

SUPREME COURT OF NEW HAMPSHIRE

State v. Burke

162 N.H. 459 (2011) · Decided September 22, 2011

SUMMARY

The New Hampshire Supreme Court affirmed Robert Burke’s conviction for criminal restraint. The court held that evidence that Burke bound the hands of an elderly, disabled woman who needed her hands to rise from a seated position was sufficient for a jury to find that she was exposed to a risk of serious bodily injury. The court also concluded that Burke’s possession of a knife was irrelevant on these facts because he did not threaten or use it against the victim.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Dalianis, C.J.; Conboy, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	September 22, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed his conviction for criminal restraint after the trial court denied his motion to dismiss at the close of the State's case.
STANDARD OF REVIEW	The court reviews the sufficiency of the evidence de novo, viewing the evidence in the light most favorable to the State and asking whether any rational trier of fact could have found guilt beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Robert Burke v. State of New Hampshire

TOPICS

- criminal procedure
- statutory interpretation
- plain meaning rule
- reasonable doubt

PRACTICE AREAS

- criminal law
- criminal procedure

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to prove that Burke confined the victim in circumstances exposing her to a risk of serious bodily injury under RSA 633:2.
2. Whether the phrase "risk of serious bodily injury" requires proof of an actual, identifiable risk rather than a possibility of serious bodily injury.

HOLDINGS

1. The State need not prove an actual, identifiable risk of serious bodily injury; it is sufficient to prove that the defendant exposed the victim to the possibility of severe, permanent, or protracted loss of or impairment to the health or function of a part of the body.
2. The evidence was sufficient for a rational jury to find beyond a reasonable doubt that Burke exposed the victim to a risk of serious bodily injury by binding her hands while she was seated and physically unable to rise safely without using them.

KEY QUOTATIONS

"The State is thus required to prove three elements: "(1) the actor must act knowingly; (2) the victim must be exposed to the risk of serious bodily injury; and (3) the act must confine the victim unlawfully." (461)

"Had the legislature intended to require proof of an actual, identifiable risk, it certainly could have done so." (462)

"It was certainly foreseeable that Greenstreet would eventually attempt to get up from the sofa, and considering her physical impairments and the fact that her hands were bound, it was entirely possible that Greenstreet would lose her balance and suffer a serious bodily injury." (463)

FACTUAL BACKGROUND

An eighty-three-year-old disabled woman was home alone when Burke entered her home holding a knife and demanding money. He directed her to sit on a sofa and tied her hands with plastic-coated wire, although he later loosened the ties. Because of her physical limitations, she had substantial difficulty rising from a seated position and needed to use her hands to push herself up; after Burke left, she went to a neighbor's house and called police.

PROCEDURAL HISTORY

Burke was charged with burglary, robbery, theft by unauthorized taking, criminal restraint, and obstructing the report of a crime. At the close of the State's evidence, he moved to dismiss all charges, arguing that the State had not proved that the victim was exposed to a risk of serious bodily injury. The Trial Court (Garfunkel, J.) denied the motion, the jury convicted Burke on several charges, and he appealed only the criminal-restraint conviction.

DISPOSITION

affirmed

CASES CITED

- State v. Crie, 154 N.H. 403, 406 (2006)

- State v. Thiel, 160 N.H. 462, 465 (2010)
- State v. Kousounadis, 159 N.H. 413, 423 (2009)
- Petition of State of N.H. (State v. Milner), 159 N.H. 456, 457 (2009)
- State v. Bruce, 132 N.H. 465, 470 (1989)

OPINION

DUGGAN, J.

DUGGAN, J. The defendant, Robert Burke, appeals a decision by the Trial Court (Garfunkel, J.) denying his motion to dismiss the charge of criminal restraint. See RSA 633:2 (2007). We affirm. The record reveals the following facts.

On the morning of February 2, 2009, eighty-three-year-old Monna Greenstreet was home alone when she saw the defendant standing in the area between her kitchen and family room. He was holding a knife and demanded \$75,000, which he claimed her *460husband had hidden in the house. Greenstreet told the defendant that her husband kept his money in the bank and not in the house.

The defendant gestured with the knife for Greenstreet to go down the hall to another room where she sat down on a sofa. Greenstreet was disabled and had difficulty walking. She had difficulty getting up from a seated position and had been taught to “lean forward two or three times and push herself up.” After Greenstreet was seated on the sofa, the defendant then tied her hands together with “sturdy plastic-coated” wire.

While Greenstreet later testified that the wire was not tied very tight, she told the defendant that the wire was too tight so that he would loosen the ties, which he did. After approximately thirty minutes, the defendant took all of the handsets from the Greenstreets’ phones, took a laptop, and drove off in the Greenstreets’ car. Greenstreet got up from the sofa, watched the defendant leave the house, and then went to her neighbor’s home and called the police.

Greenstreet testified that the knife was a kitchen knife with a blade about three inches wide and twelve inches long. She testified that the defendant held the knife in a threatening manner, but never verbally threatened to use it or attempted to use it to harm her. She testified that she “was a little shaken up,” but she “wasn’t too scared [because] he didn’t seem to be a man but just a big boy.” The defendant was subsequently charged with burglary, robbery, theft by unauthorized taking, criminal restraint, and obstructing the report of a crime.

At the close of the State’s case, the defendant moved to dismiss all of the charges. With respect to the criminal restraint charge, he argued that the State had failed to prove that Greenstreet was exposed to “risk of serious bodily injury.” The trial court denied the defendant’s motion, ruling that “under the totality of the evidence... a reasonable jury could find that [Greenstreet] was

exposed to risk of serious bodily injury when her hands were tied together.” The jury subsequently convicted the defendant on several charges.

He appeals only his conviction for criminal restraint. On appeal, the defendant argues that the State did not prove that the circumstances of Greenstreet’s confinement exposed her to a risk of serious bodily injury.

The State contends that Greenstreet’s physical limitations made it difficult for her to get up from a seated position without the use of her hands, and that by binding her hands together with plastic ties while she was seated, the defendant exposed her to a risk of serious bodily injury.

To prevail in a challenge to the sufficiency of the evidence, the defendant bears the burden of proving that no rational trier of fact, viewing the evidence in the light most favorable to the State, could have found guilt beyond a reasonable doubt. *State v. Crie*, 154 N.H. 403, 406 (2006).

In *461 reviewing the evidence, we examine each evidentiary item in the context of all the evidence, not in isolation. *Id.* Circumstantial evidence may be sufficient to support a finding of guilt beyond a reasonable doubt. *Id.* Further, the trier may draw reasonable inferences from facts proved and also inferences from facts found as a result of other inferences, provided they can be reasonably drawn therefrom.

Id. Resolution of this issue requires us to engage in statutory interpretation. “In matters of statutory interpretation, we are the final arbiter of the intent of the legislature as expressed in the words of a statute considered as a whole.” *State v. Thiel*, 160 N.H. 462, 465 (2010) (quotation omitted). “We construe provisions of the Criminal Code according to the fair import of their terms and to promote justice.” *State v. Kousounadis*, 159 N.H.

413, 423 (2009); see RSA 625:3 (2007). We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. *Kousounadis*, 159 N.H. at 423. “We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include.” *Petition of State of N.H.*

(*State v. Milner*) 159 N.H. 456, 457 (2009). “We must give effect to all words in a statute, and presume that the legislature did not enact superfluous or redundant words.” *Id.* “Finally, we interpret a statute in the context of the overall statutory scheme and not in isolation.” *Kousounadis*, 159 N.H. at 423. RSA 633:2,1, provides that a person is guilty of criminal restraint, a class B felony, “if he knowingly confines another unlawfully in circumstances exposing him to risk of serious bodily injury.” The State is thus required to prove three elements: “(1) the actor must act knowingly; (2) the victim must be exposed to the risk of serious bodily injury; and (3) the act must confine the victim unlawfully.” *State v. Bruce*, 132 N.H.

465, 470 (1989). A person is guilty of false imprisonment, a misdemeanor, “if he knowingly confines another unlawfully... so as to interfere substantially with his physical movement.” RSA 633:3 (2007). The only issue on appeal is whether the State proved that the victim was exposed to a “risk of serious bodily injury.” “Serious bodily injury” is defined as “any harm to the body which causes severe, permanent or protracted loss of or impairment to the health or of the function of any part of the body.” RSA 625:11, VI (2007).

The parties dispute the meaning of the word “risk.” The defendant contends that to establish a “risk of serious bodily injury,” the State must present evidence of “an actual, identifiable risk of serious physical or mental injury.” To require less, the defendant argues, would render the element meaningless, resulting in no distinction between felony criminal restraint and misdemeanor false imprisonment. *462The State responds by arguing that the plain meaning of the statute requires the State to prove only that the defendant exposed a victim to “the possibility of severe, permanent, or protracted loss of or impairment to the health or function of any part of the body.” “[W]e will not consider what the legislature might have said or add language that the legislature did not see fit to include.” Milner, 159 N.H. at 457.

Had the legislature intended to require proof of an actual, identifiable risk, it certainly could have done so. See Ark. Code Ann. § 5-11-103 (2006) (statute requires proof that defendant exposed the victim to a “substantial risk of serious physical injury” (emphasis added)); Conn. Gen. Stat. Ann. § 53a-95 (West 2007) (same); Mo. Rev. Stat. § 565.120 (2000) (same); Tenn. Code Ann. § 39-13-303 (2010) (same); Tex. Penal Code Ann. § 20.02(c)(2)(A) (West 2011) (same).

We note the defendant’s concern that a definition of risk that is too broad may blur the line between criminal restraint and false imprisonment. However the crime of criminal restraint still requires the State to prove the additional element of exposure to a risk of serious bodily injury.

We are confident that juries are fully capable of determining whether or not the State has proved this risk of serious bodily injury and see no reason to rewrite the statute to require a higher quantum of proof. At oral argument the State properly conceded that the fact that the defendant possessed a knife during Greenstreet’s confinement does not affect the analysis because the defendant never verbally threatened to use the knife, never held it in close proximity to Greenstreet, and never attempted to harm her with it.

Thus, on these facts, the knife is irrelevant to the element at issue. In the instant case, the jury heard evidence that Greenstreet was disabled and had difficulty walking. There was testimony that her husband had to install a special bar in order to assist her going up and down stairs. Greenstreet had great difficulty getting up from a seated position and needed to lean forward two or three times and push herself up with her hands.

Viewing the evidence in the light most favorable to the State, the evidence was sufficient to show that the defendant bound the hands of an elderly disabled woman who needed her hands in order to get up from a seated position. It was certainly foreseeable that Greenstreet would eventually attempt to get up from the sofa, and considering her physical impairments and the fact that her hands were bound, it was entirely possible that Greenstreet would lose her balance and suffer a serious bodily *463injury.

Although we consider this a close case, viewing the evidence in the light most favorable to the State, we hold that it was sufficient to establish a risk of serious bodily injury. Affirmed. DALIANIS, C.J., and Hicks, J., concurred; CONBOY, J., dissented.