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NO. COA14-462
NORTH CAROLINA COURT OF APPEALS

Filed: 2 December 2014

STATE OF NORTH CAROLINA

v.

Guilford County
Nos. 08 CRS 100627, 100630

BRENT KNIGHT,
Defendant.

Appeal by defendant from judgment entered 24 September 2010
by Judge A. Robinson Hassell in Guilford County Superior Court.
Heard in the Court of Appeals 6 October 2014.

*Attorney General Roy Cooper, by Special Deputy Attorney
General Daniel S. Johnson, for the State.*

*Appellate Defender Staples Hughes, by Assistant Appellate
Defender Paul M. Green, for defendant-appellant.*

DIETZ, Judge.

Defendant Brent Knight appeals from his conviction and
sentence for first degree kidnapping and misdemeanor breaking
and entering.

In 2008, Knight went to the home of the victim, his former
girlfriend, and violently attacked her. During the attack, he
held her down and strangled her. He then dragged her by her

hair around the house, beating her in multiple rooms within the home. Knight argues that the trial court committed plain error by failing to instruct on the lesser-included offense of false imprisonment. He contends that a reasonable jury *could have* found that holding the victim down and strangling her, dragging her around the house by her hair, and confining her in various rooms to continue beating her did not satisfy the essential elements of kidnapping.

For the reasons set forth below, we reject Knight's argument. To satisfy the plain error standard, Knight must show that, absent the alleged error, the jury probably would have reached a different result, not merely that it could have. On these facts, Knight cannot show that a reasonable jury probably would have found him not guilty of kidnapping. Accordingly, we find no plain error.

Factual Background

On the night of 5 September 2008, the victim arrived home around 3:00 a.m. after a night out with a friend. Shortly after, Knight entered the victim's home, approached the victim while she lay on the couch, and grabbed her by her hair. Knight pulled the victim from the couch onto the floor and began choking her. While choking her, he also pinned her to the floor

by placing his knees on her chest. The victim testified that Knight choked her with both hands and she could not breathe or scream and almost passed out.

Knight then pulled the victim up by her hair, dragged her to the middle of the room, and started beating her multiple times in her face, head, and body. Knight broke the victim's nose and caused other serious injuries. Knight also held a knife to the victim's throat and told her he would kill her. The victim stated that she thought Knight was going to kill her because he nearly killed her three years earlier by cutting her throat with a knife.

The victim testified that Knight then stripped her down, tied her hands behind her back, and tied her mouth shut with socks. Knight pulled her by her hair and threw her outside on her porch stating, "go be with your f-----g friends now, you b--h." Shortly after, Knight jerked her up by her hair and dragged her back inside the house and slammed the door. He pulled her into the bathroom and told her to wash all the blood off of herself. He then beat her again in the bathroom, violently enough that blood splattered on the bathroom walls.

Knight then dragged her to the back bedroom and forced her to lie down on the bed where he eventually fell asleep. The

victim stated that she did not attempt to escape that night because she was too scared to try to climb over Knight on the bed. Knight finally left the next morning and the victim immediately ran to her neighbor's house for help. The victim was so badly beaten that her neighbor did not recognize her at first. The victim was then taken to the hospital where she received treatment and was interviewed by the police.

On 3 November 2008, a grand jury indicted Knight on charges of first degree kidnapping, first degree burglary, felony assault by strangulation, and misdemeanor assault inflicting serious injury. During the trial, the State voluntarily dismissed the assault by strangulation and misdemeanor assault inflicting serious injury charges, leaving only the kidnapping and burglary charges. At the close of the State's evidence, Knight moved to dismiss the kidnapping charge for insufficient evidence, but the court denied the motion.

Knight did not request a jury instruction on false imprisonment and he did not object to the jury instructions at trial. During deliberations, the jury sent two notes to the trial court inquiring about the elements of kidnapping. The trial court reinstructed the jury on the kidnapping charge and allowed the jury to take notes.

On 24 September 2010, the jury found Knight guilty of first degree kidnapping and acquitted Knight of first degree burglary, but found him guilty of the lesser-included offense of misdemeanor breaking and entering. Knight was sentenced to 107-138 months imprisonment. He filed a timely motion for appropriate relief and then timely appealed his conviction and sentence after the trial court denied that motion.¹

Analysis

On appeal, Knight argues—for the first time—that the trial court erred by failing to instruct the jury on false imprisonment as a lesser-included offense of kidnapping. He concedes that he did not preserve this argument below and thus it is reviewed for plain error.

Our Supreme Court recently reiterated “that plain error should be used sparingly, only in exceptional circumstances.” *State v. Lawrence*, 365 N.C. 506, 517, 723 S.E.2d 326, 333 (2012). “For error to constitute plain error, a defendant must

¹ It is unusual for a criminal case to take four years to reach this Court on direct appeal, but Knight’s appeal is timely. On 4 October 2010, shortly after entry of judgment against him, Knight filed a Motion for Appropriate Relief alleging a discovery violation. The trial court did not hold a hearing on that motion until 30 January 2012, at which point it indicated that it would deny the motion. The court did not enter its written order on that motion until 23 October 2013. Knight then timely appealed. See N.C. R. App. P. 4(a).

demonstrate that a fundamental error occurred at trial.” *Id.* at 518, 723 S.E.2d at 334. “To show that an error was fundamental, a defendant must establish prejudice—that, after examination of the entire record, the error had a probable impact on the jury’s finding that the defendant was guilty.” *Id.* (quotation marks omitted). Thus, a defendant must show that absent the error, “the jury *probably would have* reached a different result,” not merely that the jury *could have* done so. *State v. Jordan*, 333 N.C. 431, 440, 426 S.E.2d 692, 697 (1993) (emphasis added). As explained below, Knight cannot satisfy the plain error standard.

False imprisonment is a lesser-included offense of kidnapping. The difference between the two offenses is “the purpose of the confinement, restraint, or removal of another person.” *State v. Lancaster*, 137 N.C. App. 37, 44, 527 S.E.2d 61, 66 (2000). To prove kidnapping, the State must prove that the confinement or removal of the victim was for one of the enumerated purposes listed in the kidnapping statute. N.C. Gen. Stat. § 14-39 (2013). “[I]f the unlawful restraint occurs without any of the purposes specified in the statute, the offense is false imprisonment.” *State v. Claypoole*, 118 N.C. App. 714, 718, 457 S.E.2d 322, 324 (1995). One of the statutory purposes listed in Section 14-39 is a confinement or removal for

the purpose of "[d]oing serious bodily harm." N.C. Gen. Stat. § 14-39(a)(3). The State indicted and convicted Knight based on this "serious bodily injury" factor.

As a result, to prevail under the plain error standard, Knight must show that the jury probably would have found insufficient evidence that Knight confined or removed the victim for the purpose of inflicting serious bodily injury. The evidence in the record does not support this argument.

At trial, the victim testified that Knight grabbed her by the hair, pulled her to the floor, and strangled her. While strangling her, Knight pinned the victim down by putting his knees on her chest, thereby confining her to the floor. Knight then pulled the victim up by her hair and dragged her around, hitting her multiple times in the face, head, and body. At one point, Knight dragged the victim outside to the porch by her hair, threatened her with further violence, and then dragged her back inside the house to the bathroom. Once confined in the bathroom, Knight punched her repeatedly, hard enough to spray blood on the bathroom walls.

We agree with Knight that a reasonable jury *could have* concluded from this evidence that Knight's actions were purely assaultive "without any confinement or removal separate from the

assault.” But a reasonable jury also readily could have concluded the opposite: that Knight held the victim down, dragged her by her hair into different rooms, and confined her in the bathroom and other areas of the house for the purpose of further attacking her and inflicting serious bodily injury. It is Knight’s burden on plain error review to show not merely that the jury could have reached a different result, but that it probably would have. Knight has not satisfied that burden and therefore we find no plain error.

Conclusion

The trial court’s failure to instruct the jury on the lesser-included offense of false imprisonment was not plain error.

NO ERROR.

Chief Judge MCGEE and Judge STEPHENS concur.

Report per Rule 30(e).