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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 11/29/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)	No. 1 CA-CR 10-0250
)	
Appellee,)	DEPARTMENT E
)	
v.)	MEMORANDUM DECISION
)	
MARCO ANTONIO CORRALES-CARDENAS,)	(Not for Publication -
)	Rule 111, Rules of the
Appellant.)	Arizona Supreme Court)
)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-007316 005 DT

The Honorable Arthur T. Anderson, Judge

AFFIRMED

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Criminal Appeals/Capital Litigation Section	
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Attorneys for Appellant	

J O H N S E N, Judge

¶1 Marco Antonio Corrales-Cardenas argues his kidnapping convictions should be reversed because the superior court erred by refusing to instruct the jury on the lesser-included offense of unlawful imprisonment. We conclude Corrales-Cardenas was not entitled to the lesser-included offense instruction and affirm his convictions.

FACTS AND PROCEDURAL HISTORY

¶2 Three men and a woman who lacked immigration documents entered the United States with the help of "coyotes" they paid to assist them with the journey.¹ The four were brought to a Phoenix home to await further travel. While they were alone in the home, armed men broke in and forced the victims to come with them against their will.

¶3 The armed men held the victims for approximately five days and demanded payment from the victims' families to ensure their safety. Three of the four families paid the ransom demands quickly, but the men refused to release any of the victims until all had paid. While awaiting payment, the men terrorized and abused the victims: They electrocuted the male victims, raped the female victim and threatened to cut off body parts.

¹ "Coyote" refers to an individual paid to bring non-citizens into the United States illegally.

¶14 Corrales-Cardenas arrived at the apartment on the last or next-to-last day of the imprisonment. The victims testified Corrales-Cardenas agreed with the men that, in exchange for a place to stay, he would guard the victims. They testified that pursuant to that agreement, Corrales-Cardenas watched over them with a gun. Corrales-Cardenas arrived after the female victim was raped and he did not electrocute anyone, but one of the male victims testified that Corrales-Cardenas hit him twice with a gun.

¶15 On the final day, the leader of the coyotes left to pick up the last ransom payment. He did not return to the apartment because he was arrested by police. When the rest of the coyotes learned what had happened, they left the apartment. The victims then walked out and contacted the police.

¶16 Corrales-Cardenas was indicted on four counts of aggravated assault, Class 3 dangerous felonies, and four counts of kidnapping, Class 2 dangerous felonies. He and a co-defendant were tried together. While settling jury instructions, Corrales-Cardenas's counsel requested a lesser-included offense instruction on unlawful imprisonment, but the court denied the request. The jury found Corrales-Cardenas guilty of all counts and found three aggravating factors.

¶17 The superior court sentenced Corrales-Cardenas to the presumptive term of 7.5 years' imprisonment on the four

aggravated assault counts, to be served concurrently with each other, and the presumptive term of 10.5 years on the kidnapping counts, to be served concurrently with each other but consecutively to the sentences on the other crimes.

¶18 Corrales-Cardenas timely appealed. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") §§ 12-120.21(A)(1), 13-4031 and 13-4033 (2011).²

DISCUSSION

¶19 Corrales-Cardenas contends the superior court erred in refusing to instruct the jury on unlawful imprisonment. We review the court's denial of a requested jury instruction for abuse of discretion. *State v. Wall*, 212 Ariz. 1, 3, ¶ 12, 126 P.3d 148, 150 (2006). Abuse of discretion may exist "[w]here there has been an error of law committed in the process of reaching the discretionary conclusion." *Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982).

¶10 An instruction on a lesser-included offense is required "if an offense is, in fact, a lesser-included offense of another, and the evidence supports giving the lesser-included instruction." *State v. Brown*, 204 Ariz. 405, 408, ¶ 7, 64 P.3d 847, 850 (App. 2003); Ariz. R. Crim. P. 23.3. Corrales-Cardenas

² Absent material revisions after the date of an alleged offense, we cite a statute's current version.

contends unlawful imprisonment is a lesser-included offense of kidnapping and the evidence presented at trial supported a finding of unlawful imprisonment.

¶11 "A lesser-included offense is one 'composed solely of some but not all of the elements of the greater crime so that it is impossible to have committed the crime charged without having committed the lesser one.'" *State v. Miranda*, 200 Ariz. 67, 68, ¶ 2, 22 P.3d 506, 507 (2001) (quoting *State v. Celaya*, 135 Ariz. 248, 251, 660 P.2d 849, 852 (1983)). The indictment charged Corrales-Cardenas with kidnapping with the intent to hold the victims for ransom. Kidnapping is defined as "knowingly restraining another person" with the intent to engage in one of six kinds of prohibited conduct specified in the statute. A.R.S. § 13-1304(A) (2011). Unlawful imprisonment is "knowingly restraining another person." A.R.S. § 13-1303(A) (2011). Thus, unlawful imprisonment is a lesser-included offense of kidnapping, and "[t]he distinguishing element between [the offenses] is the perpetrator's state of mind" - in this case, whether the unlawful imprisonment was accompanied by the intent to hold the victims for ransom. See *State v. Detrich*, 178 Ariz. 380, 383, 873 P.2d 1302, 1305 (1994); see also *State v. Tschilar*, 200 Ariz. 427, 437, ¶ 40, 27 P.3d 331, 341 (App. 2001).

¶12 The evidence is sufficient to require a lesser-included offense instruction if the jury is "able to find (a) that the State failed to prove an element of the greater offense and (b) that the evidence is sufficient to support a conviction on the lesser offense." *Wall*, 212 Ariz. at 4, ¶ 18, 126 P.3d at 151. While a "jury might simply disbelieve the state's evidence on one element of the crime," that premise alone is not enough to support a lesser-included offense instruction, as it "would require instructions on all offenses theoretically included" in every single offense. *State v. Caldera*, 141 Ariz. 634, 637, 688 P.2d 642, 645 (1984) (quoting *State v. Schroeder*, 95 Ariz. 255, 259, 389 P.2d 255, 258 (1964)); see also *State v. Bolton*, 182 Ariz. 290, 309, 896 P.2d 830, 849 (1995). Rather, "the evidence must be such that a rational juror could conclude that the defendant committed only the lesser offense." *Wall*, 212 Ariz. at 4, ¶ 18, 126 P.3d at 151.

¶13 In denying Corrales-Cardenas's request for an instruction on unlawful imprisonment, the superior court stated, "A lesser included becomes a necessary included if the state failed to prove an element of the greater offense and . . . the evidence is sufficient to support a conviction . . . on the lesser offense." Based on this standard, it concluded, "Here I think there was sufficient evidence to support the kidnapping

charges . . . [s]o I think it's - there's evidence to support the giving of the initial charge of kidnapping."

¶14 As stated above, however, in determining the sufficiency of the evidence for purposes of a lesser-included offense instruction, the issue is not whether the State has offered evidence sufficient to prove the charged offense, but whether on the evidence presented, *the jury could rationally find* that the State failed to prove the greater offense. Similarly, the issue with respect to the second condition is whether sufficient evidence supports a conviction on the lesser offense, not whether the evidence also supports the charged offense. Here, the proper inquiry was whether there was sufficient evidence from which the jury rationally could conclude that Corrales-Cardenas committed only the crime of unlawful imprisonment.

¶15 Although the superior court may have applied an incorrect legal test in declining to instruct the jury on unlawful imprisonment, after examining the record, we conclude Corrales-Cardenas was not entitled to have the jury instructed on the lesser offense. The only evidence at trial bearing on Corrales-Cardenas's knowledge and intent was that he knew the coyotes were holding the victims for ransom and he intended to participate in that crime. In the absence of evidence that Corrales-Cardenas was unaware of the purpose of the victims'

unlawful imprisonment, the superior court did not err by refusing an instruction on the lesser-included offense of unlawful imprisonment.

¶16 One of the male victims testified to two instances in which Corrales-Cardenas spoke of the ransom arrangement. In the first instance, the man testified that two of the other coyotes had told Corrales-Cardenas that he, the man, "didn't want to pay" the ransom. The witness continued, "So while we were sitting there, [Corrales-Cardenas] says, 'Oh, so you're the guy with the balls?'" In the second instance, the male victim testified that on the last day at the apartment

[w]hen [Corrales-Cardenas] got up and found out that I hadn't paid and that . . . something had happened to [the leader of the coyotes], I turned around to look at him . . . and I asked him to give me a cigarette. And he said, "Shut up. Because it's your fault they haven't paid," [a]nd so then he hit me with his gun.

¶17 Beyond these explicit references to ransom payments, another male victim testified Corrales-Cardenas arrived at the apartment and asked for a place to stay. The coyotes "told him that he could stay there, but that he was going to have to watch over [the victims]." The victims also testified that Corrales-Cardenas was one of the people who guarded them, and that he carried a gun.

¶18 In sum, there is no evidence in the record to support the proposition that Corrales-Cardenas believed the victims were being held for any reason other than for ransom. Accordingly, based on the evidence, no reasonable jury could have concluded that Corrales-Cardenas guarded the victims but lacked the intent required to commit kidnapping. For these reasons, the evidence does not support the giving of an instruction on the lesser-included offense of unlawful imprisonment, and we affirm the superior court's denial of Corrales-Cardenas's request for such an instruction. See *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) ("We are obliged to affirm the trial court's ruling if the result was legally correct for any reason.").

CONCLUSION

¶19 For the reasons stated above, we affirm Corrales-Cardenas's convictions and sentences.

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Judge

/s/

LAWRENCE F. WINTHROP, Judge