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DISTRICT IV

June 8, 2015

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You are hereby notified that the Court has entered the following opinion and order:

2013AP2657-CR State of Wisconsin v. Jorge Alvarez-Valencia (L.C. # 2011CF1933)

Before Blanchard, P.J., Lundsten and Sherman, JJ.

Jorge Alvarez-Valencia appeals a judgment convicting him, after a jury trial, of kidnapping. *See* WIS. STAT. § 940.31(1)(a) (2013-14).¹ Alvarez-Valencia argues that the circuit court improperly admitted into evidence the victim's statements to a sexual assault nurse examiner, in violation of Alvarez-Valencia's Sixth Amendment confrontation rights under *Crawford v. Washington*, 541 U.S. 36 (2004). *See* U.S. CONST. amend. VI. Based upon our

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

G.Z.C. alleged that, on October 2, 2011, Alvarez-Valencia assaulted her in a dollar store parking lot and took her against her will to the University of Wisconsin Arboretum. On October 4, 2011, G.Z.C. contacted the police. A police officer accompanied G.Z.C. to the scene of the crime at the Arboretum and then to a hospital where G.Z.C. was examined by a sexual assault nurse examiner (SANE). The SANE nurse prepared a report of the examination. G.Z.C. was unavailable at trial and the State sought to introduce into evidence the statements she made to the SANE nurse during the exam. Alvarez-Valencia objected to the introduction of the statements on confrontation grounds. The circuit court held two hearings on the motion. The court excluded some of G.Z.C.'s statements to the SANE nurse and allowed others to be admitted into evidence.

Alvarez-Valencia argues on appeal that the statements from G.Z.C. to the SANE nurse were testimonial in nature and that the circuit court erred when it allowed some of them to be admitted. The State argues that the statements in question were not testimonial and that, even if they were, any error on the part of the circuit court in admitting them was harmless error. We will assume, without deciding the issue, that the statements from G.Z.C. to the SANE nurse were testimonial. However, we agree with the State that any error in the admission of the statements was harmless.

The Confrontation Clause prohibits the admission of out-of-court testimonial statements from an unavailable witness absent the accused's prior opportunity to confront the witness. *Crawford*, 541 U.S. at 68. *See also* U.S. CONST. amend. VI. However, a violation of the

Confrontation Clause “does not result in automatic reversal, but rather is subject to harmless error analysis.” *State v. Stuart*, 2005 WI 47, ¶39, 279 Wis. 2d 659, 695 N.W.2d 259 (quoted source omitted). An error is harmless when “it is ‘clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.’” *State v. Harris*, 2008 WI 15, ¶43, 307 Wis. 2d 555, 745 N.W.2d 397 (quoted source omitted).

To prove that Alvarez-Valencia was guilty of kidnapping G.Z.C., the State was required to prove that he (1) carried G.Z.C. (2) without her consent (3) from one place to another (4) by force or with the threat of force (5) with the intent to hide her or hold her against her will. *See* WIS. STAT. § 940.31(1)(a). We are satisfied that, even without the statements from G.Z.C. to the SANE nurse, it is clear beyond a reasonable doubt that a rational jury would have found Alvarez-Valencia guilty of kidnapping.

At trial, the State presented an interview of Alvarez-Valencia video recorded by police. He told police that he and G.Z.C. had separated because she was involved in a relationship with someone else. Alvarez-Valencia admitted that, on the night of the alleged kidnapping, he borrowed a car and hid outside near G.Z.C.’s house. When G.Z.C. left her house, Alvarez-Valencia followed her to a parking lot near a “dollar store.” Alvarez-Valencia drove over to G.Z.C., opened the driver’s side door of her vehicle, and asked where she was going. He admitted that he then pulled G.Z.C. out of her vehicle by her collar and put her in the car he had borrowed. He told police that he then drove to a forest-looking park, where he told G.Z.C. to get out of the car and, when she declined, he pulled her out of the car by her hair. He then took her further into the woods, where he hit her on the face and tied her hands behind her back with a belt. Alvarez-Valencia also admitted that he put his hand on G.Z.C.’s neck.

The State also presented evidence that hair found at the crime scene matched G.Z.C.'s DNA profile. The SANE nurse who examined G.Z.C. testified about G.Z.C.'s physical injuries, including bruising and abrasions on her face, bruises on her hip, gluteus, and knee. The State also introduced photographs of G.Z.C.'s injuries.

Alvarez-Valencia's admission that he pulled G.Z.C. from the car by her hair, after she refused to get out, and took her from the car to deeper within the woods, when combined with the DNA evidence obtained from the crime scene and the physical evidence of G.Z.C.'s injuries, was strong evidence that Alvarez-Valencia carried G.Z.C. without her consent from one place to another by force. *See* WIS. STAT. § 940.31(1)(a). As to the final element of kidnapping—that Alvarez-Valencia did these things with the intent to hide G.Z.C. or hold her against her will—his own admission that he took her deep into a wooded area and tied her hands behind her back with his belt, despite the fact that G.Z.C. did not want to get out of the car, demonstrates an intent to hold G.Z.C. against her will. *Id.*

In light of all of the above, we conclude that the overwhelming evidence, other than the statements from G.Z.C. to the SANE nurse, would have convinced the jury to convict Alvarez-Valencia and that, therefore, any error by the circuit court in admitting G.Z.C.'s statements was harmless.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals