

STATE OF WASHINGTON
COURT OF APPEALS

FEB 02 2012

CLERK OF COURT
STATE OF WASHINGTON
BY _____

30123-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

JESSE JAMES LUNA, RESPONDENT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE TARI S. EITZEN

BRIEF OF APPELLANT

STEVEN J. TUCKER
Prosecuting Attorney

Mark E. Lindsey
Senior Deputy Prosecuting Attorney
Attorneys for Appellant

County-City Public Safety Building
West 1100 Mallon
Spokane, Washington 99260
(509) 477-3662

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I.

ASSIGNMENTS OF ERROR

1. The trial court erred in dismissing Count II of the amended information with prejudice.
2. The trial court erred in making Conclusion of Law No. 1.
3. The trial court erred in making Conclusion of Law No. 2.
4. The trial court erred in making Conclusion of Law No. 3.

II.

ISSUES PRESENTED

1. Does the Supreme Court's decision in *State v. Schultz*, 146 Wn.2d 540, apply to this case?
2. Does the Supreme Court's decision in *State v. Schultz* directly conflict with the provisions of RCW 10.99?
3. Did the trial court err in concluding that the Municipal Court did not comply with the provisions of RCW 10.99.050 in imposing a post-conviction no contact order on defendant as part of his sentence?

4. Did the trial court err in concluding that the post-conviction no contact order imposed by the Municipal Court pursuant to its sentence was constitutionally infirm for a lack of due process provided by the Municipal Court?
5. Did the trial court's incorrect factual findings and legal conclusions result in the improper dismissal of this case and the removal of the State's ability to hold the defendant properly accountable for his actions?

III.

STATEMENT OF THE CASE

In August, 2010, the Spokane Municipal Court issued a pre-trial no contact order against defendant/respondent in cause number N9170. On October 12, 2010, defendant/respondent entered his guilty plea to the offense charged in Municipal Court No. N9170. CP 10-13; Report of Proceedings-Municipal Court-101210 ("RPMC-101210") 1-9. The transcript record of that guilty plea includes a colloquy between the defendant/respondent and Municipal Court Judge Staub regarding the continuation of the pre-trial no contact order as a condition of the sentence therein.

COURT: your name?

DEFENDANT: Jesse Luna.

COURT: I have...a statement of defendant on plea of guilty...and your attorney is...Mr. Antush?

Mr. Antush: Me, Judge.

COURT: Ok.

Mr. ANTUSH: we're going to enter a guilty plea on the two pre-trial matters...

COURT: N9170...

Mr. ANTUSH: The recommendation on that is 365 days in jail with 245 suspended, 120 day sentence, 24 months probation, conditioned upon no criminal law violations...the victim in these cases is present...she will agree to let us argue the no contact order which is on the probation cases...this is probably something that's been argued before but we'll be arguing it again...

COURT: Mr. Luna, I have before me a statement of defendant on plea of guilty that contemplates you're going to be pleading guilty to assault domestic violence and violation of a no contact order...have you read through this with your attorney?

DEFENDANT: Yes.

COURT: Do you have any questions about the particular charges you're admitting today?

DEFENDANT: No.

COURT: ...by pleading guilty you're waiving most of your constitutional rights...right to a speedy and public trial before an impartial judge or a jury...right to challenge and confront the City's evidence and witnesses at that trial. Bring in your own evidence and witnesses and testify on your own behalf...also waiving the presumption of innocence and the requirement that the City prove this charge beyond a

reasonable doubt, and...right to appeal a finding of guilty.
Do you understand those rights that you're waiving?

DEFENDANT: Yes.

COURT: There's a joint recommendation; you've heard it explained by Mr. Antush. Is that your understanding of the joint recommendation?

DEFENDANT: Yes.

COURT: and you understand that I don't have to follow that. I can impose a sentence up to one year in jail on each charge and a \$5,000 fine?

DEFENDANT: Yes.

COURT: Other than that recommendation, has anybody made any threats or promises to you to plead guilty today?

DEFENDANT: No.

COURT: Is that your signature?

DEFENDANT: Yes.

COURT: ...you have indicated that in lieu of making a statement in your own words you'd allow the City to read into the record a factual basis for the plea.
...Mr. Luna, as to the offense of assault domestic violence in N9170, sir, how do you plead?

DEFENDANT: Guilty.

COURT: And to the offense violation of a no contact order in N23852 do you plead?

DEFENDANT: Guilty.

COURT: I'll accept your pleas of guilty, and I'll find that they are knowing, intelligent, and voluntarily made, and that there is a factual basis for those pleas; and that takes to sentencing.

Ms. PHILLIPS: to say the least, Mr. Luna's history is frightening. He has a felony record that includes death threats, first degree assault, weapons charges, robbery and on-and-on. We have two probation domestic violence cases against this victim. As soon as the no contact order was lifted on those, here we are back with yet another assault and another no contact order violation. He has repeatedly defied court orders despite serving significant jail time on prior cases, and without a no contact order in place, we're going to see him back again. He is a danger to the victim. He is a danger to the community. The jail time is appropriate. The City is asking that probation remain open on all of the cases to have more time held over his head. Additionally, the City asks that the no contact order remain in place, despite the fact the victim is here to say, yet again, that she does not want it. For her safety, it needs to remain in place. Otherwise, in a few months time we're going to be right back in the same position with another assault.

MR. ANTUSH: we're not arguing the sentence; we're asking you to follow the recommendation as to the sentence. The issue we have is with the no contact order. Mr. Luna has been before this Court a couple of times and...it took quite some time for him to get the no contact order lifted the last time...yes, there's a new offense, but...the protected party, Mrs. Luna, is present, she wants the no contact order lifted, and she certainly appears capable of calling the police when she feels as though she needs assistance. She called when the assault occurred, and...when the NCO was violated...she's here asking the no contact order be lifted because she feels as though should Mr. Luna get back into treatment he was in, everything will be fine...He's ordered to do DV perp on his probation cases, and he had been doing...alcohol or drug treatment. Not just for these cases, but also for a DUI cases he's on for...he has a probation violation hearing coming up on that & he expects a jail

sanction in that case. He's hoping for reinstatement of probation, and...Ms. Luna...indicated that this as indicated by the assault reports...is more of a chemical issue than an alcohol issue. He gets drunk and then does something stupid...so ...treatment's probably a good thing for him...they have a small child...8 months old...Sadie's here. She asked me to ask the court to recall the no contact order.

COURT: Ms. Luna...?

Ms. LUNA: ...if you do lift the no contact order, I know that last time you lifted it...you asked...what I would do if he were to get drunk and violate...I do what I was supposed to and I called the cops...But him being in jail is not conducive to his drug and alcohol classes and...his...perpetrator classes...if he is released and he's not allowed to come home, he has nowhere to go and...no structure and when he's in jail, he can't get the treatment that he need so I ask you lift the no contact order because I do not fear for my safety and if I did I would call the cops.

COURT: Mr. Luna...?

DEFENDANT: Yah, a couple of things, as far as...my sentencing, I'd just ask...for the joint recommendation...I understand that it was my choice to break the law and being on probation and stuff like that...and as far as the no contact order, I just ask you lift it and even though its lifted its still gonna be, like at least 90 days before I'm even out of custody so that way...she'd be able to come see me and bring my son...I really haven't another place to go; it's my wife, she's pretty much, that's my family right there.

COURT: Anything else sir?

DEFENDANT: No.

COURT: Mr. Luna, I'm going to...follow the joint recommendation...Mr. Luna, I am going to impose a no contact order and here's why. We've had a couple of dynamics working here. Number one, we've got substance abuse problem and as benevolent as your heart may be to not

do this, when you're dealing with a substance abuse problem and you get into the heat of the moment and...start drinking, you get violent...that's demonstrated repeatedly here. We're also dealing with an escalating domestic violence situation and I appreciate Ms. Luna's calling the police very, very much. My concern is two-fold that maybe she won't be able to get to the police the next time this happens because you know what you will be facing if she gets to that phone and that may motivate you. The second thing that concerns me is that you have a young son that you're now training to be a perpetrator...I don't want to see him grow up and come through this same system as well; and as somebody who's objectively sitting outside of it looking in with no emotional attachment to it, I think you're gonna hurt her, pretty seriously in the near future and you've demonstrated that. I lifted the no contact order last time at her request [b]ecause she promised me she'd call the police. She did call the police, but you also hurt her again. I told you not to do that anymore, so I'm gonna keep that no contact order in place and I'm gonna follow that sentence. Ms. Luna this is no disrespect to you...and I appreciate everything you are doing but, frankly, I don't want him hurting you or your son.

RPMC-101210, 1-9.

On December 15, 2010, defendant/respondent argued a motion to the Municipal Court seeking to have the no contact order entered in cause No. N9170 recalled. The Municipal Court denied the defendant/respondent's motion and maintained the no contact order. The transcript record of that motion hearing includes a colloquy between the defendant and Municipal Court Judge Staub regarding the no contact order. RPMC-121510 1-5. The Municipal Court record provides, in pertinent part:

COURT: Jesse Luna?

DEFENDANT: Here.

COURT: Mr. Luna, you're here...on a motion to recall the no contact order?...what I'm gonna ask you, Mr. Luna, is whether the domestic violence advocate has had any contact with the protected person in this case, to get their input.

ADVOCATE: I don't have any contact from the victim. I left her a message but I haven't heard back from her since.

Ms. PHILLIPS [Assistant City Prosecuting Attorney]: I would object, this no contact order wasn't just negotiated as part of the plea, it was part of the sentence...meant to stay for two years, no motions, no modifying. Part of the problem with Mr. Luna is he's got an extensive history, including felonies, death threats, first degree assault, weapons, robberies. On his last two DV assault convictions in '09 and this year, it was the same victim. He's done significant amounts of jail time, treatment, its never helped. He continues to perpetrate violence against the same victim. She's going to end up dead. I object to any lifting of this no contact order.

COURT: Mr. Luna, I'm going to deny the motion, given your history and the fact that there has been no contact with the protected person...

DEFENDANT: can I say something? I don't mean to piss you off, but...I believe in...DV case you guys gotta look at my record and stuff like that...consider that. But that's the only thing being used against me not to go to the bars and the DV case...it seems like the only excuse that they've got is my past criminal history that I already paid for...I feel what should matter the most is what the victim wants, cuz she's after all the victim.

COURT: Yes, but we don't have her input.

DEFENDANT: I know...the last time we were in here she wanted it removed...when she [victim advocate] said she left a message...if she did she [Ms. Luna] would have contacted her [Advocate] back because I know she wants it removed based off what she said here the last court date...

MS. PHILLIPS: this wasn't negotiated; this was argued as part of the sentence. The City argued for it, defendant argued against it, and the court imposed it per City's request.

COURT: Mr. Luna, you have a terrible history...we have very few means of anticipating what's gonna happen in the future. This is put here in place to protect the protected person, and one of the big factors that drives this is your past...actions because your past actions are a good predictor...

DEFENDANT: I understand that...but she's [Prosecutor] also reading charges...I never have been convicted for...I have no first degree assault on my record...

COURT: ...it looks like...you have several harassment death threats that were dismissed, a riot, deadly weapon...guilty of assault, two deadly weapon...dismissed, assault 2 intent to commit felony...dismissed, unlawful imprisonment...dismissed...You have...four Riot with a deadly weapon convictions...three assault 2 substantial bodily harm convictions...robbery in the first degree conviction, attempting to elude...possession of stolen property conviction, assault 2 convictions, a theft 2 conviction, possession of stolen property conviction...three obstructing convictions, felony hit and run attended, taking a motor vehicle, burglary 2, malicious mischief second degree...that's what I have.

DEFENDANT: Yeah, alright that's understandable but...all those ain't...against the...victim in this case...I only got one prior DV.

COURT: four convictions for domestic violence charges and those are all within 2010 and 2009. So, Mr. Luna, given your terrible history...including the DV history and the fact that we don't have any contact with the protected person, I'm denying your motion...the no contact order will stay in place.

DEFENDANT: Yup.

RPMC-121510 1-5. Only four days later, on December 19, 2010, defendant/respondent violated that very same no contact order. CP 3-7. It is the defendant/respondent's actions in violation of the no contact order that is the basis for the State's charge filed herein. CP 3-9.

On July 25, 2011, defendant/respondent argued its motion to dismiss the charge to the Superior Court. Defendant/respondent specifically argued to the Superior Court that the no contact order incorporated into the Municipal Court's judgment and sentence entered on October 12, 2010, was not in effect when defendant committed the violation thereof that is the basis for the felony order violation filed herein. RPSC-072511 3-6. Defendant argued, "careful review of the Municipal court file and all the records show that no post conviction no contact order was put into place. Defendant certainly never acknowledged anything, signed any no contact order." RPSC-072511 at 3. The State responded that with an offer of proof that the Municipal Court had imposed a no contact order as part of its judgment and sentence entered in case No. N9170. RPSC-072511 at 6, 8-9. The State further offered proof that defendant had notice of, and acknowledged, the

existence of the no contact order by virtue of the defendant's motion to recall said order two months later on December 15, 2010. RPSC-072511 at 9-12. At one point, the State offered to hand up the Municipal Court file No. N9170, yet the Superior Court refused the offer. RPSC-072511 at 12.

Thereafter, the Superior Court dismissed the State's case based upon the following reasoning:

[G]oing to dismiss this count...on three bases...Number one, a lot of the language in [*State v.*] *Schultz*, [146 Wash.2d 540, 48 P.3d 301 (2002)] deals with until sentencing...it's an odd case when...you then read [RCW] 10.99, it's in direct conflict with 10.99...the *Schultz* case is just odd...

Second grounds: this was clearly a pretrial order in the Luna case...[RCW]10.99 clearly sets forth what you need if you're going to have a no contact order as a result of a conviction...you know what we do in Superior Court...a separate order...you make the defendant stand up...look...eyeball to eyeball and say...this is a new no contact order...you tell this person eyeball to eyeball if you violate this order...you're going to get arrested...none of that was done here...a direct violation of [RCW]10.99.050.

Number three...on constitutional grounds only, this process that's happening in district court...just check the box ...if this is the practice in district court, something needs to happen because it violates the constitution of the State of Washington,...U.S. constitution. It does not give any notice to the person...it doesn't pass muster.

RPSC-072511 at 12-15.

IV.

ARGUMENT

A. THE TRIAL COURT WAS LEGALLY BOUND TO FOLLOW THE PRECEDENT ESTABLISHED BY THE *SCHULTZ* DECISION FROM THE WASHINGTON STATE SUPREME COURT.

The trial court clearly erred when it failed to follow the directly controlling authority of the Washington State Supreme Court set forth in *State v. Schultz*, 146 Wn.2d 540, 48 P.3d 301 (2002). In *Schultz*, the Washington State Supreme Court interprets a Washington State statute, RCW 10.99. “[O]nce this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court.” *State v. Gore*, 101 Wn.2d 481, 681 P.2d 227 (1984). The *Gore* Court further noted the perspective of the United States Supreme Court with regard to precedent: “But unless we wish anarchy to prevail within the federal judicial system, a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.” *Hutto v. Davis*, 454 U.S. 370, 102 S. Ct. 703, 70 L. Ed. 2d 556 (1982). Here, the trial court was therefore without authority to conclude that the *Schultz* decision by the Washington Supreme Court simply does not apply.

B. THE *SCHULTZ* DECISION INTERPRETS THE PROVISIONS OF RCW 10.99 AND IS NOT IN DIRECT CONFLICT WITH THE STATUTE.

In *Schultz*, the Supreme Court specifically analyzed the provisions of RCW 10.99 with respect to the validity of a no contact order entered at arraignment for domestic violence through a finding of guilt and sentencing. The issue in *Schultz* was whether a court may extend a no contact order entered at arraignment as a sentencing condition by indicating on the judgment and sentence that the order is to remain in effect.

The statutory provisions for no contact orders provide, in pertinent part:

At the time of arraignment the court shall determine whether a no-contact order shall be issued or extended. The order shall terminate if the defendant is acquitted or the charges are dismissed.

RCW 10.99.040(3).

When a defendant is found guilty of a crime and a condition of the sentence restricts the defendant's ability to have contact with the victim, such condition shall be recorded and a written certified copy of that order shall be provided to the victim.

RCW 10.99.050(1).

In *Schultz*, the trial court simply checked a box on the judgment and sentence marked "no contact order to remain in effect." The Supreme

Court held this notation to be an effective extension of the pretrial order entered under RCW 10.99.0404(3) because it met the requirements of RCW 10.9.050(1). *Id.*, at 548-49.

We therefore conclude that, where the trial court determines at sentencing that a defendant's contact with the victim is to be restricted, RCW 10.99.050(1) may be satisfied either by entry of a new no-contact order or by the court's affirmative indicated on the judgment and sentence that the previously entered no-contact order is to remain in effect.

Schultz, 146 Wn.2d at 547. The Supreme Court characterized the defendant's motion therein as, "Schultz seeks to invalidate a no-contact order that he knew to be in effect and that could have differed from a newly issued order in no meaningful or prejudicial way. *Id.*, at 547. The Supreme Court further noted that the Legislature "never intended an order entered at arraignment to terminate automatically upon a finding of guilt." *Id.*, at 546. The Supreme Court held that the pretrial order was valid and remained in effect until its stated expiration date. *Id.*, at 547.

C. THE POST-CONVICTION NO CONTACT ORDER IMPOSED BY THE MUNICIPAL COURT AS PART OF THE SENTENCE OF DEFENDANT COMPLIED WITH REQUISITES OF RCW 10.99.050.

The Spokane Municipal Court order entered here was similar. The no-contact order was issued pursuant to RCW 10.99 and recited that it

remained in effect until “August 17, 2099.” CP 49-65. The order properly warned the defendant, in pertinent part, that:

WARNINGS TO THE DEFENDANT: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 26.50 and will subject a violator to arrest; any assault...or reckless endangerment that is a violation of this order is a felony...a violation of this order is a class C felony if the defendant has at least 2 previous convictions for violating a protection order issued under Title 10, 26 or 74...**YOU CAN BE ARRESTED EVEN IF THE PERSON OR PERSONS WHO OBTAINED THE ORDER INVITE OR ALLOW YOU TO VIOLATE THE ORDER’S PROHIBITIONS.** You have the sole responsibility to avoid or refrain from violating the order’s provisions. Only the court can change the order upon written application.”

CP 65.

The Municipal Court properly noted on defendant’s judgment and sentence in cause No. N9170 that the “NCO” was part of his sentence.

CP 61.

The Municipal Court’s intent is apparent on the face of the Judgment and Sentence entered in No. N9170. As the Supreme Court observed in *Schultz*,

RCW 10.99.050(1) does not say that, where the trial court restricts as a sentencing condition the defendant’s contact with the victim, the court ipso facto nullifies the prior no-contact order and must then enter an entirely new order...RCW 10.99.050(1) requires only that the

sentencing condition be 'recorded' and that the victim be provided with a certified copy of the order.

State v. Schultz, 146 Wn.2d at 546.

Under the circumstances herein, the Municipal Court's Judgment and Sentence satisfies the *Schultz* requirement of a clear indication that the pretrial order was to remain in effect.

In addition, a review of the transcript of the guilty plea and sentencing hearing on October 12, 2010, from the Municipal Court provides a good body of evidence to support the fact that the court left no doubt of its intentions and the defendant's understanding thereof. RPMC-101210, 1-9.

D. THE POST-CONVICTION NO CONTACT ORDER IMPOSED BY THE MUNICIPAL COURT AS PART OF DEFENDANT'S SENTENCE IS CONSTITUTIONAL AS HAVING ONLY BEEN ISSUED AFTER FULL NOTICE TO THE DEFENDANT.

The Superior Court ruled that the no-contact order issued by the Municipal Court in No. N9170 was "constitutionally infirm" and that "due process requires notice, which was not provided here." As previously noted and argued, defendant was before the Municipal Court on October 12, 2010, when he entered his guilty plea to the domestic violence misdemeanor assault charged in No. N9170. During the defendant's post-

judgment colloquy with the Municipal Court Judge, defendant acknowledged the valid existence of the no-contact order entered therein. RPMC-101210, 1-9. A review of that record clearly proves that the Municipal Court only entered the post-conviction no-contact order after ensuring that defendant was on full notice of the existence of the no-contact order and the consequences for any violation thereof. Clearly, the Superior Court should have investigated further into the actions of the Municipal Court rather than merely assuming that there was a lack of due process based upon the representations made during argument of defendant's motion. The Superior Court acknowledged that it had received the State's brief in response to the defendant's motion to dismiss which included all the pleadings from the Municipal Court's several hearings. RP 7. Moreover, the Superior Court should have accepted that the written judgment and sentence entered by the Judge in Municipal Court No. N9170 which memorialized the imposition of a post-conviction no-contact order had been entered pursuant to due process since it included the defendant's signature. CP 63-65.

Additionally, the Superior Court's legal conclusion that the no-contact order was constitutionally defective due to insufficient notice is even more untenable in light of the evidence before the Superior Court that the defendant had brought a motion to recall that very same no-contact order

before the Municipal Court on December 15, 2010. The record of that hearing clearly proves that the defendant had sufficient notice of the issuance and existence of the no-contact order that he violated only four days later. RPMC-121510 1-5. During that hearing, the defendant once again acknowledges the existence of the no-contact order. The defendant knew before he left the Municipal Courtroom on December 15, 2010, that the no-contact order issued on October 12, 2010, was valid and still in effect. The record clearly establishes that the defendant had both oral and written notice of the issuance, existence and validity of the no-contact order when he violated that very same order herein. Hence, there is no factual or legal support for the Superior Court to have legally concluded that the no-contact order entered by the Municipal Court against defendant was “constitutionally infirm due to a lack of notice.”

E. THE TRIAL COURT’S UNSUPPORTED LEGAL CONCLUSIONS RESULTED IN THE IMPROPER DISMISSAL OF THIS CASE AND DEPRIVED THE STATE OF ITS ABILITY TO HOLD THE DEFENDANT PROPERLY ACCOUNTABLE FOR HIS ACTIONS.

The Superior Court’s “Order Dismissing Count II” entered herein presents a mixed set of “findings” making it difficult to discern which standard of review is to be applied to each. A trial court’s findings of fact supporting a suppression decision are reviewed for substantial evidence.

State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). “Substantial evidence” being sufficient evidence in the record to persuade a fair-minded person of the truth of the finding. *Id.*, at 644. A trial court’s conclusions of law are reviewed *de novo* by the appellate court. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *overruled on other grounds by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Questions of statutory interpretation are also reviewed *de novo*. *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

Here, the Order “Finding (1.)” provides, “*State v. Schultz*, 146 Wn.2d 540, does not apply to this case and is direct conflict with RCW 10.99.” CP 47-48. This appears to be a legal conclusion of the Superior Court whereby that court engages in both application of case law and statutory interpretation. As previously noted, the Washington State Supreme Court interpreted RCW 10.99 and rendered its perspective thereof in *Schultz*. Also, as previously noted, “[O]nce this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court.” *State v. Gore, supra*. Accordingly, the Superior Court’s “Finding (1.)” is plainly contrary to a binding decision interpreting RCW 10.99 as it applies to the circumstances of the cases herein.

Here, the Order “Finding (2.)” provides, “RCW 10.99.050 clearly sets forth what a court must do to impose a post-conviction no-contact order;

RCW 10.99.050 was not complied with in this case.” CP 47-48. This appears to be a factual finding, so standard of review is to determine whether there exists sufficient evidence in the record to persuade a fair-minded person of the truth of the finding. The record before the Superior Court clearly does not support the Superior Court’s finding since the defendant had notice of the post-conviction no-contact order after he entered a guilty plea in Municipal Court No. N9170 before he signed the judgment and sentence in open court. CP 10-13; RPMC-101210, 1-9.

Here, the Order “Finding (3.)” provides, “the order is constitutionally infirm as applied to this case. Due process requires notice, which was not provided here.” CP 47-48. This appears to be a mixed factual finding and legal conclusion in that the Superior Court has found the evidence before it to be factually insufficient to support a legal conclusion that the subject no-contact order was legally deficient. The record before the Superior Court clearly contradicts the factual finding that the defendant had no notice of the imposition of the post-conviction no-contact order. Hence, the Superior Court’s legal conclusion that the no-contact order was “constitutionally infirm” simply is untenable and unsupported by the record. Accordingly, the Superior Court’s “Order Dismissing Count II” lacked sufficient factual and legal support and deprived the State of the ability to hold the defendant accountable for his actions *violating a Court Order*.

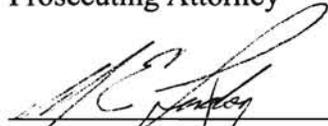
V.

CONCLUSION

For the reasons stated above, the Superior Court's dismissal of the State's cause of action with prejudice should be reversed and this case reinstated.

Dated this 2nd day of February, 2012.

STEVEN J. TUCKER
Prosecuting Attorney



Mark E. Lindsey #18272
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