

SUPREME COURT OF RHODE ISLAND

State v. Lopes

884 A.2d 397 (R.I. 2005) · Decided October 24, 2005

SUMMARY

The Rhode Island Supreme Court affirmed Carlos B. Lopes's misdemeanor conviction for willfully violating a no-contact order. The court held that his due process arguments concerning service and the order's continued validity were waived because they were not raised at trial. It further held that the order's prohibition on "any contact" did not contain an exception for communications with his ex-wife about visitation or their children.

CASE DETAILS

COURT	Supreme Court of Rhode Island
JURISDICTION	Rhode Island
DECIDED	October 24, 2005
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his jury conviction in the Superior Court for willfully violating a District Court no-contact order, seeking a new trial on due process and interpretation grounds.
STANDARD OF REVIEW	On a motion for judgment of acquittal, the evidence is viewed in the light most favorable to the state, without weighing evidence or assessing witness credibility, and the court draws every reasonable inference consistent with guilt. Appellate review is the same as the trial justice's review and is limited to evidence capable of generating proof of guilt beyond a reasonable doubt. Unpreserved issues are reviewed under the raise-or-waive rule, subject to a narrow exception for basic constitutional rights.
PRECEDENTIAL VALUE	Published Rhode Island Supreme Court opinion; precedential.
PARTIES	Carlos B. Lopes v. State of Rhode Island

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- due process
- domestic violence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the state failed to prove that Lopes had been served with the no-contact order and that the order remained in effect, thereby violating due process.
2. Whether the no-contact order's prohibition on 'any contact' permitted Lopes to contact his former wife concerning visitation or the well-being of their children.
3. Whether the evidence was sufficient to support the conviction for willful violation of the no-contact order.

HOLDINGS

1. The due process challenge was not properly before the Supreme Court because Lopes failed to raise it in the trial court.
2. An order restraining the defendant from 'any contact' with the protected person does not contain an implied exception for contact concerning visitation or the well-being of the parties' children.
3. The evidence was sufficient to establish that the no-contact order was issued and that Lopes willfully violated it.

KEY QUOTATIONS

“The defendant's argument that his due process rights were violated because the state failed to prove that the no-contact order was in effect and that he was aware of its terms, is not properly before the Court.” (at 399)

“The words 'any contact' in the order are as unequivocal as they are broad.” (at 399)

“Because there is no doubt that defendant contacted Ms. Lopes in direct violation of the order, the state has established that the defendant willfully violated the no-contact order.” (at 399)

FACTUAL BACKGROUND

Lopes and his former wife, Idelmira Lopes, were involved in a physical altercation at her Pawtucket home on May 29, 2002. A no-contact order had been issued against Lopes, was signed by him, and stated that it remained effective until further order of the court or termination of the case. Lopes contacted his former wife despite the order and testified that he knew of the order and knew he was violating it.

PROCEDURAL HISTORY

Lopes was charged with breaking and entering, assault with a dangerous weapon, simple assault, and violation of a no-contact order. The Superior Court denied his motions for judgment of acquittal, and the jury acquitted him on all charges except violation of the no-contact order. The court sentenced him to one year at the Adult Correctional Institutions, suspended with probation, and ordered domestic-violence counseling. The Supreme Court of Rhode Island affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Forbes, 779 A.2d 637, 640 (R.I. 2001)
- State v. Roddy, 401 A.2d 23, 32 (R.I. 1979)
- State v. Breen, 767 A.2d 50, 57 (R.I. 2001)
- State v. Saluter, 715 A.2d 1250, 1258 (R.I. 1998)
- State v. Mastracchio, 672 A.2d 438, 446 (R.I. 1996)
- State v. John, 881 A.2d 920, 925 (R.I. 2005)

OPINION

PER CURIAM.

ORDER The defendant, Carlos B. Lopes (Lopes or defendant), appeals from a judgment of conviction entered in the Superior Court after a jury trial in which the jury found the defendant guilty of violating a District Court no-contact order.

The defendant seeks a new trial, arguing that his due process rights were violated and that the no-contact order did not prohibit him from *398contacting his ex-wife about their children. For the reasons set forth herein, we affirm the judgment of the Superior Court.

The defendant is the ex-husband of Idel-mira Lopes (Ms. Lopes) and the father of her two children. It is undisputed that on the evening of May 29, 2002, Ms. Lopes and defendant were involved in a physical altercation at Ms. Lopes's home in Paw-tucket.

The defendant initially was charged by criminal information with four counts: breaking and entering, assault with a dangerous weapon, simple assault, and violation of a no-contact order. The defendant and Ms. Lopes offered different versions of the events leading to this prosecution. Ms. Lopes testified that she was home visiting with a male friend when she observed defendant sitting on the roof of her first-floor porch.

He left the area, but called her and asked whether he could retrieve some clothing. Ms. Lopes agreed to leave the clothing for him in a bag. The defendant arrived at her home, but refused to leave as she requested. He took food from her refrigerator and took from her kitchen a large knife, which he pressed against her stomach. According to Ms. Lopes, the knife fell to the floor and broke; she said defendant took her to the bedroom, threw her on the bed and began to choke her.

She screamed until her landlady came to the door, prompting defendant to flee the apartment. Ms. Lopes filed a police report the next day. The defendant gave a vastly different account of the events that evening. He alleged that Ms. Lopes invited him to her apartment to discuss a problem their son was having at school. According to defendant, he went to the apartment and, after his ex-

wife received a hang-up telephone call, she said that it probably was one of his “prostitutes” calling for him.

The defendant testified that Ms. Lopes grabbed a knife and went after him, threatening to inflict severe injury. A struggle ensued as defendant grabbed Ms. Lopes around the neck, threw her on the bed and left the apartment. At the conclusion of the state’s case, defense counsel moved for judgment of acquittal.

Although defendant’s argument was focused almost exclusively on the breaking and entering charge, he nevertheless sought acquittal, without argument, on the other charges in the criminal information. The trial justice denied this motion, and defense counsel properly renewed the motion at the close of evidence.

The jury returned verdicts of not guilty on all counts, except the misdemeanor charge of violating a no-contact order. The defendant was sentenced to one year at the Adult Correctional Institutions, suspended with probation, and ordered to complete domestic violence counseling.

On appeal, defendant contends that he was deprived of his due process rights because the state failed to prove that he had been served with the no-contact order and that the order still was in effect at the time of the alleged violation.

The defendant further argues that the order did not prohibit him from contacting his ex-wife to discuss visitation or the children’s well-being. When “considering a motion for judgment of acquittal, a ‘trial justice must view the evidence in the light most favorable to the state, without weighing the evidence or assessing the credibility of the witnesses, and draw therefrom every reasonable inference consistent with guilt.’” State v. Forbes, 779 A.2d 637, 640 (R.I.

2001). This Court’s standard of review on a motion for judgment of acquittal is that of the trial justice and is limited to “that evidence which the state claims is capable of generating proof of guilt beyond a reasonable doubt.” State v. Roddy, 401 A.2d 23, 32 (R.I.1979).

The defendant’s argument that his due process rights were violated because the state failed to prove that the no-contact order was in effect and that he was aware of its terms, is not properly before the Court. After a thorough examination of the transcript we conclude that defendant failed to raise this issue at trial and now attempts to argue it for the first time on appeal.

Our review of the record reveals that defendant made no reference to the no-contact order, let alone an argument that a criminal conviction for such an offense would violate due process of law. It is well settled that this Court “will not consider an issue raised for the first time on appeal that was not properly presented before the trial court.” State v. Breen, 767 A.2d 50, 57 (R.I.2001) (quoting State v. Saluter, 715 A.2d 1250, 1258 (R.I.1998)).

Although this Court has recognized a narrow exception to the raise-or-waive rule when “basic constitutional rights are concerned,” defendant’s claim does not meet the strict requirements of this rule. *State v. Mastracchio*, 672 A.2d 438, 446 (R.I.1996).

The defendant further argues that the no-contact order did not prohibit him from contacting his children or from contacting his ex-wife to discuss visitation or the children’s well-being. Pursuant to G.L.1956 § 12-29M,1 a no-contact order is violated if it has been issued against a defendant and the defendant willfully violated the order.

Here, there is sufficient record evidence that the no-contact order was issued. At trial, the state introduced the no-contact order which was signed by defendant and clearly provides that the “order is in effect until further order of the court or until the case is terminated.” There was no evidence presented suggesting that the no-contact order was invalid.

There is sufficient evidence that the defendant willfully violated the no-contact order. The defendant testified that he was aware of the order and knew that he was violating it. The order said that the defendant was “enjoined or restrained from any contact” with Ms. Lopes. It did not include an exception permitting him to contact his ex-wife to discuss visitation or the well-being of his children.

In *State v. John*, 881 A.2d 920, 925 (R.I.2005), this Court held that “[t]he words ‘any contact’ in the order are as unequivocal as they are broad.” Because there is no doubt that defendant contacted Ms. Lopes in direct violation of the order, the state has established that the defendant willfully violated the no-contact order.

For the reasons stated herein, we affirm the judgment of the Superior Court.. General Laws 1956 § 12-29-4(3) provides: “Willful violation of a court order ¾ ¾ ¾ is a misdemeanor. The written order ¾ * ¾ shall contain the court’s directive and shall bear the legend: ‘Violation of this order is a criminal offense under this section and will subject the violator to arrest.’ ”