IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 123,742

STATE OF KANSAS,
Appellee,

v.

RICHARD CHANTEZ BUTLER,
Appellant.

SYLLABUS BY THE COURT

1.

When a defendant is convicted of taking or confining someone with the intent to facilitate the commission of another crime under K.S.A. 2022 Supp. 21-5408(a)(2), the three-part test set out in *State v. Buggs*, 219 Kan. 203, 547 P.2d 720 (1976), applies. Under that test, an appellate court will vacate the conviction if: (1) the confinement is slight, inconsequential, and merely incidental to the other crime; (2) the confinement is inherent in the nature of the other crime; or (3) the confinement did not make commission of the other crime substantially easier or substantially lessen the risk of detection.

2.

The three-part test set out in *State v. Buggs*, 219 Kan. 203, 547 P.2d 720 (1976), applies only when the defendant is convicted of taking or confining a person with the intent to facilitate the commission of another crime under K.S.A. 2022 Supp. 21-5408(a)(2). The test does not apply when the defendant is convicted of taking or confining a person with the intent to inflict bodily injury or to terrorize the victim or another under K.S.A. 2022 Supp. 21-5408(a)(3).

Review of the judgment of the Court of Appeals in an unpublished opinion filed August 26, 2022. Appeal from Atchison District Court; ROBERT J. BEDNAR, judge. Oral argument held March 30, 2023. Opinion filed August 11, 2023. Judgment of the Court of Appeals reversing the district court on the issue subject to review is reversed. Judgment of the district court is affirmed.

Carol Longenecker Schmidt, of Adrian & Pankratz, P.A., of Newton, argued the cause and was on the briefs for appellant.

Natalie Chalmers, assistant solicitor general, argued the cause, and *Sherri L. Becker*, county attorney, and *Derek Schmidt*, attorney general, were with her on the briefs for appellee.

The opinion of the court was delivered by

WALL, J.: Under Kansas law, a person who confines someone with the intent to facilitate the commission of another crime has committed a kidnapping. K.S.A. 2022 Supp. 21-5408(a)(2). But some crimes, such as rape and robbery, by their nature may involve the confinement of a victim. Thus, nearly a half-century ago, we fashioned a three-part test to ensure that a defendant is not convicted of two crimes for identical conduct in these circumstances. *State v. Buggs*, 219 Kan. 203, Syl. ¶ 10, 547 P.2d 720 (1976). Under the *Buggs* test, a conviction cannot stand if the confinement was "incidental to" or "inherent in the nature of" the other crime, or if the confinement did not make commission of the other crime "substantially easier" or "substantially lessen[ ] the risk of detection." 219 Kan. 203, Syl. ¶ 10.

Today, we consider the reach of that test. We reject the view, adopted by the panel of the Court of Appeals below and pressed by Richard Chantez Butler, that the test applies to kidnappings, like Butler's, committed with the intent to inflict bodily harm or terrorize a person. See K.S.A. 2022 Supp. 21-5408(a)(3). Instead, we reaffirm what we held two decades ago: the test set out in *Buggs* applies "only to a determination of

whether a taking or confinement was to facilitate the commission of another crime." *State v. Burden*, 275 Kan. 934, Syl. ¶ 3, 69 P.3d 1120 (2003). And so we reverse the decision of the Court of Appeals panel vacating Butler's conviction for aggravated kidnapping.

FACTS AND PROCEDURAL BACKGROUND

The question before us is about Butler's aggravated-kidnapping conviction, but the crimes here go well beyond that offense. Butler was sentenced to more than 45 years in prison after being convicted of aggravated kidnapping and 14 other crimes, including 3 counts of rape and 2 counts of aggravated criminal sodomy, all against the same victim. The panel below carefully described the events underlying those convictions. See *State v. Butler*, No. 123,742, 2022 WL 3692866, at *1-5 (Kan. App. 2022) (unpublished opinion).

Butler raised several issues before the Court of Appeals. Most of those issues are not before us because the panel ruled against Butler and he did not seek, or we did not grant, review of those holdings. But the panel agreed with Butler that insufficient evidence supported his aggravated-kidnapping conviction under the three-part test our court set out nearly 50 years ago in *Buggs*. *Butler*, 2022 WL 3692866, at *12-13. In the panel's view, Butler's confinement of the victim could not support a standalone aggravated-kidnapping conviction because the confinement "was incidental to the crimes of rape and aggravated sodomy," "was inherent to the crimes," and "had no significance independent of those crimes." 2022 WL 3692866, at *11. The panel vacated Butler's conviction, noting that its decision would not affect Butler's total sentence, which was based on consecutive sentences for two counts of rape and one count of aggravated criminal sodomy.

The State appeals. It argues that under our precedent, the *Buggs* test applies only when the State alleges the defendant took or confined a person with the intent to facilitate the commission of a crime. See *Burden*, 275 Kan. 934, Syl. ¶ 3. The State says that its

sole theory at trial was that Butler had confined the victim with the intent to inflict bodily harm or terrorize her. And it argues that, under *Burden*, the *Buggs* test does not apply to that type of kidnapping.

We held oral argument in the matter during our March 2023 docket. We have jurisdiction over the appeal. See K.S.A. 60-2101(b) (providing for Kansas Supreme Court review of Court of Appeals decisions).

ANALYSIS

Before the Court of Appeals, Butler argued that there was insufficient evidence to support his aggravated-kidnapping conviction. Ordinarily, when a defendant raises a sufficiency-of-the-evidence challenge, an appellate court decides whether—after reviewing the evidence in the light most favorable to the State—it is convinced that a rational fact-finder could have found the defendant guilty beyond a reasonable doubt. *State v. Chandler*, 307 Kan. 657, 668, 414 P.3d 713 (2018). An aggravated kidnapping occurs when "bodily harm is inflicted upon the person kidnapped," so under the ordinary sufficiency-of-the-evidence standard, an appellate court would decide whether the State had proved all the elements of a kidnapping plus the added element of bodily harm. K.S.A. 2022 Supp. 21-5408(b). And it would make that determination without reweighing evidence, resolving evidentiary conflicts, or reassessing witness credibility. 307 Kan. at 668.

But nearly five decades ago in *Buggs*, our court fashioned a test that applies when a defendant is convicted under a specific subsection of the kidnapping statute. 219 Kan. 203, Syl. ¶ 10. Under that subsection, a person commits a kidnapping by taking or confining someone with the intent "to facilitate flight or the commission of any crime." K.S.A. 2022 Supp. 21-5408(a)(2). Confinement, however, can be inherent in some

charged crimes—a defendant who commits robbery by holding the victim at gunpoint, for example, may confine the victim. And as a result, an expansive reading of the kidnapping statute would allow the State to charge a person who has committed that type of crime with a kidnapping on top of the underlying crime. In other words, every defendant charged with a crime that necessarily involves confinement could also be charged with kidnapping for confining the victim with the intent to facilitate the underlying crime.

In *Buggs*, we rejected that expansive interpretation of the kidnapping statute. We determined that the Legislature had not intended the term "facilitate" to include confinements that are "slight and 'merely incidental' to the commission of an underlying lesser crime." 219 Kan. at 214-15. Thus, we developed a three-part test that applies when "a taking or confinement is alleged to have been done to facilitate the commission of another crime." 219 Kan. at 216. Under that test, an appellate court will vacate the kidnapping conviction if (1) the confinement is "slight, inconsequential and merely incidental to the other crime," (2) the confinement is "inherent in the nature of the other crime," or (3) the confinement did not make commission of the other crime "substantially easier" or "substantially lessen[ ] the risk of detection." 219 Kan. 203, Syl. ¶ 10.

Later in *Burden*, the court made clear that the *Buggs* test applies only when the State alleges that the victim was confined with the intent to facilitate the commission of another crime. *Burden* held that the test does *not* apply when the State alleges that the victim was confined with the intent "to inflict bodily injury or to terrorize the victim or another," the specific intent now codified in subsection (a)(3) of the kidnapping statute. K.S.A. 2022 Supp. 21-5408(a)(3); 275 Kan. 934, Syl. ¶ 3. Instead, an appellate court reviewing a conviction based on that subsection of the kidnapping statute applies the ordinary sufficiency-of-the-evidence standard. 275 Kan. at 936, 945.

Here, Butler was charged under (a)(3), so under *Burden*, the panel below should have reviewed his conviction under the ordinary sufficiency-of-the-evidence standard. But the panel declined to do so. According to the panel's reading of the trial record, the State had tried to evade the extra protections set out in *Buggs* by ostensibly charging Butler under (a)(3) and then arguing at trial that Butler had confined the victim with the intent to facilitate the commission of another crime under (a)(2). In the panel's view, that practice obliged the appellate courts to apply the *Buggs* test. And when the panel did that, it held that Butler's confinement of the victim "was incidental to the crimes of rape and aggravated sodomy," "was inherent to the crimes," and "had no significance independent of those crimes." *Butler*, 2022 WL 3692866, at *11. Thus, the panel reversed Butler's conviction for aggravated kidnapping.

But the record belies the panel's repeated assertions that the State proceeded under subsection (a)(2) at trial. The original and amended complaints alleged that Butler had taken or confined the victim only with the intent "to inflict bodily injury on or to terrorize" her, the specific intent codified at (a)(3). The district court instructed the jury only on (a)(3)'s specific intent. And during closing arguments, the prosecutor argued for a conviction only under (a)(3). In sum, nothing in the trial record justifies the panel's departure from *Burden*, which held in no uncertain terms that the *Buggs* test does not apply to the type of kidnapping for which Butler was convicted.

Butler suggested for the first time at oral argument that we should overrule *Burden* because a charge under (a)(3) is the functional equivalent of a charge under (a)(2) and should therefore engender the same protections. But a request to overturn controlling precedent should be briefed, not raised for the first time during oral argument—an observation that applies equally to the State's suggestion during rebuttal that we should abandon the *Buggs* test altogether. See *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021) (issues not adequately briefed are deemed waived or abandoned). In short, Butler has not offered an adequate basis to depart from our precedent in *Burden*.

Because *Burden* controls, we apply the ordinary sufficiency-of-the-evidence test when reviewing Butler's aggravated-kidnapping conviction. The State alleged a kidnapping under subsection (a)(3), so the State had to prove beyond reasonable doubt that Butler confined the victim with the intent "to inflict bodily injury or to terrorize the victim or another." And to secure a conviction for aggravated kidnapping, the State needed to prove all the elements of kidnapping under (a)(3) plus the added element that the defendant inflicted bodily harm. See K.S.A. 2022 Supp. 21-5408(b).

The victim testified extensively at trial. Viewed in the light most favorable to the State, her testimony established that Butler held her against her will in her home for several hours. Butler took her keys and phone to prevent her from escaping or calling for help. Butler held a knife to her throat, threatened her and her family, and choked her. Butler repeatedly raped and sodomized her. And she was only able to escape after Butler fell asleep. Based on this evidence, we hold that a rational fact-finder could have found beyond reasonable doubt that Butler confined the victim with the intent to inflict bodily injury or terrorize her and he, in fact, inflicted bodily injury during the kidnapping.

Finally, we note that the panel, without any prompting from the parties, suggested that an aggravated-kidnapping conviction was multiplicitous with Butler's other convictions in this case. Multiplicity is the charging of a single offense as more than one count on a charging document. *State v. Thompson*, 287 Kan. 238, 244, 200 P.3d 22 (2009). That is a problem because it results in multiple punishments for a single offense, which violates the United States and Kansas Constitutions. 287 Kan. at 244. (multiplicitous convictions violate the Double Jeopardy Clauses of the Fifth Amendment to the United States Constitution and § 10 of the Kansas Constitution Bill of Rights).

According to the panel, the only evidence that could support Butler's aggravated-kidnapping conviction already supported his other convictions. For example, as we noted above, Butler threatened the victim and her family while confining her. That evidence could support a finding under (a)(3) of the kidnapping statute that Butler had confined the victim with the intent to terrorize her. But the State also relied on that evidence to support Butler's conviction for criminal threat. See K.S.A. 2022 Supp. 21-5415(a)(1); K.S.A. 2022 Supp. 21-5408(a)(3). In the panel's view, relying on that evidence to support convictions for both criminal threat and aggravated kidnapping would "allow the State to improperly use Butler's same conduct to convict him of two separate crimes," rendering the convictions multiplicitous. 2022 WL 3692866, at *12.

But the panel's analysis is at odds with our established legal framework for analyzing multiplicity issues. Prior to 2006, when a defendant was convicted of violating multiple criminal statutes as part of the same course of conduct, we occasionally held that those convictions were multiplicitous when supported by a single wrongful act or single act of violence. See *State v. Garcia*, 272 Kan. 140, 146, 32 P.3d 188 (2001), *disapproved of by State v. Schoonover*, 281 Kan. 453, 133 P.3d 48 (2006). But this fact-intensive, "same evidence" test proved to be ambiguous and resulted in inconsistent and irreconcilable outcomes. *Schoonover*, 281 Kan. at 482.

Thus, ever since our 2006 decision in *Schoonover*, we have applied a bright-line, "same-elements" test when the multiplicity issue arises from unitary conduct resulting in multiple convictions of different statutes. 281 Kan. 453, Syl. ¶ 12. The test serves as a rule of statutory construction to discern whether the Legislature intended multiple offenses and multiple punishments for the same conduct. 281 Kan. at 498. Under that test, if one statute requires proof of an element unnecessary to prove the other offense, then the statutes do not define the same crime and are not multiplicitous. 281 Kan. at 498.

Here, aggravated kidnapping does not share all its elements with rape, criminal threat, or any of Butler's other crimes of conviction. So there is no multiplicity issue under the same-elements test established in *Schoonover*.

Which brings us to a final point. Both this court and litigants have discussed the *Buggs* test as a sufficiency-of-the-evidence standard. See, e.g., *Burden*, 275 Kan. at 937, 944-45. But at its core, the test appears to be designed to inoculate against multiplicity—it aims to ensure that a defendant is not convicted of two crimes for the same conduct. As noted at oral argument, one could question whether *Buggs*' approach to multiplicity is out of step with the same-elements test we just described. That inconsistency could also raise questions about our continued adherence to *Buggs*. Indeed, the State asked us to overrule *Buggs* during its rebuttal argument.

While we acknowledge this potential tension between *Buggs* and *Schoonover*, we do not lightly disapprove of precedent. *In re N.E.*, 316 Kan. 391, 412, 516 P.3d 586 (2022). Our court decided *Buggs* nearly five decades ago. And under the principle of stare decisis, unless clearly convinced otherwise, "'points of law established by a court are generally followed by the same court . . . in later cases'" to promote stability in the legal system. 316 Kan. at 412. The continuing validity of *Buggs* is not an issue briefed by the parties. Nor did we agree to consider it when we granted review. And perhaps most importantly, we need not revisit *Buggs* to resolve this appeal. So we save that question for another day.

The judgment of the Court of Appeals reversing Butler's aggravated-kidnapping conviction is reversed. The district court's judgment is affirmed.

* * *

STEGALL, J., concurring: I concur in the judgment. See *State v. Couch*, 317 Kan. ___, ___ P.3d ___ (2023) (No. 122,156, this day decided) (Stegall, J., dissenting), slip op. at 40-46.

LUCKERT, C.J., and WILSON, J., join the foregoing concurring opinion.