

SUPREME COURT OF WYOMING

Gregory Michael Hawes v. State of Wyoming

2014 WY 127 (Wyo. 2014) · No. S-14-0018 · Decided October 14, 2014

SUMMARY

The Wyoming Supreme Court reviewed Gregory Michael Hawes’s convictions for stalking and kidnapping arising from his restraint and pursuit of his estranged wife. The court reversed the stalking conviction for insufficient evidence of a course of conduct, affirmed the denial of sentencing mitigation for the kidnapping conviction, and upheld the jury-instruction rulings concerning felonious restraint.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Fox, Justice; Burke, C.J.; Hill, J.; Kite, J.; Davis, J.; Fox, J.
JURISDICTION	Wyoming
DECIDED	October 14, 2014
DOCKET	S-14-0018
DISPOSITION	reversed
PROCEDURAL POSTURE	Hawes appealed convictions for felony stalking and kidnapping after the district court denied his motion for judgment of acquittal and motion for new trial. He challenged the sufficiency of the evidence supporting stalking, the denial of sentencing mitigation for voluntary release of the kidnapping victim, and the jury instruction on felonious restraint as a lesser included offense.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed by assuming the prevailing party's evidence is true, disregarding contrary evidence, and giving the prevailing party every favorable inference; the court does not reweigh evidence or reassess witness credibility. The title of a lesser-included-offense instruction was reviewed for abuse of discretion. The unpreserved claim concerning the mens rea language of the instruction was reviewed for plain error.
PRECEDENTIAL VALUE	Published Wyoming Supreme Court opinion; precedential
PARTIES	Gregory Michael Hawes v. The State of Wyoming

TOPICS

criminal procedure

appellate procedure

jury instructions

lesser included offense instructions

sentencing

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the evidence was sufficient to establish the course of conduct and intent to harass necessary for a stalking conviction.
2. Whether the evidence was sufficient to show that Hawes did not voluntarily release the kidnapping victim and therefore was not entitled to statutory sentencing mitigation.
3. Whether the jury was properly instructed on felonious restraint as a lesser included offense, including whether omission of the word "felonious" and omission of a mens rea instruction required reversal.

HOLDINGS

1. The evidence was insufficient to support Hawes's stalking conviction because the State did not present evidence from which a reasonable jury could infer that Hawes acted with the intent to harass Donna on January 25, and therefore did not establish the required course of conduct.
2. The evidence was sufficient for the jury to find that Hawes did not voluntarily release Donna and therefore was not entitled to sentencing mitigation.
3. The district court did not abuse its discretion by omitting the word "felonious" from the lesser-included-offense instruction, and any error in failing to specify that the knowing mental state applied to each element was not materially prejudicial because the jury convicted Hawes of kidnapping without reaching the lesser offense.

KEY QUOTATIONS

"We review that evidence with the assumption that the evidence of the prevailing party is true, disregard the evidence favoring the unsuccessful party, and give the prevailing party the benefit of every favorable inference that we may reasonably draw from the evidence. We will not reweigh the evidence nor will we re-examine the credibility of the witnesses." (¶ 8)

"We hold there was insufficient evidence to support the stalking conviction and we reverse it." (¶ 11)

"When a greater and lesser offense are charged to the jury, the proper course is to tell the jury to consider first the greater offense, and to move on to consideration of the lesser offense only if they have some reasonable doubt as to the guilt of the greater offense." (¶ 16)

"We reverse Mr. Hawes' stalking conviction, and affirm on the issues of sentence mitigation for the kidnapping charge and the felonious restraint jury instruction." (¶ 20)

FACTUAL BACKGROUND

Hawes entered the home of his estranged wife, Donna Hawes, restrained her to a bed, gagged her, and threatened to kill her and then commit suicide. He later cut her hand restraints, but pursued her as she escaped through the pasture and abandoned the pursuit only after she reached a neighbor's property. The day before the kidnapping, Donna had seen Hawes driving a white pickup truck near her route to work, and Hawes later told her he had been watching her.

PROCEDURAL HISTORY

A Campbell County jury convicted Hawes of felony stalking and kidnapping. The district court denied his motion for new trial and imposed consecutive sentences of five to nine years for stalking and thirty years to life for kidnapping. The Wyoming Supreme Court reversed the stalking conviction and affirmed the rulings concerning kidnapping sentencing mitigation and the felonious-restraint jury instruction.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The stalking conviction is reversed. The kidnapping conviction and the ruling denying sentencing mitigation are affirmed, as is the ruling concerning the felonious-restraint jury instruction. The opinion does not state additional remand instructions.

CASES CITED

- Granzer v. State, 2010 WY 130, ¶ 7, 299 P.3d 640, 643-44 (Wyo. 2010)
- Pena v. State, 2013 WY 4, ¶ 29 n.2, 294 P.3d 13, 18 n.2 (Wyo. 2013)
- Garay v. State, 2007 WY 130, ¶ 2 n.1, 165 P.3d 99, 101 n.1 (Wyo. 2007)
- Brown v. State, 2014 WY 104, ¶ 8, 332 P.3d 1168, 1171-72 (Wyo. 2014)
- Perritt v. State, 2005 WY 121, ¶ 9, 120 P.3d 181, 186 (Wyo. 2005)
- Walker v. State, 2013 WY 58, ¶ 33, 302 P.2d 182, 192 (Wyo. 2013)
- Loomer v. State, 768 P.2d 1042, 1047 (Wyo. 1989)
- Gonzalez-Ochoa v. State, 2014 WY 14, ¶ 18, 317 P.3d 599, 605 (Wyo. 2014)
- Duke v. State, 2004 WY 120, ¶ 90, 99 P.3d 928, 954 (Wyo. 2004)
- Janpol v. State, 2008 WY 21, ¶ 9, 178 P.3d 396, 400-01 (Wyo. 2008)
- Brown v. State, 2014 WY 104, ¶ 19, 332 P.3d 1772 (Wyo. 2014)
- Keats v. State, 2003 WY 19, ¶ 8, 64 P.3d 104, 106-07 (Wyo. 2003)
- Scadden v. State, 732 P.2d 1036, 1053 (Wyo. 1987)