

APPENDIX

ORI No: NY033141J
Order No: 2012-000131
NYSID No: _____
CJTN No: _____

At a term of the Dewitt Town Court, County of Onondaga, at the Courthouse at 5400
Butternut Drive, E Syracuse, NY 13057, State of New York

Criminal Form 2 8/2010

PRESENT: Honorable Donald M. Benack Jr.

ORDER OF PROTECTION
Non-Family Offense - C.P.L. 530.13⁴
(Not involving victims of domestic violence)
 Youthful Offender (check if applicable)
Part: DV Case No.: 12487507

PEOPLE OF THE STATE OF NEW YORK
- against

Mary A Grady-Flores, Defendant
DOB: 12/29/1956

Charges: PL 140.05 V Trespass;
PL 240.20 V Disorderly Conduct;

Defendant Present In Court

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

TEMPORARY ORDER OF PROTECTION - Whereas good cause has been shown for the issuance of a temporary order of protection [as a condition of: release on bail]

ORDER OF PROTECTION - Whereas defendant has been convicted of [specify crime or violation]:

And the Court having made a determination in accordance with section 530.13 of the Criminal Procedure Law,
IT IS HEREBY ORDERED that the above-named defendant Mary A Grady-Flores (DOB: 12/29/1956) observe the following conditions of behavior:

Stay away from Earl A. Evans;

the home of Earl A. Evans;

the school of Earl A. Evans;

the business of Earl A. Evans;

the place of employment of Earl A. Evans;

6001 E. Mowley RD T/Dewitt

6001 E. Redkey RD T/Dewitt

Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with Earl A. Evans;

Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats or any criminal offense or interference with the victim or victims of, or designated witnesses to, the alleged offense and such members of the family or household of such victim(s) or witness(es) as shall be specifically named Earl A. Evans;

IT IS FURTHER ORDERED that this order of protection shall remain in force until and including 10/25/2013, but if you fail to appear in court on this date, the order may be extended and continue in effect until a new date set by the Court.

DATED: 10/25/2012



Donald M. Benack Jr.
Honorable Donald M. Benack Jr.

Defendant advised in Court of issuance and contents of Order.

Order to be served by other means [specify]: _____

Warrant issued for Defendant

Order personally served on Defendant in Court

Mary Anne Grady Flores
(Defendant's signature)

ADDITIONAL SERVICE INFORMATION [specify]: _____

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize, and in some situations may require, such officer to arrest a defendant who has violated its terms and to bring him or her before the Court to face penalties authorized by law.

Federal law requires that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person against whom the order is sought is an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§ 922(g)(8), 922(g)(9), 2261, 2261A, 2262).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty); and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired. (18 U.S.C. §§ 922(g)(8), 922(g)(9), 2261, 2261A, 2262).

⁴ Use this form for non-family offense orders of protection, issued pursuant to C.P.L. 530.13, that are not limited to victims of family offenses, intimate partner violence and household members who are victims of family offenses. For information on the use of this form, visit the Domestic Violence Registry, See ESR 1, § 214-41; C.P.L. § 530.11(1), 530.11(1), 530.13.

AI

THE PEOPLE OF THE STATE OF NEW YORK
-VS-

DEFENDANT(S)

LOCATION OF INCIDENT:
 STATE OF NEW YORK LOCAL CRIMINAL COURT
 COUNTY OF ONDONAGA
Town OF DEWITT

LOCATION OF DEPOSITION:
 STATE OF NEW YORK
 COUNTY OF ONDONAGA
Town OF DEWITT

On DATE 10/25/12

at TIME STARTED: 9:13 A.M.

FULL NAME: EARL A. EVANS

I, EARL A. EVANS GIVE THE FOLLOWING STATEMENT VOLUNTARILY.
 I, EARL A. EVANS AM THE MISSION SUPPORT GROUP COMMANDER HOLDING
 THE RANK OF COLONEL FOR THE AIR NATIONAL GUARD, LOCATED AT 6001 E. MOLLOY RD
 IN THE TOWN OF DEWITT, ONDONAGA COUNTY, STATE OF NEW YORK. AT APPROXIMATELY
 8:05 AM, ON TODAY'S DATE, 10/25/12, A GROUP OF PROTESTERS BLOCKED OUR GATES
 AT OUR MOLLOY RD AND THOMPSON RD ENTRANCE AND EGRESS. MOLLOY ROAD IS OUR
 PRIMARY ENTRANCE/EXIT AND THOMPSON RD IS OUR SECONDARY ENTRANCE/EXIT. WE WERE FORCED
 TO OPEN UP OUR TOWNLINE RD ENTRANCE/EXIT, WHICH IS NORMALLY NOT USED. THE PROTESTERS
 WERE ON OUR PROPERTY. WE CALLED 911 RIGHT AWAY TO REPORT THE INCIDENT.
 THIS WAS THE THIRD TIME THAT PROTESTERS HAVE DONE AN UN-ANNOUNCED PROTEST
 THAT RESULTED A CLOSURE IN OUR GATE. AS AN AUTHORIZED REPRESENTATIVE OF
 HANCOCK FIELD, I REQUEST THAT THE COURT ISSUE AN ORDER OF PROTECTION AGAINST
 EACH AND EVERY DEFENDANT ARRESTED SUCH THAT THEY ARE TO STAY AWAY FROM
 HANCOCK FIELD AND I REQUEST PROSECUTION TO THE FULLEST EXTENT OF THE LAW,
 THE PROTESTERS REMAINED ON OUR PROPERTY AFTER BEING LAWFULLY ADVISED TO LEAVE
 BY LAW ENFORCEMENT AND I REQUEST PROSECUTION. THE PROTESTERS ALSO LATER BLOCKED
 OUR TOWNLINE ROAD ENTRANCE/EXIT.

NOTICE

(Penal Law § 210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 25th day of October, 2012

-OR-

* Subscribed and Sworn to before me

this _____ day of _____

* This form need be sworn to only when specifically required by the court


(SIGNATURE OF DEPONENT)


(WITNESS)

TPR M.D. BIESEMAN
(NAME OF PERSON TAKING DEPOSITION)

TIME ENDED:

A2

1 Q Okay, and then so we have the guard shack here at
2 the A, and then here B is where the demonstration was that
3 day?

4 A Yes.

5 Q And then, I'm not going to ask you to identify the
6 exact building, but one of these buildings in here on the
7 campus is your office, correct?

8 A Correct.

9 Q Now, you had, there's an, an order, you're aware of
10 the order of protection involving Mary Anne, correct?

11 A I am.

12 Q You're actually the party that requested it,
13 correct?

14 A Correct.

15 Q And the purpose of that, I think in your sworn
16 statement was that you wanted, the purpose of the order of
17 protection was to keep people away from the air base,
18 correct?

19 A To keep them from blocking entry to the air base.

20 Q Right, okay, I think, fair to say at that point in
21 time you and Mary Anne Grady Flores had never met face to
22 face, correct?

23 A Correct.

24 Q Okay, never spoken, correct?

25 A Correct.

A3

1 Q No direct contact?

2 A Correct.

3

4 ATTY. SALISBURY: Okay, if I could approach
5 again, Your Honor?

6 THE COURT: You may.

7

8 Q You're aware, let me hand you what's called
9 People's exhibit two. Do you recognize that document?

10 A I do.

11 Q Is that a copy of the order of protection in this
12 case?

13 A Yes.

14 Q Now that's a, a form that, that's used, correct?
15 You're not...

16 A It was the form that was provided to me. I'm not a
17 legal expert.

18 Q Right, no I understand yeah, but let me I'll, I
19 think your testimony was that you requested the order to keep
20 people away from, from blocking entrance to the base correct?

21 A Correct.

22 Q And what you'll see in here, there's, there's a
23 section in here that says, refers to a number of terms that
24 the person can't do in terms of, of stalking, harassing you,

25

A4

1 sexual misconduct, are you familiar with the terms I'm
2 talking about in the order?

3 A Yes.

4 Q Okay, none of those things were a concern, those
5 weren't any issues you had raised, correct?

6 A In the affidavit that I signed, no.

7 Q Yeah, yeah, this is just, they're just in there
8 because it's the, the form the document?

9 A As far as I understand it, yes.

10 Q Okay, because you're not concerned about Mary Anne
11 obstructing your breathing, sexual misconduct or any of those
12 things, stalking you anything like that, is that correct?

13 A That's correct.

14 Q I think your, you've, you've, you're not afraid of
15 her, correct?

16 A No.

17 Q No, I don't think, I think you've stated you're not
18 afraid of any of the demonstrators personally, correct?

19 A Correct.

20 Q It's, it's an issue you want them, this is to keep
21 them away from the entrance to the gate?

22 A That's correct.

23 Q And you're aware, you're aware, there have been,
24 fair to say there's been a number of demonstration at, at the
25

AS

1 A (Inaudible).

2 Q And no I understand, no I think in fact you were,
3 you have some of your staff actually look at their website,
4 there's a website and so forth that talks about these issues
5 correct?

6 A (Inaudible).

7 Q Yeah, yeah, yeah I mean they're on the internet
8 anyone can...

9 A Yeah.

10 Q Yeah, yeah, but you're aware of the, what, what
11 happens. Let me strike that. As a result of these cases,
12 you're aware of, there's been a lot of confusion and issues
13 over where the base boundary is located, correct?

14 A I think we made it pretty clear where the base
15 boundary is.

16 Q Well, originally, there's been a lot of testimony,
17 a lot of conflicting testimony, there's been confusion,
18 correct?

19 A I've never been, if you ask me if I'm confused
20 about where our property line is?

21 Q No, I'm not asking you directly. Is, what I'm
22 saying, you're aware from these demonstrations, the cases
23 that there's been confusion about that?

24

25

AG

1 A I'm aware there's been questions about where the
2 base boundary is. I think we've been very clear in our
3 answers to that.

4 Q Okay, well in, in fact I think didn't that
5 confusion lead you to have a licensed land surveyor back in
6 late December, January do a survey of the, of the boundary
7 lines, correct?

8 A I guess I would ask you again, whose confusion? I
9 mean we...

10 Q I, I, I understand in general, I'm not saying you
11 personally, but you're aware of there has been confusion
12 among police officers, other parties about exactly where the
13 boundary lines were located, correct?

14 A I can't speculate on what the police officers,
15 whether they were confused about the boundary or not.

16 Q Yeah.

17 A You know, they've asked us where the boundary is,
18 we've told them where the boundary is.

19 Q Okay.

20 A And we did have a licensed surveyor come out to
21 survey the boundary. The was done to verify basically what
22 we've been telling, what we've been saying our boundary is.
23 I will also say that we are required on, by the Air Force and
24 the Air Guard (inaudible), I think it's like every ten years
25 to do a boundary survey.

A7

1 Q Right, but, yeah well I understand that but one of
2 the issues was to verify where the, the base boundaries were,
3 correct, is what you just said, I want to make sure I
4 understand that?

5 A We did a survey to show where the base boundary is.

6 Q And, and part of that in my understanding is the
7 actual base boundary, the actual base property is from the
8 behind the entrance gate and fence, correct, and then there's
9 additional lease property as, as well?

10 A Negative, we're (inaudible) installation, federally
11 own, licensed to the state of New York for use for an
12 International Guard Base. The property line is the midline
13 of (inaudible).

14 Q Right, well I understand that, but you're aware
15 that there are been, there are easements, there have been
16 other issues there in terms of, of, of that. Are you, are...

17 A Which easements are you referring to?

18 Q Well...

19 A There's utility easements and highway easements.

20 Q Right, there's, there's the highway easement,
21 correct?

22 A Correct, and that's for purposes of maintaining the
23 highway.

24 Q Right, that's public access, public there on the
25 roadway?

AS

1 A For the purposes of maintaining the highway, yes.

2 Q Yeah, yet anyone can drive up or down, walk on
3 that, that easement there, correct? Well, I mean they have
4 to be otherwise everyone who drives on East Malloy Road is,
5 is trespassing, correct?

6 A The easement boundary, highway, you know, in
7 general terms, you're correct, correct.

8 Q Okay, yeah, and there are no, there are no signs at
9 least on the, let me direct you to the part of the base along
10 East Malloy Road, your main entrance area. There are no
11 signs there that indict where the property line is, correct?

12 A There... Today there are signs. On February 13th,
13 2013, we did not have signs on that edge.

14 Q Right, so on, just to clarify, February 13th there
15 were no signs. Since then, you have put signs up, correct?

16 A (Inaudible).

17 Q Put what I, can you answer my question first?

18 A (Inaudible).

19 Q Okay, sure.

20 A Well before (inaudible).

21 [Side-talk]

22 Q I'll get a blue pen so we can differentiate. But
23 let me, and we can do that. On February 13th, there were no
24 signs along here, correct, indicating the property line?

25

A9

1 A Correct, the signage was, the signs that are up are
2 the signs that are on the fence line and the sign on the, in
3 the median, that's where the two lanes coming into the
4 (inaudible).

5 Q Those are the signs you've added?

6 A Those were the signs that were there at the time
7 of, February, February 2013 those signs were there.

8 Q Okay, okay, so February 2013 there are some signs
9 on the fence line and then you have your entrance signs that
10 indicates the base entrance?

11 A Correct.

12 Q Okay, and then since then you have, and this line
13 here is what we're referring to as the fence line, correct?

14 A Correct.

15 Q And it runs, it intersects A the guard shack and
16 runs along?

17 A Correct.

18

19 THE COURT: Can you describe for the record
20 this?

21 ATTY. SALISBURY: Yeah, for the record, I am
22 describing on defense exhibit A, there is a
23 distinguishable line that runs from A in both direction.
24 It is a line that indicates a fence, a, I think it's a

25

A10

1 standard chain link type of fence, probably I'm guessing
2 eight to ten feet tall, something, approximately.

3
4 A I think it's eight feet to the top of the fence and
5 then there's that...

6 Q The barb wire on top?

7 A Yes.

8 Q This, and, yet, then since then why don't you put
9 with, would you rather have it as a C or an S to put the new
10 signs? Why don't we put an S, so the jury will understand
11 what you're indicating.

12

13 THE COURT: Do you need a blue pen?

14 ATTY. SALISBURY: A blue pen, yeah, with the
15 new signs.

16

17 Q Okay, with a, with a C that's that was fine, thank
18 you. So the blue C's here reflect where the new signs have
19 been placed to indicate the boundary line, correct?

20 A To indicate the edge of the highway.

21 Q Right, yeah, nothing, nothing I'm sorry let me
22 clear up. I think one little piece you indicated the MQ-9 is
23 a remotely controlled vehicle, correct?

24 A Remotely piloted aircraft.

25

All

1 ATTY. SALISBURY: If I could approach, Your
2 Honor?

3 THE COURT: You may.

4 ATTY. SALISBURY: Let the record reflect I'm
5 showing the witness defendant's exhibit A.

6

7 Q This obviously is, I think you've stated, is an
8 aerial photograph of the campus of...

9 A Yeah.

10 Q Now I'm not asking you to identify which building
11 it is, but you work inside one of those buildings, correct?

12 A Correct.

13 Q Colonel Evans works inside another building
14 correct?

15 A The same building.

16 Q Oh same building?

17 A Yeah.

18 Q Okay, they're in the same building, you're in
19 different buildings for different operations of the base
20 different parts of the unit?

21 A Yes.

22 Q Correct, the one, it's, not dissimilar to when I
23 call it a campus, for instance, a college campus, different
24 buildings, different departments doing different things,
25 correct?

A12

1 A Yes, good analogy.

2 Q Yet, and on East Malloy Road there's the, I think
3 you said there's, there's a public right away, correct?

4 A Yes.

5 Q People, people can drive, correct?

6 A Yes.

7 Q They can walk and jog on the shoulder there?

8 A Yup.

9 Q Now, yet, the reason that you were called that day,
10 you're actually the individual responsible for security at
11 the base, correct?

12 A Correct.

13 Q And I think part of that is you keep track of the
14 demonstrations?

15 A Yes.

16 Q You actually I think stated before you've actually
17 gone on to the website on the internet and looked at stuff?

18 A Yes.

19 Q I think you've even clicked on some of their links
20 and read some of the materials and things like that?

21 A Yes.

22 Q Just stuff that seemed interesting?

23 A Correct.

24 Q Okay, yet, and you've kept track of, of what the,
25 you're, these demonstrations and the cases you've kind of

A13

1 Q Okay, did at some point you go out to the front
2 gate on East Malloy Road?

3 A I did once I was satisfied that we were still under
4 control as far as what was opening and closing and I made
5 sure that the chain of command was notified then I went
6 (inaudible).

7 Q Okay, when you say chain of command, who do you
8 mean?

9 A Originally, initially I contacted Colonel Evans
10 immediately and then I contacted my commander (inaudible).

11 Q When you went out to the, to the gate, what
12 happened when you got there?

13 A Went inside the gate shack and just started
14 observing what was happening, called back to (inaudible) to
15 make sure that the 911 center was notified that we needed
16 assistance with the law enforcement.

17 Q Why do you call 911 in a case like this?

18 A Because it's outside our fence line, it's still on
19 our property, we still use local law enforcement to do the
20 arrests.

21 Q You said you were in the gate shack?

22 A Yes.

23 Q How far is that from where the protesters were?

24 A About a 170 feet.

25 Q Okay, how do you know that?

A14

1 kept, you're aware of what's gone on with them to some
2 degree, correct?

3 A Yes.

4 Q Part of your job you need to be, you know, you want
5 to know what's happening, correct?

6 A Correct.

7 Q Yet, you know that there's been confusions among
8 other parties about where the base boundary has been,
9 correct?

10 A Correct.

11 Q That's one of the reasons after February 13th you
12 put those signs up along the edge of the easement, correct?

13 A Correct.

14 Q The, the, the demonstration of February 13th that,
15 that occurred, I think there was, you observed that, correct,
16 I think you've testified?

17 A Yes.

18 Q There was basically a line of, I believe, eight
19 people that were holding signs, correct?

20 A I think the numbers eight, your right, yup, there's
21 a line of people there.

22 Q Right, holding signs. Mary Anne was actually not
23 one of those people holding a sign there, correct?

24 A Correct.

25

A15

1 ATTY. SALISBURY: Okay and if I could
2 approach, Your Honor?

3 THE COURT: You may.
4

5 Q Mary Anne, let me show you what's Defendant's
6 exhibit A. Do you recognize that photograph?

7 A Yes.

8 Q Okay. Now, are there... On February 13th...

9 A Yes.

10 Q Were there any signs here along the road
11 delineating the boundary of, of the base?

12 A No, there were not.

13 Q Okay and were there any other... Are there... On
14 February 13th, were there any other identifying features that
15 would, that would possibly indicate a boundary line?

16 A No, there were not. There are no trespass signs.
17 Nothing like that at that date.

18 Q Okay.

19 A At that time.

20 Q Okay.
21

22 ATTY. SALISBURY: If I can approach again,
23 Your Honor?

24 THE COURT: You may.
25

A16

1 ATTY. SALISBURY: Your Honor and I'm showing
2 the witness again, Defendant's exhibit A.

3

4 Q Do you recognize what this line here is?

5 A Yes, that would be the (inaudible).

6 Q Okay. Okay. Now, prior to... What... Prior to
7 February 13th, 2013 had, had anyone ever told you the base
8 boundary was (inaudible)?

9 A Not before that, not before the arrest.

10 Q Okay. Now, are... What was your understanding on
11 February 13th, where... Well, let me...

12

13 ATTY. SALISBURY: I think, I'm going to go
14 back to the video again, Your Honor. Let the record
15 reflect we have People's exhibit one, the dash cam video
16 being shown to the jury at approximately 1.13 on the
17 video.

18

19 Q Mary Anne, did you, you previously identified a
20 number of photographs that you had taken. You see the video
21 where people are standing?

22 A Yes.

23 Q What's the relationship between the location of the
24 people in the video to where we see them stand, standing in
25 the photographs?

A17

1 A My belief was that it was the chain link fence and
2 the guard shack and that boundary line that he pointed out in
3 the Google Maps.

4 Q The... What was your belief about where that area we
5 showed where the demonstration was occurring?

6 A That that was public roadway.

7 Q Okay.

8 A And like you said, the jogger running by, that it's
9 a place where the public can pass by and be.

10 Q Okay. It... And was it ever your intent to just
11 consciously disregard the order of protection?

12 A Never.

13 Q Okay.

14 A Never. No, I feel that it's important that I obey
15 that and that I obey that and that I have to take legal means
16 if I want to appeal that.

17 Q Okay. Okay.

18

19 ATTY. SALISBURY: Nothing further, Your Honor.

20 Thank you. Thank you.

21 THE PEOPLE: Judge, may I approach briefly?

22 THE COURT: Sure.

23 [SIDE-TALK]

24 THE COURT: I'm just gonna have everybody stay
25 put. We're gonna take a brief. I'll be right back.

A18

1 THE COURT: You may. (Inaudible) full
2 knowledge and understanding those are the terms of the
3 order of protection.

4 ATTY. SALISBURY: Well, yeah that's true. It
5 says stay away, but I'm, I'm entitled to ask her what
6 the... I can still ask her what her understanding of that
7 is just as he can cross examine her.

8 THE COURT: (Inaudible).

9 ATTY. SALISBURY: No. I think, I asked her
10 what, what's her understanding of that, of what stay
11 away means.

12 THE COURT: (Inaudible).

13 ATTY. SALISBURY: Okay, but I think, I can
14 still ask her that, correct?

15 THE COURT: So (inaudible).

16 ATTY. SALISBURY: I can withdraw it, yes.

17 THE COURT: (Inaudible).

18 ATTY. SALISBURY: Okay.

19 THE COURT: Sustained as to form.

20

21 Q Okay. Mary Anne, what was your understanding of
22 what you had to do to comply with the order of protection?

23 A I had to stay off the base property, but I was
24 allowed to be in the roadway was my understanding on that
25 day.

A19

1 A Yeah. I'm the tall guy. Yeah.

2 Q Okay. I don't recall that before. Did you hear
3 that police officer give that warning?

4 A I didn't. I'm sorry. I was... That's from a
5 different angle. I'm trying to sort of place who that is and
6 where everything is.

7 Q Do you see that you have 30 seconds to move and you
8 won't be arrested?

9 A I hear that.

10 Q Yeah. At, at that point had, had Mary Anne Grady
11 left?

12 A (Inaudible).

13 Q Had Mary Anne Grady left?

14 A Yes.

15 Q Okay and when you were there on February 13th, were
16 you aware of where the base boundary was?

17 A No.

18 Q Okay. Do you still have any idea where the base
19 boundary is?

20 A Since then...

21

22 THE PEOPLE: Judge, objection.

23

24 Q No, just... Okay. Let, let me stop you. Yeah. It,
25 it... There. On, on February 13th, 2013, to your knowledge was

A20

1 THE COURT: I'm going to overrule the
2 objection. You may proceed

3

4 Q Let me ask you. Did, did you have a conversation
5 with Mary Anne about the, the demonstration? About if she
6 would participate in the demonstration that day?

7 A I did, that morning.

8 Q What was that?

9 A The conversation was that she would not participate
10 in the... She would not participate in the demonstration.

11 Q And why, why was that?

12 A She would not participate, because she had an order
13 of protection against her and she needed to not be on base
14 property.

15 Q Okay and the... Do you have... Are you aware of the
16 fact that there was confusion over the base boundary on
17 February 13th, 2013?

18 A Yes, I am aware of that.

19 Q Okay. Was Mary Anne ever one of the people holding
20 signs and standing in that line?

21 A No. No, she was not.

22 Q Okay. Did you recall a red truck exited through
23 the gate?

24 A Very vaguely.

25

A21

1 A The difference would be they're on the other side
2 of the road and we're, we're standing on what we thought was
3 base property.

4 Q You thought where you were standing was base
5 property?

6 A We... Yeah. We... Well, we... Well, actually we
7 thought we were standing on the road to the base property.

8 Q Okay and the reason why they didn't... They
9 thought they were standing on?

10 A They thought they were standing on, on public
11 property on the other side.

12 Q Okay.

13 A They weren't part of our demonstration.

14 Q No further question. Thank you.

15

16 THE COURT: Re-direct?

17 ATTY. SALISBURY: Just a couple of, of
18 questions.

19

20 RE-DIRECT EXAM BY ATTY. SALISBURY:

21 Q I, I didn't... That last one, you thought you were
22 standing on the road to base property?

23 A Yeah. I was... We thought we were standing on the
24 road to base, you know and public property.

25

A22

1 their life may be a little more free to do that and it's all
2 terms in practicality and if they have the time to do that,
3 that kind of thing. So, there were eight of us who had
4 planned to (inaudible) if that were to happen that day and
5 (inaudible) support who did things like media and take
6 pictures and, because of course, you wanted to hit a bigger
7 audience anticipate people who might be driving passed the
8 base.

9 Q Now, let me, let me ask you. On February 13th,
10 were... You're, you're aware of these demonstrations that have
11 gone on?

12 A Yes.

13 Q And have happened, yes. To your knowledge... Your
14 understanding, has there been confusion about the exact
15 location of the base boundary?

16 A Yes, I understand that and I didn't actually know
17 where it was that day anyhow either.

18 Q Okay.

19 A It's not... It wasn't marked when we were there.
20 There's no rule no (inaudible) point.

21 Q Okay.

22

23 ATTY. SALISBURY: Nothing, nothing further,
24 Your Honor. Thank you.

25 THE COURT: Cross?

A23

1 A My belief was that it was the chain link fence and
2 the guard shack and that boundary line that he pointed out in
3 the Google Maps.

4 Q The... What was your belief about where that area we
5 showed where the demonstration was occurring?

6 A That that was public roadway.

7 Q Okay.

8 A And like you said, the jogger running by, that it's
9 a place where the public can pass by and be.

10 Q Okay. It... And was it ever your intent to just
11 consciously disregard the order of protection?

12 A Never.

13 Q Okay.

14 A Never. No, I feel that it's important that I obey
15 that and that I obey that and that I have to take legal means
16 if I want to appeal that.

17 Q Okay. Okay.

18

19 ATTY. SALISBURY: Nothing further, Your Honor.

20 Thank you. Thank you.

21 THE PEOPLE: Judge, may I approach briefly?

22 THE COURT: Sure.

23 [SIDE-TALK]

24 THE COURT: I'm just gonna have everybody stay
25 put. We're gonna take a brief. I'll be right back.

A24

1 Q Outside the base, but not on the base property?

2 A Correct.

3 Q Now, do you, do you know where on the base Colonel
4 Evans works?

5 A No.

6 Q Have you ever been inside the base?

7 A Never.

8 Q Okay. Had, had you ever met Colonel Evans?

9 A Never. I was so shocked the day that Judge Benack
10 was reading this order of protection and it started out
11 saying I couldn't, couldn't...

12 Q Well, that's okay. It, it...

13 A But I never... I didn't know who the guy was. I
14 would not have been able to identify him if I stood next to
15 him in a gas station or I wouldn't know who to look for to
16 stay away from. It was like shocking.

17 Q Okay. The... It... What was your understanding of
18 the purpose of the order of protection?

19 A To keep the protesters away from the base.

20 Q Okay. Now...

21 A To protect the base.

22 Q Are you aware... Have there been legal arguments
23 made about this order of protection?

24 A Yes.

25 Q Okay.

A25

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THE PEOPLE: Judge...

ATTY. SALISBURY: That's just a foundational.

Q It... Now, what's your view of how you need or what's your, what's your view, your thinking of, of how you need to view this order of protection?

A I...

THE PEOPLE: Judge, can we approach?

THE COURT: Sure.

[SIDE-TALK]

THE PEOPLE: Just a full understanding. He's (inaudible). He's... He... He's trying to...

THE COURT: What?

ATTY. SALISBURY: He's trying to accuse her of deliberately violating the order of protection. I'm allowed to ask her how she viewed the order and how, you know, did she have the (inaudible), what's her understanding of that. It goes to the (inaudible).

THE COURT: (Inaudible).

ATTY. SALISBURY: Yeah, what's her...

THE COURT: (Inaudible).

A26

1 ATTY. SALISBURY: No. Well, if, well, if we
2 step over here and I'll explain what that, what that,
3 what it, it...

4 THE COURT: (Inaudible).

5 ATTY. SALISBURY: I... Well, let's see we maybe
6 we talk right there and I can...

7 THE PEOPLE: (Inaudible).

8 ATTY. SALISBURY: Okay. No, I'm, I'm fine.
9 It...

10 THE COURT: (Inaudible).

11 ATTY. SALISBURY: Right. It... No. Okay. The
12 only point of that was that they're... Well, everyone's
13 aware there'd been legal arguments. They and...

14 [SIDE-TALK]

15 THE PEOPLE: They're not relevant.

16 ATTY. SALISBURY: No. No, but they're not and
17 I'm not going into them. It's just you're aware that my
18 asking questions. It, because you will see the
19 following is what's her understanding of how she needs
20 to respect the order and she's going to explain that.

21 THE COURT: (Inaudible).

22 ATTY. SALISBURY: No. No. No. I'm not...

23 THE PEOPLE: That's exactly what you were
24 asking.

25

A27

1 ATTY. SALISBURY: No. No, I wasn't asking for
2 interpret it. I mean I can rephrase as, as to form, but
3 the, the idea, the question to her is, is what's her
4 understanding of, of how she has to respect the order,
5 because I think, Mr. McNamara is claiming she just
6 disregarded it.

7 THE COURT: (Inaudible).

8 ATTY. SALISBURY: Yeah. Okay. I'll just...
9 I'll rephrase, Your Honor.

10 THE COURT: Sustained as to form.

11

12 Q What... Mary Anne, what's your view of how you have
13 to respect the order of protection that's in place?

14 A I am... I know that I have to respect the order of
15 protection. I disagree with its, how it's being applied, but
16 we've had...

17 Q Well...

18 A We have to at least deal with appeals on it and...

19 Q Yeah. No, I understand. I would... I understand
20 that and we're aware of that, but...

21 A But I respect the order of protection. My
22 intention is to respect that order of, of protection even
23 though I don't agree with it.

24

25

A28

1 ATTY. SALISBURY: Okay and if I could
2 approach, Your Honor?

3 THE COURT: You may.
4

5 Q Mary Anne, let me show you what's Defendant's
6 exhibit A. Do you recognize that photograph?

7 A Yes.

8 Q Okay. Now, are there... On February 13th...

9 A Yes.

10 Q Were there any signs here along the road
11 delineating the boundary of, of the base?

12 A No, there were not.

13 Q Okay and were there any other... Are there... On
14 February 13th, were there any other identifying features that
15 would, that would possibly indicate a boundary line?

16 A No, there were not. There are no trespass signs.
17 Nothing like that at that date.

18 Q Okay.

19 A At that time.

20 Q Okay.
21

22 ATTY. SALISBURY: If I can approach again,
23 Your Honor?

24 THE COURT: You may.
25

A29

1 ATTY. SALISBURY: Your Honor and I'm showing
2 the witness again, Defendant's exhibit A.

3

4 Q Do you recognize what this line here is?

5 A Yes, that would be the (inaudible).

6 Q Okay. Okay. Now, prior to... What... Prior to
7 February 13th, 2013 had, had anyone ever told you the base
8 boundary was (inaudible)?

9 A Not before that, not before the arrest.

10 Q Okay. Now, are... What was your understanding on
11 February 13th, where... Well, let me...

12

13 ATTY. SALISBURY: I think, I'm going to go
14 back to the video again, Your Honor. Let the record
15 reflect we have People's exhibit one, the dash cam video
16 being shown to the jury at approximately 1.13 on the
17 video.

18

19 Q Mary Anne, did you, you previously identified a
20 number of photographs that you had taken. You see the video
21 where people are standing?

22 A Yes.

23 Q What's the relationship between the location of the
24 people in the video to where we see them stand, standing in
25 the photographs?

A30

1 UNKNOWN: Sure. Yeah. Sure.

2 THE COURT: (Inaudible) those are all the
3 exhibits with the exception to the video. They gave you
4 some exercise. Recess again.

5 [RECESS]

6 THE COURT: Okay. The Court has received a
7 note from the jurors. I've marked it... We're on?

8 THE CLERK: Yes, we're on.

9 THE COURT: I've marked it as Court's exhibit
10 three. I'm now opening it. "Is there a legal
11 definition on stay away as pertains to the order of
12 protection or is just left to common sense?" And by the
13 way, we have six orders of steak.

14 [LAUGHS] [CROSS-TALK]

15 ATTY. SALISBURY: My position would be that it
16 has to be the definition given to Mary Anne what that
17 means.

18 THE COURT: I don't know if there is. Is
19 there a (inaudible)?

20 ATTY. SALISBURY: I don't think there's an...
21 No, I don't think there is an exact definition.

22 THE COURT: Let's see if (inaudible).

23 ATTY. SALISBURY: I mean, that's what was,
24 that's what the definition was.

25 THE PEOPLE: (Inaudible).

A31

1 THE COURT: (Inaudible). I've got a, I've got
2 a jury note and the note came back asking is there a
3 legal definition of a stay away order pertaining to the
4 order of protection or is it just left to common sense.
5 Is there (inaudible) instruction on stay away, what stay
6 away means? Yeah. And... But it doesn't cover that. I...
7 I'm gonna have to go look. I thought maybe you, you
8 guys may have something (inaudible).

9 [SIDE-TALK]

10 THE COURT: (Inaudible) CPL definitions?

11 THE PEOPLE: Where's the... What's the form
12 from?

13 THE COURT: The forms from 530, 530.13.

14 THE PEOPLE: That's 530.13 for sure, yeah.

15 ATTY. SALISBURY: I don't think there is a
16 5/30/13. There may be a...

17 THE PEOPLE: Definitely a 530.13.

18 THE COURT: CPL. CPL.

19 ATTY. SALISBURY: Yeah.

20 THE PEOPLE: It's absolutely 530.13.

21 THE COURT: I've got in here. I was thinking
22 out loud.

23 THE PEOPLE: That, that (inaudible) in my
24 mind, burning my mind.

25

A32

1 THE COURT: Pardon? Yes, yeah. Yeah. It's...
2 Let me... 530.13.

3 [SIDE-TALK]

4 [THE COURT ON A CALL]

5 THE COURT: All right that didn't help.
6 Here's the issue. 530.13 (inaudible) order protection
7 (inaudible) under CPL, all it says is stay away without
8 any definition of the term that I can see unless the two
9 of you have looked at it and I, I mean my best guess
10 here is it's a factual determination for the jury.

11 ATTY. SALISBURY: It is, but I mean I think,
12 here's the issue. If the defendant was given a
13 definition of that, I think, that has to be the
14 definition given to the jury and then, they have to make
15 a factual determination if her conduct was within that
16 definition, because otherwise, they could come up with
17 a... You could jurors coming up with a completely
18 different definition of what their...

19 THE COURT: The evidence is in. How do I put
20 that in?

21 ATTY. SALISBURY: Well, I think, you have to...
22 The... Define it. I mean, I think, there may have been
23 testimony about that.

24 THE COURT: There was, there was testimony.

25 ATTY. SALISBURY: Yeah.

A33

1 THE COURT: Cause I recall there was
2 testimony. I can't if it was said or not.

3
4 ATTY. SALISBURY: I know I asked my client
5 what... How... What was explained to her about the, the,
6 the stay away, you know, what that meant and, and I
7 don't, and I, I think that's the only witness I asked
8 that, because I don't think any of the of them had
9 orders of protection.

10 THE COURT: I, I think, I think, the only way
11 I can handle it, unless I, I'm hearing different, I
12 still, it's a, it's a factual determination by them
13 based on the evidence they heard, the testimony and the
14 evidence. I don't know what else to do with it.

15 ATTY. SALISBURY: Yeah. I think, telling..
16 You know, the, the testimony and evidence about of what
17 was explained, the testimony about, about that, the
18 discussion of that.

19 THE COURT: Well, I don't know if I have to
20 explain that. I can say there was testimony in, you
21 know, based upon the testimony that was received and
22 there being, you know, I don't know if you want me to
23 say there may have been testimony about what was
24 explained about the stay away.

25

A34

1 THE PEOPLE: Well, Judge I mean, it's been
2 stipulated to.

3 ATTY. SALISBURY: No. No. That's not the
4 issue. The stipulation doesn't define. They want a
5 definition of what does, what does stay away mean and I
6 think it's, because it doesn't just mean stay away. It...
7 I think, we all recognize that and I think you have
8 that, because you would have to refer them to the, the
9 testimony that was taken on what the order of protection
10 meant.

11 THE COURT: Well... I don't think I can do it
12 in the specific way though. I can only say that it's a
13 factual determination for you to make based upon the
14 testimony and evidence you've received.

15 ATTY. SALISBURY: Okay.

16 THE COURT: And it's up to them to figure that
17 they're... I'm sure some of them are recollecting the
18 testimony. That's what it is and they may ask for a
19 read back of the testimony relative to the stay away or
20 a read back, a playback.

21 ATTY. SALISBURY: Playback, yeah.

22 THE COURT: Does anybody disagree with me
23 that that's the only thing I can tell them?

24 THE PEOPLE: I mean, I think, it's up to them.
25 The law doesn't define what stay away means.

A35

1 ATTY. SALISBURY: Yeah. I think, because it...
2 And I... No, I understand. My only issue was that she
3 was given a definition and I... So I think, that was the...
4

5 THE COURT: Well and it's probably the only
6 thing in evidence, in evidence.

7 ATTY. SALISBURY: Yeah. Yeah. Of what...
8 The... That's...

9 THE COURT: So I mean, that's the only thing I
10 can say. Maybe I can start out by saying they're... You
11 know, they... I mean, I don't even know if I want to do
12 that. I think, the only safe answer I can give is a
13 factual determination to be made by you as triers of the
14 fact based upon the testimony and evidence you've
15 received. I don't even want to say it's not defined in
16 the law.

17 ATTY. SALISBURY: No, I wouldn't say that, but
18 I think you can based upon the testimony and evidence
19 received or the, related to that issue.

20 THE COURT: Well, it would have to be related
21 to that issue.

22 ATTY. SALISBURY: I... We...

23 THE PEOPLE: (Inaudible).

24 ATTY. SALISBURY: I think, sometimes it's
25 helpful to focus them on that fact.

1 THE COURT: Alright. Do you have an objection
2 to me saying that?

3 THE PEOPLE: Saying? Just?

4 THE COURT: Testimony and evidence received
5 related to that issue?

6 THE PEOPLE: Yeah. I, I don't have a problem
7 with that.

8 THE COURT: Alright. So... Alright. We'll
9 have them back in here.

10 THE PEOPLE: I mean, Judge, can we approach?

11 THE COURT: Well, before we (inaudible).

12 THE PEOPLE: I guess my problem with that
13 instruction is, is that I stipulated to this fact,
14 because the issue (inaudible), I couldn't, I couldn't
15 call, because he's since passed away.

16 THE COURT: (inaudible).

17 ATTY. SALISBURY: Yeah.

18 THE PEOPLE: I understand that. I understand
19 that.

20 THE COURT: And that's where the crux is.
21 That's really the issue is (inaudible).

22 THE PEOPLE: Which, I think is a factual
23 determination. Whether or not that they violated the...
24 It's a plain language which I...

25 THE COURT: It's a jury request.

A37

1 ATTY. SALISBURY: But I think, we alert to
2 them, that it's, the testimony related.

3 THE PEOPLE: No, I think we just go straight
4 to that you've heard, you've heard... You know I think, a
5 natural thing of you know, ladies and gentlemen for
6 your, for any evidence that you've received in your...

7 THE COURT: The question is (inaudible)
8 factual issue (inaudible).

9 THE PEOPLE: Yeah.

10 THE COURT: You'll have to determine that
11 question based upon the testimony and evidence that was
12 received on (inaudible).

13 THE PEOPLE: Sure.

14 THE COURT: Does that sound good?

15 THE PEOPLE: That's good by me.

16 ATTY. SALISBURY: Can you run that by me
17 again? Sorry.

18 THE COURT: Let's wait this out.

19 ATTY. SALISBURY: Yeah. Sorry. I'm getting
20 tired and I...

21 THE COURT: You're (inaudible).

22 THE PEOPLE: Excuse me. You (inaudible)
23 question the fact that you are the sole triers of the...

24 THE COURT: (inaudible).
25

1 THE PEOPLE: And you are the soul triers of
2 the fact. Sorry. (Inaudible) based upon testimony that
3 you have heard and the evidence that has been received
4 or (inaudible).

5 THE COURT: Does that work?

6 ATTY. SALISBURY: Yeah, I think.

7 THE COURT: Okay. Ready for the jury? Okay.
8 We'll have the jury brought in. No...

9 [CROSS-TALK]

10 THE COURT: You may be seated and (inaudible).
11 The record should reflect the Court has received an
12 additional note from the jury, which has now been marked
13 as Court's exhibit three. Question is, is there a legal
14 definition of stay away as pertains to the order of
15 protection or has it just left the common sense. Your
16 question relates to a question of fact and you are the
17 sole triers of the fact based upon the testimony that
18 you have heard and the evidence that has been received
19 relative to that issue. So, it's the.. Hopefully that
20 helps. At least you have a little extra (inaudible).
21 Is it okay if I staple the answer to the?

22 ATTY. SALISBURY: Yeah, no I think it should
23 be.

24 THE COURT: I am stapling the answer to
25 exhibit 3. Okay we stand in recess.

A39

1. The Trial Court Failed to Provide the Jury with Proper Instructions Regarding the Terminology of the Order of Protection at Issue in this matter

1. Defendant Grady Flores raises the following issue pursuant to CPL 330.30 (1).
 2. There was error at trial which does require reversal of the conviction.
 3. The key issue at trial was whether the Defendant had violated the terms and conditions of the order of protection issued by the trial court regarding the Air National Guard airbase located at Hancock airport in Onondaga County.
 4. The issue of the order of protection issued to the Defendant and to other similar parties has provoked much issue before the Court. As part of this process, the judges of the DeWitt Town Court, (the Hon. David S Gideon and the Hon. Robert L. Jokl, jr.) have explained in open court in the presence of this counsel and numerous other parties, that if a party who was subject to an order of protection related to the air base was present outside the base property they would not be in violation of the order of protection. This explanation was provided in several different ways, including stating that yes being on the other side of the road was not a violation, being outside the base boundary; and that someone not participating in a protest would not be in violation if merely present.
 5. The defense at trial as the Court is aware was based upon the fact that there was great confusion regarding the base property lines and that the Defendant had not knowingly violated the order of protection. The Defendant herself testified to

this fact and to her understanding of what and where she could be without committing a violation of the order of protection.

6. There was extensive testimony at trial regarding this issue as a key defense point – that at the time of the arrest of the Defendant on these charges there was great uncertainty among the parties as to the exact location of the base property line, given conflicting beliefs and the existence of a public easement in the area where the Defendant was standing.

7. As the Court is aware there were prior dismissals of charges and acquittals of defendants based on the testimony and uncertainty over where at the time of the arrest of the Defendant on these charges the base property lines were actually located. There was testimony that knowledge was gained after the events leading to the arrest of the Defendant on these charges that there was uncertainty among many parties, including protestors, the Defendant, police officers and others as to the exact location of the base property lines.

8. Following summations the Court instructed the jury and the members retired to deliberate.

9. Subsequently among the questions presented by the jury to Court was a question seeking the definition of “stay away” the term that was found in the order of protection and which was the key point in the order of protection at issue in the trial.

10. The Defendant requested that the Court provide the same instruction or definition that had been provided to the defendants and others in court. That definition clearly conveyed the intent that if one stayed outside the property of the

base that individual was not in violation of the order of protection. The Defendant's position was that the jury should hear the same definition provided to the Defendant and others in order to determine if the Defendant had violated the terms and conditions of the order of protection.

11. The Court did make a number of efforts to contact other parties for legal assistance and advisement before providing a response to the jury's question. Ultimately unsuccessful in this regard, the Court made the determination that he would instruct the jury that they would have to define the term stay away for themselves. This was done despite the request of defense counsel that the Court provide the same definition as provided to the Defendant.
12. Following this instruction the jury retired and came back with a verdict of guilty on the charge of Criminal Contempt in the 2d Degree and not guilty on the charge of Disorderly Conduct.
13. Subsequent to the rendering of a verdict defense counsel joined the Assistant District Attorney who prosecuted the case in meeting with several of the jurors to discuss the trial and the verdict.
14. Two of the jurors indicated that they found or relied upon the fact that to them "stay away" meant "stay away". They used the terms "stay away means stay away"; "what about stay away didn't she understand" and "she should not have been there". The jurors also referred to the video shown that showed the Defendant standing in front of the demonstrators taking photographs of protestors as an effective way of showing that she was present and therefore in violation of the order of protection.

15. The jurors went on to note that after receiving their response to the question about the meaning or definition of "stay away" if one existed, that other jurors were persuaded to adopt their position regarding the meaning of stay away and whether the Defendant had violated the order of protection.
16. The statements of the jurors clearly indicate that they adopted an interpretation of the words "stay away" that is completely different from the definition the Court had given to defendants and other observers in open court regarding the meaning of the term in the order of protection.
17. The Court had declined to give the Defense request for a definition at least in part based upon a reasoning that the jury should determine issues of fact.
18. The error committed here was that a specific definition had been provided to the Defendant and others present in open court as to what behavior would not constitute a violation of the order of protection. This was in essence a legal definition of a term contained in the order of protection. As such this definition should have been provided to the jury. The jury should have been instructed to then apply that definition in determining whether they found a violation of the order of protection as defined to them in the instructions by the Court.
19. Failure to provide this definition allowed the jury to substitute their own, differing definition from that given to the Defendant and then use that to determine whether a violation occurred.

1 elements of criminal contempt, a number of things that I
2 have to prove to you beyond a reasonable doubt for you
3 to find that woman guilty. I have to prove to you that
4 there has been an issued order of protection. That's
5 been stipulated too. Okay? The Judge talked to you
6 about what stipulated means. Everyone agrees to that,
7 that's evidence. Okay? That is evidence in this case,
8 it has been agreed upon, there's no issue to that.
9 There's an issue that I have to prove of knowledge of,
10 of the order of protection that she actually knew that
11 it was issued. That's been stipulated to as well in the
12 stipulation. Okay? And you'll get a copy of this later
13 and you'll get to see what I mean and we'll talk about
14 it more in my closing, but that's been stipulate, those
15 things have been stipulated to. Okay? What else do I
16 have to prove? Well, I have to prove that on February
17 13th, 2013 in the town of Dewitt that Mary Anne Grady-
18 Flores intentionally disobeyed an order of protection,
19 and what I have to prove is that she intentionally
20 disobeyed this order of protection which told her to
21 stay away from 6001 East Malloy Road. Okay? That's the
22 only issue in this case, whether she violated the stay
23 away portion of telling her to stay away from 6001 East
24 Malloy Road. It's gonna be the only issue. It is the
25 only issue. If you find that she violated that, which

A44

1 you're afraid of the order of protection, because of
2 where that they were going to stand then she, she knew
3 where they were going to stand. Her sister told her to
4 come bring the camera. Okay? She knew where she was
5 going to... They were going to stand, but she said I
6 can't join you, because I'm going to join the... I don't
7 want to violate the order of protection and then, what
8 she do? She goes stands with them anyways. She's not
9 holding the sign, but that's not required for criminal
10 contempt. All that's required is that she didn't stay
11 away from Colonel Evan's employment which was 6001 East
12 Malloy Road. Think about that, think about that. If
13 she didn't think she was on the airbase, why was she
14 concerned about violated the order of protection? It's
15 simple, because she thought she was going to violate the
16 order of protection if she stood there. I'll briefly
17 talk about disorderly conduct. Defense counsel said
18 that basically, that Mike Kergan can't be believed,
19 because he was wrong about one or two things in his
20 testimony, but well... What actually Mike Kergan was
21 wrong about was where Mary Anne Grady Flores was when he
22 gave his warning. He was wrong. She wasn't standing in
23 front of him. She wasn't standing in front of him. She
24 was on the other side of the road and what'd he say?
25 When he arrived he tried to pull in and what did he,

A45

1 importantly that we, the citizenry of our communities be
2 actively involved and my whole family is involved too.

3 Q Okay. Now, are you familiar with the airbase at,
4 at, at, at Hancock?

5 A I am.

6 Q Where this occurred. Okay. Now, are, are you
7 aware of an order of protection that was issued against you
8 with Earl, Colonel Earl A. Evans name on it?

9 A Yes, I am aware of that.

10 Q Now, let me draw your attention to February 13th,
11 2013.

12 A Yes.

13 Q Did you, Mary Anne, intentionally do anything to
14 violate that order of protection against you?

15 A No, I did not intentionally do anything to violate
16 that.

17 Q Okay. Now, let me come back to that order. Does...
18 Take you back to February 13th, you're aware of the events at,
19 at the, the airport?

20 A Yes.

21 Q Okay. Now, were you involved in any of the
22 planning for that event?

23 A No, I was not.
24
25

A46

1 Council in Syracuse where I met with some other fellow
2 Catholic workers and we talked about what we were going to do
3 that afternoon. Was...

4 Q Let me, let me stop you there. Was Mary Anne Grady
5 Flores... Well, do you know Mary Anne Grady Flores?

6 A Yes. I know Mary Anne, yes.

7 Q Okay. Do you... Was Mary Anne Grady Flores present
8 at that meeting?

9 A Yes. At the Peace Council, yes. At the... In the
10 building.

11 Q In the... Well, let me, let me be a little more
12 specific. Was she involved in that planning meeting?

13 A I don't think so.

14 Q Okay and what was the purpose of that meeting?

15 A The purpose of the... It was my first peace action.
16 So, I think, a lot of it was over my head. The purpose of
17 the meeting was to organize what was going to happen, what we
18 were going to do that afternoon and what the possible
19 consequences of our actions might be and how that might play
20 out.

21 Q Okay and do you know how many people were planning
22 to actually demonstrate that day?

23 A Yes, eight.

24 Q Eight? Okay.

25 A Yes.

A47

1 Q Was Mary Anne Grady one of the eight?

2 A No, she was not.

3 Q Okay. Did you ever have any conversations with,
4 with Mary Anne about that?

5 A About?

6 Q Why or why not? Why she would or would not?

7 A She did not want to participate, because of her
8 order of protection.

9 Q Okay and...

10

11 ATTY. SALISBURY: If, if I could approach,
12 Your Honor?

13 THE COURT: You may.

14 ATTY. SALISBURY: The... Oh. They're right
15 here. Oh I'm sorry.

16

17 Q Let the record reflect I'm showing the witness
18 Defendant's exhibits J and, and I. Do you recognize... Do you
19 see yourself in those photographs?

20 A Right in the center.

21 Q Okay and, and what are, what are wearing? If I
22 could reach... It... When you say in the center, are you
23 pointing..

24

25

A48

1 Q Okay. Do you recall at some point later in the
2 demonstration was a, was a (inaudible) given to, to the
3 people?

4 A Yeah.

5 Q And where, where were you standing at that point?

6 A I was standing in the, the roadway there at the
7 entrance to, to, to the base.

8 Q Okay and where was Officer Kergan in relation to
9 you?

10 A I don't remember specifically. He was more...
11 Usually, there were a bunch of officers if I remember
12 correctly, that were standing to the left of us. So, we were
13 facing East Malloy Road with our signs and he had come from
14 that direction and his, I think, he pretty much stayed in
15 that area, but there were a lot of officers that arrived
16 after a while and, and so, we had them on both sides of us
17 and, but so, I don't remember specifically where he was
18 standing.

19 Q Okay. Was Mary Anne standing with you at that
20 point in time?

21 A No, she never stood with us.

22 Q Okay. Thank you, nothing further.

23

24 THE COURT: Your witness.

25

A49

1 showing the defendant or showing Father Pickard the
2 Defendant's exhibits K and, and M.

3

4 Q Do you recognize... Next to the sign that says,
5 "for killing children, God forgive us." Who is that
6 individual sir?

7 A That's myself.

8 Q Okay and in this picture here, do you recognize
9 that individual?

10 A Yes.

11 Q Who... That's, that's you. Okay. Do you recall how
12 many people were involved in the actual demonstration that
13 day?

14 A I don't actually recall the exact number.

15 Q Okay. Well, well, were you involved in the
16 planning for that event?

17 A Yes.

18 Q Okay. Was Mary Anne Grady Flores... Well, strike
19 that. You know who Mary Anne Grady Flores is, correct?

20 A Yeah.

21 Q Yeah. Was Mary Anne involved in the planning for
22 that event?

23 A She specifically stated that she didn't want to
24 become involved and (inaudible).

25 Q Okay and you weren't aware of why that is?

ASU

1 A Because she, she had (inaudible) against and she
2 (inaudible) complicate her life and take the risk of being
3 arrested again.

4 Q Okay. Now, Father you, you... How long have you
5 known Mary Anne?

6 A About five years, I think.

7 Q About five years, okay it... And how do you know
8 her?

9 A Well, the first time I met her was at the funeral
10 of her brother-in-law, Peter Demont [sp].

11 Q Okay and...

12 A And she was at the funeral actually.

13 Q Okay.

14 A Yeah and Peter was, was a (inaudible) individual
15 and he was very close with a lot of people and I got to know
16 Mary Anne through (inaudible) and, and I've more or less
17 involved with, with the, the peace movement through people
18 like, like Mary Anne.

19 Q Okay. Are you aware of Mary Anne's general
20 reputation in, in, in the community for integrity, honesty,
21 truthfulness?

22 A Yes and I consider it to be an example of what it
23 is to put the Catholic church issues and statements and
24 beliefs (inaudible) into action (inaudible). She's a very
25 sensitive person. She knows what Catholic church is all

AS1

1 A Yes.

2 Q Do you know who that person is?

3 A Yes, that, that's myself. I had sprained my ankle
4 just before I came up from the demonstration.

5 Q Okay. It... Now... So, were you... Obviously, you
6 were one of the demonstrators?

7 A That's correct, yes.

8 Q Were you one of the eight arrested?

9 A Yes, that's correct.

10 Q It... Was Mary Anne Grady on one of the
11 demonstrators that day?

12 A No. Oh well, in support she was. She wasn't a
13 part of the action.

14 Q Okay and could you explain? Are there often times
15 at these demonstrations, are there demonstrators who go up to
16 witness and support?

17 A Yes. Yeah. It's actually pretty practical and
18 organized. Even though it may not look organized at times
19 and protest... If you've never been a part of the
20 demonstration, there is actually some method to the madness
21 maybe. We plan it out and, and part of the planning is
22 there's some of us who maybe in our life situations fear to
23 (inaudible) and others who are don't feel they're in
24 situation to do that and they usually do support and a lot of
25 times, you take turns with this. Some people at some time in

A52

1 their life may be a little more free to do that and it's all
2 terms in practicality and if they have the time to do that,
3 that kind of thing. So, there were eight of us who had
4 planned to (inaudible) if that were to happen that day and
5 (inaudible) support who did things like media and take
6 pictures and, because of course, you wanted to hit a bigger
7 audience anticipate people who might be driving passed the
8 base.

9 Q Now, let me, let me ask you. On February 13th,
10 were... You're, you're aware of these demonstrations that have
11 gone on?

12 A Yes.

13 Q And have happened, yes. To your knowledge... Your
14 understanding, has there been confusion about the exact
15 location of the base boundary?

16 A Yes, I understand that and I didn't actually know
17 where it was that day anyhow either.

18 Q Okay.

19 A It's not... It wasn't marked when we were there.
20 There's no rule no (inaudible) point.

21 Q Okay.

22

23 ATTY. SALISBURY: Nothing, nothing further,
24 Your Honor. Thank you.

25 THE COURT: Cross?

A53

1 THE COURT: I'm going to overrule the
2 objection. You may proceed

3
4 Q Let me ask you. Did, did you have a conversation
5 with Mary Anne about the, the demonstration? About if she
6 would participate in the demonstration that day?

7 A I did, that morning.

8 Q What was that?

9 A The conversation was that she would not participate
10 in the... She would not participate in the demonstration.

11 Q And why, why was that?

12 A She would not participate, because she had an order
13 of protection against her and she needed to not be on base
14 property.

15 Q Okay and the... Do you have... Are you aware of the
16 fact that there was confusion over the base boundary on
17 February 13th, 2013?

18 A Yes, I am aware of that.

19 Q Okay. Was Mary Anne ever one of the people holding
20 signs and standing in that line?

21 A No. No, she was not.

22 Q Okay. Did you recall a red truck exited through
23 the gate?

24 A Very vaguely.

25

A54

1 A I measured it off yesterday.

2 Q On whose direction?

3 A Yours.

4 Q And at some point did you leave the gate shack?

5 A Yes.

6 Q Where'd you go?

7 A I went up to coordinate with town of DeWitt police
8 officer that had shown up. They were parked on, as you're
9 looking south, they were parked to the left of our access
10 road coming on to the base, so I went out there to talk to
11 them try to get a feel for timeframe, how long it was going
12 to take to get our access road free.

13 Q Okay, so they were actually parked on the edge of
14 what would be the entrance way?

15 A Yes.

16 Q Okay, in other place but the, but a military
17 installation that would be called a driveway, right?

18 A Yes, correct.

19 Q When you went out there, did you, did you happen to
20 see the defendant?

21 A Yes.

22 Q And where was the defendant when you saw her?

23 A She was walking around, there was a number of
24 people in a line, the line across the driveway (inaudible)
25 oncoming and off going driveways and she was walking around

ASS

1 and seemed to be filming or taking pictures and she went
2 across the street a few times, across Malloy Road and came
3 back.

4 Q Okay, how long did you see the defendant on your
5 side of East Malloy Road, so, in the entrance way, what would
6 be the driveway essentially to the, to the base?

7 A The majority of the protest, she was on the base,
8 the north side of Malloy Road.

9 Q Okay, which is, the north side is where the base
10 actually is located, right?

11 A Yes.

12 Q Do you remember about how long the protest was?

13 A It went, it went past three o'clock, it went passed
14 three, but the exact time I'm not sure.

15 Q Okay.

16 A It started around 2:30, 2:30 timeframe and then it
17 went past three o'clock so I want to say it was over an hour.

18 Q Okay, it, definitely over half an hour though?

19 A Yes.

20

21 THE PEOPLE: Okay, for the record, I'm showing
22 the witness what has been marked as defendant's exhibit

23 A.

24 THE COURT: A.

25 THE PEOPLE: What's that?

A56

1 A Yes, good analogy.

2 Q Yet, and on East Malloy Road there's the, I think
3 you said there's, there's a public right away, correct?

4 A Yes.

5 Q People, people can drive, correct?

6 A Yes.

7 Q They can walk and jog on the shoulder there?

8 A Yup.

9 Q Now, yet, the reason that you were called that day,
10 you're actually the individual responsible for security at
11 the base, correct?

12 A Correct.

13 Q And I think part of that is you keep track of the
14 demonstrations?

15 A Yes.

16 Q You actually I think stated before you've actually
17 gone on to the website on the internet and looked at stuff?

18 A Yes.

19 Q I think you've even clicked on some of their links
20 and read some of the materials and things like that?

21 A Yes.

22 Q Just stuff that seemed interesting?

23 A Correct.

24 Q Okay, yet, and you've kept track of, of what the,
25 you're, these demonstrations and the cases you've kind of

AS>

1 Q I think there was a, they, they spread a line of
2 ashes across the road, those eight?

3 A Yes.

4 Q And then stood behind it, with their, with their
5 signs?

6 A Correct.

7 Q Mary Anne was walking around on the other side
8 taking photos I think you said?

9 A She was walking up and down the line, taking photos
10 or filming.

11 Q Filming right.

12 A She was also interacting with people that were in
13 the line.

14 Q Talking to them?

15 A Yeah, yup.

16 Q Yeah. Yet, I think there were some other people
17 walking around as well. A gentlemen in a green coat, for
18 instance?

19 A Yes.

20 Q And as well as there several police officers
21 standing there, correct?

22 A Yep.

23

24 ATTY. SALISBURY: And, if I could approach
25 again, Your Honor?

A59

1 earlier, my name is Jordon McNamara and I represent the
2 People of the state of New York and the Onondaga County
3 DA's office. It's my pleasure to, to prosecute this
4 case today. The defendant is charged with two, with two
5 counts. The first count that she is charge with is
6 criminal contempt in the second degree and the second
7 count that she is charged with is disorderly conduct and
8 it says that, and the information as the Judge spoke to
9 you about says on or about the 13th day of February 2013
10 at 6001 East Malloy Road, 174th attack wing at the Air
11 Force base, in the town of Dewitt, county of Onondaga,
12 state of New York at approximately 2:30 in the
13 afternoon, the defendant did commit the offenses of
14 criminal contempt in the second degree and disorderly
15 conduct when the defendant, Mary Anne Grady Flores,
16 after being asked to move continued to stand in the
17 driveway of the, of 6001 East Malloy Road and obstruct
18 vehicles from being able to drive onto the property.
19 She did this in violation of a dually served order of
20 protection ordering her to stay away from 6001 East
21 Malloy Road. Okay? That's the charge. You'll hear
22 more about it later. The Judge will, will charge on the
23 law. That's his job, but that's what you're here to
24 consider. Okay? Ultimately when this case comes down
25 to it, you're gonna be asked to consider a number of

A60

1 (inaudible) witness down there and became more familiar with
2 Mary Anne Grady with the peace community and celebrate mass
3 in Ithaca at different locations and functions and it's just
4 been since 2000 (inaudible) action with everyone since 2000.

5 Q Okay. Now, are you, you aware of her reputation in
6 the community for things like honesty and truthfulness,
7 integrity, morality?

8 A Oh yes. Yeah and I find her a person of integrity
9 and you know, she just practices what she preaches. I mean,
10 she lives that up.

11 Q Okay. Is she a person of truthfulness and honesty?
12 Is that her reputation?

13 A Yes. Yes and she really follows her conscience.
14 That's important.

15 Q Okay. It... Now, when you, when you seen that
16 reputation, you seen that in, in personal through
17 interactions with others?

18 A Yeah, definitely. In her own personal life and,
19 and in her... I'll just... In her faith life. You know, she
20 lives what she believes in the gospel and well, maybe an
21 expression of a faith that does justice. You know, she
22 follows that and puts that faith into practice and
23 (inaudible).

24 Q Okay.

25 A It's not a Sunday thing. It's a consistent life.

AGI

1 Q Consistent life and you found her to be a truthful
2 person? Okay and, and an honest person?

3 A Honest person. As I say, in our, in our Catholic
4 theology and our teaching and ethics is our conscience is our
5 value and, and our conscience is the most sacred thing we
6 have in a person and the conscience is supposed to be
7 followed and it's honored and it's a holy place and she is a
8 woman of, a person of conscience and finds that holy and
9 wouldn't betray that. So, I think, that's what I find her
10 and I experience in her life situation.

11 Q Okay. Nothing, nothing further. Thank you.

12

13 THE COURT: Cross examine?

14

15 CROSS-EXAMINATION BY THE PEOPLE:

16 Q Good afternoon, Father.

17 A Good afternoon.

18 Q You known the defendant for over a decade you said?

19 A Yes.

20 Q Probably closer to two?

21 A Yeah.

22 Q Okay and during that time you've engaged in... You
23 said you went to the college of the America's?

24 A I've been down there, yes.

25

A62

1 A Yeah.

2 Q Something... Aging everybody.

3 A Yeah.

4 Q It... Do you... And, and how, how do you know her?

5 A I know her through the Catholic worker and works at
6 Social Justice.

7 Q Okay. It... Do you know of her, her reputation in
8 the, in the community?

9 A Of course. Yes, I do.

10 Q Okay and are you aware of her general reputation in
11 the community in terms of, of honesty and truthfulness,
12 morality?

13 A Yes, of course.

14 Q And what is that reputation?

15 A Well, I think, Mary Anne has a very high level of
16 integrity and a very high level of conscious and not to sound
17 dramatic or anything, but I could easily picture Mary Anne in
18 World War two hiding Jews. I think, that... And the
19 importance of that happening then is equally important today.
20 So, I look at her as a person of courage, integrity and
21 awareness and clarity around what is going on in the world of
22 social justice for all types of people.

23 Q Okay and do you know how she's considered by others
24 in terms of her, her reputation in that regard, in, in terms
25 of integrity, honesty, truthfulness?

A63

1 A I have never heard anything to contradict that.

2 Q Okay.

3 A Or seen anything in my own experience of knowing
4 her all these years.

5 Q Okay. It... I'm going to, I'm going to leave it
6 right there. Thank you.

7

8 THE COURT: Cross?

9

10 CROSS-EXAMINATION BY THE PEOPLE:

11 Q Good afternoon, Mr. DeSalvo.

12 A Good afternoon.

13 Q How... You said, about 30 years you've known the
14 defendant?

15 A Yes.

16 Q How'd you meet, how'd you first meet the defendant?

17 A I met them, Mary Anne, through social justice work,
18 through retreats, through religious retreats and through
19 friends in Ithaca.

20 Q Okay and you said you know her character for
21 truthful honesty and integrity to be that of a good one?

22 A Yes, we're all human.

23 Q Sure. Would your, would your knowledge of her
24 reputation change... Are you aware that she's been convicted
25 twice of disorderly conduct?

A64

1 Judge Gideon, the justice is about love of humanity, the
2 justice that is about (inaudible) and a justice that is
3 about (inaudible) the children and (inaudible). Thank
4 you.

5 [APPLAUSE]

6 THE COURT: Firstly the Court takes this
7 opportunity for both its prosecution and defense counsel
8 for their comments and insights and also to the
9 defendant and for their professionalism throughout all
10 of these proceedings in presenting their respective
11 views. Contrary to what the Court believes to be the
12 defendant's beliefs and her case is both present and
13 previous are first amendment cases involving an
14 unfettered right to expound upon our positions without
15 limitation. This Court cannot disagree more. In the
16 opinion of this Court, the present case, as well as the
17 prior cases, involve nothing more than the defendant
18 willing to break the law to seek publicity for her
19 cause. Publicity at any cost without any regard for the
20 rules of society. This was never more evident to this
21 court than during the testimony of Matthew Ryan and
22 others where and it was disclosed that planning sessions
23 are held, prior to the demonstrations where at the risk
24 of arrest is discussed and the participants are groomed
25 according to who is waiting to be arrested versus those

AGS

1 who are not. To this Court, it seems abundantly evident
2 that if one knows there is a risk of arrest, then the
3 activity being contemplated is most likely illegal. To
4 this Court, the demonstration participants clearly have
5 a first amendment right to protest, but only in a lawful
6 manner. There are limits to our individual rights and
7 the opinion of this Court, one person's rights will
8 extend only as far as another's rights begin.

9 Throughout this proceeding and the prior proceedings
10 this Court has certainly observed an acknowledgement of
11 these individual fundamental rights by the base
12 personnel of the 174th Attack Wing, not only during the
13 testimony but also in the planning and accommodations
14 made to provide for safe areas in which the
15 demonstrations can occur. Demonstrations have occurred
16 without arrests until some of the participants have
17 found it necessary to block the entrance ways to the
18 facility for the simple reason, evident to this Court,
19 to create conflict and media attention, acts which are
20 certainly calculated to force an arrest. As on prior
21 occasions the authorities have been questioned as to
22 whether the act would result in an arrest prior to the
23 individual embarking on the prohibited action. This
24 Court has observed the constant testing of limits and as
25 we, as children, learn while growing up the testing of

A66

1 limits can be a learning process with boundaries and
2 consequences to be had. While the Court finds the
3 defendant to be an equable and likeable person, as in
4 any matter before this Court this is not the sole
5 criteria to be considered by the Court in reaching an
6 appropriate sentence to be imposed. The Court
7 acknowledges receipt of the sentencing memorandum
8 submitted by defense counsel and has had an opportunity
9 to review the same, along with the attached letters and
10 the letters that were just attached. The Court has also
11 had an adequate opportunity to review the pre
12 sentence investigation report prepared by the Onondaga
13 County Probation Department concerning the defendant
14 finding it unfortunately, devoid of any appropriate
15 substance on which to intelligently base its conclusion.
16 Rather than the usual in-depth analysis concerning
17 family, environment and social circumstances usually
18 provided by the probation department, the report merely
19 provides minimal background information appearing to
20 draw its conclusion that the nature of the offense that
21 the defendant was convicted of really not that big of a
22 deal. The report fails to take into account the fact
23 that this particular defendant having been twice
24 convicted by this Court following trial, has
25 intentionally out of protest refused to pay the fines

AG7

1 and surcharges previously imposed by this Court despite
2 the fact that she is clearly able to do so financially.
3 The Court having noted that she has certainly able to
4 post bail on behalf of her fellow codefendants. This
5 Court recalls this particular defendant having
6 previously declared to this court for pride in carrying
7 on the tradition of her parents who were involved in
8 many earlier protests concerning other issues and that
9 they were friends with one of the former justices of the
10 supreme court of the United States, information which
11 escaped the probation officer in his investigation. The
12 most useful information to this Court was the statements
13 made by the defendant to the probation officer admitting
14 her presence at the entrance of the base at Malloy Road.
15 While the Court understands that the defendant and her
16 any supporters who have sent notes to this Court
17 disagree with the findings of the jury, the fact remains
18 that the defendant has been found guilty by six everyday
19 citizens who appeared to carefully weigh all of the
20 evidence presented to them during the trial. Whether
21 the defendant was or was not a participant in the
22 protest is completely irrelevant to her conviction for
23 criminal content second. I would remind the defendant
24 that she was acquitted by that same jury of the
25 disorderly conduct charge just as her codefendants were

AG8

1 by Judge Jokl following a bench trial. The simple fact
2 is that whether the defendant was present for as she
3 testified for emotional support, publicity or otherwise,
4 she clearly admitted that she was there on the property
5 of the 174th Attack Wing. That is in violation of the
6 order of protection in this Court previously issued. As
7 it has always been a position of this Court and the
8 understanding of the officers who have testified in this
9 matter and previously, had the defendant remained across
10 the street from the property she would of not have been
11 arrested for violating the order of protection. As it
12 is clearly depicted in the video and obviously found by
13 the jury, the defendant decided to cross the street onto
14 the base property. To this Court, if the defendant was
15 there only to take pictures, she could've adequately
16 have done so across the street using the zoom or
17 otherwise. She obviously chose not to. So there is no
18 misunderstanding these were the choices that you and you
19 alone made fully cognizant of the consequences that
20 could result. You and you alone placed yourself in this
21 position. In deciding the appropriate sentence in this
22 case, this Court would remind the defendant of it
23 sentencing comments made during her last conviction for
24 disorderly conduct in February of this year. The Court
25 does not agree with the defense counsel or the probation

A69