

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELRADA EUGENE GILMORE,

Defendant-Appellant.

UNPUBLISHED

June 19, 2012

No. 301177

Wayne Circuit Court

LC No. 10-007567-FC

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Defendant Delrada Eugene Gilmore appeals by right his bench convictions of kidnapping, MCL 750.349, fourth-degree criminal sexual conduct, MCL 750.520e(1), and malicious destruction of fire or police property, MCL 750.377b. The trial court sentenced him to serve concurrent prison terms of four to 15 years for the kidnapping conviction, 112 days for the criminal sexual conduct conviction, and 112 days for the malicious destruction of property conviction. Because we conclude that there were no errors warranting relief, we affirm.

Defendant first argues that the kidnapping statute, MCL 750.349, is unconstitutionally vague and overly broad. This Court reviews de novo a trial court's determination regarding the constitutionality of a statute. *People v Rogers*, 249 Mich App 77, 94; 641 NW2d 595 (2001).

There are three grounds for challenging a statute for vagueness: (1) the statute is overbroad and impinges on First Amendment freedoms, (2) the statute fails to provide fair notice of the proscribed conduct, and (3) the statute is so indefinite that it confers unfettered discretion on the trier of fact to determine whether the law has been violated. *Id.* at 94-95. Generally, a defendant may only challenge a statute as vague in light of the facts of his case. *Id.* at 95. If the defendant's conduct falls within the constitutional scope of the statute, he may not defend the charge on the basis that the statute is vague. *Id.*

Here, defendant challenges the kidnapping statute as vague because "[i]t is difficult to imagine what acts of criminal sexual conduct" would "not contain some brief or incidental restriction of the person's movement." Defendant also argues that the statute allows the prosecutor to charge a wide range of behaviors as kidnapping. Defendant does not have standing to assert that the statute is vague, however, because his conduct was clearly prohibited by the statute. *Rogers*, 249 Mich App at 94-95.

“A person commits the crime of kidnapping if he or she knowingly restrains another person with the intent to”: “[h]old that person for ransom or reward”, use “that person as a shield or hostage”, “[e]ngage in criminal sexual penetration or criminal sexual contact with that person” use, “[t]ake that person outside of this state”, “[h]old that person in involuntary servitude.” MCL 750.349(1). The Legislature further defined “restrain” to mean “to restrict a person’s movements or to confine the person so as to interfere with that person’s liberty without that person’s consent or without legal authority.” MCL 750.349(2). Moreover, the restraint can be momentary and may arise from the commission of another crime: “The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.” *Id.*

Defendant was charged with kidnapping with the intent to engage in criminal penetration or criminal sexual contact. MCL 750.349(1)(c). At trial, there was evidence that, after the victim refused to have sex with defendant, he closed and locked the door, told the victim she was not going anywhere, took her cell phone, and pinned her to the couch by her neck. There was other evidence that defendant told the victim to bend over, exposed his penis to the victim, and fondled her vagina while she was pinned to the couch. Defendant’s conduct clearly was prohibited by the statute. Therefore, defendant may not defend the kidnapping charge on the basis that it is vague. *Rogers*, 249 Mich App at 94-95.

Defendant next argues that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that he was guilty of kidnapping under MCL 750.349. Specifically, defendant argues that the evidence was insufficient because it did not prove the element of asportation.

When reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). “[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

In 2006, the Legislature amended the kidnapping statute. See 2006 PA 159. The amendment substantially changed the language and organization of the statute. As amended, the kidnapping statute does not contain an asportation element and defendant has cited no legal basis for reading such an element into the new statute. Furthermore, viewing the evidence noted above in the light most favorable to the prosecution, we conclude that the evidence was sufficient to support the trial court’s verdict. *Wolfe*, 440 Mich at 515.

There were no errors warranting relief.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly
/s/ Mark T. Boonstra