



In the Missouri Court of Appeals
Eastern District
DIVISION ONE

STATE OF MISSOURI,)	No. ED 98250
)	
Respondent,)	Appeal from the Circuit Court of
)	St. Charles County
vs.)	
)	
KARTEZ HARDIN,)	Hon. Angela Turner Quigless
)	
Appellant.)	FILED: May 21, 2013

Kartez Hardin (Defendant) appeals the trial court's judgment and sentence after a jury convicted him of fourteen offenses perpetrated against his former spouse (Victim) and her child (Child). We affirm in part and reverse in part.

Background

Viewed in the light most favorable to the verdict, the facts can be summarized as follows.¹ Defendant and Victim married in May 2010. In July of that year, Defendant beat Victim about the head enough to cause six facial fractures and a ruptured ear drum. In November, after Defendant assaulted her again and threatened to kill her, Victim left the couple's home and obtained an *ex parte* order of protection. About a week later, while Victim and Child (age 8) were visiting a relative, Defendant appeared there and refused

¹ We recite the facts only as needed to establish the offenses of which Defendant was convicted. We have omitted additional details depicting the extent of Defendant's abuse for the sake of brevity and Victim's privacy, but we do not mean to minimize his conduct or the victims' experience.

to leave. Victim and Child ran to their vehicle (an SUV) and attempted to flee. Defendant climbed atop the vehicle holding the luggage rack. Victim began driving and swerved the SUV side to side in an attempt to shake Defendant from the roof. He kicked the windshield and driver's window and door, and the door eventually opened. Defendant reached in and grabbed the steering wheel such that Victim could no longer control the car's direction, forcing her to "slam on the brakes" in order to avoid jumping the curb and hitting a brick building. Defendant took the driver's seat and drove away, speeding up to 100 miles per hour on the highway and passing cars on the shoulder, with Victim in the passenger seat and Child in the back. Defendant eventually deposited Child with a relative but forced Victim to remain in the vehicle and took her to a remote location where he raped her. Following the assault, Defendant allowed Victim to retrieve her son and go home, after which she drove to a police station. Throughout that night, Defendant called Victim nine times. Subsequent to Defendant's arrest, he wrote to Victim four times urging her to drop the charges against him.

The State charged Defendant with forcible rape, two counts of kidnapping, endangering the welfare of a child, property damage, aggravated stalking, six counts of violating a protective order, domestic assault, and victim tampering. The jury found Defendant guilty on all counts, and the trial court sentenced Defendant to 50 years for rape plus concurrent sentences equaling 25 years on the other counts,² for a total of 75 years. On appeal, Defendant asserts three points of error: (1) that the sentence of 50 years for rape is outside the range of punishment; (2) that the convictions for violating a

² Specifically, the court imposed: 25 years for each kidnapping count; 15 years for endangering the welfare of a child; six months MSI (medium security institution) for property damage; seven years for aggravated stalking, one year for each violation of a protective order; 15 years for domestic assault; and 15 years for victim tampering.

protective order and aggravated stalking result in double jeopardy; and (3) that the evidence was insufficient on the charge of endangering the welfare of a child.

Discussion

Fifty-year Sentence

For his first point, Defendant contends that the trial court erred by imposing a prison sentence of 50 years on count 1 (forcible rape) because, he claims, such a term is outside the range of punishment set forth in §566.030.2 RSMo Supp. 2010. Defendant concedes that this point was not preserved for appellate review and therefore requests plain error review under Rule 30.20. “Plain errors affecting substantial rights may be considered in the discretion of the court when the court finds that manifest injustice or miscarriage of justice has resulted.” Rule 30.20. Plain errors are those that are evident, obvious and clear. State v. Williams, 306 S.W.3d 183, 185 (Mo. App. 2010).

Section 566.030.2 authorizes a range of punishment of “life imprisonment or *a term of years not less than five.*” While, under the plain language of the statute, a term of 50 years would appear to fall within the range, Defendant submits that a 50-year term is beyond the range because, for purposes of parole, a life sentence is treated as 30 years. See §558.019.4(1) (establishing mandatory minimum sentences) and State v. Juarez, 26 S.W.3d 346 (Mo. App. 2000) (noting that, under §558.019.4(1), a life sentence is considered 30 years for purposes of parole). We are not persuaded.

Section 588.019.4(1) calculates a life sentence as a *minimum* of 30 years, and §588.019(2) specifically contemplates the possibility that a defendant may receive a term sentence of over 75 years. Moreover, although cases interpreting earlier versions of §566.030.2 vary in their instruction, recent authorities on the current version of

§566.030.2 encourage a plain language interpretation void of inferred limitations. An evolution of the precedent is illustrated by the following examples. In State v. Douglas, this court held that a 40-year sentence was within the range of “life imprisonment or a term of years not less than five years.” 657 S.W.2d 703 (Mo. App. 1987). In State v. Williams, this court held, *sans* analysis, that the defendant’s 100-year sentence exceeded the statutory maximum of life. 828 S.W.2d 894, 903 (Mo. App. 1992). In State v. Stoer, the Southern District declined to follow Williams and upheld a 100-year sentence where the statutory maximum was indefinite, albeit in a case of armed criminal action. 862 S.W.2d 348 (Mo. App. 1993). In Olds v. State, this court followed Williams to hold that the defendant’s 75-year sentences exceeded the statutory maximum of life. 891 S.W.2d 486, 494 (Mo. App. 1994). In 1994, the rape statute was amended to impose a maximum term sentence of 30 years. That provision was removed in 1995. In Thomas v. Dormire, on a petition for *habeas corpus*, the Western District found no sentencing error on the face of the record in that “ninety-nine years is a ‘term of years not less than five years.’” 923 S.W.2d 533, 534 (Mo. App. 1996). The court opined, “while Thomas’ sentences, under court *interpretations* of §566.030.2 [citing Williams and Olds], may not be authorized,” the defendant was not entitled to relief “where the sentencing defect is not so patent as to present a jurisdictional issue.” Id. at 534-535. (*italics original*) More recently, in State v. Maples, the Western District noted that the 1995 removal of the previous term maximum of 30 years “was not a reduction to the maximum sentence; it was an increase. Instead of a maximum sentence of thirty years ... the amendments ... did not have a maximum sentence.” 306 S.W.3d 153, 157 n. 4 (Mo. App. 2010).

We are compelled by the implication of Thomas - essentially declining to follow Williams and Olds - and the simple logic of Maples because the alternative interpretation eviscerates the effect of the 1995 amendment and infers limitations not contained in the plain language of the statute. The parole statute bolsters our interpretation by acknowledging the possibility of a term over 75 years. Under Rule 30.20, plain errors are those that are evident, obvious and clear. Based on the foregoing authorities, we cannot say that the trial court plainly erred in imposing a 50-year sentence. Point denied.

Double Jeopardy

For his second point, Defendant asserts that the trial court erred by entering judgment on counts 8-12, each for violating a protective order, because those counts alleged the same conduct included in count 7 for aggravated stalking, thereby resulting in double jeopardy. The State concedes this point, so a lengthy analysis is unnecessary. In short, both the Fifth Amendment and Missouri statute protect against multiple punishments for the same offense. U.S. Const. Amend. V; §556.041 RSMo. This court has held that the offense of violating a protective order (§455.085.2) is included in the offense of aggravated stalking (§565.225) because proof of the same conduct is required to sustain both convictions. State v. Smith, 370 S.W.3d 891, 895 (Mo. App. 2012). As such, the trial court's judgment and sentences on counts 8-12 violate the prohibition against double jeopardy and must be vacated. Point granted.

Sufficiency of the Evidence – Endangering the Welfare of a Child

Finally, Defendant submits that the trial court erred by entering judgment on count 4 (endangering the welfare of a child) because the evidence was insufficient to support a finding that Defendant caused Victim to lose control of her vehicle. This

court's review is limited to a determination of whether the record - viewing the evidence and inferences in the light most favorable to the State - contains sufficient evidence from which a reasonable juror might have found the defendant guilty beyond a reasonable doubt. State v. Grim, 854 S.W.2d 403, 411 (Mo. banc 1993). In making this determination, we give great deference to the trier of fact. State v. Morton, 229 S.W.3d 626, 629 (Mo. App. 2007).

A person commits the crime of endangering the welfare of a child when he “knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child.” §568.045.1(1). The State charged Defendant with this offense for jumping on and hitting Victim’s car and “causing her car to drive recklessly.” The jury instruction required the jury to find that Defendant jumped on Victim’s car “causing her to lose control” while Child was a passenger. Defendant insists that the evidence did not establish that Victim ever lost control of her car, so there was never substantial risk to Child. There is no bright line test to determine whether a person’s actions knowingly create a substantial risk to the health of a child. State v. Huhn, 115 S.W.3d 845, 849 (Mo. App. 2003). To determine whether Defendant’s actions rise to that level, we look at the totality of circumstances as presented by the evidence. Id. As relevant to this point, Victim testified as follows:

Q: What are you doing while he’s climbing on top of your car?

A: Driving.

Q: Okay. And what are you thinking?

A: This isn’t the first time he’s done this, for one thing. And I just was just like, “I’ve got to get him off.” He starts kicking the windshield with his heels and, you know, my son is screaming, and I’m swerving back and forth to try to throw him off the vehicle. I guess at some point he realized he wasn’t going to break the windshield, and he started kicking my

driver's side window right next to me. Well, the second time he kicked it, the door popped open.

...

A: He started reaching inside of the car, and he put his arm through my steering wheel, which kind of – which I was not able to move the steering wheel, and we were heading off of the road onto a curb where a brick building was.

Q: Okay.

A: And I slammed on the brakes.

Q: Why did you slam on the brakes?

A: Because I was going to hit the brick building.

...

Q: Okay. And what was [Child] doing at the time?

A: Screaming, crying.

Considering the totality of circumstances described in Victim's testimony, and viewing it in the light most favorable to the State, this record provides a sufficient evidentiary basis from which a reasonable juror could infer that Victim lost control of her SUV as a result of Defendant's actions, thereby creating a substantial risk of harm to Child. Point denied.

Conclusion

The trial court did not plainly err in imposing a prison sentence of 50 years on count 1 for forcible rape, as such a term is not clearly outside the range of punishment under §566.030.2. The trial court also did not err in entering judgment on count 4 for endangering the welfare of a child, as the evidence in the record was sufficient to support a finding of guilt. However, counts 8-12 for violations of a protective order allege the same conduct included in count 7 for aggravated stalking and thereby violate Defendant's

right against double jeopardy, so the trial court's judgment and sentences on counts 8-12 are hereby vacated. The court's judgment is affirmed in all other respects.



CLIFFORD H. AHRENS, Presiding Judge

Sherri B. Sullivan, J., concurs.
Glenn A. Norton, J., concurs.