

SUPREME COURT OF NEW HAMPSHIRE

State v. Hofland

151 N.H. 322 (2004) · Decided August 27, 2004

SUMMARY

The New Hampshire Supreme Court affirmed a district court ruling that the defendant violated Concord's overnight parking ordinance. The court held that it had jurisdiction to hear the appeal under RSA 599:1-c and rejected the defendant's arguments concerning notice, equal protection, prosecutorial misconduct, and judicial recusal. The court affirmed the conviction and deemed unbriefed or insufficiently developed issues waived.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Broderick, C.J.; Nadeau, J.; Dalianis, J.; Duggan, J.; Galway, J.
JURISDICTION	New Hampshire
DECIDED	August 27, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed to the Supreme Court of New Hampshire from a Concord District Court bench-trial judgment finding him guilty of violating a City of Concord parking ordinance.
STANDARD OF REVIEW	Questions of law, including statutory interpretation and constitutional claims, are reviewed de novo. Prosecutorial-misconduct rulings are reviewed for an unsustainable exercise of discretion. Recusal rulings are reviewed under an objective reasonable-person standard.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Randall B. Hofland v. State of New Hampshire

TOPICS

- municipal law
- ordinances
- appellate jurisdiction
- due process
- equal protection

PRACTICE AREAS

- municipal law
- appellate procedure
- constitutional law
- statutory interpretation
- criminal procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court of New Hampshire had subject-matter jurisdiction over an appeal from a district-court sentence for violating a municipal parking ordinance.
2. Whether due process required the City of Concord to post the parking ordinance where Hofland parked.
3. Whether allegedly nonuniform enforcement of the ordinance violated equal protection.
4. Whether the prosecutor committed reversible misconduct through objections during cross-examination or statements during closing argument.
5. Whether the trial judge was required to recuse under Supreme Court Rule 38.

HOLDINGS

1. A person sentenced by a district or municipal court for violating a municipal ordinance may appeal directly to the Supreme Court of New Hampshire under RSA 599:1-c.
2. Due process does not require a municipality to post every parking ordinance throughout the city or at the location where an alleged violation occurs when applicable law requires the ordinance to be kept on file and published but does not expressly require physical posting.
3. A defendant challenging enforcement of a municipal ordinance must establish conscious intentional discrimination or an impermissible classification treating similarly situated persons differently; Hofland failed to meet that burden.
4. The prosecutor's objections to the defendant's questions did not constitute misconduct, and any claim based on the prosecutor's closing argument was unpreserved because the defendant made no contemporaneous specific objection.
5. Recusal is required when a judge's impartiality might reasonably be questioned under an objective reasonable-person standard; Hofland identified no fact meeting that standard.

KEY QUOTATIONS

“When interpreting statutes, we ascribe to statutory words and phrases' their usual and common meaning, unless the statute suggests otherwise.” (151 N.H. at 324)

“Under the defendant's argument, due process would require that the city post every parking ordinance throughout the city.” (151 N.H. at 325)

“Whether an appearance of impropriety exists is determined under an objective standard, ie., would a reasonable person, not the judge himself, question the impartiality of the court.” (151 N.H. at 327)

FACTUAL BACKGROUND

The City of Concord prohibited parking on city streets for more than thirty minutes between 2:00 a.m. and 6:00 a.m. At approximately 4:30 a.m. on October 20, 2002, Hofland received a ticket for parking more than thirty minutes on a downtown city street. After a bench trial, he was found guilty and challenged the ordinance, its enforcement, the prosecutor's conduct, and the trial judge's refusal to recuse.

PROCEDURAL HISTORY

Hofland was issued a parking ticket for parking more than thirty minutes on a Concord city street between 2:00 a.m. and 6:00 a.m. Following a bench trial, the Concord District Court found him guilty. The Supreme Court first considered whether it had subject-matter jurisdiction over the appeal, concluded that it did, and then affirmed on the merits.

DISPOSITION

affirmed

CASES CITED

- Route 12 Books & Video v. Town of Troy, 149 N.H. 569, 575 (2003)
- State v. McCarthy, 150 N.H. 389, 390 (2003)
- Remington Invs. v. Howard, 150 N.H. 653, 654 (2004)
- State v. McKenney, 126 N.H. 184 (1985)
- State v. Blackmer, 149 N.H. 47, 49 (2003)
- State v. McLellan, 149 N.H. 237, 240 (2003)
- State v. Ball, 124 N.H. 226, 231-233 (1983)
- Chicago v. Morales, 527 U.S. 41, 56 (1999)
- State v. Porelle, 149 N.H. 420, 423 (2003)
- State v. Stratton, 132 N.H. 451, 457 (1989)
- State v. Perry, 130 N.W.2d 343, 346 (Minn. 1964)
- Stewart v. Cunningham, Warden, 131 N.H. 68, 70 (1988)
- Alexander v. Town of Hampstead, 129 N.H. 278, 283 (1987)
- Bacon v. Town of Enfield, 150 N.H. 468, 474 (2004)
- State v. Wood, 150 N.H. 233, 235 (2003)
- State v. Porter, 144 N.H. 96, 102 (1999)
- State v. Bader, 148 N.H. 265, 268 (2002), cert. denied, 538 U.S. 1014 (2003)
- DeButts v. LaRoche, 142 N.H. 845, 847 (1998)
- State v. Higgins, 149 N.H. 290, 303 (2003)