

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL JAMES MILLER,

Defendant-Appellant.

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UNPUBLISHED

August 12, 2010

No. 291357

Calhoun Circuit Court

LC No. 2008-004091-FC

Before: M.J. KELLY, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for kidnapping, MCL 750.349(1)(b), and unlawfully driving away an automobile, MCL 750.413. Defendant was sentenced as an habitual offender, third offense, MCL 769.11, to 102 months to 300 months' imprisonment for the kidnapping conviction and 24 months to 120 months' imprisonment for the unlawfully driving away an automobile conviction with credit for 119 days, the two sentences to run concurrently. We affirm.

Defendant argues that he requested an additional kidnapping instruction at trial, which the trial court declined to give, that provided that in order to find defendant guilty, defendant had to have acted willfully and maliciously, in that defendant knew that it was wrong to confine the victim and that he did not have legal authority to do so. Defendant cited *People v Adams*, 34 Mich App 546; 192 NW2d 19 (1971), rev'd in part 389 Mich 222 (1973). Defendant argues that he possessed no criminal intent and thus the trial court should have given the requested instruction, and it deprived him of his defense when it did not give the instruction. Moreover, defendant argues that whether he intentionally restrained the victim was an essential element of the kidnapping offense; therefore, he was also deprived of due process because the jury was not instructed on every essential element of the charged offense. Claims of instructional error and issues of statutory interpretation are reviewed de novo. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005); *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

“At a criminal trial, the judge functions both as a neutral arbiter between the two contesting parties and as the jury's guide to the law. This role requires that the judge instruct the jury regarding the law applicable to the case . . . and fully and fairly present the case to the jury in an understandable manner.” *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991). It is important to initially note that this Court “look[s] to the language of the kidnapping statute

in effect at the time the instant offense[] w[as] committed.” *People v Gayheart*, 285 Mich App 202, 218 n 6; 776 NW2d 330 (2009). In this case, the alleged conduct that resulted in a kidnapping charge occurred on November 17, 2008. Thus, the current kidnapping statute, MCL 750.349, which became effective August 24, 2006, was applicable to this case.

“[W]hen a statute is repealed and another statute is enacted that covers the same subject area, a change in wording is presumed to reflect a legislative intent to change the statute's meaning.” *People v Henderson*, 282 Mich App 307, 328; 765 NW2d 619 (2009). Further, “[t]he Legislature is presumed to be familiar with the rules of statutory construction, and when it is promulgating new laws it is presumed to be aware of the consequences of its use or omission of statutory language.” *People v Hock Shop, Inc*, 261 Mich App 521, 528; 681 NW2d 669 (2004). Although the former MCL 750.349 was not repealed, the statute was completely rewritten and thus the change of wording and the omission of the statutory language willful and malicious is presumed to reflect a legislative intent to change the statute’s meaning and provide that a defendant no longer is required to act willfully and maliciously to be convicted of kidnapping. *Id.*; *Henderson*, 282 Mich App at 328. In addition, the language of the statute that applied in this case was clear and unambiguous and nothing should be read into a clear statute that is not within the manifest intention of the Legislature as derived from the language of the statute itself. *Macomb Co Prosecuting Atty v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001); *People v Lange*, 251 Mich App 247, 254; 650 NW2d 691 (2002). Thus, instructing the jury that defendant must have acted willfully and maliciously would have been erroneous. Moreover, although defense counsel relied on *Adams*, 34 Mich App 546, that case was decided before the Legislature rewrote the kidnapping statute and removed the terms willfully and maliciously. Hence, *Adams* is not applicable. Further, “[u]nless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning.” *Lange*, 251 Mich App at 253. Therefore, it was not improper for the trial court to determine that the word “knowingly” could be interpreted by the jury “in accordance with the ordinary understood meaning of the term.” In addition, during closing arguments, defense counsel clearly raised the issue of intent with the jury and set forth the idea that defendant’s intent was not to do anything illegal or to wrongfully confine or restrain his estranged wife, Judy Miller. Thus, contrary to defendant’s assertion, defendant was not deprived of the defense that he did not possess the necessary intent in order to be convicted of kidnapping.

Finally, the jury was instructed that in order to find defendant guilty, the jury must conclude that defendant knowingly restrained Miler with the intent to take her outside of Michigan, which is consistent with the statutory language of MCL 750.349(1)(b). And, the jury was provided with the statutory definition of the term restrain as set forth in MCL 750.349(2). Thus, defendant’s argument that defendant was deprived of due process because the jury was not instructed that defendant intentionally restrained Miller is without merit, because the jury was properly instructed according to the express language of the statute.

Affirmed.

/s/ Michael J. Kelly  
/s/ Jane E. Markey  
/s/ Donald S. Owens