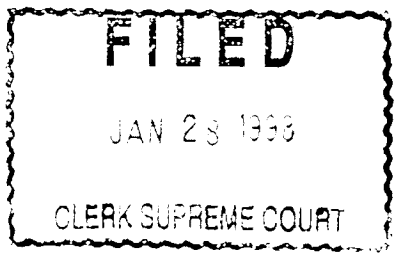
**IN THE COURT OF APPEALS OF IOWA**

No. 7-611 / 96-2268

000363




**STATE OF IOWA,**

Plaintiff-Appellee,

**vs.**

**LARRY CARROLL, JR.,**

Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, George Bergeson, Judge.

Defendant challenges the sufficiency of the evidence to support his conviction for second-degree kidnapping in violation of Iowa Code sections 710.1 and 710.3 (1995). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Christopher Cooklin and John M. Priester, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Jean Pettinger and Ann E. Brenden, Assistant Attorneys General, John Sarcone, County Attorney, and Mark Sandon, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Vogel and Mahan, JJ.

**MAHAN, J.**

Defendant Larry Carroll appeals his conviction upon a jury verdict finding him guilty of kidnapping in the second degree. The jury also found Carroll guilty of burglary in the first degree and carrying weapons, but he does not appeal those convictions. We affirm.

Carroll admits he entered the house of his estranged wife, Marie, armed with a loaded pistol, ties, and duct tape. He claims he wanted to talk to Marie, return some items to her, and then kill himself. Carroll hid in Marie's bedroom closet before she arrived home from work and waited until she was preparing for bed that evening before he left the closet to confront her.

The State's evidence against Carroll is substantial and overwhelming. Carroll parked his truck a few blocks away from Marie's home to avoid detection and broke into her home before she returned from work. This violated a no-contact order in effect to keep Carroll away from Marie and her residence. He hid in a closet in the bedroom for approximately four hours after Marie returned home, listening to her phone calls. When Marie entered the bedroom, Carroll jumped out of the closet, shoved her onto the bed, hit her in the eye with a gun, and pinned her down for approximately one hour by straddling her body as she lay on her back. Carroll yelled at Marie about her ending their marriage and getting a no-contact order against him. Carroll threatened to kill her or burn down her house; then he threatened to kill himself.

Carroll tied Marie's hands behind her back with plastic straps, and at some point he unplugged the phones. The plastic straps were on for only a short time. Carroll took Marie's house keys, led her outside, and locked the door while he went to the shed where he had hidden a gas can and a duffle bag. Carroll threatened to shoot Marie if she attempted to escape. At approximately 3:30 or 4:00 a.m. Carroll urged Marie to go to bed, but she was too frightened. Eventually both fell asleep. In the morning, Marie attempted to proceed normally, preparing for her workday. She escaped in her car when Carroll went to take the trash outside.

**I. PRESERVATION OF ERROR.** In his brief, Carroll challenges the sufficiency of the State's evidence to prove the confinement of Marie was more than incidental to the confinement to commit the assault. At trial, in his motion for judgment of acquittal, Carroll's counsel stated:

> First of all, I would move for a judgment of acquittal on Count I, which is the Kidnapping charge, for the reason that the State has failed to produce sufficient evidence to convince a reasonable jury beyond a reasonable doubt that my client had the intent to secretly confine Marie Carroll in this case. All the evidence is that whatever happened happened at her home, and I think that the failure to show there was any intent on the part of my client to confine -- secretly confine her from anyone would necessitate that the Court find a judgment of acquittal on that charge.

This is a different argument than the argument being raised on appeal. It is our function to review a trial court's consideration of arguments raised before it. *Podraza v. City of Carter Lake*, 524 N.W.2d 198, 198 (Iowa 1994). It is not our function to

hear arguments counsel chooses to raise for the first time in this forum. *Id.* We find error was not preserved on the issue of incidental confinement.

Further, even if Carroll had preserved the issue regarding incidental confinement, there was substantial and sufficient evidence to sustain the jury's verdict. To prove the confinement has a significant independence from the underlying crime, the State must prove the confinement substantially increases the risk of harm to the victim, significantly lessens the risk of detection, or significantly facilitates escape following the consummation of the offense. *State v. Rich*, 305 N.W.2d 739, 745 (Iowa 1981). The State does not need to present evidence of what confinement or removal normally exists with the crime. *State v. McGrew*, 515 N.W.2d 36, 40 (Iowa 1994). As in *McGrew*, we find overwhelming evidence exists in the record from which a rational trier of fact could conclude the confinement of Marie exceeded the degree of confinement inherent in the commission of assault. *See id.* ("Choosing seclusion of his victim's own bedroom as the situs of the offense lessened the risk of detection for [the attacker]. However, that seclusion also increased the risk of harm to [the victim] because [the attacker], with his victim secluded, was free to deal with her as he wished.").

**II. SECRETLY CONFINED.** Carroll also challenges the evidence presented by the State that he intended to "secretly confine" Marie. We review challenges to the sufficiency of evidence for errors at law. Iowa R. App. P. 4; *State v. Kraklio*, 560

N.W.2d 16, 17 (Iowa 1997). In evaluating such a claim, we view the evidence in a light most favorable to upholding the jury's verdict. *Kraklio*, 560 N.W.2d at 17. We give the State all reasonable inferences and presumptions the evidence will bear. *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996). The verdict is binding on us unless the record contains no substantial evidence to support it. *Kraklio*, 560 N.W.2d at 17. Evidence is substantial if it could convince a rational trier of fact that the accused is guilty beyond a reasonable doubt. *Id.* Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive. *Liggins*, 557 N.W.2d at 269. Additionally, discrepancies in testimony, in and of themselves, do not preclude proof beyond a reasonable doubt. *See generally State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992) (jury could adopt evidence it found credible); *State v. Forsyth*, 547 N.W.2d 833, 836 (Iowa App. 1996) (jury's function is to determine credibility and resolve conflicts in evidence). A jury's assessment of credibility may only be ignored on appeal when the testimony is so impossible, absurd, and self-contradictory that it may be deemed a nullity. *See State v. Smith*, 508 N.W.2d 101, 103 (Iowa App. 1993).

All of the facts in this case could clearly lead a rational jury to believe Carroll intended to secretly confine Marie. We find the evidence is substantial and sufficient to support the jury's verdict.

We have carefully considered the contentions of defendant and, as discussed above, choose to affirm the jury's verdict.

**AFFIRMED.**