IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN A. BROUGHTON,	§	
	§	No. 515, 1999
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr.A. No. S98-10-0509
Plaintiff Below,	§	through 0513
Appellee.	§	

Submitted: November 28, 2000
Decided: February 1, 2001

Before **VEASEY**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

O R D E R

This 1st day of February, 2001, upon consideration of the briefs of the parties it appears to the Court that:

1) Steven A. Broughton appeals from his convictions, following a jury trial, on charges of first degree rape, first degree kidnapping, attempted first degree robbery, third degree assault and terroristic threatening. He argues that (i) there was insufficient evidence to support independent convictions on the kidnapping charge and the underlying rape and assault charges; and (ii) the jury instruction on kidnapping was an incorrect statement of the law.

2) One morning at about 6:00 a.m., Broughton walked into the laundromat where Donna Truitt was working. He grabbed Truitt by the throat and demanded money. When Truitt told Broughton that there was no money, Broughton dragged her by the throat into the back room. Truitt struggled and Broughton squeezed her throat so hard that Truitt briefly lost consciousness. While in the back room, Broughton pulled Truitt's clothes off and raped her. When he was finished, Broughton warned Truitt that he would kill her if she told anyone.

3) Broughton argues that the trial court erred by allowing the jury to consider the kidnapping charge. In *Weber v. State,*[1] this Court held that, in cases like this, the trial judge must decide whether there is sufficient evidence to establish "'much more' (substantial) interference with the victim's liberty than is ordinarily incident to the underlying crime." If not, the kidnapping charge should not be submitted to the jury. According to Broughton, the evidence shows that there was no independent restraint of Truitt.

[1]Del. Supr., 547 A.2d 948, 959 (1988).

4) We review this claim for plain error since it was not presented to the trial court. Under this standard, the error "must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process."[2] Based on our review of the record, we conclude that there was sufficient evidence of independent restraint to submit the kidnapping charge to the jury. Broughton did not simply subdue Truitt, he dragged her by the throat through the laundromat and into a storage room at the back of the building. Although the trial court should have made its own determination, as a matter of law, we find no plain error in its failure to do so.

5) Broughton also complains that the instruction on kidnapping was incorrect. Specifically, he says that the instruction was defective because it did not define "substantial" interference with a person's liberty to mean "much more" interference. This claim lacks merit. The jury instruction defined "restraint" as restriction of another person's movement "in such a manner as to interfere substantially with the person's liberty...." In addition, the jury was told that it must find that the "restraint of the victim was independent of and not incidental to the other charged offenses...."

[2] *Wainwright v. State,* Del.Supr., 504 A.2d 1096, 1100 (1986).

Broughton is not entitled to any particular instruction, and, since this one correctly stated the law, we find no plain error.[3]

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[3] *Floray v. State*, Del. Supr., 720 A.2d 1132, 1138 (1998).