IN THE COURT OF APPEALS OF IOWA

No. 1999-539 (9-800) / 98-2079
Filed February 23, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TERRY DEAN ALDERMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Bobbi M. Alpers, Judge.

Defendant appeals from the judgment and sentence entered upon jury verdicts finding him guilty of first-degree kidnapping and second-degree sexual abuse. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Chris Odell and Julie H. Brown, Assistant Attorney General, Richard R. Phillips, County Attorney, and Dana Christiansen, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Miller, JJ.

STREIT, J.

Terry Alderman used Iowa's trademark fields of corn to shield him as he perpetrated sexual abuse on a family member. Alderman was convicted for the kidnapping and sexual abuse of his stepdaughter. On appeal, he claims his confinement of the victim was merely incidental to the underlying sexual assault. Because his actions substantially increased the risk of harm to the victim and significantly lessened the likelihood of detection, we find sufficient confinement to support the kidnapping charge and affirm his convictions.

I. Background Facts & Proceedings.

In the evening hours of a mid-summer's day, the defendant, Terry Alderman, asked his stepdaughter, Stephanie, if she could use her vehicle to help him pick up an antique hutch as a surprise gift for her mother. Stephanie was unable to help Alderman at that particular moment but agreed to help him later in the evening. After three more pressing phone calls from Alderman, Stephanie was finally free to help him, drove over to her parents' home, and met Alderman standing in the driveway.

Alderman told Stephanie to drive to a mobile home at a local trailer park. Upon arriving, Alderman knocked on the home's door but received no answer. He told Stephanie there was no one home but the occupants also had a farmhouse in the country and they should try there. Stephanie hedged at this proposition, citing the late hour and that her family would begin to worry. Alderman assured her the drive would take but a moment and began giving directions. Stephanie reluctantly complied and began winding her way along the outskirts of town.

Well outside the protections of Iowa City, Alderman abruptly demanded Stephanie stop and turn down a small, low-maintenance gravel road. Stephanie refused to go down the road and said it was too dark and there was nothing down that road. Alderman insisted there was a farm home down the road and grew increasingly argumentative. He grabbed her, jabbed a hard object in her side, and in an explicative-filled tirade demanded she head down the road. Stephanie reached down in effort to identify the object in her side, but Alderman quickly told her it was a knife and he would cut her if she did not comply with his wishes. Stephanie immediately offered Alderman her vehicle, but he did not want the vehicle—he wanted her.

Gripped by fear, she proceeded down the road enveloped on either side by walls of dense corn. Approximately a mile down the road, he instructed her to pull into an inlet amidst the corn. Alderman got out of the vehicle, pulled Stephanie into the passenger seat, and ordered her to undress. She told him she would do whatever he wanted if he just got rid of the knife. He threw it[1] into the cornfield, undressed her, and unsuccessfully attempted to penetrate her. He then allowed her to gather her clothes, and they drove back to Iowa City.

Police arrested Alderman charging him with sexual abuse in the second degree and kidnapping in the first degree. The jury found Alderman guilty on both counts. This court later reversed the conviction because of an evidentiary ruling. *State v. Alderman*, 578 N.W.2d 255 (Iowa App. 1998). Alderman was retried, his motion for acquittal denied, and convicted.

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[1] A Bic lighter was the only object found at the site of the incident.

Alderman appeals, claiming there was insufficient evidence to support the kidnapping conviction, as his confinement of Stephanie was merely incidental to the sexual abuse.

II. Standard of Review.

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

III. The Merits.

A person commits kidnapping under Iowa Code section 710.1 (1995) by improperly confining someone with the intent to inflict serious injury or sexual abuse on that person. Although no minimum period of confinement is required, it must nonetheless exceed the incidental confinement necessary to complete the underlying assault or sexual abuse. *See State v. Griffin*, 564 N.W.2d 370, 373 (Iowa 1997); *State v. McGrew*, 515 N.W.2d 36, 39 (Iowa 1994); *State v. Rich*, 305 N.W.2d 739, 745 (Iowa 1981). The confinement exceeds being incidental if it "substantially increases the risk of harm to the victim, significantly lessens the

risk of detection, or significantly facilitates escape following the commission of the underlying offense." *State v. McGrew*, 515 N.W.2d 36, 39 (Iowa 1994). Merely seizing the victim during the commission of the crime does not rise to the level of confinement required for kidnapping. *State v. Mead*, 318 N.W.2d 440, 445 (Iowa 1982).

Alderman's seizure of his stepdaughter stretched beyond mere incidental seizure as it substantially increased the potential harm to Stephanie and significantly reduced the likelihood he would be detected. Alderman forced Stephanie to travel almost a mile down a low-maintenance, virtually abandoned road late in the evening. The road was shielded from any passersby by natural flora as well as growing corn. Alderman, in an attempt to further secret his criminal intentions, then forced Stephanie to pull off the low-maintenance road into a small inlet amidst the corn. Stephanie could not readily escape due to her isolation and could not alert others with her cries of help. Alderman confined her in a manner that would permit his completion of the intended sexual assault free from the worries his victim may escape or his plan may be foiled by passersby. The remoteness of the confinement would permit him to harm Stephanie with impunity and to avoid detection. A rational trier of fact could readily find the confinement of Stephanie was not merely incidental to the intended sexual assault. The conviction is affirmed.

AFFIRMED.