IN THE COURT OF APPEALS OF IOWA

No. 0-155 / 99-520
Filed April 28, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DERRICK DEWAYNE GIVENS,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

Defendant appeals following his convictions and sentences on charges of third-degree kidnapping and felony domestic assault. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Chris Odell, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Lisa Krigsten, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Zimmer and Hecht, JJ.

ZIMMER, J.

Derrick Givens appeals following his convictions and sentences on charges of third-degree kidnapping and felony domestic assault. He contends the State failed to present sufficient evidence to support his conviction on the kidnapping charge. We affirm.

Defendant Derrick Givens lived with his girlfriend, Carmen Clay, at various times during the period between September 1997 and September 1998. During the summer of 1998, Clay tried to end the relationship. An altercation resulted and Givens "backhanded" her. Clay attempted to end the relationship a second time. Givens said he would not let that happen and told Clay their relationship would end only when one of them killed the other.

The current charges arose out of events occurring on September 7, 1998. Two weeks prior, Clay had stopped seeing Givens and moved in with a friend. On the date in question, she saw Givens' car pull up to the house and she ran into the basement. He followed her, grabbed her by the hair, and pulled her up the stairs. He tried to push her out the back door of the house, but she resisted. Givens then dragged her by the hair outside and onto the driveway. He tried to force her into his car and threatened to punch her in the face if she did not get into it. She continued to resist and he slammed her head against the car. The force of the blow split Clay's head open and caused profuse bleeding. Givens then let go of Clay's hair and she returned to the house to get a towel for the blood. He followed her into a bathroom and struck her in the face with his fist.

Clay got into another car and waited to be taken to the hospital. Givens stood at the car window and asked her where she was going. He said he would

find her and stated: "You think this is something, wait until you get out of the hospital. This isn't nothing." He then walked away. Clay was taken to the hospital. She suffered bruises on her forehead and nose and a cut at her hairline requiring fourteen stitches.

Staci and Christina Custer witnessed the events at the house. Their testimony corroborated Clay's version of events, set out above. On the other hand, Givens denied the beating ever took place. He claimed he spent that entire day with his fiancée at a barbecue. He acknowledged Clay was his former girlfriend, but denied living with her for any extended period of time. He also denied assaulting Clay in the past.

On September 25, 1998, the State charged Givens with third-degree kidnapping in violation of Iowa Code sections 710.1 and 710.4, and felony (third offense) domestic assault in violation of Iowa Code sections 708.1 and 708.2A(4) (1997). Jury trial commenced on February 3, 1999. The next day, the jury returned guilty verdicts on both counts. At the conclusion of his trial, Givens admitted previous convictions for domestic assault on October 26, 1995, and October 24, 1996. On March 11, 1999, the trial court sentenced Givens to concurrent terms of imprisonment not to exceed ten years on the kidnapping and five years on the domestic assault charge.

Givens appeals. He contends the district court erred in denying his motion for judgment of acquittal on the kidnapping charge. He claims the evidence was insufficient to show he possessed the requisite intent to inflict serious injury on Clay. He does not challenge his conviction on the domestic assault charge.

I. Scope of Review. We review sufficiency-of-the-evidence claims for errors at law. *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998). The standards applied in such a review are well-established:

> The jury's findings of guilt are binding on appeal if supported by substantial evidence. . . . In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. . . . Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. . . .

State v. Query, 594 N.W.2d 438, 445 (Iowa App. 1999) (citations omitted). We do not make an independent determination of "whether the evidence established guilt beyond a reasonable doubt"; rather, we determine the legal sufficiency of the evidence to support the verdict. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994).

II. The Merits. Givens maintains his intent to inflict serious injury cannot reasonably be deduced from the manner of the assault. He urges the degree of violence employed did not create a risk of death, permanent disfigurement, or bodily impairment. *See* Iowa Code § 702.18 (defining serious injury).

The district court instructed the jury it must find proof beyond a reasonable doubt of the following elements in order to convict Givens of kidnapping:

> 1. On or about the 7th day of September, 1998, the defendant removed Carmen Clay from the basement of 416 West 3rd Street.
>
> 2. The defendant did so with the specific intent to inflict serious injury upon Carmen Clay.
>
> 3. The defendant knew he did not have the consent of the victim to do so.

See also Iowa Code §§ 710.1 and 710.4. The district court also submitted an instruction on serious injury which advised the jury: "A serious injury is a bodily

injury which creates a substantial risk of death or which causes serious permanent disfigurement or extended loss or impairment of the function of any bodily part or organ." Intent can be established by circumstantial evidence and inferences reasonably drawn from a defendant's conduct and the circumstances surrounding the crime. *See State v. Nance,* 533 N.W.2d 557, 562 (Iowa 1995). Evidence of a victim's lacerations, sprains, and bruises justify a finding a defendant used force which created a substantial risk of serious injury. *See State v. Howard,* 284 N.W.2d 201, 202-03 (Iowa 1979) (discussing serious injury in context of sexual abuse charge).

The parties agree Clay did not suffer a "serious injury" as that term is defined by the Iowa Code. *See* Iowa Code § 702.18. Givens contends the absence of a serious injury undermines his kidnapping conviction. We disagree. The law does not require proof a victim *actually* suffered serious injury to show the requisite intent to inflict serious injury. *See State v. Taylor,* 538 N.W.2d 314, 316 (Iowa App. 1995) (discussing term in context of sexual assault charge). The trial court correctly instructed the jury it could "consider the facts and circumstances surrounding the act to determine the defendant's specific intent" and could infer he intended the natural results of his actions.

Contrary to defendant's contentions, Givens' conduct and the testimony of Clay and eyewitnesses convincingly prove he intended to inflict serious injury on Clay on September 7, 1998. The couple had a turbulent relationship. Just a few weeks before this incident, Givens had threatened Clay, stating he was not going to let her leave him and the only way to end the relationship was for one to kill the other. Aspects of the attack also lend support to the inference Givens

intended to inflict serious injury. He sought out Clay at her friend's home. He pursued her and searched the house for her. When he found her in the basement, he proceeded to brutally drag her out by her hair and tried to force her into his car. She prevented him from opening the car door. He then slammed her face into the side of the car. The force of the blow caused significant bleeding and stitches were required. When Clay returned to the house to get a towel for the bleeding, Givens followed her and punched her in the nose hard enough to knock her back and down onto the floor. As she left for the hospital, Givens threatened her again, suggesting this was "nothing" and she would get a "birthday whopping." As a result, Clay suffered bruises on her face and a head laceration requiring stitches.

At trial, Givens gave an entirely different version of events and claimed an alibi. The jury was free to reject his version of events. *See, e.g., State v. Plaster,* 424 N.W.2d 226, 233 (Iowa 1988). Our standard of review does not permit us to reassess the witnesses' credibility. We examine only the legal *sufficiency* of the evidence. Here other witnesses corroborated the victim's version of events. They also stated Givens appeared upset with Clay, was aggressive, and called her names. Givens' attack was vicious and his pursuit of Clay aggressive and single-minded. We find the evidence presented at Givens' trial sufficient to support his kidnapping conviction. We affirm.

AFFIRMED.