

Attorney for Fotis Dulos files Supreme Court brief arguing gag order violates his right to defend himself

By DAVE ALTIMARI | HARTFORD COURANT

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Fotis Dulos outside court with his lawyer Norm Pattis in September. Dulos' attorney filed a brief Monday arguing the gag order imposed by a judge infringes on Dulos' constitutional right to defend himself.

The attorney for Fotis Dulos Monday asked the state's highest court to revoke a gag order imposed by a judge because it infringes on Dulos' constitutional right to defend himself against the constant

speculation that he murdered his missing, estranged wife Jennifer Farber Dulos.

Dulos charges that the order was imposed without a proper hearing or attempt to determine what its impact would be on his

right to a fair trial.

In a 40-page brief filed to the state Supreme Court, attorney Norm Pattis compares Dulos to Sam Sheppard - the Ohio doctor charged with murdering his wife in the 1950's only to be exonerated years later -- and accuses Superior Court Judge John Blawie of issuing what may be a first-of-its-kind gag order in the country. Pattis argued that the order by Blawie was broad and bars not only the attorneys from talking to the media but also bars Dulos, state police and any potential witness from speaking, violates Dulos' First Amendment rights to free speech and his Sixth Amendment rights to a fair trial.

"The State has fanned public speculation that Mr. Dulos killed his wife, but has not charged him with any crime in which his wife is a victim," Pattis wrote. "The trial court has barred Mr. Dulos from speaking out about charges not even lodged, an order breathtaking in scope and absolutely devastating in its impact."

Blawie issued the gag order on Sept. 12, prompting Pattis to ask the Supreme Court to hear an emergency appeal, which it granted. The state will now have until Nov. 22 to submit a reply brief and a full hearing before the justices will take place Dec. 9. The Courant plans to file an amicus curiae, or friend-of-the-court, petition in the appeal.

Stamford/Norwalk State's Attorney Richard J. Colangelo Jr. had requested a gag order in August, arguing he was concerned about potentially false statements made by Pattis, including how Dulos' girlfriend, Michelle Troconis, took a lie detector test. Blawie wrote in his order that intense media coverage of Farber Dulos' disappearance led to the publication of "theories masquerading as facts, and stories based upon unauthorized leaks of partial information, some apparently from law enforcement sources."

"The extent and the nature of the coverage is not merely a result of the public record of the case, but rather, it reflects the tendency of some to fan the flames of publicity by providing the media with salacious, inadmissible and often prejudicial details," Blawie wrote.

But Pattis said that the judge failed to conduct a meaningful hearing to determine if there was any negative impact from all of the press coverage before issuing the gag order. Pattis compared Dulos to Sam Sheppard from the infamous "The Fugitive" case which had a "circus atmosphere" around it at both pre-trial and when the case went to trial. The media coverage was intense as has been the case here ever since Farber Dulos disappeared on May 24.

Pattis argues that in this case, it's even more unfair because Dulos hasn't been charged with murder.

"The crimes Mr. Dulos has been charged with are offenses against the administration of justice - his wife is neither a victim, a party, nor a foreseeable witness," Pattis wrote. "Yet in its warrants the state has all but called him a murderer. Does he truly possess no right to defend himself against these accusations?"

Dulos has been arrested twice - the first time in June for tampering with evidence and hindering prosecution and the second time in September for tampering with evidence - and is free on two separate \$500,000 bonds. His former girlfriend Michelle Troconis also has been arrested twice on similar charges.

It is the second arrest that Pattis is focusing on, particularly the arrest warrant affidavit in that case, which Blawie signed just days before he issued the gag order. Pattis said the arrest warrant affidavit in that case lays out the state's entire theory on what happened to Farber Dulos on the morning of May 24 with little evidence to back it up.

Pattis wrote in the brief that state police believe Dulos traveled to Farber Dulos' home the morning she disappeared; the police believe Dulos lay in wait for her as she returned

home from dropping the children off at school; the police believe Dulos left his wife's home in her car, with her body stuffed into the truck; the police believe that Dulos drove a short distance to a public roadway where he transferred his wife's body to a vehicle the police believe Dulos drove from Farmington to New Canaan earlier that morning. The police believe Dulos then drove away with his estranged wife's body.

"The State has effectively accused Mr. Dulos of murder without charging him with a crime of violence, or any crime whatsoever implicating him in his wife's disappearance. At most, the alleged conduct supporting his arrests is consciousness of guilt evidence as to predicate offenses as yet uncharged," Pattis wrote.

"He (Dulos) has refrained from commenting on conduct of which he has been accused, doing what savvy litigants do – saving their explanations for when they matter, when a jury is empaneled. The State has stirred a media frenzy with its warrants."

Pattis also questions the timing of the gag order. It was issued on the same day that Dulos was arraigned in Norwalk Superior Court for the second set of charges without ever holding a hearing on his reasoning for issuing it.

"The trial court here abdicated its responsibility to make any factual record on the potential prejudicial impact of pre-trial publicity, relying instead on phantoms," Pattis wrote. "The court did not hold hearings of any type to address the overwhelmingly prejudicial impact of the second warrant, a warrant the judge himself was full well aware of as he signed it, presumably while working on his gag order ruling."

The last time that Dulos appeared before Blawie earlier this month the judge angrily denied Pattis' allegation that he hadn't had a proper hearing before issuing the gag order.

Pattis said by issuing the gag order right at the time of the second arrest Blawie ignored "the substantial prejudice to the defendant caused by the State's warrants filed in June, and, especially in September." Pattis also said that Blawie failed to take into account that Connecticut has individual sequestered voir dire where attorney's are allowed to probe potential jurors on how much they know about the case.

Pattis also argued that Blawie never consulted with Dulos - the only party with a constitutional right to a fair trial. He said that Blawie should have asked Dulos whether he understood that exercising First Amendment right might, conceivably and somehow, undermine his fair

trial right.

"Such a canvass would have provided Mr. Dulos the right to assert which right he was prepared to weigh more heavily in the balance. On the facts the circumstances of this case, the trial court's paternalism – striking the balance for Mr. Dulos – is obscene, tying Mr. Dulos to the whipping post of public speculation," Pattis said.

In the 43-page arrest warrant affidavit released in September, investigators wrote that they believe that Dulos was "lying in wait" for Farber Dulos when she got home. They provided surveillance video of Farber Dulos' SUV leaving her home, saying they also believed that Dulos was driving off with her body in the vehicle.

Her Chevy Suburban was later found near Waveny Park about 100 feet, police say, from where school bus surveillance cameras caught a red Toyota truck parked earlier that morning.

Police believe that Dulos took that red truck, which belonged to Pawel Gumienny, an employee from his home construction company, from Farmington to New Canaan and back that morning, affidavit state.

Troconis told police that she saw the red truck parked at a Mountain Spring Road home that Dulos' company, Fore Group Inc., owns on the

afternoon of May 24. She told police Dulos was cleaning a “coffee stain” out of the front seat when she arrived, but that when he handed her the towel to throw away it didn’t smell like coffee, arrest warrant affidavits say.

According to the affidavit, Troconis accompanied Dulos to an Avon car wash a few days later to have the truck washed and detailed. She can be seen sitting in the passenger’s seat as he gets cash from an ATM to pay the bill to clean the truck.

When state police detectives asked Troconis why she thought he was washing the car, she replied: “Well obviously ... all the evidence says because ... you showed me the picture of the blood in the door it’s because the body of Jennifer at some point was in there,” the affidavit states. ■