

**Crawford v Ally**

2020 NY Slip Op 34526(U)

September 9, 2020

Supreme Court, Bronx County

Docket Number: 260054/2020

Judge: Jr., Kenneth L. Thompson

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*Dismissed  
as  
moot*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX IA 20 \_\_\_\_\_ X

SHAMIKA CRAWFORD,  
Petitioner,

-against-

HONORABLE SHAHABUDEEN ALLY, Justice of  
the Criminal Court,

-and-

DAERCEL D. CLARK, Bronx District Attorney,

Respondents.

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Index No: 260054/2020

**DECISION ORDER AND JUDGMENT**

**Present:**  
**HON. KENNETH L. THOMPSON, JR.**

The following papers numbered 1 to 8 read on this **petition**

No	On Calendar of July 28, 2020	PAPERS NUMBER
	Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	<u>1, 3</u>
	Answering Affidavit and Exhibits-----	<u>4, 6</u>
	Replying Affidavit and Exhibits-----	<u>7, 8</u>
	Affidavit-----	_____
	Pleadings -- Exhibit-----	_____
	Memorandum of Law-----	<u>2, 5</u>
	Stipulation -- Referee's Report --Minutes-----	_____
	Filed papers-----	_____

Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Petitioner seeks a writ of mandamus directing the Bronx Criminal Court to hold an evidentiary hearing concerning the appropriateness and scope of the temporary order of protection in the underlying criminal action, People v. Crawford, Docket No. 2019BX029058. This application is based upon a due process claim under the New York State Constitution.

On November 3, 2019, Petitioner, Shamika Crawford, (Crawford), was arrested and charged with assault in the third degree, petit larceny, criminal obstruction of breathing and harassment in the second degree. The complainant

was Keivian Meyers, (Meyers), who complained that Crawford, a brother of hers and an unidentified man kicked his face and took his gold chain. The police were called and Crawford was arrested. Crawford and Meyers have two children in common, and Meyers lived with Crawford in her NYCHA apartment along with the two children and a brother of Crawford.

Crawford was arrested and arraigned on November 3, 2019 and she was released on her own recognizance under the terms of a full temporary order of protection, (TOP). Under CPL 530.12(1), a court in a criminal action, “may issue a temporary order of protection ...as a condition of any order of recognizance.” The full TOP required Crawford not to return to her apartment where Meyers was staying and where the alleged attack took place. The People indicated that since the charges were violent offenses, the People asked for a full TOP. Crawford’s argument for a limited TOP that would permit her to return home was adjourned to five days later, November 8, 2019.

On the return date, November 8, 2019, respondent, Judge Shahabuddeen Ally, presided. The People asked for continuation of a full TOP because the defendant attacked Myers in a home that Crawford and Meyer shared and there were about 17 prior domestic incident reports.<sup>1</sup> Crawford’s attorney asked for a due process hearing based on Crawford’s property and family interest. Judge Ally

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<sup>1</sup> Transcript of hearing before J. Ally, November 8, 2019, p. 2.

responded that this is a hearing and that unless Crawford had some other argument that “the parties will remain safe with a limited order,” the TOP will remain full.<sup>2 3</sup> Judge Ally set an agreed to schedule for a motion seeking modification of the full TOP. The case was adjourned to December 20, 2019. “[T]he form said hearing should take is left to the discretion of the judge conducting it. Clearly, although a full evidentiary hearing is permissible and of course desirable from the petitioner's point of view, is it not mandatory.” (*Lopez v. Fischer*, No. 17025/09, 2009 WL 4737590 [N.Y. Sup. Ct. Dec. 02, 2009]).

On the December 20, 2019 return date, Crawford’s order to show cause was fully submitted. Judge Ally denied the application to modify the full order of protection on grounds that “there was no change of circumstances, there was nothing new in your movement [sic] papers.. on its merits, I don’t believe it warrants the limited order or modification of the order.”<sup>4</sup>

On January 30, 2020, the parties appeared before Judge Audrey Stone. The order of protection expired on January 30, 2020 and the People made an application to extend the TOP. Judge Stone indicated that it was not her practice to conduct a hearing on extensions or modifications of a TOP, “but certainly will allow everyone to have an opportunity to be heard.” Judge Stone reviewed

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<sup>2</sup> Transcript of hearing before J. Ally, November 8, 2019, p. 6.

<sup>3</sup> A factor a Court considers in modifying a full TOP to permit entry to the home is “whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition.” (*People v. Carrington*, 12 Misc. 3d 1189(A), 824 N.Y.S.2d 764 [Crim. Ct. 2006])

<sup>4</sup> Transcript of hearing before J. Ally, December 20, 2019, p. 3.

photographs of the injured complainant.<sup>5</sup> Judge Stone also observed that a significant amount of time had passed with “no particular reason to believe this defendant is not following the order of protection.”<sup>6</sup> Judge Stone reviewed the domestic incident reports that were included in this Article 78 proceeding of which Judge Stone stated “I don’t believe they were presented last time it was before Judge Ally.”<sup>7</sup> Defendant’s attorney informed Judge Stone that the ADA argued before Judge Ally that there should be a full order of protection on grounds of there being prior domestic incident reports between Crawford and Meyers without indicating that all of the domestic incident reports were made by Crawford against Meyers. Crawford’s attorney indicated that he did not have the domestic incident reports when before Judge Ally.<sup>8</sup>

Judge Stone observed that there was no argument that the defendant threatened Myers or had any issues with drug or alcohol abuse or any access to weapons. In contrast, Judge Stone observed that Myers had threatened Crawford and that he had an alcohol intoxication issue.

Accordingly, Judge Stone renewed the TOP on a limited basis that permitted Crawford to return to her apartment and reside with her children, but required her “to refrain from any act that would create any unreasonable risk to the health,

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<sup>5</sup> Transcript of hearing before J. Stone, January 30, 2020, pp. 8-9.

<sup>6</sup> Transcript of hearing before J. Stone January 30, 2020 p. 29.

<sup>7</sup> Transcript of hearing before J. Stone, January 30, 2020 p. 29.

<sup>8</sup> Transcript of hearing before J. Stone, January 30, 2020 p. 30.

safety, and welfare of any family member in particular, that she not engaged in any family offenses against the complainant.”<sup>9</sup> There was colloquy regarding whether the limited TOP mooted this article 78 proceeding.<sup>10</sup>

The underlying criminal proceedings afforded Crawford multiple opportunities to be heard regarding her applications to modify the TOP. As could be anticipated, different arguments and evidence proffered at different appearances could produce different results. There were clearly additional argument and evidence that was before Judge Stone that was not before Judge Ally.

On a March 5, 2020 appearance in criminal court the People moved to dismiss on grounds that the People cannot meet their burden of proof at trial. Judge Beth Beller dismissed all pending charges against Crawford.

It is undisputed that the application for a writ of mandamus directing an evidentiary hearing in the underlying proceeding is moot.<sup>11</sup> However, petitioner maintains that the facts of the underlying criminal proceeding warrant application of the exception to the mootness doctrine. The exception to the mootness doctrine includes three factors, “(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on,

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<sup>9</sup> Transcript of hearing before J. Stone, January 30, 2020 p. 38-39.

<sup>10</sup> Transcript of hearing before J. Stone, January 30, 2020 pp. 39- 40.

<sup>11</sup> Reply in Support of Verified Petition, p. 6.

i.e., substantial and novel issues.” *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 714–15 [1980]).

With respect to the likelihood of repetition, there is no possibility of a repetition with the same parties as the criminal proceeding was dismissed, but similar circumstances may arise in another proceeding by someone else in the general public. With respect to evading review, under the facts of Crawford’s criminal proceeding, the modification of the full TOP and the dismissal of the criminal proceeding has mooted her article 78 proceeding. However, similarly situated defendants’ proceedings do not necessarily evade review as is seen in *Lopez v. Fischer*, (No. 17025/09, 2009 WL 4737590 [N.Y. Sup. Ct. Dec. 02, 2009]).

With respect to whether the issues are substantial and novel, the plethora of cases regarding the due process requirements in the context of a TOP in a criminal matter is evidence it is not a novel issue.

Accordingly, this special proceeding is dismissed as moot.

The foregoing constitutes the decision, order and judgment of the Court.

The Clerk of the Court is directed to enter judgment accordingly.

Dated: 9/9/2020

  
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KENNETH L. THOMPSON JR. J.S.C.