Exhibit 1

20CA1708 Peo v Fields 08-03-2023

COLORADO COURT OF APPEALS

Court of Appeals No. 20CA1708
City and County of Denver District Court No. 17CR1872
Honorable Edward D. Bronfin, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Troy L. Fields,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division VII
Opinion by JUDGE PAWAR
Freyre and Schock, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced August 3, 2023

Philip J. Weiser, Attorney General, Jessica E. Ross, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

Megan A. Ring, Colorado State Public Defender, Sean James Lacefield, Deputy State Public Defender, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Troy L. Fields, appeals the judgment of conviction and sentence entered after a jury found him guilty of kidnapping and sexual assault. We affirm.

I. Background

¶ 2 The charges in this case stem from events occurring in 1994, when the victim, J.C., arrived home, unlocked the front door of her house, and was pulled in by a man waiting inside. J.C. testified that the man held a knife to her throat, repeatedly threatened to kill her, moved her from the front of the house to the bedroom at the back of the house, tied her hands, gagged her, and sexually assaulted her. The man then tied J.C.'s feet and ordered her around the house before putting her in the bedroom closet and robbing her. J.C. escaped and ran to a neighbor's house to call the police. She underwent a sexual assault examination, gave a police interview, and assisted a sketch artist in creating a drawing of her attacker. The case went cold.

¶ 3 Twenty-two years later, detectives reprocessed DNA taken from J.C.'s vaginal swab and identified a match with a DNA sample taken from Fields.

¶ 4 The prosecution charged Fields with sexual assault and kidnapping, and a jury convicted him as charged. Fields was also convicted of five habitual criminal counts. The trial court sentenced him to concurrent sentences of ninety-six years' imprisonment for kidnapping and life imprisonment with the possibility of parole after forty years for sexual assault.

¶ 5 Fields appeals, arguing that the trial court violated the Uniform Mandatory Disposition of Detainers Act (UMDDA), improperly instructed the jury on the elements of kidnapping, and admitted irrelevant victim impact evidence. He also challenges his adjudication as a habitual criminal and argues that his life sentence is illegal.

II. UMDDA

A. Applicable Law

¶ 6 The UMDDA provides that a prisoner "may request final disposition of any untried indictment, information, or criminal complaint pending against him in this state." § 16-14-102(1), C.R.S. 2022. Once the trial court and prosecution receive a UMDDA request, the prisoner must be brought to trial within 182 days. § 16-14-104(1), C.R.S. 2022. A defendant invokes his rights

under the UMDDA if (1) his request substantially complies with the statute's requirements; and (2) the prosecution receives "actual notice," which means "actual knowledge," of his request. *People v. McKimmy*, 2014 CO 76, ¶¶ 20, 21. If a defendant invokes his rights but the trial court fails to comply with the 182-day deadline, the court loses jurisdiction, and the charges must be dismissed with prejudice. § 16-14-104(1).

¶ 7 In reviewing a denial of a motion to dismiss for violation of the UMDDA, we defer to the trial court's factual findings provided they are supported by competent evidence, but we review the court's legal conclusions de novo. *McKimmy*, ¶ 19.

B. Procedural History

¶ 8 The prosecution filed the underlying charges against Fields on March 24, 2017. On May 7, 2017, while Fields was represented by a public defender, Fields' wife, Lisa Fields, sent a fax to the prosecutor and county court requesting final disposition of the charges under the UMDDA and seeking removal of the public defender. On May 19, 2017, the county court issued a minute order noting that it had received these motions, but "[u]nless Lisa

Fields is a licensed attorney said motions are null." Fields filed a second UMDDA request, which was received on August 2, 2017.

¶ 9 The case was moved to the trial court, and a motions hearing was held on November 3, 2017. Representing himself, Fields argued the county court misapplied the law by nullifying his May 7th UMDDA request and that his right to a speedy trial would be violated unless trial were held by the following day. The prosecutor argued that Fields did not file an effective notice of his rights because the motion was never received by the prosecutor's office and she was not familiar with the telephone number where the motion was faxed.

¶ 10 The trial court deferred ruling on the motion, ordering the prosecutor to investigate whether the May 7th request was received and whether service by fax was sufficient.

¶ 11 At a subsequent hearing, the prosecutor argued the county court properly nullified Fields' UMDDA request and it was within the court's discretion to do. The trial court noted there was no indication in the record why the county court rejected the May 7th filing "but accepted an almost identical filing . . . on August 2nd," but it concluded that it was "not in a position to countermand what

[the county court] did." Because Fields' May 7th request was nullified, the trial court denied Fields' motion to dismiss.

C. Discussion

¶ 12 Fields argues the trial court improperly relied on the law of the case doctrine because the county court abused its discretion when it nullified his May 7, 2017, UMDDA request.[1] We disagree. A criminal defendant is not entitled to hybrid representation — self-representation and representation by counsel — and a court is entitled to ignore pro se filings submitted by a represented defendant. *See People v. Gess*, 250 P.3d 734, 737 (Colo. App. 2010); *see also People v. Adams*, 243 P.3d 256, 266 (Colo. 2010) (non-attorneys may not engage in the unauthorized practice of law, including by preparing court pleadings). Because the county court was entitled to discretion in nullifying Fields' pro se UMDDA request, the trial court properly concluded that it was void. *See People v. Warren*, 55 P.3d 809, 813 (Colo. App. 2002) ("Under the law of the case doctrine, prior relevant rulings made in the same case generally are to be followed."); *People v. Dyer*, 2019 COA 161,

[1] Fields does not appeal the timeliness of his trial as related to his August 2, 2017, UMDDA request.

¶ 39 (we may affirm on any ground supported by the record). Accordingly, we discern no error.

III. Kidnapping Instruction

¶ 13 Fields next argues that the trial court reversibly erred by incorrectly instructing the jury on the elements of second degree kidnapping. The prosecution agrees that the instruction was incorrect but argues that reversal is not required.

¶ 14 We agree with both parties that the instruction was incorrect. But because the error is unpreserved, we reverse only if the error was plain. *See Hagos v. People*, 2012 CO 63, ¶ 14. Plain error is both obvious and substantial. *Id.* It is an error that so undermines the fundamental fairness of the trial itself as to cast serious doubt on the reliability of the judgment of conviction. *Id.* We conclude that even if the error was obvious, it was not substantial.

¶ 15 Second degree kidnapping requires that the defendant knowingly "seizes and carries" a person "from one place to another" without lawful justification or the person's consent. § 18-3-302(1), C.R.S. 2022. Though the elemental instruction correctly listed the elements, a separate definitional instruction stated that "'[s]eized and carried' means any movement, however short in distance."

¶ 16 At the time of trial, the law was settled that this definition of seized and carried was correct and a proper instruction. However, between the time of trial and this appeal, our supreme court held that such an instruction is error. *Garcia v. People*, 2022 CO 6, ¶ 20. As *Garcia* explained, this instruction eliminates the seizure element and improperly changes the asportation element from carrying a person from one place to another to "any movement, however short in distance," effectively lowering the prosecution's burden of proof. *Id.* at ¶ 21.

¶ 17 The prosecution contends that because *Garcia* was announced after the trial in this case, the trial court's error could not have been obvious. A division of this court recently rejected this argument and concluded that for purposes of determining whether an error was obvious, we look to the state of the law at the time of appeal, not the time of trial. *People v. Crabtree*, 2022 COA 73, ¶¶ 42-50 (*cert. granted* Mar. 6, 2023). The prosecution advances several reasons why we should reject the time-of-appeal standard for obviousness. But we need not resolve this question because, assuming without deciding the error was obvious, we nevertheless conclude the instructional error was not substantial.

¶ 18 If the record contains overwhelming evidence of the defendant's guilt, an erroneous jury instruction is not substantial error. *See People v. Miller*, 113 P.3d 743, 750 (Colo. 2005). At trial, J.C. testified that Fields grabbed her wrist and pulled her from outside the front door of her house to inside the house, moved her at knifepoint to the bedroom at the back of the house, and then moved her from room to room before placing her in a closet when he thought he saw someone outside. For his part, Fields argued he was not the person who committed the crimes against J.C. Accordingly, Fields did not dispute, and does not challenge on appeal, J.C.'s testimony as to what happened. That is, the facts of what happened to J.C. were established through her uncontested testimony. Additionally, by convicting Fields of sexual assault, the jury found that he was the one who committed the crimes.

¶ 19 Considering the uncontroverted evidence of what occurred during the entirety of the incident, coupled with the jury verdict that it was Fields who sexually assaulted J.C., we conclude the evidence was overwhelming that Fields committed second degree kidnapping and the instructional error was not substantial.

¶ 20 Fields argues the jury relied upon the improper instruction because the prosecutor emphasized it during closing argument. Fields asserts that — by arguing that even if Fields had only moved J.C. "from her bed . . . into the closet and not shuttled her back and forth all over the whole house, . . . that small movement alone would have constituted kidnapping" — the prosecutor improperly focused on the distance rather than whether Fields had moved J.C. "from one place to another." But we consider the prosecutor's statements in light of the entire closing argument. And the prosecutor made this comment after arguing that the elements of kidnapping were satisfied by J.C.'s testimony that Fields moved her "from place to place in her home" and that "[s]he was subject to greater harm in the back of her house, further from the street, further from any help." Indeed, whether the movement resulted in a "demonstrable increase in risk of harm" is an appropriate consideration when determining whether a defendant moved a victim from one place to another. *Garcia*, ¶ 42 (quoting *Apodaca v. People*, 712 P.2d 467, 475 (Colo. 1985)). We therefore cannot say the statements made during closing argument cast serious doubt on the reliability of the judgment of conviction.

¶ 21 We conclude from J.C.'s uncontroverted testimony that her assailant pulled her from outside her home to inside her home — which certainly increased the risk of harm to her — and the jury's sexual assault verdict finding Fields was the perpetrator overwhelmingly supported the asportation elements of second degree kidnapping. *See Apodaca*, 712 P.2d at 475 (victim's uncontroverted testimony that the defendant forced her at knifepoint into a pickup truck "clearly established the completed crime" of kidnapping). Accordingly, the erroneous jury instruction was not plain error.

IV. Victim Impact Evidence

¶ 22 Fields also argues that he is entitled to a new trial based on the improper admission of victim impact evidence. Specifically, he challenges J.C.'s testimony that she "never lived in that home again" and J.C.'s mother's testimony that J.C. "would never let [her] turn the lights off day or night" and "would never sleep by herself," choosing to sleep with her mother "because she was so scared with the lights on day and night."

¶ 23 Fields did not object to this testimony at trial, so reversal is not required in the absence of plain error. *Hagos*, ¶ 14. We are not

convinced that the testimony was irrelevant, as it had some tendency to lend credibility to J.C.'s testimony that the crime happened as she said it did. *People v. Haymaker*, 716 P.2d 110, 113 (Colo. 1986) (state-of-mind evidence is to be viewed with skepticism but was not improper when it "substantiated the credibility of the victim" and was not so inflammatory or repetitive as to violate CRE 403).

¶ 24 Regardless, even assuming without deciding that this testimony was improper, reversal is not required. J.C.'s and her mother's testimony was brief, not referenced in closing argument, and "conveyed relatively mundane information when compared with the graphic evidence otherwise admitted at trial." *People v. Dean*, 2012 COA 106, ¶ 46, *aff'd*, 2016 CO 14. Accordingly, we discern no reversible error.

V. Jury Trial on Habitual Criminal Adjudication

¶ 25 Fields also asserts that his sentence for kidnapping should be reversed because the constitution and section 16-13-103, C.R.S. 1994, required the jury to find that his prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes. We disagree.

¶ 26 As to Fields' constitutional arguments, Fields acknowledges that the right to a jury trial on facts increasing the penalty for a crime does not extend to the fact of a prior conviction. *People v. Session*, 2020 COA 158, ¶ 24 (first citing *Blakely v. Washington*, 542 U.S. 296, 303 (2004); and then citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)). He further acknowledges that divisions of this court have found *Apprendi*'s prior conviction exception to encompass whether prior convictions were separately brought and tried and arose out of separate and distinct criminal episodes. *Id.* at ¶ 25. Nevertheless, Fields argues that the facts underlying his prior convictions are distinct and "will depend on several facts besides the conviction itself, such as how counts were charged, and when, where, and how the criminal episodes occurred." As we understand Fields' position, he argues we should reject the approach adopted by *Session* and the cases it cites and instead conclude that these facts — whether prior convictions are separately brought and tried, and whether they arose out of separate and distinct criminal episodes — do not fall within the prior conviction exception to the jury trial right.

¶ 27 We decline to accept Fields' invitation to depart from *Session*. Whether prior convictions are separately brought and tried, and whether they arose out of separate and distinct criminal episodes, "can be definitively established based on the judicial records introduced at the habitual criminal trial." *People v. Nunn*, 148 P.3d 222, 227 (Colo. App. 2006). Unlike the issue of identity, these issues are therefore "matters of law for the court." *People v. Jones*, 967 P.2d 166, 169 (Colo. App. 1997).

¶ 28 Although Fields argues his constitutional rights were violated, he does not allege any flaws in the proceedings resulting in his prior convictions. He could have collaterally attacked those convictions but did not. And contrary to his arguments, the prior conviction exception remains intact after *Alleyne v. United States*, 570 U.S. 99 (2013). *Session*, ¶ 27; *People v. Parks*, 2015 COA 158, ¶ 29. We therefore reject Fields' constitutional claim.

¶ 29 As to Fields' statutory arguments, we conclude that section 18-1.3-803, C.R.S. 2022 (which replaced section 16-13-103), did not entitle Fields to a jury trial on the habitual counts. *See People v. King*, 121 P.3d 234, 243 (Colo. App. 2005) (under facts similar to those presented here, there is no statutory right to a jury trial on

habitual criminal charges where the crimes occurred before 1995 but the complaint was filed thereafter). True, Fields received a jury trial on the issue of identity. But that is of no consequence to our conclusion as he received greater protection than what he was entitled to by statute. Finally, we decline his invitation to depart from *Jones* and instead follow its holding to conclude that he was "not entitled to have any other issues determined by the jury." 967 P.2d at 169.

VI. Applicability of Section 16-13-101(2.5), C.R.S. 1994

¶ 30 Finally, we are not persuaded by Fields' argument that his life sentence for sexual assault is illegal. Five days after the 1994 sexual assault in this case, Fields committed a burglary. He was convicted of the burglary and adjudicated a habitual criminal in 1995. And he was convicted of the charges in this case in 2019.

¶ 31 Section 16-13-101(2.5), C.R.S. 1994, requires life imprisonment for any person who is convicted and sentenced as a habitual criminal and "who is thereafter convicted of a felony which is a crime of violence." Fields argues it does not apply to him because he committed the crime of violence (the sexual assault) *before* he committed burglary. Put another way, he argues the

burglary cannot serve as the predicate offense under section 16-13-101(2.5) because it occurred after the sexual assault.

¶ 32 But the plain language of section 16-13-101(2.5) unambiguously provides that the sequence of *convictions* — not commission of the offenses — controls. *See McCoy v. People*, 2019 CO 44, ¶ 38 ("If the statute is unambiguous, then we need look no further."); *see also In re People v. Woodside*, 2023 CO 25, ¶ 17 (a conviction is "prior" even if it is for conduct occurring after a second offense where the plain language of the applicable statute does not "contemplate the timing of the underlying conduct"). We therefore conclude Fields was properly sentenced under section 16-13-101(2.5).

VII. Disposition

¶ 33 The judgment is affirmed.

JUDGE FREYRE and JUDGE SCHOCK concur.

Exhibit 2

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: May 6, 2024 CASE NUMBER: 2023SC691
Certiorari to the Court of Appeals, 2020CA1708 District Court, Denver County, 2017CR1872	
Petitioner: Troy L. Fields, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2023SC691
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 6, 2024.