STATE V. JONES

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ADAM JONES,
Defendant-Appellant.

NO. 35,037

COURT OF APPEALS OF NEW MEXICO

December 15, 2016

APPEAL FROM THE DISTRICT COURT OF OTERO COUNTY, Angie K. Schneider, District Judge

COUNSEL

Hector H. Balderas, Attorney General, Santa Fe, NM, Elizabeth Ashton, Assistant Attorney General, Albuquerque, NM, for Appellee

L. Helen Bennett, Albuquerque, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: M. MONICA ZAMORA, Judge, J. MILES HANISEE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant Adam Jones appeals his convictions for false imprisonment and battery against a household member. Defendant argues that double jeopardy barred conviction for both offenses because the false imprisonment was incidental to the

battery and that there was insufficient evidence to convict him of false imprisonment. Unpersuaded, we affirm.

BACKGROUND

{2} The pertinent facts are not in dispute. Defendant and his girlfriend, Nicole Baird (Victim), got into an argument in the early morning hours of July 26, 2013. As Victim walked away, Defendant approached her from behind, wrapped his arms around her waist, lifted her up into the air, and pinned Victim's arm to her side. In the process of trying to free herself, Victim elbowed Defendant in the face. Defendant then pinned Victim to the ground and placed her in a chokehold. Victim eventually broke free from Defendant, and Defendant kicked her and walked away.

DISCUSSION

Double Jeopardy

{3} On appeal, Defendant contends that "any false imprisonment was incidental to the battery against a household member" and that convictions for both offenses violated his right to be free from double jeopardy. In support of his argument, Defendant relies on *State v. Trujillo*, 2012-NMCA-112, ¶ 1, 289 P.3d 238, *cert. quashed*, 2015-NMCERT-003, 346 P.3d 1163, which held that the "Legislature did not intend to punish as kidnapping restraint or movement that is merely incidental to another crime." However, we disagree because *Trujillo* deals specifically and exclusively with the offense of kidnapping, and in any case, the false imprisonment was sufficiently separated in time and place with the battery on a household member such that it was not incidental. *See id.* ¶¶ 34, 39.

{4} The Double Jeopardy Clause "has been held to incorporate a broad and general collection of protections against several conceptually separate kinds of harm: (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense." *State v. Montoya*, 2013-NMSC-020, ¶ 23, 306 P.3d 426 (internal quotation marks and citation omitted). We generally apply a de novo standard of review to the constitutional question of whether there has been a double jeopardy violation. *See State v. Andazola*, 2003-NMCA-146, ¶ 14, 134 N.M. 710, 82 P.3d 77.

{5} In the present matter, the relevant question is whether Defendant's conviction for false imprisonment and battery against a household member constitutes multiple punishments for the same offense, i.e., whether Defendant's same conduct violated both statutes. For the double jeopardy prohibition against multiple punishments, there are two types of cases: (1) when a defendant is charged with violations of multiple statutes for the same conduct, referred to as "double description" cases; and (2) when a defendant is charged with multiple violations of the same statute based on a single course of conduct, referred to as "unit of prosecution" cases. *See State v. DeGraff*,

2006-NMSC-011, ¶ 25, 139 N.M. 211, 131 P.3d 61. Defendant's arguments raise only double description issues.

{6} For "double description" cases, we apply the two-part test set forth in *Swafford v. State*, 1991-NMSC-043, ¶ 9, 112 N.M. 3, 810 P.2d 1223: (1) whether the conduct is unitary and (2) if so, whether the Legislature intended to punish the offenses separately. *See State v. Silvas*, 2015-NMSC-006, ¶ 9, 343 P.3d 616. "When determining whether [a d]efendant's conduct was unitary, we consider whether [the d]efendant's acts are separated by sufficient indicia of distinctness." *DeGraff*, 2006-NMSC-011, ¶ 27 (internal quotation marks and citation omitted). "Conduct is unitary when not sufficiently separated by time or place, and the object and result or quality and nature of the acts cannot be distinguished." *Silvas*, 2015-NMSC-006, ¶ 10.

{7} We first note, and Defendant concedes, that *Trujillo* applies strictly to the offense of kidnapping. *See* 2012-NMCA-112, ¶ 39. We specifically emphasized in *Trujillo* that we were analyzing whether the Legislature intended the defendant's conduct in that case to constitute kidnapping. *Id.* ¶ 42. Indeed, the approach this Court took in *Trujillo* was premised on the history of the kidnapping statutes and the serious nature of that offense. *See id.* ¶¶ 23-30. In *Trujillo*, we recognized that these considerations distinguish kidnapping from the lesser included offense of false imprisonment. *Id.* ¶¶ 26-27, 29-30, 41. Therefore, we do not find Defendant's argument that we should apply *Trujillo* to false imprisonment under the factual landscape of the instant case persuasive.

{8} Nevertheless, we briefly address Defendant's argument—that the false imprisonment was incidental to the battery against a household member. The jury was instructed to convict Defendant of false imprisonment if it found, in pertinent part, that he restrained or confined Victim against her will. To convict Defendant of battery against a household member, the jury was instructed that it must find, in pertinent part, that Defendant "intentionally touched or applied force to [Victim] by grabbing, choking[,] and/or kicking [Victim.]" Here, Defendant restrained Victim when he wrapped his arm around her waist and then pinned her arm to her side. Further, this restraint occurred while Victim was standing up and before the choking and kicking episode, whereas the battery occurred when Defendant grabbed, choked, and/or kicked Victim. In addition, the grabbing can reasonably be construed as part of the battery episode that occurred when Defendant threw Victim to the ground and subsequently choked and kicked her and, therefore, distinct from the restraint that occurred when Defendant prevented Victim from leaving by wrapping his arm around her waist and lifting her up in the air. *See State v. Armendariz*, 2006-NMCA-152, ¶ 4, 140 N.M. 712, 148 P.3d 798 (explaining that, even in a de novo double jeopardy review, "[w]e indulge in all presumptions in favor of the verdict when reviewing the facts" (internal quotation marks and citation omitted)). Because discrete acts underlie the convictions, *see DeGraff*, 2006-NMSC-011, ¶ 27, and because the offenses were completed in different places—specifically, where Victim was standing and then lifted in the air while restrained and then thrown on the ground when choked and kicked—and at different points in time, the

restraint was not merely incidental to the battery and was therefore not unitary. *See Silvas*, 2015-NMSC-006, ¶ 10.

{9} Since we conclude that the false imprisonment was not merely incidental to the battery against a household member, we need not consider whether the Legislature intended false imprisonment to be a separately punishable offense. *See id.* ¶ 9 ("Only if the first part of the test is answered in the affirmative, and the second in the negative, will the [D]ouble [J]eopardy [C]lause prohibit multiple punishment in the same trial." (internal quotation marks and citation omitted)).

Sufficiency of the Evidence

{10} Defendant also argues, pursuant to *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and *State v. Boyer*, 1985-NMCA-029, 103 N.M. 655, 712 P.2d 1, that there was insufficient evidence to support his conviction for false imprisonment. Defendant's argument is that the "evidence was insufficient to distinguish the false imprisonment from the battery"; however, this is the double jeopardy issue discussed above. Because we have already answered the question—double jeopardy did not bar conviction for both false imprisonment and battery against a household member—we hold that there was sufficient evidence for the false imprisonment conviction. *See State v. Cunningham*, 2000-NMSC-009, ¶ 26, 128 N.M. 711, 998 P.2d 176 (holding that the reviewing court "view[s] the evidence in the light most favorable to the guilty verdict, indulging all reasonable inferences and resolving all conflicts in the evidence in favor of the verdict").

CONCLUSION

{11} For the foregoing reasons, we affirm.

{12} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

M. MONICA ZAMORA, Judge

J. MILES HANISEE, Judge