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NOTE

Serious Personal Injury Requirement for Rape Is Met by Mental Injury Alone—*State v. Baker*

INTRODUCTION

The North Carolina General Assembly amended the state's rape laws in 1979. In redefining first degree rape, the legislature replaced the previous language, "serious bodily injury" with the words "serious personal injury."¹ With this change, the legislature broadened the interpretation of the "serious personal injury" element of first degree rape such that mental injury as well as physical bodily injury could satisfy this element. This note will discuss, through case law examples, types of mental injuries which have been held sufficient to constitute serious personal injury to a rape victim. The note will review the difference between first degree and second degree rape in North Carolina. Finally, the note will consider the possible implications for future first degree rape prosecutions, focusing on the serious personal injury element. The stimulus for this note is the North Carolina Supreme Court decision in *State v. Baker*,² which upheld a first degree rape conviction based on mental injuries to the victim deemed sufficient to satisfy the serious personal injury element of first degree rape under North Carolina law.³

PRIOR NORTH CAROLINA LAW

The critical issue in *Baker* was the interpretation of the definition of "serious personal injury" to distinguish first degree rape from second degree rape. North Carolina General Statute Section 14-27.2 (a) provides in pertinent part:

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(2) With another person by force and against the will of the other person, and:

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1. 1979 N.C. Sess. Laws, ch. 682.
 2. 336 N.C. 58, 441 S.E.2d 551 (1994).
 3. N.C. GEN. STAT. § 14-27.2(a)(2)b. (1993).

- a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; *or*
- b. Inflicts serious personal injury upon the victim or another person; *or*
- c. The person commits the offense aided and abetted by one or more other persons.⁴

By contrast, Section 14-27.3 defines second degree rape as follows:

- (a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person:

- (1) By force and against the will of the other person; . . .⁵

The distinguishing feature between the two degrees of rape is the existence of one or more of the elements enumerated in subdivisions a. through c. of Section 14-27.2(a)(2).

In 1979, the statute was amended to include the requirement that the victim suffer "serious personal injury." Before that time, the wording provided that the defendant must cause "serious bodily injury." Three years after the legislature amended the statute, the North Carolina Supreme Court in *State v. Boone* held that the "infliction of 'serious personal injury' as required by G.S. 14-27.2(2)b. . . . may be met by the showing of mental injury as well as bodily injury."⁶ The *Boone* decision was a highly significant change from pre-amendment law, which had required serious bodily injury. The leading case defining serious bodily injury had previously been *State v. Jones*⁷, which stated:

The term "inflicts serious injury" means physical or bodily injury resulting from an assault with a deadly weapon with intent to kill. The injury must be serious but it must fall short of causing death. Further definition seems neither wise nor desirable. Whether such serious injury has been inflicted must be determined according to the particular facts of each case.⁸

All of the cases cited in the *Boone* opinion involved tangible bodily injuries, and the North Carolina Supreme Court declined to attempt to define the substance of the phrase "serious bodily injury." Instead it followed the rule from *Jones* that the particular facts of each case would determine whether serious injury had occurred.⁹

Following the same line of reasoning as that used in *Jones*, the *Boone* court did not attempt to enunciate a "bright line" rule as to

4. N.C. GEN. STAT. § 14-27.2 (Supp. 1994) (emphasis added).

5. N.C. GEN. STAT. § 14-27.3 (1993).

6. 307 N.C. 198, 204, 297 S.E.2d 585, 589 (1982).

7. 258 N.C. 89, 128 S.E.2d 1, (1962)). In *Jones*, the injury sustained by the victim was a shotgun wound to the back of the head.

8. *Id.* at 91, 128 S.E.2d at 3.

9. *Boone*, 307 N.C. at 204, 297 S.E.2d at 589.

when serious personal injury had been inflicted. Instead, the *Boone* court held that the existence of mental injury sufficient to constitute serious personal injury within the meaning of the statute must be determined from the particular facts of each case. The *Boone* court reasoned that because the legislature had created two degrees of rape, the lawmakers must have intended for the mental injury inflicted during rape to be more than the *res gestae* results¹⁰ present in every forcible rape.¹¹ Further, the court held that "the State must ordinarily offer proof that such injury was not only caused by the defendant but that the injury extended for some *appreciable* time beyond the incidents surrounding the crime itself."¹² In *Boone*, the victim's hysteria and crying immediately after the rape were not found to be evidence of mental injury sufficient to satisfy the requirement for first degree rape. The record disclosed no residual injury to the mind or nervous system of the victim.¹³

In 1990, the North Carolina Court of Appeals upheld two first degree rape convictions against defendants' challenges that there was insufficient evidence to support a finding that the victims suffered serious mental personal injuries. In *State v. Mayes*,¹⁴ the victim dropped out of community college, moved from the city where she had been living, and obtained professional counseling from a mental health center and a shelter for abused women. At the time of the trial seven months later, the victim was still suffering from her mental injury. Later the same year, in *State v. Davis*,¹⁵ the court of appeals held that the victim's continued appetite loss, severe headaches, nightmares, sleep difficulty, and difficulty in urination and bowel movements following rape and sodomy were sufficient to support a first degree rape conviction based on serious personal injury. It is important to note in both of these cases that the defendant displayed a dangerous weapon or an article believed to be a dangerous weapon. Thus, the fulfillment of the dangerous weapon element could have provided an alternate or additional basis for a first degree rape conviction under the statute.

STATEMENT OF THE CASE

In *State v. Baker*, the State's evidence showed that on the night of the rape, the victim was asleep in the mobile home where she resided

10. *Res gestae* results are those "so closely connected to occurrence or event in both time and substance as to be part of the happening." BLACK'S LAW DICTIONARY 1305 (6th ed. 1990).

11. 307 N.C. at 205, 297 S.E.2d at 590.

12. *Id.* (emphasis added).

13. *Id.*

14. 97 N.C. App. 559, 389 S.E.2d 585, *disc. rev. denied*, 326 N.C. 803, 393 S.E.2d 903 (1990).

15. 101 N.C. App. 12, 398 S.E.2d 645 (1990), *appeal dismissed & disc. rev. denied*, 328 N.C. 574, 403 S.E.2d 516 (1991).

with her infant son, her roommate, and the roommate's two young children. After hearing the defendant knock, she went to the door and began to open it because she recognized the defendant as her roommate's boy friend. The defendant burst into the home and raped the victim. The State offered testimony which demonstrated that the victim suffered from loss of appetite and depression. She quit her job because she was unable to handle public interactions. She moved out of her home and contacted a rape crisis center for counseling. She had nightmares or was unable to sleep. Most significantly, she was unable to care for her infant son for a period of nine months. At the time of trial, which was almost a year after the rape, testimony demonstrated that the victim was still having problems with her nerves and trouble sleeping,¹⁶ and experienced weight loss and headaches.¹⁷

The defendant was convicted of both first degree rape and second degree sexual offense; he was sentenced to life imprisonment for the first degree rape. The court of appeals overturned the first degree rape conviction on the ground of insufficient evidence of serious personal injury.¹⁸ The North Carolina Supreme Court reversed, based on the evidence that the victim was still suffering from "bad nerves" at the time of the trial in addition to other post-rape symptoms.¹⁹ The court found that these symptoms met the *Boone* test, and that a reasonable juror could have concluded that these injuries were not *res gestae* results present in every forcible rape.²⁰ The court held that the victim's mental injuries were sufficient to meet the statutory requirement of serious personal injury, and reinstated the first degree rape conviction.²¹

ANALYSIS

The decision in the *Baker* case marks the first time that the North Carolina Supreme Court has upheld a first degree rape conviction based solely on a serious personal injury that was entirely of a mental and emotional type. While this decision is not unsupported by principles laid out in previous North Carolina case law, it does show a substantial broadening of the use of the serious personal injury element as a basis for conviction of first degree rape. Indeed, the court's rejection of the defendant's argument concerning the requirement for the

16. 336 N.C. at 61, 441 S.E.2d at 552-53.

17. *State v. Baker*, 109 N.C. App. 557, 562, 428 S.E.2d 216, 218 (1993), *rev'd*, 336 N.C. 58, 441 S.E.2d 551 (1994).

18. 109 N.C. App. at 563, 428 S.E.2d at 219.

19. 336 N.C. at 61, 441 S.E.2d at 553.

20. *Id.* at 65, 441 S.E.2d at 555.

21. *Id.* at 65-66, 441 S.E.2d at 555.

presence of some other act not found within the *res gestae* of a forcible rape clearly establishes the court's position in support of mental injury.²² The court stated that the interpretation of the law urged by the defendant would discount even serious, lingering, diagnosable mental injuries unless the injury stemmed from an act not present in every forcible rape.²³ By its holding, the court has recognized that mental injuries that remain for an appreciable time after the rape are serious injuries.

North Carolina is not alone in recognizing that serious personal injury need not be solely of a physical character. Seven states have sex offense statutes that consider the victim's mental or emotional state to be an aggravating factor which can elevate the severity of the offense.²⁴ Michigan's statute defines "personal injury" as "bodily injury, disfigurement, *mental anguish*, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ."²⁵ The statute does not define "mental anguish." New Mexico's statute, by contrast, defines "great mental anguish" as "psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an in-patient or out-patient basis, and is characterized by extreme behavioral change or severe physical symptoms."²⁶ Personal injury is also defined in the same statute as "bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ."²⁷ It is significant, however, that in all of these jurisdictions, there is clear statutory language to the effect that mental anguish is an adequate and *bona fide* injury sufficient to elevate the degree of the crime. North Carolina's statute

22. The court explained that the defendant's argument that some other act not present in every forcible rape was required to inflict serious personal mental injury stemmed from his misunderstanding of *State v. Coefield*, 324 N.C. 452, 379 S.E.2d 834 (1989). In that case, the defendant choked the victim until she lost consciousness immediately following the rape. The victim there continued to suffer mental injury consisting of nightmares almost four years later. The mental injury in that case was used as an aggravating factor in sentencing for a conviction of second degree rape. There was no discussion in the case as to whether the strangling and resultant nightmares constituted serious personal injury so as to raise the crime to first degree rape. *Baker* 336 N.C. at 63, 441 S.E.2d at 554.

23. The court further explained that a requirement such as that argued by the defendant was not supported by the plain meaning of the statute, which it held to be clear and unambiguous, leaving no room for judicial construction. *Id.*

24. These include Delaware, DEL. CODE ANN. tit. 11, § 775 (Supp. 1992); Michigan, MICH. STAT. ANN. § 28.788 (1) (Callaghan 1990); Minnesota, MINN. STAT. ANN. § 609.341 (8) (West 1987); Nebraska, NEB. REV. STAT. § 28.318 (4) (1989); New Hampshire, N.H. REV. STAT. ANN. § 632-A:1 (III) (1986); New Jersey, N.J. STAT. ANN. § 2C: 14-1(f) (West 1982); New Mexico, N.M. STAT. ANN. § 30-9-10(B), (D) (Michie Supp. 1994).

25. MICH. STAT. ANN. § 28.788(i), (j) (Callaghan 1990).

26. N.M. STAT. ANN. § 30-9-10(B) (Michie Supp. 1994).

27. N.M. STAT. ANN. § 30-9-10(D) (Michie Supp. 1994).

is not so worded, and so judicial interpretation has formed the basis for the similarity between the result in this jurisdiction and those previously cited.

The holding in *Baker* and in cases based on statutes recognizing mental anguish injuries appear to be pro-victim. Generations of women have long felt that the most enduring injury following a rape is the recurring mental trauma. Long after any physical injuries have healed, the mental scars linger. Yet, traditionally it has been difficult for the State to obtain a rape conviction unless there were significant physical injuries present. Certainly, physical injuries were easier to see and document for the jury's later evaluation. The *Baker* holding indicates that any past reliance on physical injury is not necessary. In the future the State's case is likely to focus with increasing frequency on mental or emotional injury and the duration of such injury. This will be particularly true where there is no serious physical injury inflicted at the time of the rape.

One significant question which arises when mental injury is recognized as an aggravating element of a rape is how the courts are to determine when the harm done is sufficient to support a conviction for a higher level offense. Defendants in Michigan²⁸ and New Mexico²⁹ have, in fact, mounted constitutional challenges to the statutes in those states claiming that they should be void for vagueness. In the New Mexico case, *State v. Jimenez*,³⁰ the court dealt with the constitutional challenge by holding that the defendant failed to request clarifying jury instructions and noting that the statute defines the crime in terms of a result which the defendant caused through the use of force. The court generally implied that the statute provided adequate guidelines to determine the degree of mental injury necessary to support conviction for a higher level crime. The opinion in *Jimenez* specifically states "Defendant recognizes that determining the degree of the crime by the amount of the harm done to the victim does not make the statute unconstitutionally vague."³¹

In Michigan, the state court of appeals first faced a constitutional challenge to that state's statute in *People v. Gorney*.³² There, the court preserved the statute by interpreting the degree of mental anguish necessary to elevate the offense to be "extreme" or "serious"

28. See, e.g., *People v. Gorney*, 297 N.W.2d 648 (Mich. Ct. App. 1980), *People v. Petrella*, 380 N.W.2d 11 (Mich. 1985).

29. See, e.g., *State v. Jimenez*, 556 P.2d 60 (N.M. Ct. App. 1976).

30. *Id.*

31. *Id.* at 65. The court noted that this recognition by the defendant was premised on the previous decision in *State v. Chavez*, 484 P.2d 1279 (N.M. Ct. App. 1971), which squarely answered that question.

32. 297 N.W.2d 648 (Mich. Ct. App. 1980).

mental anguish.³³ The *Gorney* court set forth two factors which could establish extreme mental anguish: "the need by the victim for psychiatric care or some interference with the victim's ability to conduct a normal life, such as absence from the workplace."³⁴

A series of decisions following *Gorney* eroded its holding that in rape cases the mental anguish must be extreme or serious. In *People v. Baker*,³⁵ the court noted that the application of the standard of "extreme or serious" mental anguish was contrary to the legislative intent as evidenced by the legislative history of the statute; the legislature intended that *any* personal injury or any mental anguish suffice.³⁶ In *People v. Jenkins*,³⁷ a Michigan court of appeals panel directly confronted the reasoning used in the *Gorney* decision. The *Jenkins* court stated:

The concern in *Gorney* was that virtually all sexual assaults involve some degree of mental anguish on the part of the victim. Since the element of mental anguish is, in itself, sufficient to raise third-degree criminal sexual conduct to first-degree criminal sexual conduct (and fourth-degree criminal sexual conduct to second-degree criminal sexual conduct), the *Gorney* Court reasoned that the legislature must have intended the term "mental anguish" to involve more than the mere mental distress attendant to all sexual assaults. Although the Court acknowledged that its decision was contrary to the legislative intent expressed in the legislative history of the statute, it felt compelled to impose the requirement of "extreme" or "serious" mental anguish "in order to preserve the integrity of the criminal sexual conduct statute as a whole", and "to avoid finding the statute unconstitutionally vague." [Citations omitted.]

In our opinion, the *Gorney* panel's substitution of "extreme" mental anguish for the statutory phrase "mental anguish" is merely a semantic exercise which results in redundancy and unnecessary confusion. The term "anguish" is defined in Webster's Third New International Dictionary as "extreme pain" and "excruciating distress". Therefore, in common usage, the term "mental anguish" means extreme pain or excruciating distress of the mind. Viewed in this light, the *Gorney* panel's requirement of "extreme" mental anguish results in a redundancy.

While we agree that virtually all persons who become victims of a sexual assault involving force or coercion experience some degree of mental trauma, we do not accept the assumption that all such persons suffer mental anguish. In our opinion, the proper inquiry to determine whether there is sufficient evidence of the mental anguish ele-

33. *Id.* at 651.

34. *Id.*

35. 304 N.W.2d 262 (Mich. Ct. App. 1981).

36. *Id.* at 264, n.1.

37. 328 N.W.2d 403 (Mich. Ct. App. 1982).

ment is whether the victim suffered any significant degree of mental distress greater than that normally attendant to criminal sexual assaults accomplished by force or coercion.³⁸

Finally, *People v. Petrella*,³⁹ the Michigan Supreme Court held, in agreement with *Jenkins*, that the *Gorney* rationale was clearly wrong and resulted in redundancy. The Michigan Supreme Court further held that the term "mental anguish" is not unconstitutionally vague, is not beyond the grasp of the rational trier of fact, and "is not 'so indefinite that it confers unstructured and unlimited discretion on the trier of fact to determine' which offense has been committed, if any."⁴⁰ Additionally, and perhaps most significantly, the court saw no need to construe the statute in a manner that required that the victim suffer some degree of mental anguish greater than that normally attendant to criminal sexual assaults accomplished by force. Instead, the court held that the prosecution must produce evidence from which a rational trier of fact could conclude beyond a reasonable doubt that the victim experienced extreme or excruciating pain, distress, or suffering of the mind. The court stressed that each case must be decided on its own facts and that no single factor would be necessary to find mental anguish. The court listed with approval the factors which the court of appeals had considered:

- (1) Testimony that the victim was upset, crying, sobbing, or hysterical during or after the assault.
- (2) The need by the victim for psychiatric or psychological care or treatment.
- (3) Some interference with the victim's ability to conduct a normal life, such as absence from the workplace.
- (4) Fear for the victim's life or safety, or that of those near to her.
- (5) Feelings of anger and humiliation by the victim.
- (6) Evidence that the victim was prescribed some sort of medication to treat her anxiety, insomnia, or other symptoms.
- (7) Evidence that the emotional or psychological effects of the assault were long-lasting.
- (8) A lingering fear, anxiety, or apprehension about being in vulnerable situations in which the victim may be subject to another attack.
- (9) The fact that the assailant was the victim's natural father.⁴¹

The enhanced potential for a positive outcome for the State and the victim here in North Carolina will likely cause prosecutors to inquire more frequently and in more detail about mental injuries of rape vic-

38. *Id.* at 405-06.

39. 380 N.W.2d 11 (Mich. 1985).

40. *Id.* at 27, quoting *Woll v. Kelley*, 297 N.W.2d 578, 592 (Mich. 1980).

41. *People v. Petrella*, 380 N.W.2d 11, 33 (Mich. 1985).

tims.⁴² It seems reasonable that this inquiry will spawn a great many more psychological referrals of victims to mental health professionals. Further, more women may come forward to report rape if they believe that conviction of first degree rape with longer prison terms is a real possibility based on their mental injuries. Because retribution is one of the recognized purposes of punishment for criminal offenses, it is not unusual for states to increase the level of the offense, and thereby the potential punishment, as greater harm is done to the victim. Victims support groups, bolstered by the potential for retribution, will also be likely to encourage more women to come forward when greater retribution in the form of longer prison sentences may result. This is especially likely when there is an enhanced likelihood of conviction when psychological injury is proved.

There are two concerns raised by the potential increase in psychological referrals. First, there will be an increased cost associated with this service that must be covered by either the victim or the state. In terms of the cost of mental health services, the important factor is that such services be available to all rape victims regardless of socioeconomic status. While there are many existing rape crisis centers and public mental health clinics, it is impossible to predict whether adequate numbers exist should counseling become strongly advocated or almost covertly required to obtain a conviction. Those victims who have private health insurance will be able to draw upon that resource. Those who are able to afford out of pocket payment will not be compromised as to available counseling. It is the lower middle class victims who are most likely to be unable to qualify for public assistance, have no health insurance, and have insufficient personal funds to acquire counseling. This group will be unable to obtain the relief or vindication through conviction unless there is some provision made for counseling services by the criminal statutes or a national health insurance plan is adopted.⁴³

Secondly, any implication that mental injuries must persist for a long period of time may be contrary to the victim's best interest in terms of putting the incident behind her and getting on with her life. Several cases refer to the victim's injuries extending up to the time of trial, making it reasonable to believe that courts may look for injuries persisting at the time of trial. Accusations of malingering on the part of the victim are likely to be raised by defendants.

42. Further, evidence of the participation in counseling is something which is quite concrete to a jury and thus becomes an *objective* measure of a victim's mental injury.

43. If a universal health insurance coverage plan were to be passed by the federal government, the financial concerns regarding psychiatric evaluation and counseling might be relegated to concerns about tax increases. National health insurance plan availability and coverage details, however, are unknown presently and are beyond the scope of this note.

From the defendants' perspective, the *Baker* decision raises a new risk because all rape victims are not the same. On one hand, victims with access to adequate psychiatric evaluation are more likely to be able to show "serious personal injury." On the other hand, even if the victim does not seek counseling, those victims who are particularly susceptible to mental injuries may demonstrate sufficient injury to permit the state to carry its burden of proof regarding serious personal injury.

The defendant faces a situation not unlike the defendant in a civil tort claim brought by a plaintiff whose particular sensitivities caused the harm done by the defendant to be more serious than it would have been to another plaintiff. This principle, known as the thin skull or "eggshell skull"⁴⁴ victim rule in tort law, appears to be injected into rape law by the holding in this case. Under the eggshell skull theory the aggravation of an unknown condition which produces a disproportionate, unforeseeable harm, does not excuse the negligent defendant in any way. The tort defendant must take the plaintiff as he finds her and is held liable for the aggravation of pre-existing conditions which occur as a result of his acts.⁴⁵ However harsh this may seem in negligence cases, there is less compelling reason to attempt to argue for mediation of this liability for unforeseeable harm caused by the intentional acts of the criminal rape defendant. The defendant's assertion that the injuries caused were unforeseen will not be likely to prevail.

In the wake of *Baker*, the outcome of prosecutions may initially appear inconsistent. This is because the decision as to what constitutes sufficient injury to be "serious personal injury" within the statutory meaning is to be decided in North Carolina on the particular facts of each case.⁴⁶ Several cases will have to be decided before a clear indication of how long "an appreciable time" after the crime will need to be. A number of cases will need to be decided based on the element of serious mental personal injury before prosecutors and defense attorneys can predict what will ultimately be sufficient mental injuries to obtain a first degree rape conviction. Guidelines for decisions may have to be drawn from case law in other jurisdictions such as the Michigan case of *People v. Petrella*.⁴⁷ Conversely, the legislature could attempt to codify requirements for intensity or duration of mental injury should inconsistency in results prove problematic.

Additionally, the *Baker* decision will increase in the number of first degree rape convictions, raising issues of backlog in the courts, poten-

44. This phrase originated in *Dulieu v. White*, 2 K.B. 669, 679 (1901).

45. See *McCahill v. New York Transp. Co.*, 94 N.E. 616 (N.Y. 1911).

46. *Boone*, 307 N.C. 198, 297 S.E.2d 585; see also *supra* text accompanying notes 10-13.

47. 380 N.W.2d 11 (Mich. 1985). See *supra* text accompanying notes 39-41.

tial violations of the defendants' right to a speedy trial, and worsening of prison overcrowding. However, given the current public concern over crime, and for reasons including both deterrence and retribution, these potential problems will likely be considered an acceptable price to pay for the increased punishment of the perpetrators of a violent crime.

CONCLUSION

The decision in the *State v. Baker* case opens the door to the possibility for an increasing number of first degree rape convictions. This increase may occur because of the potential ease with which prosecutors may plead and prove serious personal injuries if such injuries continue for an appreciable period of time following the rape. Given that mental health providers have long recognized significant mental trauma from forcible rape, prosecutors are likely to increase referrals to counselors in the hope of an increased probability for conviction of first degree rape. This referral pattern will increase costs for victims of rape and/or society in general. Defendants in rape cases run a greater risk of convictions in some cases than others where the defendant "selects" a victim who is particularly susceptible to mental or emotional harm.

North Carolina has no statutory definition of mental anguish, unlike the other seven jurisdictions which consider the victim's mental state to be an aggravating factor. Due to the lack of statutory definition, it will take several more trials and appellate decisions to define the element of serious personal injury of a mental nature before attorneys will have adequate guidance as to what types of mental harm, and their duration, are likely to be sufficient to support a conviction for first degree rape when other elements which raise the crime to a higher degree are not present. This decision appears to be a boon for victims and a sobering potential enhancement of criminal liability of rape defendants. The emerging case law provides significant retribution for victims with some promise of protection to society by reducing the number of further victims through lengthy incarceration of convicted defendants.

SHARON P. TURNER