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Judges Widen Legal Searches in Cases of Domestic Violence

By Mark Scoloro, Associated Press

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Judges can order warrantless searches to collect guns in domestic-violence cases, a state appeals court has ruled in a decision that legal experts said significantly expands the breadth of a state law.

A Superior Court panel ruled, 2-1, last week that a Montgomery County judge had the authority to order deputies to search a man's home for guns. The judge had also ordered warrantless searches of a vehicle and a hunting cabin in the Poconos that belonged to the man's father.

Beth Ann Kelly of Gilbertsville sought a protection-from-abuse order against James C. Mueller Jr. in September 2003, shortly after their relationship ended. Kelly alleged physical and verbal abuse, including an incident in which she said Mueller pointed his father's handgun at her head and threatened to kill her.

Mueller, who lived with his parents in Zieglersville, was ordered to turn over all weapons. But when deputies went to the house, he signed a document saying there were none.

Kelly insisted he was lying, and the judge issued a second order directing that the home, vehicles and cabin of James C. Mueller Sr. be searched.

The judge also authorized the use of "whatever force necessary" to seize any weapons found there.

Several guns were found in the searches, though it was unclear how many or where they were found. The son is seeking return of his guns, and the father wants a handgun back.

The Protection From Abuse Act's authority to force defendants to relinquish weapons gives judges the power to order such searches, Senior Judge Patrick R. Tiamilia wrote in the majority opinion.

Tamilia also wrote that the act's weapons provisions were broad enough and explicit enough to supplant the need for probable-cause affidavits in searches.

Searching the father's property also was permissible, the court ruled. The case was sent back to Montgomery County for a ruling on whether the father's guns should be returned.

Senior Judge Justin M. Johnson dissented, saying there was no authority for searches in the Protection From Abuse Act. He called the action "far beyond what the legislature established or intended."

The Muellers' lawyer, Eric J. Cox of Plymouth Meeting, said Monday the case was the only example he could find of a Pennsylvania judge ordering a search to enforce a protection-from-abuse order. Cox said the Muellers had not decided whether to appeal the decision

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