

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)

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