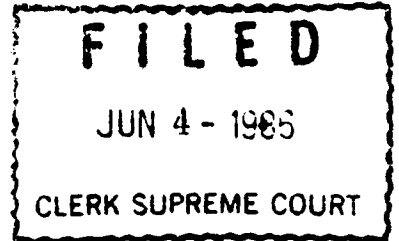


IN THE COURT OF APPEALS OF IOWA



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Filed June 4, 1986

6-86
85-1022

STATE OF IOWA

Plaintiff-Appellee,

vs.

JEFFREY J. HOOVER,

Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County (No.16120)

- William L. Thomas, Judge.

Defendant appeals from his conviction for kidnapping in the first degree in violation of Iowa Code §§ 710.1(3) and 710.2 and burglary in the first degree in violation of Iowa Code §§ 713.1 and 713.3. Defendant asserts there was insufficient evidence in the record for a rational jury to find him guilty beyond a reasonable doubt. **AFFIRMED.**

Charles Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Christie Scase, Assistant Attorney General, and Linda McGuire, Assistant County Attorney, for plaintiff-appellee.

Heard by Snell, P.J., and Schlegel, and Sackett, JJ.

SACKETT, J.

Defendant Jeffrey Hoover appeals from conviction for kidnapping in the first degree in violation of Iowa Code §§ 710.1(3) and 710.2 and burglary in the first degree in violation of Iowa Code §§ 713.1 and 713.3. Defendant contends the trial court erred in overruling his motions for directed verdict and new trial. Defendant asserts there was insufficient evidence in the record for a rational jury to find him guilty beyond a reasonable doubt.

On March 26, 1985, defendant was arrested and charged with first-degree kidnapping, first-degree burglary and second-degree sexual abuse. A jury trial commenced on June 3, 1985. At the close of the State's case defendant's motion for directed verdict was overruled. The jury found defendant guilty of first-degree kidnapping and first-degree burglary. Defendant's motion for new trial was denied. Defendant asserts on appeal that the record lacks substantial evidence to support a guilty verdict.

I.

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985); State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Direct and circumstantial evidence are equally probative so long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Hall, 371 N.W.2d at 188; Bass, 349 N.W.2d at 500. Substantial evidence means evidence which would convince a rational trier of fact that the defendants are guilty

beyond a reasonable doubt. Hall, 371 N.W.2d at 188; State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

A jury verdict is binding upon this court unless the record lacks substantial evidence. State v. Blair, 347 N.W.2d 416, 419 (Iowa 1984). The jury is at liberty in its deliberations to believe or disbelieve the testimony of witnesses as it chooses. Id., at 420. The very function of the jury is to sort out the evidence presented and to place credibility where it belongs. Id.

II.

We believe there is substantial evidence in the record from which the jury could have found the following facts.

On the evening of March 7-8, 1985, defendant broke into the apartment of an Iowa City woman, Kimberli Walker, while she was asleep. Before she was able to hide defendant broke into her bedroom. Defendant forced Walker to hold her hands over her eyes as he led her to his car. At the time Walker was wearing only a green sweatshirt, red underwear, white crew socks and a black bandana. Walker testified later that defendant held a knife with a blade at least four and one-half inches long to her throat as he led her to his car.

Walker testified she saw defendant's car as he pushed her inside it. She described the car as a gold, two-door vehicle with a vinyl-type roof. She testified the interior of the car was lighter color than the exterior, the driver's bucket seat cover was ripped and the dashboard stuck out and had a distinctive design.

Driving around in the car, defendant questioned Walker about possessions in her apartment. Walker testified defendant said he planned to return to her apartment and rob it later that night. Walker asked defendant to turn on the heater and noticed it blew out only cold air. Walker also recalled the radio was tuned to station KRNT and that the car did not run smoothly. Iowa City police officer Paul Sueppel noticed the same heater and car problems and the

radio tuned on KRNT when he rode with defendant to the police station in defendant's car.

At some point during Walker's abduction defendant stopped the car and forced Walker to remove her sweatshirt which he tore to use to bind her hands. Walker testified defendant tied her socks together to blindfold her. Defendant then drove around north of Iowa City near I-80 and sexually assaulted her at knife point. Afterwards defendant told Walker they were returning to her apartment and she was to help him load her possessions into his car. While still outside Iowa City, however, defendant made her get out of his car and drove away.

Walker walked along the road, knocking on doors of several homes before someone allowed her inside to telephone the police. When the police went to Walker's apartment in an attempt to head off a burglary attempt, they found it on fire. The police took Walker to the hospital for examination. Thereafter, at the police station she gave a statement which included extremely detailed descriptions of defendant, his car and the assault itself.

On March 12, 1985, police officers drove Walker around the Iowa City area looking at cars, hoping she would be able to identify the car in which she had been abducted. After several hours of looking and attempting to point out similarities of various vehicles to defendant's car Walker spotted and positively identified a gold 1976 Chrysler Cordoba as her assailant's vehicle.

Defendant asserts Walker's identification of defendant's car was "tainted by an aura of suggestiveness." Defendant contends Sueppel indicated in Walker's presence that he had a specific car, a 1976 Chrysler, he wanted her to look at. While the record shows that Sueppel did mention to another officer in Walker's presence that he thought she should check out a specific car, Walker testified it was she who first spotted the defendant's car parked on a side street. Walker positively identified the car after checking out the interior. There is no evidence

either officer pointed out defendant's car to Walker. In addition, the car they located matched the detailed description Walker had given to the police. We do not believe the circumstance about which defendant complains made the identification impermissibly suggestive. Even assuming, however, that the identification was suggestive as claimed, the identification was nevertheless admissible under this record, because we find no substantial likelihood of irreparable misidentification. State v. Newman, 326 N.W.2d 788, 794 (Iowa 1982).

Police later determined the car belonged to defendant. Defendant testified he had purchased the car two days before the abduction and no one had driven the car since.

Walker also identified defendant from an array of six photographs as being the person who abducted and assaulted her. Defendant contends the probative value of the photographic line up was dramatically reduced because Walker knew two of the six persons in the line up and was unreliable because she was blindfolded and had little opportunity to observe her assailant. However, Walker testified she saw defendant in her bedroom before she was told to cover her eyes. Although the lights were off, Walker testified she was able to see defendant because the moon was very bright and the outdoor lights from the neighboring building came through her windows. Defendant also matched the detailed description Walker had given police. In addition, Walker had been trained at a previous job to look for and memorize details if the business was ever robbed. Looking at the totality of circumstances we do not find the photographic line up was impermissibly suggestive or unreliable. See Newman, 326 N.W.2d at 794.

In addition to Walker's identification of defendant and defendant's car, there is other evidence supporting the jury's verdict defendant was the person who kidnapped and sexually abused Walker. Laboratory analysis by DCI criminolo-

gist Paul Bush compared green fibers found in defendant's car to fibers in the sweatshirt Walker was wearing when abducted. The fibers taken from the car were the same material and the same dye color breakdown as the fibers from Walker's sweatshirt. The same comparison and match were obtained from an analysis of red fibers taken from defendant's car and fibers from Walker's red underwear. Also, a hair found on Walker's sock was consistent with defendant's hair.

Viewing the evidence in the light most favorable to the State, we conclude the trial court was correct in overruling defendant's motion for directed verdict and new trial. We find there was substantial evidence in the record for a rational jury to find defendant guilty of first-degree kidnapping and first-degree burglary beyond a reasonable doubt.

AFFIRMED.