

STATE OF TENNESSEE v. LARRY ALSTON, KRIS YOUNG, and JOSHUA WEBB
(Appellee) (Appellants)

Primary Issues

Whether an instruction pursuant to *State v. White*, 362 S.W.3d 559 (Tenn. 2012), is required when a kidnapping is accompanied by a burglary.

Whether the Court of Criminal Appeals erred in determining that the absence of the *White* instruction was harmless beyond a reasonable doubt.

Facts

On the afternoon of April 15, 2010, the three defendants (Larry Jereller Alston, Kris Theotis Young, and Joshua Edward Webb) confronted the victim as she was getting into her car in front of her house. They took her purse at gunpoint and forced her into the house. They pushed her onto a couch and dumped the contents of her purse on a coffee table. They took her money and demanded the personal identification number for her bank card. They began looting the house. As one of the defendants was walking out of the house with the victim's television, the police arrived and apprehended the defendants. The entire incident lasted only a few minutes.

Trial Court Action

The case was tried before release of the Supreme Court's decision in *White*. The trial court denied the defendants' request for a jury instruction similar to the one adopted in *White*. The jury convicted all three defendants as charged of especially aggravated kidnapping, aggravated burglary, aggravated robbery, and possession of a firearm with the intent to go armed during the commission of a dangerous felony. The trial court entered an order dismissing the charges of especially aggravated kidnapping and aggravated burglary on the ground that they violated due process principles. The trial court later dismissed the firearms charge on the ground that it could not stand in light of the dismissal of the especially aggravated kidnapping and aggravated burglary charges.

Court of Criminal Appeals Decision

The Court of Criminal Appeals affirmed the conviction of aggravated robbery and the dismissal of the firearms charge. The Court of Criminal Appeals reinstated the convictions of especially aggravated kidnapping and aggravated burglary. Upon granting the defendants' application for permission to appeal, the Supreme Court remanded the case to the Court of Criminal Appeals in January 2014 for reconsideration in light of *State v. Cecil*, 409 S.W.3d 599 (Tenn. 2013). Confirming on remand its earlier holdings, the Court of Criminal Appeals stated that "the evidence clearly and overwhelmingly established that the removal of the victim from her driveway and her confinement within the house went far beyond that necessary to accomplish the single aggravated robbery as that offense was narrowly charged in the indictment [*i.e.*, taking from the person of the victim a purse and its contents]." Court of Criminal Appeals slip opinion, p. 8.

Permission to Appeal

The defendants applied for permission to appeal from the judgment of the Court of Criminal Appeals, and the Supreme Court granted their application. Therefore, the defendants are the appellants, and the State of Tennessee is the appellee.

Text of Tennessee Code Annotated Section 39-13-302

39-13-302. False imprisonment. – (a) A person commits the offense of false imprisonment who knowingly removes or confines another unlawfully so as to interfere substantially with the other’s liberty.

Text of Tennessee Code Annotated Section 39-13-305

39-13-305. Especially aggravated kidnapping. – (a) Especially aggravated kidnapping is false imprisonment, as defined in § 39-13-302:

(1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; . . .

Text of Tennessee Code Annotated Section 39-13-401

39-13-401. Robbery. – (a) Robbery is the intentional or knowing theft of property from the person of another by violence or putting the person in fear.

Text of Tennessee Code Annotated Section 39-13-402

39-13-402. Aggravated Robbery. – (a) Aggravated robbery is robbery as defined in § 39-13-401:

(1) Accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon; . . .

Text of Tennessee Code Annotated Section 39-14-403

39-14-403. Aggravated Burglary. – (a) Aggravated burglary is burglary of a habitation as defined in §§ 39-14-401 and 39-14-402.

Holding of *State v. White*

By using false imprisonment as the “building block” for kidnapping offenses, Tennessee statutes require that a defendant “knowingly removes or confines another unlawfully so as to *interfere substantially with the other’s liberty.*” *White*, 362 S.W.3d at 576 (quoting Tenn. Code Ann. § 39-13-302(a)). Whether a victim’s removal or confinement is, in essence, incidental to an accompanying offense or, in the alternative, is significant enough, standing alone, to support a separate conviction is a jury question, to be reviewed by the appellate courts under a sufficiency of the evidence standard. *White*, 362 S.W.3d at 577-78. Prior Tennessee Supreme Court decisions that had applied a separate due process analysis in appellate review are expressly overruled. *White*, 362 S.W.3d at 578. An

appropriate instruction on the “substantial interference” element is necessary to assure that juries properly afford constitutional due process protections to those on trial for a kidnapping offense and an accompanying offense. *Id.* The instruction to the jury on the “substantial interference” element should provide as follows:

To establish whether the defendant’s removal or confinement of the victim constituted a substantial interference with his or her liberty, the State must prove that the removal or confinement was to a greater degree than that necessary to commit the offense of [insert offense], which is the other offense charged in this case. In making this determination, you may consider all the relevant facts and circumstances of the case, including, but not limited to, the following factors:

- the nature and duration of the victim’s removal or confinement by the defendant;
- whether the removal or confinement occurred during the commission of the separate offense;
- whether the interference with the victim’s liberty was inherent in the nature of the separate offense;
- whether the removal or confinement prevented the victim from summoning assistance, although the defendant need not have succeeded in preventing the victim from doing so;
- whether the removal or confinement reduced the defendant’s risk of detection, although the defendant need not have succeeded in this objective; and
- whether the removal or confinement created a significant danger or increased the victim’s risk of harm independent of that posed by the separate offense.

White, 362 S.W.3d at 580-81. The failure to give the “substantial interference” instruction is non-structural constitutional error, which is subject to harmless error analysis. *See White*, 362 S.W.3d at 580 n.20.

Holding of *State v. Cecil*

The Supreme Court confirmed that the absence of the *White* instruction results in instructional error that must be subjected to constitutional harmless error analysis. *Cecil*, 409 S.W.3d at 610. The reviewing court should address whether the instructional error was harmless beyond a reasonable doubt. *Cecil*, 409 S.W.3d at 610 (citing *State v. Rodriguez*, 254 S.W.3d 361, 371 (Tenn. 2008)). The touchstone of this inquiry is whether a rational trier of fact could interpret the proof at trial in different ways. *Cecil*, 409 S.W.3d at 610 (citing *White*, 362 S.W.3d at 579).

Harmless Error Standards

There are three categories of trial errors: structural constitutional error, non-structural constitutional error, and non-constitutional error. Structural constitutional errors are errors that compromise the

integrity of the judicial process itself and therefore require automatic reversal. Non-structural constitutional errors and non-constitutional errors may be harmless and not require reversal. With a non-structural constitutional error, the State has the burden of proving beyond a reasonable doubt that the error did not contribute to the verdict obtained. With a non-constitutional error, the defendant has the burden of proving that the error “more probably than not affected the judgment or would result in prejudicial to the judicial process.” Tenn. R. App. P. 36(b).

Appellants (Larry Alston, Kris Young, and Joshua Webb) Argument

The defendants argue that, under the facts of this case, they were entitled to a *White* instruction with regard to the aggravated burglary as well as the aggravated robbery. They contend that the proof was capable of more than one interpretation regarding whether there was a removal or confinement of the victim that was not essentially incidental to the underlying offenses of aggravated robbery and aggravated burglary. Because the jury was not instructed as to which accompanying offense the kidnapping was related, the defendants assert that the reviewing court has no way of knowing whether the individual jurors found the defendants guilty of kidnapping related to the removal and detention of the victim at the car, on the way to the house, inside the house, or at some other time during the four minutes this criminal episode took place.

The defendants argue that the Court of Criminal Appeals injected an additional element in its analysis that no other similarly situated case includes, that is, *as charged in the indictment*, the aggravated robbery was concluded prior to any incidental movement of the victim. They contend that taking the purse and forcing the victim into the house were all part of one course of conduct and one single criminal episode and that, when viewed this way, the facts fall squarely within the recent line of cases finding the erroneous omission of the *White* instruction is not harmless beyond a reasonable doubt. They assert that, when analyzing whether the absence of the *White* instruction is harmless error, the reviewing court should look at the totality of the circumstances, instead of dividing a single crime into separate temporal and spatial units without some “clear break” in the chain of events to complete the aggravated robbery.

Appellee (State of Tennessee) Argument

The State argues that a *White* instruction is not required when a kidnapping is accompanied by a burglary because burglary – a property crime which is fully complete upon entry into a habitation – is not among those felonies such as rape or robbery for which some period of confinement is inherent to the commission of the offense. The State contends that the due process concerns in *White* are not implicated because there is no danger of an incidental kidnapping during a burglary. The State asserts that public policy also disfavors extending *White* protection to kidnappings accompanied by a burglary because it would give incentive to burglars to detain victims during burglaries.

The State argues that the Court of Criminal Appeals properly found that the absence of the *White* instruction was harmless beyond a reasonable doubt because the aggravated robbery, as charged in the indictment, was complete before the removal or confinement that served as the basis for the kidnapping charge. The State contends that the defendants committed three separate and

distinct offenses: an aggravated robbery in taking the victim's purse outside the house, followed by an especially aggravated kidnapping in forcing the victim back to the house, followed by an aggravated burglary in entering the house. The State asserts the "clear break" analysis, on which the defendants rely, would apply if the State had attempted to charge them with one count of aggravated robbery for stealing the victim's purse outside the house and then another count of aggravated robbery for stealing other items once inside the house, but that the "clear break" analysis does not apply when a defendant is convicted of legally distinct offenses such as aggravated robbery and aggravated burglary in this case.

CASE GLOSSARY

State of Tennessee v. Larry Alston, Kris Young, and Joshua Webb

Due Process - Due process, at its most basic level, means fundamental fairness and substantial justice. One of the most basic due process requirements is a fair trial in a fair tribunal. A conviction based on legally insufficient evidence on any element of the charged offense constitutes a denial of due process. In Tennessee, due process is protected by Article I, section 8, of the Tennessee Constitution, which provides "[t]hat no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land." Similarly, the Fifth Amendment to the United States Constitution states that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law." Likewise, the Fourteenth Amendment to the United States Constitution prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law."

Harmless Error - An error that does not require reversal of the judgment.

Sufficiency of the Evidence - When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the State, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.