



CASE ALERT

Bailey v. Murray (2024) 102 Cal.App.5th 677

New Case Explains That:

- **The Court Can Ask General, Open-Ended Questions of a Self-Represented Person and Still Be Neutral.**
- **A Restrained Person Violates the Temporary Restraining Order (TRO) When the Court Has Evidence of Gun Ownership and the Restrained Person Does Not Present Evidence to Deny It.**
- **A Restrained Person Violates the TRO If They Do Not Properly Complete Their DV-800 Form to Show the Date and Time They Turned Over Their Firearms.**
- **As Other Cases Have Already Held**
 - **Survivors Do Not Have to Put Every Act of Abuse in Their Request; Only Notice of the General Allegations**
 - **Violations of the TRO Are Abuse and a Court Can Grant a DVRO Based on That Abuse Alone**

How Could This Case Help Your Clients?

1. This case gives specific examples of how a judge can ask general, open-ended questions to a self-represented survivor to help them present their case for a restraining order. Trial court judges are supposed to play an active role to help develop a case when there is a self-represented person requesting a Domestic Violence Restraining Order (DVRO). See also the case alert for [Vinson v Kinsey \(2023\) 93 Cal.App.5th 1116](#)
2. This case shows how a restrained person can violate Family Code 6389, which does not let them possess a firearm, firearm parts or ammunition after a TRO has been issued, if they do not properly complete the required Judicial Council [Form DV 800](#), Receipt for Firearms, Firearm Parts and Ammunition. A violation of Family Code 6389 is a restraining order violation which is abuse and can be the reason to grant a DVRO.
3. This case shows that where a court has credible evidence of registered gun ownership, the burden is on the restrained party to show that they do not own or have the gun.

Summary of the Case: Bailey and Murray were in a relationship in January 2021 when Murray sexually assaulted Bailey. Bailey ended the relationship and eventually quit her job, moved and stopped going to church for some time, but Murray kept contacting her. In February 2023, Murray blocked Bailey's car in her church's parking lot until she agreed to go with him. Murray took Bailey to his house, tried to sexually assault her again, and kept Bailey from leaving. Bailey asked for a Domestic Violence Restraining Order (DVRO) in April 2023. She was given a Temporary Restraining Order. The stay-away orders included the church Bailey attended.

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At the hearing on the DVRO, Bailey was not represented, and Murray had an attorney. During Bailey's direct testimony, the trial court asked her some questions including what led her to file her request for a DVRO. While Bailey's DVRO request did not include the January 2021 incident, Bailey testified about it at the hearing. Bailey also said Murray had shown up to her church after the TRO issued. The trial court admitted the evidence about the January 2021 assault. Murray claimed they had consensual sex in January 2021 and denied Bailey's version of events in February 2023. Murray did not deny showing up at the church.

The trial court told Murray it had received the standard criminal history report, and it showed Murray was the registered owner of a gun. The court gave Murray the DV-800 Form to complete. The court told Murray he had one day to file the form to show he had turned the gun over or he would be in violation of the TRO. Murray turned in an incomplete form that did not show the time and date when he turned the gun over to a licensed gun dealer. When the trial court told him his form was incomplete and gave Murray a chance to correct the form he did not. Instead, Murray claimed he had a Fifth Amendment right to not answer questions about where the gun was. Murray then tried to say he never owned the gun but would not answer questions.

The Trial Court Ruling: The court granted Bailey's DVRO request based on the sexual assault, attempted sexual assault and violations of the TRO. The trial court said Murray had violated the TRO by 1) going back to the same church as Bailey and 2) by having a firearm even after the TRO was in place. The court said that both of these violations were acts of abuse and on their own were enough to grant the DVRO.

Murray appealed, saying that his due process rights had been violated because 1) the trial court was not neutral when it was asking Bailey questions, 2) Bailey should not have been allowed to testify about the January 2021 incident because it was not in her DVRO request, and 3) he was not allowed to argue against the trial court's conclusion that he owned a firearm based on the report.

The Court of Appeal disagreed and said:

1. The trial court could ask "general, open ended questions" to get the important facts from Bailey as a self-represented party and to clarify "confusing and incomplete testimony." Open ended questions are generally questions asking the other person to explain something and asking for details and clarifications. The trial court's questions did not favor one side or the other. Some of the trial court's questions were, "[S]pecifically what happened during that incident that caused you to file for a restraining order?" and "Anything else you want to tell the Court about why you are requesting a restraining order?"
2. The Domestic Violence Prevention Act (DVPA) does not require survivors to put every incident of abuse in the petition if they gave the other party notice "of the general allegations." The Court said that Murray could have requested a continuance if he was not prepared to respond to Bailey's testimony about the 2021 incident.

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3. The trial court could rely on the criminal record report to find Murray owned a gun and he violated the TRO by not turning it over. The Court of Appeal said the trial court properly gave Murray the DV-800 form and gave Murray and his attorney every opportunity to complete and correct the form, but they chose not to. The Court of Appeal said it was Murray's choice not to challenge the finding he owned a firearm registered to him or he had not properly turned it over.

PRACTICE TIPS

1. If you are self-represented and the **other party says or the judge says they cannot help** you tell the court what happened, by asking **open-ended questions**, show the court this case.
2. If the court says you cannot talk about a specific example of abuse that was not in your request or denies your DVRO because you did not **list all incidents of abuse in the request**, show the court this case. As long as your request generally talks about the kinds of abuse you experienced, for example, threats on your life, the other side has notice. It is up to the other side to say that they did not have notice and ask for a continuance. See also the case alert for [In re Marriage of Davila \(2018\), 29 Cal.App.5th 220](#)
3. If the court does not require the other side to **prove that they do not own a firearm when there is evidence of registered gun ownership**, show the court this case.
4. If the court accepts the other party's DV-800 Form as proof they **turned over their firearms, firearm parts or ammunition** even though the **form is incomplete**, show the court this case.
5. If the court does not find it is a TRO violation when the other side **does not prove they do not own a firearm registered to them or give complete details about how the firearm was turned in**, show them this case.
6. If the court does not find violations of the TRO are abuse or says it cannot grant a DVRO based only on violations of the TRO, show the court this case. See also the case alert for [N.T. v. H.T. \(2019\) 34 Cal.App.5th 595](#)

For questions or clarifications, email or call Family Violence Appellate Project at info@fvapl.org or (510) 380-6243. Thank you!