

STATE OF RHODE ISLAND

PROVIDENCE, SC

SUPERIOR COURT

STATE OF RHODE ISLAND

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:
:

v.

C.A. No. P1-2020-1991ADV

VICTOR COLEBUT

**STATE'S MEMORANDUM IN SUPPORT OF ITS OBJECTION TO DEFENDANT'S
MOTION TO DISMISS COUNTS TWO (2) AND THREE (3)**

I. PROCEDURAL POSTURE

On August 14, 2024, the defendant filed a motion entitled "Motion to Dismiss Simple Assault and Battery and Violation of No Contact Order." The State objects to the defendant's motion. The defendant alleges that G.L. 1956 § 11-5-3 and 12-29-4 are "void for vagueness" in violation of the Due Process Clause and should be dismissed.

II. RELEVANT FACTUAL BACKGROUND

The defendant was arraigned in Providence Superior Court on July 8, 2020, and held without bail on indictment number P1-2020-1991ADV. That indictment charges the defendant with three (3) distinct counts. Count one (1) murder pursuant to G.L. 1956 §11-23-1, Count two (2) simple assault and/or battery pursuant to G.L. 1956 § 11-5-3 and § 12-29-5 (3rd offense), and Count three (3) violation of a no contact order pursuant to G.L. 1956 § 12-29-4 and §12-29-5 (3rd offense).

III. G.L. 1956 § 11-5-3 AND § 12-29-4 ARE NOT VOID FOR VAGUENSS

G.L. 1956 § 11-5-3 provides: Simple assault or battery.

(a) Except as otherwise provided in § 11-5-2, every person who shall make an assault or battery or both shall be imprisoned not exceeding one year or fined not exceeding one thousand dollars (\$1,000), or both.

(b) Where the provisions of “The Domestic Violence Prevention Act”, chapter 29 of title 12, are applicable, the penalties for violation of this section shall also include the penalties as provided in § 12-29-5.

The Rhode Island Supreme Court has stated that an assault and battery are both chargeable under § 11-5-3. Assault is “a physical act of a threatening nature or an offer of corporal injury which puts an individual in reasonable fear of imminent bodily harm.” State v. Broadley, 939 A.2d at 1021 (quoting Hennessey, 694 A.2d at 696). Battery is defined as “an act that was intended to cause, and does cause, an offensive contact with or unconsented touching of or trauma upon the body of another, thereby generally resulting in the consummation of the assault.” Id. (quoting Fenwick v. Oberman, 847 A.2d 852, 855 (RI 2004)). As this definition reflects, these two crimes, although independent and distinct from each other, are closely related and often arise from a single incident. See Proffitt v. Ricci, 463 A.2d 514, 517 (R.I.1983) (emphasizing that “assault and battery are separate and different acts, each with independent significance,” that often arise out of the same incident); see also State v. Messa, 594 A.2d 882, 884 (R.I.1991).

G.L. 1956 § 12-29-4 Restrictions upon and duties of the court provides in pertinent part:

(a)(1) Because of the likelihood of repeated violence directed at those who have been victims of domestic violence in the past, when a person is charged with or arrested for a crime involving domestic violence, that person may not be released from custody on bail or personal recognizance before arraignment without first appearing before the court or bail commissioner. The court or bail commissioner authorizing release shall issue a no-contact order prohibiting the person charged or arrested from having contact with the victim.

(2) At the time of arraignment or bail hearing the court or bail commissioner shall determine whether a no-contact order shall be issued or extended.

(3) Willful violation of a court order issued under subdivision (1), (2), or as part of disposition of this subdivision of this subsection is a misdemeanor. Beginning July 1, 2025, said violation shall be prosecuted by an attorney appointed by the prosecuting authority who shall self-certify that they have successfully completed a specialized domestic violence prosecution training course and updated training every four (4) years

thereafter, aligned with national best practices and eligible for continuing legal education credit(s) as approved by the Rhode Island Bar Association. The written order releasing the person charged or the written order issued at the time of disposition shall contain the court's directive and shall bear the legend: "Violation of this order is a criminal offense under this section and will subject a violator to arrest". A copy of the order shall be provided to the victim.

A criminal statute will be declared void for vagueness under the Fourteenth Amendment's Due Process Clause when that statute is so vague that people "of common intelligence must necessarily guess at its meaning and differ as to its application." State v. Stierhoff, 879 A.2d 425, 435 (R.I.2005) (internal quotation marks omitted). Challenges based on a statute's vagueness "rest principally on lack of notice." Id. (internal quotation marks omitted). The Rhode Island Supreme Court has held that "[a]bsent some other constitutional concern, if the facts show that a defendant is given sufficient notice that his conduct is at risk we see no reason to speculate whether the statute notifies a hypothetical defendant." State v. Sahady, 694 A.2d 707, 708 (R.I.1997) (citing Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc., 455 U.S. 489, 500, 102 S.Ct. 1186 (1982)). In other words, a vagueness challenge based solely on the Due Process Clause "must be examined in the light of the facts of the case at hand." State v. Fonseca, 670 A.2d 1237, 1240 (R.I.1996) (quoting United States v. Mazurie, 419 U.S. 544, 550, 95 S.Ct. 710, 42 (1975)).

In this case at hand, the defendant is charged with assaulting Ms. Ohler as evidenced by the bruises/trauma to her body. He is also charged with violating a no contact order that was previously imposed by the Court for the protection of Ms. Ohler. The defendant was found to be in her presence in violation of that signed order by police after he called E-911. More importantly, defendant's previous criminal history includes nolo contendere pleas to 1) felony assault on May 15, 2009; 2) eluding police on August 20, 2009; 3) **domestic simple assault and battery on April 1, 2016**; 4) possessing toxic vapors on September 21, 2016; 5) **domestic violation of a no-contact order on December 29, 2016**; and 6) obtaining money under false pretense, under \$1,500 on June

1, 2017. Clearly, this defendant cannot claim to lack notice or that he had to guess as to the meaning of G.L. § 11-5-3 or § 12-29-4 when he has previously made a knowing, intelligent and voluntary plea to these exact same charges/statutes in 2016. In fact, during the plea colloquy the defendant had to admit sufficient facts on the record for each of these charges.

IV. CONCLUSION

For the reasons articulate above, the State respectfully requests the Court deny the defendant's motion to dismiss Counts two (2) and three (3) on the grounds that they are void for vagueness.

STATE OF RHODE ISLAND

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CERTIFICATION

I hereby certify that a true copy of the within State's Memorandum in Support of its Objection to Defendant's Motion to Dismiss has been e-filed through the ECF filing system and is available for viewing and downloading and was mailed, postage prepaid, to Victor Colebut, acting *pro se*, at the Intake Service Center, and e-mailed to standby counsel, Elizabeth Payette, Esq. on the 23rd day of August, 2024.

Victoria Cabral