



Legal Update

Commonwealth v. Gonsalves

May 27, 2021

KNOWLEDGE OF RESTRAINING ORDER CAN BE PROVED BY CIRCUMSTANTIAL EVIDENCE

Commonwealth v Gonsalves, Appeals Court 19-P-1167 (2021)

Relevant Facts

After a year of dating, the victim ended her relationship with the defendant on December 30, 2016. She obtained a restraining order against the defendant on January 4, 2017. The order prohibited the defendant from contacting her.

From January 5 to January 11, before he was served with the order, the defendant sent the victim over 100 text messages. Some of the messages called her names including "Rat bitch," while others threatened her with violence. Some did both. Some examples of the text messages include:

"So you put papers on me bitch lol...trust me that's not going to stop me believe me my nieces will be seeing u 'real soon."

"They don't mean shit tell they give them to me I'm not new to this bitch."

"Who gave you the idea that a peace of paper is going to stop you from getting your ass kick from my nieces lol."

Some of the texts indicated that the defendant knew the police were trying to serve the order on him. For example:

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“Well I’m in Boston right now tell the cops to stop looking for a ghost it was a waste of your day sitting at the court house for that shit anyways”.

“Tell the cops to stop going by because I’ll be away for a while.”

The defendant argues that, because there was no service of the order, the Commonwealth failed to meet its burden of proving that he had knowledge of the terms of the order.

Issue: Can a defendant be found guilty of violating a restraining order if he was never served with the order?

Short answer: Yes. The Commonwealth can meet its burden by circumstantial evidence.

Discussion

To prove a violation of a restraining order, the Commonwealth must prove that the defendant knew of the order. When there is no evidence that the defendant was actually served with the order,

“the Commonwealth can still meet its burden by presenting other evidence sufficient to prove ‘that the defendant had actual knowledge of the terms of the order or was put on sufficient notice to make reasonable inquiry concerning the issuance and terms of the order.’” *quoting Commonwealth v. Welch*, 58 Mass.App.Ct. 408, 410 (2003).

The Commonwealth in this case presented sufficient evidence to prove that the defendant either had actual knowledge that his conduct violated the 209A order or that he had sufficient notice of the order to make reasonable inquiry.

In the text messages he sent, the defendant admitted that he knew that the victim “put papers on him” and telling her that a piece of paper would not protect her. The texts demonstrated the defendant’s familiarity with restraining orders and the concept of service. They also proved an awareness that officers were attempting to serve him. “This evidence was sufficient to prove that the defendant had actual or constructive knowledge of the terms of the 209A order.”

The court also noted that,

“the jury could have found that knowledge of the existence of the 209A order would have prompted a reasonable person to make inquiry of its terms before sending threatening messages and continuing to send messages for the next six days.”

The jury could also have found, based upon the content of the text messages, that the defendant was evading service. The court found that the defendant could not escape the consequences of violating the order by simply avoiding being served with the order.

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