IN THE COURT OF APPEALS OF IOWA

No. 1-560 / 00-1857
Filed September 26, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CLARK ANDREW BREWSTER,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge.

Clark Andrew Brewster appeals from the judgment and sentence following his convictions for first-degree burglary, domestic abuse assault, and false imprisonment. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, Denver D. Dillard, County Attorney, and Russell Keast, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Vaitheswaran, JJ.

VAITHESWARAN, J.

Clark Brewster appeals his first-degree burglary, domestic abuse, and false imprisonment convictions, contending the evidence was insufficient to support them. We disagree and affirm.

I. Background Facts and Proceedings

A jury could have found the following facts. Vanessa Trosky and Donald Bradshaw rented an apartment in Cedar Rapids. Trosky was dating Brewster. She agreed to let Brewster stay with her. Witnesses disputed whether this was to be a short or long-term arrangement.

Soon, Trosky and Brewster had a falling out. Trosky asked Brewster to move out. He did not. Trosky ultimately called the police, who advised her to move Brewster's belongings out. Trosky did so, but Brewster moved them back in. Trosky again contacted the police, who stated there was nothing they could do. Meanwhile, Brewster voluntarily moved his belongings to a friend's apartment.

Several days after Brewster moved out, Trosky received a call from him, asking if he could come over to talk. Trosky refused and, as a precaution, locked her front door. Soon, she heard Brewster yelling and knocking on her door. Trosky turned off the lights and went to her bedroom. Brewster left and came back several times, each time pounding on the door and yelling. The pounding eventually stopped, and Trosky, believing Brewster had left, went to sleep.

Trosky awoke to find Brewster leaning over her while yelling and poking her. Brewster told Trosky he had broken down the apartment door. Trosky tried to use the telephone and made efforts to leave the apartment but was physically

restrained from doing either. Neighbors, hearing an altercation, contacted the police, who arrived and arrested Brewster.

The State charged Brewster with first-degree burglary, domestic abuse assault, and false imprisonment. *See* Iowa Code §§ 713.1, 713.3, 708.1, 708.2A(2)(a), 710.7 (1999). A jury convicted him of all three charges and the district court sentenced him to a prison term not exceeding twenty-five years on the burglary count, a thirty-day jail term on the domestic abuse assault count and a prison term not exceeding one year on the false imprisonment count, all to be served concurrently. This appeal followed.

II. Sufficiency of the Evidence

Brewster argues the evidence is insufficient to support his convictions. We review challenges to the sufficiency of the evidence on error, upholding a finding of guilt if substantial evidence supports the verdict. *State v. Atkinson*, 620 N.W.2d 1, 3 (Iowa 2000). We consider all the evidence in the record, viewing the evidence and any legitimate inferences in the light most favorable to the State. *State v. Sinclair*, 622 N.W.2d 772, 777-78 (Iowa Ct. App. 2000). We will separately consider each of the three charges.

A. First-Degree Burglary. The jury received two burglary instructions, the broader of which stated:

> 1. On or about the 29th day of May, 2000, the defendant remained in 3312 Oakland Road NE #11, Cedar Rapids, Iowa.
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> 2. The residence at 3312 Oakland Road NE #11 was an occupied structure as defined in Instruction No. 23.
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> 3. A person was present in the occupied structure.

> 4. Either the defendant did not have permission or authority to remain in the residence at 3312 Oakland Road NE #11 or the defendant's permission or authority to remain there had expired.
>
> 5. The defendant did so with specific intent to commit an assault.
>
> 6. After the defendant remained he intentionally inflicted bodily injury on Vanessa Trosky.

Brewster contends the evidence is insufficient to support his conviction for first-degree burglary because: (1) his permission or authority to remain in the apartment had not expired; and (2) he did not inflict bodily injury on Trosky.

1. Remaining Over. Our highest court has stated a person's privilege to remain in an occupied structure may be revoked even though the victim does not expressly tell the person to leave. *State v. Walker*, 600 N.W.2d 606, 609 (Iowa 1999). Here, Trosky not only told Brewster to move out after their relationship ended but physically removed his belongings from the apartment. She further contacted the police for assistance when he returned his belongings to the apartment. Finally, after Brewster voluntarily moved out, she did not invite him to return and, on the day in question, locked her door to prevent his entry.

In addition to Trosky's testimony, there was evidence Brewster told a police officer he had been kicked out of Trosky's apartment and was living in a friend's apartment. There was also evidence the doorframe to Trosky's apartment had been broken and the locks were no longer working. While it is true numerous relatives of Brewster testified they believed Brewster was living with Trosky, a jury was free to discount this testimony in light of their relationship to the defendant. *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996).

We conclude there was sufficient evidence for the jury to conclude Brewster's authority to remain in Trosky's apartment expired before he engaged in the acts giving rise to these charges.

2. Bodily Injury. The jury was instructed "bodily injury" means "physical pain, illness or any impairment of physical condition." The State elicited testimony from Trosky that Brewster bruised her on the arms and leg while physically restraining her from leaving. The following testimony is instructive:

> I tried to dial the phone, and he was grabbing me by my arms, and I was sitting on the bed with the phone in my lap, and I was trying to dial, and he kept grabbing it from me, and was grabbing my arms, and I tried to go towards my bedroom door, and he grabbed me by my arm again, and I fell and hit my bed frame and I hit the wall.

She stated she then grabbed her leg and began crying because she thought she had broken it. We conclude there was sufficient evidence to establish a bodily injury. *Cf. State v. Brown*, 569 N.W.2d 113, 115-16 (Iowa 1997) (noting evidence of welts and bruises under victim's eyes).

B. Domestic Abuse Assault. The jury was instructed the State would need to prove the following elements to establish domestic abuse assault:

> 1. On or about the 29th day of May, 2000 the defendant did an act which was meant to either cause pain or injury, result in physical contact which was assaulting or offensive, or place Vanessa Trosky in fear of immediate physical contact which would have been painful, injurious, insulting or offensive.
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> 2. The defendant had the apparent ability to do the act.
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> 3. The act occurred between either family or household members who resided together at the time of the incident or, persons who have been family or household members residing together within the past year but not residing together at the time of the incident.

Brewster maintains the State presented no evidence he injured Trosky. For the previously stated reasons, we disagree and find sufficient evidence to support the conviction for domestic abuse assault.

C. False Imprisonment. The jury was instructed the State would have to prove the following elements to establish a claim of false imprisonment:

> 1. On or about the 29th day of May, 2000 the defendant intentionally confined Vanessa Trosky.
>
> 2. Vanessa Trosky was confined against her will.
>
> 3. The defendant did not have a reasonable belief that he had a right or authority to confine Vanessa Trosky.

Brewster concedes he may have delayed Trosky in her efforts to leave the apartment but maintains he left for fifteen to twenty minutes, a period of time that he claims was more than sufficient to permit Trosky to leave. Therefore, he submits, he cannot be guilty of false imprisonment.

A jury was free to disregard Brewster's version of events in favor of Trosky's rendition. *State v. Maring*, 619 N.W.2d 393, 395 (Iowa 2000). Trosky testified when she tried to telephone a friend to come and get her, Brewster grabbed the phone from her. She locked herself in the bathroom, but came out when he began kicking in the door. Trosky then tried to leave the apartment. Brewster stopped her by grabbing her arm and pulling her back into the apartment. She tried again and he did the same thing. Trosky returned to her bedroom and again attempted to call a friend, but Brewster again intercepted her. She repeated her efforts to leave the apartment and make a telephone call, without success. We conclude this evidence was sufficient to support the conviction for false imprisonment.

We affirm Brewster's convictions for first-degree burglary, domestic abuse assault, and false imprisonment.

AFFIRMED.