

No. 98-0483. [9-316] STATE v. KIRCHNER

Appeal from the Iowa District Court for Ida County, Richard J. Vipond, Judge.
AFFIRMED. Considered by Sackett, C.J., and Mahan and Zimmer, JJ. Opinion by Mahan, J. (10 pages \$4.00)

Kirchner was charged with first-degree kidnapping and four lesser charges. These charges arose out of Kirchner's confinement of his estranged wife and driving her to at least three rural locations before releasing her several hours later. The jury found Kirchner guilty on all counts against him. **OPINION HOLDS: I. Substituted Court-Appointed Counsel.** Kirchner had continued to communicate with his trial attorney up to the time of the hearing and had actually discussed his concerns with his trial attorney. The trial court addressed the concern that Kirchner receive adequate representation at trial and recognized Kirchner's trial attorney is a very capable and experienced criminal defense attorney. The trial court concluded, and we agree, Kirchner had failed to establish sufficient reason to substitute his trial attorney; it was not an abuse of discretion to deny his request for a different attorney on the morning of trial. **II. Motion for Judgment of Acquittal.** Kirchner contends there is insufficient evidence to prove either the torture or the sexual abuse alternatives of first-degree kidnapping or specific intent to commit sexual abuse during the confinement or removal. **A. Torture.** Kirchner had previously subjected his estranged wife to threats and physical abuse. During the confinement, he repeatedly threatened to kill her while carrying a tire iron and subjected her to repeated physical abuse. She testified that throughout the ordeal she was terrified and thought Kirchner would kill her. We conclude there is substantial evidence to support a finding Kirchner tortured his estranged wife by intentionally subjecting her to severe physical or mental pain. **B. Sexual Abuse.** The estranged wife's description of events clearly satisfies the definition of a sex act. The State was not required to supply corroborating evidence of her testimony. We conclude there is substantial evidence to support a finding Kirchner sexually abused his estranged wife. **C. Specific Intent.**

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There is substantial evidence Kirchner actually sexually abused his estranged wife; thus the jury could reasonably infer Kirchner had formed the intent to sexually abuse her. The evidence shows that although Kirchner did untie his estranged wife prior to the sexual abuse, she was in the hayloft, dressed inadequately for the cold weather, in a rural area, after hours of confinement, threats, and abuse, and Kirchner still had the tire iron, which he did not put down until after the sexual abuse incident. We conclude there is substantial evidence to support a finding Kirchner continued to confine his estranged wife at the time of the sexual abuse and he had formed the requisite intent to commit the sexual abuse during the confinement. **III. Ineffective Assistance of Counsel.** Kirchner's ineffective assistance of counsel claims are reserved for postconviction relief.