

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)

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