

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

VIRGO A. KIDD

Appellant

: No. 2054 EDA 2025

Appeal from the Judgment of Sentence Entered March 17, 2025
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0006641-2022

BEFORE: BOWES, J., OLSON, J., and McLAUGHLIN, J.

MEMORANDUM BY BOWES, J.:

FILED AUGUST 20, 2026

Virgo A. Kidd appeals from his aggregate judgment of sentence of seventeen to thirty-four years of imprisonment, followed by three years of probation, imposed upon his convictions for rape, burglary, aggravated indecent assault, and unlawful restraint. We affirm.

The trial court offered the following summary of the facts underlying Appellant's convictions:

On the evening of July 25, 2022, S.W. returned from work to her home in Philadelphia. S.W., who was [sixty-one] years old at the time, lived alone. She went to sleep in her second-floor bedroom at around 10:30 or 11:00 p.m.

S.W. awoke when she heard a noise. She looked at a framed picture on a wall in her bedroom and could see the reflection of a person, whom S.W. later identified as [Appellant], coming towards her. [Appellant] was wearing a striped shirt and black gloves [that had a distinctive white rim or lining]. [Appellant] approached S.W. with red-handled scissors taken from S.W.'s kitchen. When [Appellant] neared S.W., he made a striking

motion at S.W. with the scissors in his hand. S.W. grabbed the scissors from [Appellant]'s hand and threw them across the room. [Appellant] commanded S.W. to turn on her stomach, told her not to look at him, and asked her if she wanted to die. S.W. turned on her stomach with her face directed towards the window and away from [Appellant].

[Appellant] then asked S.W. about her money, and S.W. pointed towards the shelf in her bedroom. [Appellant] retrieved four dollars from the shelf, bumped S.W. in the head, put his arm around her neck, and asked her for the rest of the money. S.W. pointed towards a box in the bedroom, and [Appellant] retrieved ninety dollars from under the box. [Appellant] also found S.W.'s pocketbook and took keys from it. [Appellant] then proceeded to assault S.W., putting his fingers in her vagina. [Appellant] got on top of S.W., lifted her nightgown, pulled down her underwear, and put his penis in her vagina for a couple of seconds.

Afterwards, [Appellant] tied S.W.'s hands with wire from her toothbrush holder and tied her feet with wire from her CD player. At the time, S.W. had a physical infirmity that prevented her from being able to move one of her arms. [Appellant] continued to ask S.W. if she wanted to die as he tied her up. [Appellant] then told S.W. he would be back and went downstairs with S.W.'s keys. S.W.'s front entrance had an additional security door that locked from the inside, requiring a key to exit the house. After a while, [Appellant] returned to S.W.'s bedroom to ask which key opened the front door, and S.W. showed him.

After some time passed and S.W. could no longer hear [Appellant] downstairs, she began trying to remove the wires off of her arms. She eventually was able to free her arms and then called 911 at approximately 11:37 p.m. Because [Appellant] had taken S.W.'s cellphone, S.W. used her home's landline to call the police.

S.W. went downstairs after calling 911. Her front door was left unlocked, and police and medics had arrived outside her home. S.W. was taken into the back of the ambulance, where she spoke to police officers. S.W. told police officers that [her assailant] was wearing a black and white striped shirt and black gloves. S.W. also informed the officers that defendant had raped her. An extension cord was still tied around S.W.'s legs as the officers spoke with her. An officer briefly investigated the scene

of the crime and observed that the lock to the house's backdoor had been damaged.

The police transported S.W. to the Philadelphia Sexual Response Center, where she gave a statement to an officer describing her assailant as a 5' 7" black male with a medium build wearing black gloves. A forensic examination revealed that S.W. had sustained an abrasion on her vaginal wall. S.W. was then taken to Pennsylvania Hospital, where she received further treatment.

Trial Court Opinion, 10/15/25, at 2-4 (cleaned up).

Police recovered surveillance footage which depicted a man dressed as S.W. had described in the vicinity of her home before and after the attack. When shown still-frames from the images, S.W. identified the person as her assailant, and indicated that he resembled Appellant, who was the son of S.W.'s friend and who had performed some work on S.W.'s home. Presented with a photo array, she confirmed that it was Appellant who assaulted her.

Police arrested Appellant at his home on July 28, 2022, where they recovered a black rubber glove with distinctive markings matching those seen in the surveillance videos. He was charged with the above-referenced crimes, tried by a jury, convicted, and sentenced as indicated *supra*. He filed a timely post-sentence motion for reconsideration of sentence that the trial court promptly denied.

This timely appeal followed. Appellant and the trial court both complied with their Pa.R.A.P. 1925 obligations. Appellant presents the following question for our determination: "Was the evidence insufficient for conviction on the charge of unlawful restraint under 18 Pa.C.S. § 2902(a)(1), where the

complainant was not placed at risk of serious bodily injury?" Appellant's brief at 2.

The following principles govern our assessment:

[T]his Court's standard of review when considering a challenge to the sufficiency of the evidence requires us to look at the evidence in a light most favorable to the Commonwealth, as verdict winner, and determine whether the evidence presented, actual and/or circumstantial, was sufficient to enable a fact-finder to find every element of the crime charged, beyond a reasonable doubt.

Commonwealth v. Cooper, 357 A.3d 516, 519 (Pa.Super. 2026) (citation omitted). In relevant part, the unlawful restraint statute provides that "a person commits a misdemeanor of the first degree if he knowingly: (1) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury[.]" 18 Pa.C.S. § 2902(a). Our legislature has defined "serious bodily injury" as "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S. § 2301. Unlawful restraint does not occur where the victim merely perceived herself to be in danger of serious bodily injury; there must have been an actual risk that such injury could result. ***See Commonwealth v. Melvin***, 572 A.2d 773, 775 (Pa.Super. 1990).

Appellant contests only the adequacy of the Commonwealth's proof that his restraint of S.W. actually put her at risk of serious bodily injury. He likens this case to ***Commonwealth v. Schilling***, 431 A.2d 1088 (Pa.Super. 1981), in which this Court reversed an unlawful restraint conviction where the

defendant perpetrated a rape in a safely-parked vehicle by threatening the victim with an unloaded pellet gun. **See** Appellant's brief at 11 (contrasting **Schilling** with **Melvin**, where the defendant pointed a sawed-off shotgun, not proven to have been loaded, at the victim while forcing him to drive a car in search of a man who had previously shot at the defendant).

Appellant argues that proof of any actual danger was likewise lacking in this case. He maintains that S.W. "never said she was choked or forcibly struck." **Id.** at 12. He notes there was no indication "that the penetration was especially violent," and suggests that the vaginal abrasions were a common for post-menopausal women. **Id.** at 13. Appellant further highlights that S.W. testified that Appellant bound her hands and feet after the robbery and assault, that the "restraints were not very effective," and that she "quickly freed herself." **Id.** Thus, he concludes, "nothing about the circumstances of the crime—neither the sexual assault itself, nor the subsequent physical restraint—created a risk of serious bodily injury, or indeed of any injury beyond what the victim actually sustained." **Id.** at 14.

The Commonwealth responds by clarifying that the restraint at issue took place during the entire attack, not just the few minutes S.W. was bound with cords after the rape. **See** Commonwealth's brief at 10. The Commonwealth contends that Appellant "essentially argues that because [S.W.] did not sustain more serious injuries, the evidence was insufficient to establish the exposure to serious bodily injury." **Id.** However, it observes

that “[t]he statute requires that the victim be placed in danger of serious bodily injury, not that the victim sustain such injury.” **Id.**

As summarized by the trial court, the risk-creating restraint was established by the evidence that Appellant, who was larger than S.W., moved to strike S.W. with a pair of kitchen scissors; repeatedly asked her if she wanted to die; placed his arm around her neck and raped her, causing an internal abrasion; then left her bound and alone in her home without her cell phone. **See** Trial Court Opinion, 10/15/25, at 12 (citing N.T. Trial, 11/20/24, at 92-112; N.T. Trial, 11/21/24, at 168-69). The trial court perceived this proof to be “more than sufficient to establish that defendant exposed S.W. to a risk of serious bodily injury.” **Id.**

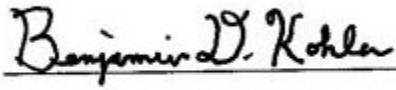
We agree. Unlike the defendant in **Schilling**, Appellant did not restrain his victim’s movement through the empty threat of an unloaded weapon. Rather, the circumstances of the instant case are akin to those in which this Court has affirmed convictions for unlawful restraint wherein the defendant used physical force during an assault. **Compare Commonwealth v. McBall**, 463 A.2d 472, 474 (Pa.Super. 1983) (rejecting sufficiency challenge to unlawful restraint conviction where the defendant, who was significantly larger than the victim, pulled, pushed, and repeatedly threatened to kill her while holding her down and raping her); and **Commonwealth v. Harbold**, 260 A.3d 134, 2021 WL 2933141, at *5 (Pa.Super. 2021) (non-precedential decision) (affirming conviction where a rape was accompanied by

manhandling, strangulation, and a threat to kill the victim); **with Commonwealth v. Bishop**, 307 A.3d 657, 2023 WL 6629728, at *5 (Pa.Super. 2023) (non-precedential decision) (vacating conviction for unlawful restraint where the evidence failed to show actual risk of harm, noting the absence of “evidence that [the a]ppellant hit her, tried to choke her or impede her ability to breathe, threw her against any object, or put her in a dangerous location”). **See also Interest of D.N.**, 344 A.3d 1107, 2025 WL 1948652, at *6 (Pa.Super. 2025) (non-precedential decision) (holding risk of serious bodily injury was established by the misuse of a sports equipment during restraint, namely the shoving of a “vibrating, bullet-shaped head of a massage gun between the victim’s buttocks and repeatedly mov[ing] the massage gun up and down along the crease of the victim’s buttocks”) (cleaned up)); **Commonwealth v. Rodriguez**, 336 A.3d 1005, 2025 WL 1806454, at *7 (Pa.Super. 2025) (non-precedential decision) (deeming proof of actual risk of serious bodily harm proven by the defendant’s “acts of choking Victim, dragging her to his car, forcing her inside and driving away with her, then pulling out a firearm and threatening to kill her”).

Since the Commonwealth’s evidence was sufficient to allow the jury to conclude that Appellant’s violence in restraining and raping S.W. exposed her to the risk of serious bodily injury, we have no cause to disturb his conviction or the sentence imposed thereupon. Therefore, we affirm.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/20/2026