

Attorney: Gag order prevents defense of murder ‘speculation’ in Jennifer Dulos case

By Lisa Backus

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Fotis Dulos, left, listens as his attorney Norm Pattis address the media after appearing at the Connecticut Superior Court in Stamford, Conn., Monday, Sept. 23, 2019.

Attorney Norm Pattis contends a gag order is preventing his client from speaking out about charges that are not even lodged against him, according to a 40-page brief filed Monday with the state Supreme Court.

As the disappearance of Jennifer Dulos, a 51-year-old

New Canaan mother of five, grabbed international headlines, Superior Court Judge John Blawie last month issued a gag order in the case — partly because of comments Pattis made to the media.

His client, Fotis Dulos, 52, and Michelle Troconis, 44, have each

been charged with two counts of tampering with evidence and hindering prosecution in the May 24 disappearance.

The gag order prohibits those involved with the case from making comments outside the courtroom. The order, which Pattis calls overly broad, applies to attorneys, police, witnesses and family members.

Pattis decried the order, saying it impeded his client's First and Sixth Amendment rights and was a form of "prior restraint" that has not been tested in Connecticut courts. Pattis contends that through arrest warrants, police were able to "recite law enforcement beliefs" about a violent struggle inside Jennifer Dulos' New Canaan home the day she vanished.

Pattis pointed out the warrants also say Fotis Dulos traveled to the home and was "lying in wait" for his estranged wife and "he then disposed of her body."

"Media worldwide have reported law enforcement speculation as fact, prejudicing potential jurors to believe that Mr. Dulos is not only guilty of those crimes with which he has been charged, but also — if not foremost — guilty of the heinous crime with which he has not been charged: Murder," Pattis wrote in the brief.

The gag order "freezes" Fotis Dulos "in the exercise of his First Amendment right to speak

out about potential charges not yet filed," said Pattis, who also contends the order "deprives him of his Sixth Amendment right to a fair trial."

"The state has fanned public speculation that Mr. Dulos killed his wife, but has not yet charged him with any crime in which his wife is a victim," Pattis wrote.

The 40-page brief outlines the state and federal constitutional issues that should be considered by the state Supreme Court.

The brief invoked the high-profile cases of Sam Sheppard, who eventually was exonerated in the death of his wife, and Jack Ruby killing Lee Harvey Oswald that changed case law in regard to pre-trial publicity after a defendant was charged and publicly identified.

"The cases and commentaries focus not at all on the rights of a suspect who has not been charged," Pattis said.

Pattis had until Monday to file the document after a Supreme Court judge denied his request for more time and 10 additional pages. The judge allowed Pattis to submit five additional pages above what he was allotted, bringing the document to a total of 40 pages.

Pattis argued Blawie's gag order "is so porous as to be meaningless." Pattis also points out several times the charges against his client are crimes

against the state — and not Jennifer Dulos, who he concedes has not been found.

Blawie's ruling on the order doesn't take into account the state's voir dire process, which allows attorneys to question potential jurors on their knowledge or possible feelings on the case or the fact that cases take years to come to trial — which would allow the media firestorm to calm before a jury is chosen, Pattis said.

The order also doesn't address the issue that attorneys are allowed to file warrants or briefs in the cases to release information they want the public to hear, Pattis said.

"The order ignores the substantial prejudice to the defendant caused by the state's warrants filed in June, and especially in September," Pattis said. "Mr. Dulos is presumably prevented from commenting on a crime as yet uncharged — murder. Yet the warrants are steeped in the state's theory that he killed his wife."

Pattis also pointed out the state has no right to a "fair trial," however his client does.

"The trial court failed to consult the only party with a constitutional right to a fair trial, Mr. Dulos, to determine whether he understood that exercising (his) First Amendment right might conceivably and somehow,

undermine his fair trial right," Pattis said.

In the document filed Monday, Pattis asked the state Supreme Court to consider whether "a content-based prior restraint on trial participants" violates the First and Sixth Amendments and whether it also violates the Connecticut Constitution.

Pattis argued that previous U.S. Supreme Court rulings have determined that "prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights."

In the 1976 ruling in *Nebraska Press Association*, the U.S. Supreme Court struck down a "content-based judicial prior restraint on the press (known as a 'gag order') designed to prevent prejudicial pretrial publicity," Pattis said.

Attorneys for the Chief State's Attorney's Office will have until Nov. 22 to file their brief opposing Pattis' appeal. Pattis will then have until Dec. 5 to file a rebuttal before the Supreme Court hears the case on Dec. 9.

Blawie imposed the gag order in September at the request of Stamford State's Attorney Richard Colangelo after Pattis made several highly publicized statements about Jennifer Dulos and the pending cases against his client.

Most notably, Pattis said his

defense team was investigating whether Jennifer Dulos purposely vanished to get back at her husband much like the novel "Gone Girl," by Gillian Flynn.

Pattis has also publicly questioned whether Jennifer Dulos was seriously ill based on \$14,000 worth of medical bills his client received in the months leading up to her disappearance and suggested she could have perpetrated a "revenge suicide" plot.

Pattis also claimed Troconis passed a polygraph test, which Colangelo contends was never administered.

Despite the gag order, Pattis has recently renewed his request for Jennifer Dulos' medical records, which he claims would show she was receiving "reproductive services" at a New York facility.

Jennifer Dulos, 51, was last seen on a neighbor's security camera returning home around 8:05 a.m. May 24 after dropping off her five children at a nearby school.

Police believe Fotis Dulos was "lying in wait" when she arrived at her Welles Lane home, where they found evidence that she was the victim of a "serious physical assault" based on blood stains and spatter in the garage, according to arrest warrants.

Colangelo said Fotis Dulos' DNA was also found mixed with his

wife's blood on the faucet of her kitchen sink.

Fotis Dulos and Troconis were initially charged a week after the disappearance when police discovered video footage of two people resembling them in Hartford around the time Jennifer Dulos was reported missing, according to arrest warrants. The footage showed Fotis Dulos dumping bags that were later determined to contain his wife's blood and clothing, arrest warrants state.

Fotis Dulos and Troconis were arrested in September on a second tampering with evidence charge related to cleaning up a pickup truck police say was involved in the disappearance, according to the latest warrants.

According to the warrants, Fotis Dulos drove a pickup truck belonging to one of his employees to and from New Canaan on May 24. Police said Fotis Dulos and Troconis took the vehicle to be washed in the days after the disappearance. Fotis Dulos also urged the employee to remove the seats, which the man did and turned over to investigators who found Jennifer Dulos' blood on one of them, according to arrest warrants.

Fotis Dulos is next scheduled to appear in state Superior Court in Stamford on Nov. 6. ■