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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-837

Filed 16 September 2026

Alamance County, No. 24CR262785-000

STATE OF NORTH CAROLINA

v.

JAQUALE MARKECE BURNETTE

Appeal by defendant from judgment entered 24 January 2025 by Judge T. Pennell Broyhill in Alamance County Superior Court. Heard in the Court of Appeals 25 August 2026.

Taran A. Wessells for defendant-appellant.

Attorney General Jeff Jackson, by Special Deputy Attorney General Rochelle Sparko, for the State.

FREEMAN, Judge.

Jaquale Markece Burnette (defendant) appeals from judgment entered upon a jury verdict finding him guilty of second-degree kidnapping, assault on a female, domestic violence, and communicating threats. On appeal, defendant argues that the jury instructions for first-degree kidnapping constituted plain error. For the reasons below, we hold that defendant received a fair trial free from plain error.

I. Factual and Procedural Background

On 21 October 2024, a grand jury indicted defendant for first-degree kidnapping, assault on a female, misdemeanor crime of domestic violence, and communicating threats. On 21 January 2025, the case came on for trial in Superior Court, Alamance County.

Evidence at trial tended to show the following: defendant and Clarissa Hackney (the Victim) were in a relationship. On the morning of 10 December 2023, defendant and the Victim were showering together when defendant punched the Victim in the face, resulting in her falling out of the shower. Later, while the Victim was on the phone with her cousin, defendant grabbed the Victim and told her that he was taking her to Burlington, North Carolina. While the Victim was packing her belongings, defendant continued to yell and hit her. Concerned for the Victim's well-being, her cousin called the police to conduct a wellness check. However, by the time the police arrived, defendant and the Victim had left for Burlington.

After defendant received a phone call informing him about the police looking for the Victim, defendant exited off the highway and stopped at the end of a dead-end dirt road. The Victim did not consent to being taken anywhere but Burlington. Defendant told the Victim to get out of the car. As the Victim was gathering her things from the floorboard, defendant put her in a chokehold and began hitting her in the face. Defendant then grabbed the Victim out of the car and began trying to shove her face into a mud puddle. Defendant repeatedly told the Victim to die and to

give up. Defendant jumped on the Victim's back with both of his knees several times, attempting to put her face into the mud. Defendant then pulled the Victim up by her hair and began punching her in the face until she said she didn't want to leave the kids. The Victim then crawled back into the car and defendant drove them back to his house. The Victim sustained severe injuries, including an injured lip, a ripped ear, black eyes, and lesions on the back of her head.

On 24 January 2025, the jury found defendant guilty of second-degree kidnapping, assault on a female, domestic violence, and communicating threats. On 24 January 2025, the trial court arrested judgment on the charge of assault on a female. Defendant timely appealed.

II. Jurisdiction

Because this Court has jurisdiction to hear an appeal from a final judgment of a superior court, we have jurisdiction over defendant's appeal of right. N.C.G.S. §§ 7A-27(b), 15A-1444(a) (2025).

III. Discussion

Defendant contends that the trial court plainly erred regarding its jury instructions on first-degree kidnapping. Specifically, defendant argues the trial court should have instructed the jury that it needed to find that he "restrained or removed" the victim separate and apart from that restraint which was inherent in the assault or domestic violence.

Defendant did not object to the jury instructions at trial and requests plain

error review on appeal. Accordingly, we review for plain error. N.C. R. App. P. 10(a).

Our Supreme Court has explained that plain error “should be ‘applied cautiously and only in the exceptional case,’ that it is reserved for ‘grave error which amounts to a denial of a fundamental right of the accused,’ and that it focuses on error that has ‘resulted in a miscarriage of justice’ or the denial of a ‘fair trial.’” *State v. Reber*, 386 N.C. 153, 158 (2024) (quoting *State v. Lawrence*, 365 N.C. 506, 516–17 (2012)). Under plain error review, the defendant must show (1) “a fundamental error occurred at trial,” (2) “the error had a ‘probable impact’ on the outcome,” and (3) the error is an “exceptional case” that “seriously affects the ‘fairness, integrity, or public reputation of the judicial proceedings.’” *Id.* (citing *Lawrence*, 365 N.C. at 517–18). This test examines “all the evidence except for the challenged evidence and asks whether, in light of that remaining evidence, the jury probably would have done something different.” *Id.* at 162. “[T]his standard—showing that a jury *probably would have* reached a different result—requires a showing that the outcome is significantly more likely than not. *Id.* at 159. “An event will probably occur if it is almost certainly the expected outcome.” *Id.* (cleaned up).

[C]ertain felonies . . . cannot be committed without some restraint of the victim. . . . G.S. 14-39 was not intended by the Legislature to make a restraint, which is an inherent, inevitable feature of such other felony, also kidnapping so as to permit the conviction and punishment of the defendant for both crimes. To hold otherwise would violate the constitutional prohibition against double jeopardy. . . . [W]e construe the word “restrain,” as used in G.S. 14-39, to connote a restraint separate and apart from that which is

inherent in the commission of the other felony.

State v. China, 370 N.C. 627, 633–34 (2018) (quoting *State v. Fulcher*, 294 N.C. 503, 523 (1978)).

The elements of kidnapping are defined by statute:

(a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:

(1) Holding such other person for a ransom or as a hostage or using such other person as a shield; or

(2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or

(3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person; or

(4) Holding such other person in involuntary servitude in violation of G.S. 14-43.12.

(5) Trafficking another person with the intent that the other person be held in involuntary servitude or sexual servitude in violation of G.S. 14-43.11.

(6) Subjecting or maintaining such other person for sexual servitude in violation of G.S. 14-43.13.

(b) There shall be two degrees of kidnapping as defined by subsection (a). If the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted, the offense is kidnapping in the first degree and is punishable as a Class

C felony. If the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony.

N.C.G.S. § 14-39 (2025).

Here, the jury was given the following instructions for second-degree kidnapping:

If you do not find the defendant guilty of first degree kidnapping you must determine whether the defendant is guilty of second degree kidnapping. Second degree kidnapping differs from first degree kidnapping only in that it is unnecessary for the State to prove that the person had been seriously injured.

If you find from the evidence beyond a reasonable doubt that on or about the alleged date of December 10, 2023, that the defendant unlawfully restrained a person or removed a person from one place to another, and that that person did not consent to this restraint or removal, and that this was done for the purpose of doing serious bodily harm to the person or terrorizing that person or any other person and that this restraint or removal was a separate, complete act independent of and apart from the intended injury, it would be your duty to return a verdict of guilty of second degree kidnapping.

Defendant argues that the jury instructions for first-degree kidnapping constituted plain error. But defendant was found not guilty of first-degree kidnapping. Thus, “we fail to perceive how defendant has been prejudiced.” *See State v. Willis*, 20 N.C. App. 43, 46 (1973) (holding that the defendant was not prejudiced by the introduction of testimony regarding alcohol on the defendant’s breath because the defendant was found not guilty of driving while intoxicated).

Presuming that defendant contested the second-degree kidnapping charge on appeal, we still cannot say the trial court plainly erred. The trial court used the pattern jury instructions which included the language “this restraint or removal was a separate, complete act independent of and apart from the intended injury.” We fail to see how using pattern jury instructions with that language constitutes the “exceptional case that seriously affects the fairness, integrity, or public reputation of the judicial proceedings.” *See Reber*, 386 N.C. at 158.

Further, defendant cannot show prejudice. The trial court arrested judgment on the assault on a female verdict, ameliorating any double jeopardy concerns regarding that charge. Defendant punched the victim in the face in the shower, bruising her lip. Then later in the day, defendant drove the victim to the end of a dirt road in Burlington, put her in a chokehold, beat her face, pressed her face in a mud puddle, jumped on her back to press her face into the mud, pulled her back up by the hair, and repeatedly hit her face. Under these facts, a jury could have determined that the drive to Burlington was “separate and apart from” the incident in the shower. Therefore, we cannot say that different jury instructions would have probably led the jury to a different result.

IV. Conclusion

For the foregoing reasons, we hold that defendant received a fair trial free from plain error.

NO PLAIN ERROR.

STATE V. BURNETTE

Opinion of the Court

Judges WOOD and STADING concur.

Report per Rule 30(e).