

Supreme Court justices raise questions about gag order in Fotis Dulos case during emergency hearing

By DAVE ALTIMARI | HARTFORD COURANT

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Fotis Dulos stands during a hearing at Stamford Superior Court on June 11, 2019 in Stamford after he was charged with evidence tampering and hindering prosecution in the disappearance of his wife Jennifer Dulos.

Several state Supreme Court justices questioned the gag order implemented in the on-going case of the disappearance of Jennifer Farber Dulos Thursday, hinting that the state’s jury selection process weeds out

potential bias and any impact that pre-trial publicity can have even on a high-profile case like this one.

“What’s the prejudice the state sees here even with extensive

publicity?” Justice Stephen Ecker said. “What evidence has there ever been in Connecticut that a trial has been prejudiced by pre-trial publicity?”

The court was holding an emergency hearing to consider an appeal by lawyers for Fotis Dulos challenging a gag order imposed by Superior Court Judge John Blawie. Fotis Dulos has been arrested twice for tampering with evidence in connection with the disappearance of Jennifer Faber Dulos, who has been missing since May 24.

A full panel of justices spent more than an hour questioning Norm Pattis, lawyer for Fotis Dulos, and assistant state’s attorney Robert Scheinblum about the merits of the gag order. The order prohibits not only attorneys, but also potential witnesses and Dulos or his family from commenting on the case.

Pattis said that the gag order is unfair because Dulos is unable to fight back against the allegations raised in arrest warrants that he said “speculate” that Dulos waited at his wife’s New Canaan home on the morning of May 24, killed her and drove the body away in her own vehicle.

“I was shocked at what’s been filed in the warrants. I’ve never seen a warrant in 30 years of practice where speculative

theories were allowed to be made public,” Pattis said. “We didn’t create this tidal wave of publicity but I’ll be damned if we’re going to let it drown us.”

The justices didn’t focus as much on the details of the Dulos case but more on the breadth of the gag order issued by Blawie and whether it is even necessary in Connecticut, where under the state’s voir dire jury selection process lawyers can question jurors and use challenges to keep them off the jury if they feel they are biased.

“We have an extraordinary voir dire process where you can ask questions until the cows come home,” Chief Justice Richard Robinson said.

Several justices also pointed out that the state recently argued that pre-trial publicity didn’t have an impact in the Cheshire murders trials. Joshua Komisarjevsky is seeking a new trial based partly on the issue that his trial should have been moved from New Haven because of the massive publicity surrounding the case. The state argued in that case that the voir dire process worked well. There was a gag order imposed in that case.

“The state made a pretty good case that despite the massive saturation of publicity in that case there was no prejudiced in the Cheshire cases,” Ecker said.

Scheinblum argued that a

judge should have the option to impose a gag order after reviewing all other options. Scheinblum admitted that the state asked for a gag order on just Pattis after he incorrectly stated in open court that Michelle Troconis, Fotis Dulos’ former girlfriend, had taken and passed a polygraph test. Blawie extended the order to include any potential witnesses, law enforcement, Fotis Dulos and any of his family and friends.

Troconis also has been charged twice with tampering with evidence. She is free on two bonds of \$500,000 and \$100,000, respectively, and is not part of this appeal. Dulos is free after posting two separate \$500,000 bonds.

In his court briefs, Pattis argued “no court in Connecticut has previously entered a gag order of this scope.” He argued that the order is overly broad and unfair to Dulos, who has been charged with hindering prosecution and evidence tampering. Dulos’ next court appearance is Jan. 7 in Stamford Superior Court.

The Courant has filed an amicus brief opposing the gag order, arguing that it exceeds the court’s authority and amounts to prior restraint of free speech. The paper wasn’t allowed to participate in oral arguments.

In September, police released a 43-page arrest warrant affidavit that said police obtained

surveillance videos showing a red Toyota truck driven by Dulos that traveled back and forth from Farmington to New Canaan on the day Farber Dulos disappeared.

She has not been found since she disappeared on May 24.

A home security video also showed Farber Dulos' Chevy Suburban leaving her New Canaan home shortly before 10:30 that morning. State police said in the arrest warrant affidavit that they believe Dulos was driving and that the body of his dead wife was in it.

The affidavit also quotes Michelle Troconis saying she saw Dulos at a Mountain Spring Road home his company owns cleaning a "coffee spill" out of the front seat of the Toyota. She said he handed her the towel and that it didn't smell like coffee.

Police said that they found Farber Dulos' blood in the truck.

Pattis has criticized the latest arrest warrant affidavit saying it publicized what state police "believed" happened compared to what the evidence so far actually shows. Pattis wrote that in the second arrest warrant affidavit, police said they "believe" Dulos may have used his wife's vehicle to help move her body from her home to some as yet undiscovered location and that they believed he was

lying in wait for her to return home after dropping off their five children at school in New Canaan.

After Thursday's hearing both Pattis and Dulos addressed the media on the steps of the Supreme Court.

"Mr. Dulos is not guilty and we are anxious to try this case," Pattis said. "Expecting us to be silent in the face of life-destroying allegations is more than the law should allow."

Dulos said this is not just his right but "everyone's right which is the right to free speech."

Dulos then once again addressed the fact he hasn't seen his children in more than six months.

"For the past six months my children and I haven't been allowed to see or speak to each other," Dulos said. "My children have been banned not only from me but from their extended family. My sister is here and she wanted to see my children and speak to them and she wasn't allowed to. The same with the rest of my family.

"So because I cannot tell them I will tell you, I love my children, I miss them every day and I will not stop fighting for our right to be a family." ■