (quotation marks, brackets, citations omitted)); see also State v. Buckley, 149 A.3d 928, 932 (Vt. 2016) (quoting instructions to jury) (“A breach of peace is an action that causes or is likely to cause an immediate disturbance or loss of public order. It must be reasonably likely and not merely a remote possibility. . . . Whether actions do rise to a breach of peace . . . depends on the accompanying circumstances of each case. . . . Even if there is a breach of peace as you find it, defendant must still act reasonably and use only reasonable degree of force in defending against it”). But cf. Rogers v. Allis-Chalmers Credit Corp., 679 F.2d 138, 141 (8th Cir. 1982) (“Generally, if a debtor ‘voluntarily and contemporaneously consents to a repossession it cannot be a breach of the peace.’” (emphasis added) (quoting James K. White & Robert Summers, Handbook of the Law Under the Uniform Commercial Code § 26-6, at 1097 (2d ed. 1980))).

(2016) (citations omitted).

¶20 Virgin Islands law retains the common law distinction between assault and battery. An assault occurs when a person attempts to commit a battery or makes a threatening gesture which shows an immediate intention and ability to commit a battery. See 14 V.I.C. § 291; accord Drew, 57 V.I. at 65. Assault and battery occurs when someone “uses any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used.” Id. (quoting 14 V.I.C. § 292). Intent can be inferred from “the facts and circumstances surrounding the act,” “the situation of the parties,” “the nature and extent of the violence,” and “the acts and declarations of the parties at the time.” Drew, 37 V.I. at 65.

¶21 Here, the evidence supports a finding of battery more so than assault, at least concerning the fight between Mr. Williams and Ms. Bellot outside the car. But assuming, *arguendo*, that Mr. Williams was acting in self-defense in response to Ms. Bellot’s attempt to render the car inoperable, he also testified that he was angry and that he “pushed [Ms. Bellot] hard enough” that “[s]he fell to the ground.” Id. at 15:2. Mr. Williams may have been acting lawfully up until this point by defending himself and his “stuff,”<sup>7</sup> id. at 14:12, including his firearm. But he was not acting lawfully when Ms. Bellot ran “to the gate to close [it]” and he “jumped in the car” and drove “towards her gate” “probably doing thirty, thirty-five” miles an hour. Id. at 15:9-10, 13. That constitutes assault because it put Ms. Bellot in imminent apprehension of a battery, namely being struck by the car Mr. Williams was driving.

¶22 Ms. Bellot alleged in her complaint that Mr. Williams committed assault and that she was fearful he would “harm me, damage my property, or harm my dog.” (Compl. ¶ 7, filed Feb.6, 2017, Bellot v. Williams, case no. SX-17-DV-036.) Mr. Williams argues on appeal that he “wasn’t trying to knock her down.” Id. at 15:14. Whether to believe him or Ms. Bellot was for the trial court to decide, not the appellate court. See Moore v. Walters, 61 V.I. 502, 508 (2014) (“It is well established that, on appeal, the court must defer to the credibility decision made by the factfinder, whether it be the judge or the jury.” (citations omitted)). The evidence is sufficient to affirm the Magistrate Court’s finding that Mr. Williams committed an act of domestic violence against Ms. Bellot when he drove a car at her “doing thirty, thirty-five” miles an hour. (Hr’g Tr. 15:13.)

### Duration of the Permanent Restraining Order

¶23 Mr. Williams’s second issue concerns the duration of the PRO. After the Magistrate Court announced its ruling, Mr. Williams asked “[h]ow long is the restraining order?” (Hr’g Tr. 24:3.) The court answered, “[t]wo years.” Id. at 24:4. The transcript ends there and whether Mr. Williams objected is unclear. Consequently, he may be raising this argument for the first time on appeal. *But cf.*, *supra*, note 2.

¶24 Generally, errors not raised to the trial court are deemed waived on appeal. See, e.g., Gardiner v. Diaz, 58 V.I. 199, 205 n.5 (2013) (“[T]he Appellate Division of the Superior Court should, as a routine

---

<sup>7</sup> Cf. Ford Motor Credit Co. v. Herring, 589 S.W.2d 584, 587 (Ark. 1979) (question of fact not raised by the record as to repossession but as to personal property inside car) (“Even though the repossession of the vehicles was proper, the question of whether appellant’s subsequent retention of certain personal property stored in the trucks constituted conversion was properly submitted to the jury.”).



matter, address the arguments raised before it in the parties' briefs. If the Appellate Division determines that an appellant has waived any of the arguments raised in the brief, it should so indicate."'). However, when the error raised concerns the final order entered, whether the appellant must have raised that error to the trial court to preserve it is not clear. It would necessitate filing a motion for relief from judgment before filing an appeal to raise the issue and preserve it. It would also prolong the case and chill the right of appeal granted by the Legislature of the Virgin Islands. See 4 V.I.C. §§ 33, 125. However, because the issue Mr. Williams raises is one of first impression in the Virgin Islands—how long should an order “prohibiting the defendant from having contact with the plaintiff” be in effect. 16 V.I.C. § 97(b)(2)—the Court will review for plain error out of an abundance of caution.<sup>8</sup>

¶25 “[T]o reverse under a plain error standard of review, four conditions must be met. First, there must be an error; second, the error must be plain; third, the error must affect substantial rights; and finally, the error must seriously affect the fairness, integrity, or public reputation of judicial proceedings.” Marsh-Monsanto v. Clarenbach, 66 V.I. 366, 381 (2017) (quotation marks and citations omitted). “An error is a deviation from a legal rule, and an error is plain if it is clear and obvious.” Id. (quotation marks and citations omitted). “An error affects substantial rights when it would change the outcome of the proceedings.” Id. at 383 (quotation marks and citations omitted). Lastly, “[w]hether an error has” “the potential to damage the public reputation of judicial proceedings” “is determined on a case-specific and fact-intensive basis.” Id. at 384 (quotation marks and citations omitted).

¶26 When an error presents a question of first impression, the first factor of plain error might not be met since “an error is only plain if it is clear under current law.” Cornelius, 67 V.I. at 821 (citing Murrell

---

<sup>8</sup> The Supreme Court of the Virgin Islands reviews for plain error in civil cases. E.g., Marsh-Monsanto v. Clarenbach, 66 V.I. 366, 381 (2017) (“We apply a plain error standard of review to determine whether the interests of justice compel us to notice and correct such an error.” (citations omitted)). But cf. Moore, 61 V.I. 510 n.4. However, plain error review is available under that Court’s rules. See Caribbean Healthways, Inc. v. James, 59 V.I. 805, 812 n.2 (2013) (recognizing in a civil case “that Rule 4(h) simply adopts the plain error standard of review.”). The Court has not addressed yet whether the Appellate Division of the Superior Court can review for plain error. The Appellate Division’s rules do not allow or prohibit plain error review. See Super. Ct. R. 322.3(b) (“(1) Findings of Fact. Factual determinations are to be reviewed for clear error; (2) Legal Issues. Legal findings, statements of law, and the application thereof, are to be afforded plenary review.”). However, the Court has held that it will typically “decline to review directly the magistrate[ court]’s rulings out of consideration for the ‘unique relationship’ between the Magistrate and Appellate Divisions of the Superior Court, and traditional appellate practices.” Gardiner, 58 V.I. at 204 (citing Maso v. Morales, 57 V.I. 627, 632 (2012); Browne v. Gore, 57 V.I. 445, 453 (2012)). The Court has also held that the Appellate Division functions as an intermediate appellate court between the Magistrate Division of the Superior Court and the Supreme Court of the Virgin Islands. It is this role—as intermediate appellate court—that compels this Court to conclude that the Appellate Division must be able to review for plain error. Otherwise, further appeal to the Supreme Court of the Virgin Islands would be necessary before a plain error could be considered, something unwarranted particularly in quasi-criminal cases. Cf. Pcolar v. Casella Waste Sys., Inc., 59 A.3d 702, 709 (Vt. 2012) (“[W]e consider plain error in civil cases ‘only in limited circumstances, i.e., when an appellant raises a claim of deprivation of fundamental rights, or when a liberty interest is at stake in a quasi-criminal or hybrid civil-criminal probation hearing.’” (quoting Follo v. Florindo, 970 A.2d 1230, 1237 (Vt. 2009))).

v. People, 54 V.I. 338, 366 (2010)). But here, the law, notwithstanding that no court has considered it yet, because what relief is available in a civil domestic violence cases is provided by statute and that statute vests authority in the discretion of the court.

¶27 Section 97 of title 16 of the Virgin Islands Code provides that the court “*may* issue an [o]rder granting *any or all* of the following relief.” 16 V.I.C. § 97(b) (emphasis added)). The word “*may*” connotes discretion. Cf. Dennie v. People, 66 V.I. 143, n.6, (Super. Ct. App. Div. 2017) (“*Shall* normally suggests something mandatory not discretionary.” (citations omitted)); see also, e.g., City of Hubbard ex rel. Creed, 74 Ohio St. 3d 402, 408 (1996) (“Use of the word ‘*may*’ in the statute implies that the decision to award attorney fees to a successful plaintiff.”); Thielman v. Leean, 659 N.W.2d 73, 76-77 (Wis. Ct. App. 2003) (“The word ‘*may*’ is generally construed as permissive or directory. The use of permissive language connotes a grant of discretionary power by the legislature to an authorized decision-maker.” (citations omitted)). “A trial court abuses its discretion when it fails to exercise its discretion.” Gerace v. Bentley, 65 V.I. 289, 297 (2016) (quotation marks, brackets, and citation omitted)), cert. dismissed sub nom Vooyoys v. Bentley, 901 F.3d 172 (3d Cir. 2018).

¶28 A permanent restraining order is one form of relief courts can grant in a civil domestic violence action. See generally id. § 97(a). Courts can also grant possession of real property or temporary possession of personal property or order a defendant to receive counseling, among other remedies. See generally id. § 97(b). Courts can also award monetary damages for losses a victim may have incurred “as a direct result of the act of domestic violence.” Id. § 97(b)(5). Thus, courts have a wide range of remedies available in domestic violence cases to protect victims from further abuse, to ensure their safety, but also to deter abusers from committing further acts of domestic violence. In many instances, restraining the defendant from having contact with the plaintiff for the maximum period of time permitted by law may be the most appropriate relief to grant. But it is not the only relief. And herein lies the problem.

¶29 Courts must find facts to support their conclusions. Although no court in the Virgin Islands has considered the question in the context of civil domestic violence cases, it is clear that Virgin Islands law vests courts with discretion to grant injunctive relief among other forms of relief. Even if injunctive relief is the only relief awarded, a court cannot impose the maximum period of restraint available out of nothing more than an abundance of caution. Accord Doe v. Doe, 380 P.3d 175, 179 (Idaho 2016) (“The duration of a protection order under Idaho Code section 39-6306 is committed to the sound discretion of the trial court. A trial court does not abuse its discretion ‘*so long as it recognizes the issue as one of discretion.*’” (emphasis added) (quoting Roberts v. Roberts, 64 P.3d 327, 329 (Idaho 2003))). Moreover, courts exercise their discretion by finding facts and applying the relevant law to those facts, considering any other factors raised by the circumstances of the case. “It is axiomatic that when a court with discretion fails to balance the pertinent factors required for it to properly exercise that discretion, such failure constitutes an abuse of discretion.” Beachside Assocs., LLC v. Fishman, 53 V.I. 700, 719 (2010) (quoting parenthetically Rivera-Mercado v. Gen. Motors Corp., 51 V.I. 307, 330 (2009) (Swan, J., concurring)/

¶30 Although no court has held that factual findings of fact and legal conclusions must accompany final orders issued in civil domestic violence cases, the law plainly requires it because more than one-type of relief is available in such cases. Accord Turnbull v. Turnbull, S. Ct. Civ. No. 2009-0092, 2011 V.I. Supreme LEXIS 4, \*9 (V.I. Mar. 1, 2011) (“[T]he court in a bench trial must find the facts specially and state its conclusions of law separately, either on the record after the close of the evidence or in an opinion

or a memorandum of decision filed by the court.” (quotation marks, brackets, and citation omitted)); V.I. R. Civ. P. 52(a); see also *Ferris v. Withey*, SX-2014-sm-038, 2014 V.I. LEXIS 48, \*3-4 (V.I. Super. Ct. App. Div. May 9, 2014) (“[F]or the Appellate Court to conduct a meaningfully review of the Magistrate Court factual findings and legal conclusions, the Appellate Court must have sufficient findings and conclusions to review.”). Orders granting relief under section 97 of title 16 of the Virgin Islands Code are akin to judgments because they conclude the civil domestic violence case on the merits. Further, even though final orders in civil domestic violence actions must be limited, “effective for a fixed period not to exceed twenty-four months,” 16 V.I.C. § 97(d), no rule of procedure or statute exempts final orders in domestic violence cases from the requirement to state “findings and conclusions . . . on the record after the close of the evidence . . . or in an opinion or a memorandum of decision.” V.I. R. Civ. P. 52(a).

¶31 Here, the Magistrate Court did not state findings regarding what amount of time was necessary to ensure Ms. Bellot “maximum protection from abuse.” 16 V.I.C. § 90(a)(1). Instead, the court imposed the maximum period permitted by law, but without asking Ms. Bellot how long she believed the restraining order should be in effect to feel safe and without questioning Mr. Williams about what impact, if any, a two-year restraining order might have on him. Contra *Drayton v. Drayton*, SX-2014-DV-029, 2014 V.I. LEXIS 122, \*9 (Super. Ct. Mar. 6, 2014) (limiting duration of restraining order based on the evidence) (“Since the object of the parties’ disdain for one another appears to be the former marital abode, the Court further finds it prudent and necessary to only put the order in place, but only for a period long enough to permit the Family Court to address the pending divorce matter.”). Cf. *Vazquez v. Vazquez*, 54 V.I. 485, 493 (2010) (“In addition to the inherent reputational harm from a finding that one has committed an act of domestic violence, Virgin Islands law imposes several collateral legal consequences on those found to have committed domestic violence.”). Here, the statute vests the trial court with discretion. The court did not exercise its discretion. The failure to exercise discretion constitutes error and that error is plain. See 16 V.I.C. § 97(b); *Marsh-Monsanto*, 66 V.I. at 381.

¶32 The error also affects Mr. Williams’s substantial rights and, but for the error, “the outcome of the proceedings” might have been different. *Marsh-Monsanto*, 66 V.I. at 383 (quotation marks and citations omitted). When reviewing the text messages Ms. Bellot moved into evidence, the Magistrate Court noted that she and Mr. Williams had continued to text each other long after the fight in her yard. (See Hr’g Tr. 18:4-9 (“THE COURT: . . . [A]ll these thirteen pages is conversation between the both of you? MS. BELLOT: Yes. THE COURT: And this is after you had the car already and you went to the police station? MS. BELLOT: Yes.”); id. at 20:2-3 (“THE COURT: You guys spend hours going back and forth with these texts, right?”).) in fact, Plaintiff’s Exhibit 1 showed that Ms. Bellot and Mr. Williams were texting each other from just before 3:00 p.m. on Thursday, February 2, 2017 until shortly after 8:00 p.m. on Monday, February 6, 2017—the same day Ms. Bellot had filed her complaint and received a TRO. This evidence that Ms. Bellot moved into evidence warranted further consideration as to the length of the injunction because it undermines the need for a two-year restraining order.

¶33 There are no talismanic words that must be spoken in civil domestic violence hearing. However, because of the quasi-criminal consequences of domestic violence cases, all evidence—testimony, documentation, demeanor, and tone—placed on record must be considered by the court when deciding whether the plaintiff has proven her or his case and what relief (if any) will ensure maximum protection under the law. Had the court questioned Ms. Bellot and Mr. Williams about what relief she sought—given that they had continued to text each other for days after the fight in her yard and that the dispute centered

around the car—the court might have awarded different relief,<sup>9</sup> including a shorter PRO. Court can always grant an extension, a renewal, or a modification “upon good cause shown.” 16 V.I.C. § 97(d). In other words, had the court make findings and balance factors before deciding to restrain Mr. Williams for two years, the result may have been different. Therefore, the third factor is also met.

¶34 Lastly, and perhaps most importantly, not stating findings regarding how long a restraining order should be in effect has “the potential to damage the public reputation of judicial proceedings.” Marsh-Monsanto, 66 V.I. at 384 (quotation marks and citations omitted). Civil domestic violence actions were enacted to “[r]ecogniz[e] that battering is a serious crime which will no longer be excused or tolerated” and to ensure that victims are given “the maximum protection from abuse that the law can provide.” 16 V.I.C. § 90(a)(6), (1). But “maximum protection” does not always translate to restraint for the maximum amount of time. Punishment is an aim of criminal cases, not civil cases. Moreover, the purpose for “[c]reat[ing] a flexible and speedy remedy to discourage violence and harassment against family members or others,” *id.* § 90(2), is somewhat undermined when courts fail to assess what remedies are most appropriate for the persons who come before them.

¶35 Having reviewed the record and applicable law, this Court concludes that the Magistrate Court erred by imposing a two-year PRO without stating its findings or questioning the parties about the appropriate relief. Courts have discretion to determine what relief is appropriate in civil domestic violence actions. *See* 16 V.I.C. § 97(b). Failing to exercise discretion is an abuse of discretion, which constitutes an error. *See Gerace*, 65 V.I. at 297; *cf. Sananap v. Cyfred, Ltd.*, 2009 Guam 13, ¶ 13 (“[A] district court abuses its discretion when it makes an error of law.” (quotation marks and citation omitted)). But for the error, the outcome here may have been different. Public perception of domestic violence proceedings may be harmed if the public were to believe that an individual could obtain a permanent restraining order for the maximum time permitted by law but without stated findings in support. Further, the error also goes to the heart of what courts are called upon to do, justice, which “is not a one-way street, but a two lane boulevard.” *Peebles v. Moses*, 40 V.I. 75, 84 (Terr. Ct. 1999). Courts do not reward prevailing parties because they prevail. *Cf. King v. Appleton*, 61 V.I. 339, 346 (2014) (“Before entering a default judgment, the Superior Court [i]s still required to determine whether the[] facts constituted a valid cause of action under Virgin Islands law, and if so, to hold a default judgment hearing to establish the amount of damages.” (footnote omitted)).

### Firearm Restriction

¶36 Mr. Williams’s last issue concerns a collateral consequence of having committed an act of domestic violence, the prohibition on possessing, shipping, or transporting a firearm. Again, Mr. Williams did not raise this objection to the Magistrate Court, so the Court reviews for plain error.

¶37 Ms. Bellot alleged in her complaint that Mr. Williams possesses a firearm and that she was “no[t] sure what he is capable of.” (Compl. ¶ 7.) At the hearing, Ms. Bellot and Mr. Williams testified that Mr.

---

<sup>9</sup> The gravamen of Ms. Bellot and Mr. Williams’s dispute centered almost exclusively on the car. The Magistrate Court could have awarded Ms. Bellot “temporary possession of specified personal property, such as [the] automobile[,],” 16 V.I.C. § 97(b)(6), to avoid further violence and harassment and ensure that Mr. Williams did not attempt to take back possession of the car.

Williams works in law enforcement and Mr. Williams further testified that he had a firearm in the car on the night he and Ms. Bellot fought in her yard. But it was Mr. Williams who was concern about the firearm. He explained that he was worried that Ms. Bellot might have been reaching for his firearm when she started pulling his “stuff” out of the car. Ms. Bellot’s only mention of the gun was in reference to their text messages.

MS. BELLOT: I went to file a report after the incident. And I kept trying to call him and tell him to just bring me the car so that all this could be over with and whatever. And when I told him that, that I was at the station filing the report, I told the officer all I wanted was the car and to be done with the situation and then that will be it. And while I was at the station, he was texting me saying that I going to file a false report; and if he’s getting arrested then I’m getting arrested, because pulling his gun on him is not a nice feeling.

THE COURT: Pulling his gun on him?

MS. BELLOT: Yes. He said that, but I never did that.

THE COURT: He has a gun?

MS. BELLOT: Yes. And he just kept texting. And I just told the officers if he brings me the car, then I’ll be done with the situation.

(Hr’g Tr. 11:9-25.) The court then asked Mr. Williams about the gun.

THE COURT: Where’s the weapon now?

MR. WILLIAMS: The court has it.

Id. at 14:21-22. No further testimony was provided or elicited regarding the firearm before the Magistrate Court issued its ruling and barred Mr. Williams “pursuant to the provisions of Title 18 of the United States Code, Section 922, Subsection (g) . . . from shipping or transporting in interstate or foreign commerce or possessing in or affecting commerce, any firearm or ammunition or receiving any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.” Id. at 22:6-12.

¶38 Defendants in civil domestic violence action may lose the right to possess a firearm if they are found to have committed an act of domestic violence. See Travieso v. Lopez, 39 V.I. 189, 194-95 (D.V.I. App. Div. 1998). Section 922 of title 18 of the United States Code, “commonly known as being part of the Brady Handgun Violence Protection Act,” State v. Haney, 966 N.E.2d 921, 923 n.2 (Ohio Ct. App. 2011), provides in subsection (g)(8) as follows:

It shall be unlawful for any person . . . who is subject to a court order that . . . (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of

bodily injury to the partner or child; and (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury . . . to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(8) (breaks between sections omitted).

¶39 Federal law defines “intimate partner” (for purposes of section 922(g)) as “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.” *Id.* § 921(a)(32). The definition of “intimate partner” is implicated here because the Magistrate Court enjoined Mr. Williams from possessing, shipping, or transporting a firearm or ammunition “pursuant to the provisions of 18 U.S.C. subsection 922(g).” (Perm. Restraining Order 2, entered Feb. 17, 2017, Bellot v. Williams, SX-17-DV-036.) But the Magistrate Court did not determine first whether Ms. Bellot and Mr. Williams were “intimate partners” as defined by Section 922(g)(8). This is an error and the error is plain because the statute is clear. “When a statute includes an explicit definition, we must follow that definition, even if it varies from that term’s ordinary meaning.” Stenberg v. Carhart, 530 U.S. 914, 942 (2000) (citations omitted).

¶40 Ms. Bellot and Mr. Williams testified that they were intimate, but they did not state whether they were each other’s current or former spouse. The text messages Ms. Bellot sent to Mr. Williams, which were moved into evidence, suggested that she might have been pregnant, but neither party testified whether they shared a child together. Ms. Bellot could have qualified as Mr. Williams’s intimate partner if they were cohabitating. But there is no testimony on record about where they resided. In fact, Ms. Bellot testified that, for approximately five months before the domestic violence occurred, she was off-island away at school.

¶41 Federal courts have held, with reference to violations of Section 922(g)(8), that “[t]he intimate partner relationship is a fact the government must prove at trial.” United States v. Crespo, 16-cr-546, 2017 U.S. Dist. LEXIS 24065, \*10 (S.D.N.Y. Feb. 21, 2017) (citing United States v. Luedtke, 08-cr-189, 2008 U.S. Dist. LEXIS 96544, \*13 (E.D. Wis. Nov. 18, 2008); United States v. Garretson, 13-cr-029, 2013 U.S. Dist. LEXIS 154246, \*15 (D. Nev. Oct. 28, 2013)). Federal courts have also rejected attempts by criminal defendants to attack the underlying order that was issued in domestic violence cases because the state court failed to find whether the defendant and the victim were intimate partners. *See, e.g., Crespo*, 2017 U.S. Dist. LEXIS 24065 at \*9 (“[T]he Court concludes that the statute does not require that the intimate partner status be made explicit on the face of the protective order.” (citing Luedtke, 2008 U.S. Dist. LEXIS 96544 at \*13)).

¶42 United States v. Sanchez, 639 F.3d 1201 (9th Cir. 2011), is instructive in this regard. In Sanchez, the United States Court of Appeals for the Ninth Circuit held that state courts must “ensure [their] order[s] trigger[] § 922(g)(8) by including either a *finding* that the person subject to the court order represented a credible threat to the physical safety of an intimate partner or child or *specific terms* prohibiting the use,

attempted use, or threatened use of physical force.” Id. (emphasis added).

For a court order to meet the requirements of § 922(g)(8), it must satisfy several distinct sub-elements. First, there must be a court order. Second, this order must have been issued after a hearing, of which the [defendant] received notice. Third, the order must restrain the [defendant] from harassing, stalking or threatening an intimate partner or child of such intimate partner or person, or engaging in conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child. Fourth, the court order must also either include a finding that the [defendant] represents a credible threat to the victim’s safety, or, by its terms, explicitly prohibit the use, attempted use, or threatened use of physical force against such a person.

Id. at 1204 (quotation marks and citations). Although the order at issue in Sanchez concerned Section 922(g)(8)(C)(ii)’s requirement that the domestic violence order “by its terms explicitly prohibit[] the use, attempted use, or threatened use of physical force,” the court’s reasoning is persuasive regarding the “intimate partner” requirement.

¶43 Sanchez’s holding is straight-forward: that all of Section 922(g)(8) must be complied with. It follows then—if a domestic violence “court order must contain explicit terms substantially similar in meaning to the language of (8)(C)(ii),” Sanchez, 639 F.3d at 1205—that similar orders must include findings that the victim and the defendant were intimate partners. That did not happen here.<sup>10</sup>

¶44 Congress enacted a very narrow definition of “intimate partner.” Although the ordinary meaning

---

<sup>10</sup> To be fair, whether state and territorial courts must explicitly find in domestic violence cases that the victim and the wrongdoer were intimate partner is not settled under federal law. Cf. Luedtke, 2008 U.S. Dist. LEXIS 96544 at \*12 (“Because the court commissioner did not necessarily find that the petitioner was his intimate partner, defendant argues that the injunction cannot serve as a predicate for a § 922(g)(8) prosecution. The magistrate judge rejected defendant’s argument, concluding that the issue of whether the injunction petitioner was defendant’s intimate partner is a matter for the government to prove at trial. The magistrate judge’s position finds support in the structure of the statute.” (paragraph break omitted)). Some state courts have recognized that “intimate partner” is a defined term under Section 922(g)(8), or the state’s statutory equivalent. E.g., Michaelson v. Garr, 393 P.3d 1193, 1196 n.8 (Ariz. App. Ct. 2014) (“Garr now challenges the firearm prohibition solely on federal grounds. Specifically, he contends that because he did not meet the definition of an “intimate partner” pursuant to 18 U.S.C. § 922(g)(8), the firearm prohibition could not apply to him as a matter of law. Because we can resolve the issue under state law, we do not address his argument.”); Fox v. Bonam, 45 N.E.3d 794, 805 (Ind. Ct. App. 2015) (vacating portion of protection order that required surrender of firearm) (“[T]he trial court relied solely on 18 U.S.C. § 922(g) in ordering him to surrender his firearms, and that statute does not apply in this case because Tracy is not John’s ‘intimate partner.’”); Haney, 966 N.E.2d at 923 (“While we recognize that Section 922(g)(8) only becomes operable once a person is subject to a protection order, that does not mean that every state protection order forbids, or proscribes, the same conduct addressed in Section 922(g)(8). Therefore, unless the court expressly prohibits the possession of firearms, or the state legislature enacts the equivalent of Section 922(g)(8), there is no state authority prohibiting the possession of firearms merely because a state civil protection order has been issued.” (footnote omitted)); accord Mann v. Helmig, Civ. No. 05-153,

of that phrase might encompass the relationship Mr. Williams and Ms. Bellot had, courts must apply the terms of the statute as defined “even if it varies from that term’s ordinary meaning.” Stenberg, 530 U.S. at 942 (citations omitted).

¶45 Although the parties’ relationship might not have satisfied the federal definition of “intimate partners,” it could have satisfied another statute. The Virgin Islands enacted its own statute prohibiting persons who commit acts of domestic violence from possessing firearm. See 23 V.I.C. § 456a(a)(8). Section 456a of title 23 of the Virgin Islands Code, enacted as part of the Omnibus Justice Act of 2005, see Act 6730, 2005 V.I. Sess. L. 68 (Mar. 5, 2005), is nearly identical to the federal law, except that our Legislature did not adopt the corresponding definitions from the United States Code. The question becomes then whether deliberate, meaning did the Legislature leave it to the courts to decide whether “intimate partner” should mean something different under section 453a of title 23 of the Virgin Islands Code than it does under section 922(g)(8) of title 18 of the United States Code.

¶46 This Court cannot answer that question because it requires further findings. Moreover, the Magistrate Court did not rely on section 453a as the authority for prohibiting Mr. Williams from possessing a firearm. Whether it should have relied on the federal statute, the local statute, or both—and similarly, whether “intimate partner” should be construed more broadly under either statute or both<sup>11</sup>—was for the trial court to decide in the first instance. Not determining what law governed here and not finding whether the facts warranted prohibiting Mr. Williams from possessing a firearm before barring him was an error. Cf. Marsh-Monsanto, 66 V.I. at 381. That error is plain from a reading of either statute.<sup>12</sup>

¶47 The error also affected Mr. Williams’s substantial rights because the outcome might have been

---

2007 U.S. Dist. LEXIS 23839, \*4 n.1 (E.D. Ky. Mar. 30, 2007) (“In the view of this court, plaintiff was correct. Only a person who has been restrained by a court order from harassing, stalking or threatening an ‘intimate partner’ is prohibited by this subsection from possessing firearms. An ‘intimate partner’ is defined, so far as pertinent here, as ‘one who cohabitates or has cohabited with the person.’ ‘Cohabitates’ implies a sexual relationship. Everyone agrees no such relationship existed here.” (citation omitted)); cf. Rieger v. Montgomery Cty., 2009-Ohio-4125, ¶ 16 (Ct. App.) (“[T]he existence of an ‘intimate partnership’ or cohabiting relationship was not actually and directly at issue in the civil-stalking case. It follows that the entry granting the victim a [civil stalking protection order] . . . in the civil-stalking case does not preclude Rieger from now seeking to establish that he and the victim were not intimate partners under the federal Brady Act.”).

<sup>11</sup> Virgin Islands courts are not limited to applying federal law. Cf. ASARCO, Inc. v. Kadish, 490 U.S. 605, 617 (1989) (state courts “possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law.” (citations omitted)).

<sup>12</sup> The Appellate Division of the District Court directed the opposite in Travieso, namely that, “when a domestic violence restraining order is imposed . . . the Territorial Court [should] include the firearm prohibition and the provisions of section 922(g) in all restraining orders issued pursuant to the domestic violence chapter of the Virgin Islands Code.” 39 V.I. at 195 n.4. In this case, the evidence showed that Mr. Williams possessed a firearm. Since Travieso recommended that all restraining orders include



different if the parties' relationship did not satisfy section 921(a)(32)'s definition of "intimate partners." The evidence showed that Mr. Williams possessed a firearm for his job as a corrections officer. On appeal, he asserts that he is "prohibited from shipping or transporting or possession any firearm or ammunition prohibits [him] from significantly from adequately performing [his] career duties, responsibilities and the opportunity to advance [his] career." (Pet. 1.) The Second Amendment to the Constitution of the United States of America protects the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." District of Columbia v. Heller, 554 U.S. 570, 635 (2008). Congress extended the Second Amendment to the Virgin Islands. See 48 U.S.C. § 1561 ("The following provisions of and amendments to the Constitution of the United States are hereby extended to the Virgin Islands . . . the first to ninth amendments inclusive."). Clearly, Mr. Williams's substantive rights have been affected.

¶48 Finally, the error has the potential to damage the reputation of judicial proceedings. If Mr. Williams were indicted for possessing a firearm in violation of the PRO, and by extension section 922(g)(8), the United States Attorney's Office would have to prove at trial that he and Ms. Bellot were intimate partners. But because the Magistrate Court did not determine that they were, Mr. Williams could be precluded from attacking the underlying order and might have to present evidence to the jury in his defense that he and Ms. Bellot were not intimate partners. Cf. Crespo, 2017 U.S. Dist. LEXIS 24065at \*10 (intimate partner is an element of the offense of possessing a firearm in violation of a domestic violence order). Section 922(g)(8) is only implicated when the defendant in a domestic violence case was also an intimate partner of the victim and that finding is for State and Territorial trial courts to determine in the first instance. Clearly, the error does have the potential to damage the reputation of judicial proceedings.

### CONCLUSION

¶49 For the reasons stated above, the Magistrate Court's finding that Mr. Williams committed an act of domestic violence against Ms. Bellot is affirmed. Mr. Williams may have been acting in self-defense when he tried to stop Ms. Bellot from rendering the car he leased from her inoperable or when he tried to stop her from throwing his personal property inside the car to the ground. But he was not acting in self-defense when he drove the car at Ms. Bellot at a high rate of speed. That constitutes assault and assault is an act of domestic violence. However, the Magistrate Court did commit plain error when it issued a two-year PRO without stating its findings on the record or in an accompanying opinion. The error has frustrated

---

language prohibiting the possession of a firearm, the Territorial Court, and later the Superior Court, may have construed the Appellate Division's "recommendation" as a directive and added language to its standard domestic violence orders. To the extent the Magistrate Court relied on Travieso (albeit without citing it), the error would not be plain. But Travieso was also decided before section 456a of title 23 was enacted. And the Virgin Islands Supreme Court has subsequently held that civil domestic violence actions are quasi-criminal. Courts cannot expand the definition of "intimate partner," Stenberg, 530 U.S. at 942, so it is unclear how a blanket firearm prohibition on every person found to have committed an act of domestic violence, as per Travieso, would be constitutional. Under Virgin Islands law, the victim in a civil domestic violence action may be a "parent, child, or any other person related by blood or marriage" *in addition to* "a spouse, former spouse . . . a present or former household member, a person with whom the victim has a child in common, or person who is, or has been, in a sexual or otherwise intimate relationship with the victim." 16 V.I.C. § 91(c). A father-in-law could be a victim of domestic violence by his son-in-law because they are related by marriage. But they would not qualify as "intimate partners."

appellate review. Cf. Wessinger, 56 V.I. at 488.

¶50 Courts have discretion in civil domestic violence cases to decide what relief to award and a PRO is one form of relief. *See* 16 V.I.C. § 91(b). But a PRO is also an injunction as it is an “order commanding or preventing an action.” Wessinger, 56 V.I. at 488 (quotation marks and citations omitted). And injunctions must be accompanied by factual findings. See id. (“[T]he Superior Court was required to make findings of fact when it imposed the injunction, and it abused its discretion by failing to do so.”). As all injunctions, and especially those issued in cases that are “quasi-criminal in nature,” Bernhardt, 51 V.I. at 350-51, courts must balance maximum protection from abuse with the collateral consequences of a domestic violence finding. Imposing the two-year maximum period allowed by law may have been appropriate here, but this Court cannot make that determination because the Magistrate Court did not state its findings or its reasoning. Likewise, this Court also cannot determine whether enjoining Mr. Williams from possessing a firearm for two years was required because the Magistrate Court failed to find facts in support. Federal and Virgin Islands law require courts to enjoin persons who commit acts of domestic violence against an “intimate partner” from possessing a firearm. See 18 U.S.C. § 922(g)(9); 23 V.I.C. § 456a(a)(8). Although it may seem obvious that two persons who were sexually intimate should be “intimate partners,” federal law defines “intimate partner” as “the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.” 18 U.S.C. § 921(a)(32). The record does not establish whether Mr. Williams and Ms. Bellot were “intimate partners” as defined by federal law. They might have been intimate partners under Virgin Islands law, but the Magistrate Court did not consider Virgin Islands law. These errors are plain and require a reversal.

¶51 Because the Court is affirming in part and reversing in part and remanding for further proceedings, the Court will also direct the Magistrate Division to issue a temporary restraining order forthwith and schedule a hearing expeditiously. An appropriate order follows.

DONE AND SO ORDERED this 11 day of February, 2019.



DENISE A. HINDS ROACH, JUDGE

ATTEST:

Estrella H. George  
Clerk of the Court

By: 

Court Clerk Supervisor

2/11/19