

64043-7

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No. 64043-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

M.N. (D.O.B. 12/22/91),

Appellant.

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COURT OF APPEALS
STATE OF WASHINGTON
CLERK'S OFFICE

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
JUVENILE DIVISION

The Honorable Carol Schapira

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. In the absence of sufficient evidence, the trial court erred in finding the State proved the elements of unlawful imprisonment beyond a reasonable doubt.

2. The trial court failed to enter findings of fact and conclusions of law, contrary to JuCR 7.11.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. "Restraint" is an essential element of unlawful imprisonment. To support a conviction, "restraint" must be substantial; i.e., a real and material interference with a person's liberty. Further, if there is a known means of escape that is not a danger and is not inconvenient, the State has not shown restraint. Did the State fail to prove the complainant was restrained based the complainant's claim that he was "pushed" into a car, where, although he was outside his own home he did not attempt to attract attention to himself and other witnesses said he looked "happy" and not scared? (Assignment of Error 1)

2. In a case that is appealed, a juvenile court is required by court rule to enter findings of fact and conclusions of law 21 days following an adjudication of guilt. The failure to enter findings and conclusions creates an appearance of unfairness that requires

reversal of the conviction. Must M.N.'s conviction be reversed because the court failed to enter findings of fact and conclusions of law? (Assignment of Error 2)

C. STATEMENT OF THE CASE

Juvenile appellant M.N. and Q.N. dated for approximately ten months. 2RP 216. Their relationship was tumultuous. They argued and broke up frequently, although usually Q would break up with M after an argument. Id. When they first started dating, Q would apologize for his behavior, but as the relationship progressed, he would not agree to get back together with M until she said she was sorry. 2RP 217. After a break-up, things would be good in the relationship for a couple of weeks, and then M and Q would start to argue again. 2RP 218.

Q was physically abusive to M, a fact which she hid from her family and friends because she knew he would not want other people to know about his behavior. 2RP 221, 274. M was used to lying for Q, because she loved him. 2RP 246. For example, on one occasion, after M had had an abortion, Q punched her in the stomach while they were driving. Id. A police officer, believing that M was injured, nearly arrested Q, but she persuaded him that nothing had happened. 2RP 246-47.

In September 2008, M was pregnant a second time, but this pregnancy resulted in a miscarriage. 2RP 219, 232. When Q found out M was pregnant, however, he became angry and broke up with her again. 2RP 219. He told her to stay home for a week and rest, which she at first thought he did because he was concerned about her well-being. Id. She later found out from friends that Q had started seeing someone else. Id. M confronted Q and he told her that her friends were lying. 2RP 220.

At this point, M broke down and confided in a close girlfriend that Q was abusive to her. Another mutual friend, Rithie, who learned of the situation, offered to go talk to Q for M. 2RP 222. M consented, and the next morning before school, they drove to Q's house. Id. Only Rithie and M were supposed to be there, but when M arrived there were more people and two cars. 2RP 223.

When Q left his house, Rithie asked if they could go talk and Q agreed. 2RP 227. They drove to M's house. As they entered, M's mother was in the kitchen and Q greeted her. 1RP 189; 2RP 230. She did not believe that anything was amiss. 2RP 230.

Upstairs in M's room, Rithie and Q sat on M's bed and looked at game sites on the internet. 2RP 233. At one point, M's mother came in the room to ask why they were not in school, and

saw Q and Rithie seated on the bed, playing computer games. 1RP 190-91, 202. All the young people greeted her and told her they were allowed to be home from school for the first two hours of that day. 1RP 190.

At lunchtime, the other young people went downstairs, leaving M and Q alone, and M again asked him if he was seeing someone else. 2RP 234. Q got angry and insisted there was no one else and she should trust him. Id. He soon got over being mad at her, however. He threw her on the bed and lay on top of her, and started saying “sweet stuff” to her in a special “squeaky voice” he liked to use when talking to her. 2RP 235. They then had sex, despite the recent miscarriage, as M always had sex with Q when he wanted to have sex with her. 2RP 237, 294.

After the sex, Q showered, and when he came back into M’s room she again asked him if he was seeing someone else. 2RP 239. He became mad again, but this time his anger escalated, and he pushed M and then started to trash her bedroom. Id. M began to cry and followed behind him in an effort to pick things up as Q destroyed them. 2RP 240-41. In doing so, she cut her finger on some broken glass, at which point Q’s rage diminished, and he hugged her and told her he was sorry. Then he went home. Id.

Q telephoned M while he was walking home. 2RP 242. He told her he had just been punched in the face by a “black guy.” Id. He blamed M, telling her it was all her fault he was “going through this.” 2RP 243. He said he would get in trouble with his juvenile probation officer for missing school and would be “locked up.” 2RP 244-46. He then told M that she had to help him by saying she kidnapped him. 2RP 246. He assured her that she would not get in any trouble if she lied to the police, claiming that he was the only person who could charge her. 2RP 284.

Q called 9-1-1 and Seattle police officer Benjamin Kelly responded to his home. Q told Kelly that he had been kidnapped, but Kelly felt Q was being recalcitrant and believed he was not getting the whole story. 1RP 15, 24. Kelly also did not observe any physical indication that Q had been assaulted, as he claimed. 1RP 21, 24. Q also was inconsistent regarding the details; at one point, he said that one of the people who allegedly had “forced” him into a car was a friend, but later he claimed he did not know any of the people who came to his house. 1RP 26. Q told the 9-1-1 operator that he had been helped to “escape” M’s home by a friend who witnessed the kidnapping and came to his rescue. 1RP 107. He later admitted under oath, however, that this statement was a lie,

and claimed he escaped by jumping to the ground from M's sister's second-story bedroom window. 1RP 77.

When Kelly contacted M, she "came bouncing down the stairs" and, eager to help Q, gave a detailed description of the "kidnapping." 1RP 16-22. He transported her to the police station, where she told another officer that Q was tied up and that an individual who had not actually been present, "Jamie," had kned Q in the face, bloodying his nose. 1RP 141-42.

M. was charged in King County juvenile court with unlawful imprisonment. CP 1. Following a bench trial before the honorable Carol Schapira, M was convicted as charged. CP 39. M appeals. CP 10.

D. ARGUMENT

1. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE THE ESSENTIAL ELEMENTS OF UNLAWFUL IMPRISONMENT.

a. The State must prove the essential elements of a criminal offense. Consistent with due process, the State bears the burden of proving each element of a criminal charge beyond a reasonable doubt. Appendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In Re Winship, 397 U.S. 359, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970); State v. Cantu, 156

Wn.2d 819, 825, 132 P.3d 725 (2006); U.S. Const. amends. V, XIV; Const. art. I, § 3. When the sufficiency of the evidence is challenged on appeal, the Court examines all of the evidence and decides whether any rational trier of fact could have found guilt beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). The evidence must viewed in the light most favorable to the State, with all reasonable inferences construed against the accused. Id.

b. The State presented insufficient evidence to prove the “restraint” element of unlawful imprisonment. A person commits the crime of “unlawful imprisonment” if she “knowingly restrains another.” RCW 9A.40.040(1). To “restrain” someone is to restrict their movements “without consent and without legal authority in a manner which interferes substantially with his liberty.” RCW 9A.40.010(1).

Restraint is “without consent” if it is accomplished by “physical force, intimidation, or deception[.]” Id. “A substantial interference is a ‘real’ or ‘material’ interference with the liberty of another as contrasted with a petty annoyance, a slight inconvenience, or an imaginary conflict.” State v. Washington, 135 Wn. App. 42, 50, 153 P.3d 606 (2006) (quoting State v. Robinson,

20 Wn. App. 882, 884, 582 P.2d 580 (1978), aff'd, 92 Wn.2d 357 (1979)). The presence of a means of escape may help to defeat a prosecution for unlawful imprisonment unless “the known means of escape ... present[s] a danger or more than a mere inconvenience.” Washington, 135 Wn. App. at 50 (citing State v. Kinchen, 92 Wn. App. 442, 452 n. 16, 963 P.2d 928 (1998)).

In its oral ruling, the juvenile court devoted little attention to analyzing the facts, instead choosing to criticize M’s personality and the unhealthy dynamic of her relationship with Q. 2RP 338-40. Seemingly on this basis, the court decided to convict her. Id. With respect to the restraint element of the charge, the court did not address itself to the events at M’s home. The court ruled only:

The court does find that the initial incident that [Q], who had indicated he didn't want to be with her, she hides behind a car so he doesn't know it's her, but then she knows he sees her. I'm sure he did see her at some point. Why does she come with all these kids? Did they push him into the car? Yes, they did. And that was the act of unlawful imprisonment. I think it's highly likely that he was tied up at some point.

2RP 340.

Even viewed in the light most favorable to the State, this act does not support a finding that Q was unlawfully imprisoned. To support a conviction, a restraint must be a “substantial interference”

with a person's liberty. Washington, 135 Wn. App. at 50. Further, if there is a known means of escape that does not present a danger and is not more than merely inconvenient, the restraint element is not established. Kinchen, 92 Wn. App. at 452 n. 16.

Q was outside of his home, in public, in broad daylight, when he claimed he was "pushed" into a car by M's alleged confederates. 1RP 50. He did not attempt to attract attention to himself or to alert anyone regarding the situation. Further, when Q came to M's house, he was not restrained, seemed "happy," greeted M's mother, and did not ask either of M's parents to "free" or assist him. 1RP 61, 67, 92; 2RP 189. The evidence does not support the juvenile court's finding that Q was restrained.

c. The remedy is reversal and dismissal of the conviction. If an appellate court holds that evidence is insufficient to support a conviction, then double jeopardy bars retrial for that offense, and the matter must be dismissed. Burks v. United States, 437 U.S. 1, 11, 98 S.Ct. 2141, 57 L.Ed.2d 1 (1978). If this Court finds the evidence insufficient to support the "restraint" element of unlawful imprisonment, it must reverse and dismiss M's conviction.

2. THE JUVENILE COURT'S FAILURE TO FILE FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO JuCR 7.11(d) REQUIRES

REVERSAL OF M.N.'s ADJUDICATION OF
GUILT.

JuCR 7.11(d) directs that following an adjudication of a juvenile's guilt, the juvenile court is required to enter written findings of fact and conclusions of law if the respondent files a notice of appeal:

The court shall enter written findings and conclusions in a case that is appealed. The findings shall state the ultimate facts as to each element of the crime and the evidence upon which the court relied in reaching its decision. The findings and conclusions may be entered after the notice of appeal is filed. The prosecution must submit such findings and conclusions within 21 days after receiving the juvenile's notice of appeal.

Where the State completely fails to file findings pursuant to JuCR 7.11, an appearance of unfairness results, which may require reversal of the adjudication of guilt. State v. Royal, 122 Wn.2d 413, 858 P.2d 259 (1993); State Naranjo, 83 Wn. App. 300, 302, 921 P.2d 588 (1996). If the failure to file the required findings of fact and conclusions of law results in prejudice, dismissal is required. Naranjo, 83 Wn. App. at 302.

"A court's oral opinion is not a finding of fact." State v. Hescoc, 98 Wn. App. 600, 605, 989 P.2d 1251 (1999) (citations omitted). In Hescoc, a juvenile defendant appealed his

adjudication of guilt. Id. at 602. The Hescock Court noted that while a reviewing court could look to a court's oral ruling to interpret written findings and conclusions,

the trial court's oral decision is not binding 'unless it is formally incorporated into findings of fact, conclusions of law, and judgment.'

Id. at 606 (citing State v. Dailey, 93 Wn.2d 454, 459, 610 P.2d 357 (1980)). The Hescock Court acknowledged that remand may be allowed where findings and conclusions are incomplete. Id. (citing State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998) (additional citations omitted)).

Under JuCR 7.11(d), the State was required to submit findings of fact and conclusions of law to the juvenile court within 21 days after M filed her notice of appeal. M's notice of appeal was filed on August 21, 2009. CP 10. To date, more than five months later, no findings of fact and conclusions of law have been filed in this case. The State's failure to submit, and the court's failure to enter, such findings and conclusions, requires reversal of M's adjudication of guilt.

E. CONCLUSION

For the foregoing reasons, this Court should reverse and dismiss M.N.'s conviction.

DATED this 26th day of February, 2010.

Respectfully submitted:

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