IN THE COURT OF APPEALS OF IOWA

No. 5-464 / 94-960

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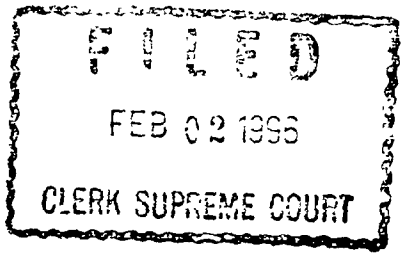
STATE OF IOWA,

Plaintiff-Appellee,

vs.

CHARLES EDWARD SIMPSON,

Defendant-Appellant.



Appeal from the Iowa District Court for Adams County, James W. Brown, Judge.

Charles Edward Simpson appeals from his conviction, following a bench trial, of first-degree kidnapping. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Earl Hardisty, County Attorney, for appellee..

Considered by Hayden, P.J., and Sackett and Cady, JJ.

SACKETT, J.

Defendant Charles Simpson was charged with the crimes of kidnapping in the first degree in violation of Iowa Code sections 710.1(3) and 710.2, and sexual abuse in the third degree in violation of sections 709.1(1) and 709.4(1). After a bench trial, the district court found him guilty of both crimes. At the sentencing hearing, the court determined sexual abuse in the third degree was a lesser-included offense of kidnapping in the first degree as charged in this case. Simpson was sentenced to life imprisonment on the kidnapping charge. He now appeals. We affirm.

On August 5, 1993, Simpson checked into the Sunset Motel in Corning, Iowa. That afternoon, he approached A.R., a thirteen-year-old boy, who was riding his bicycle in the downtown area of Corning. Simpson asked A.R. some questions. A.R. stated he had to hurry home. Simpson told him, "You're coming with me for a little bit." Simpson then got on the back of A.R.'s bicycle with him.

Simpson left the bicycle behind a meat locker. He told A.R. they were going to walk. He warned A.R. not to cry out or run away or he would hurt him. He also told A.R. he might stab him. Simpson led A.R. to the Sunset Motel. The manager of the motel, Gayla Franklin, saw Simpson and A.R. approaching the motel. Simpson told her A.R. was his cousin. Franklin stated A.R. nodded his head, but looked frightened. A.R. testified he nodded because he was scared.

Simpson took A.R. into his motel room. There, he ordered A.R. to take off his pants and lie on the bed. After A.R. did so, Simpson placed his tongue on A.R.'s

anus. After one or two minutes, Simpson ordered A.R. into the bathroom. Simpson dropped his pants and required A.R. to lick his buttocks. Simpson then told A.R. he could go. A.R. ran from the motel and contacted his mother. They immediately reported the incident to law enforcement officers.

When police officers arrived at the Sunset Motel, Simpson was gone. He was subsequently apprehended. As noted above, Simpson was convicted of kidnapping in the first degree. He now appeals.

Simpson contends the district court should have granted his motion for judgment of acquittal. He believes there was insufficient evidence presented to support his conviction for kidnapping in the first degree. In particular, he claims any confinement or removal was merely incidental to the sexual assault and was not sufficient to constitute kidnapping.

When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all the evidence in the record in a light most favorable to the State. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). We must uphold the conviction if there is substantial evidence in the record to support it. *State v. Frake*, 450 N.W.2d 817, 819 (Iowa 1990). Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. *State v. Robinson*, 288 N.W.2d 337, 339 (Iowa 1980).

Kidnapping, as charged in this case, is defined in Iowa Code section 710.1 as follows:

> A person commits kidnapping when the person either confines a person or removes a person from one place to another, knowing that the person who confines or removes the other person has neither the authority nor the consent of the other to do so; provided, that to constitute kidnapping the act must be accompanied by one or more of the following:
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> * * *
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> 3. The intent to inflict serious injury upon such person, or to subject the person to a sexual abuse.

In kidnapping cases in which there is an "underlying" offense, such as sexual abuse, the confinement or removal necessary to sustain a conviction must be more than incidental to the commission of the underlying offense. *State v. Ripperger*, 514 N.W.2d 740, 750 (Iowa App. 1994). While all sexual abuse involves some degree of confinement or removal, not all sexual abuse rises to the level of kidnapping. *State v. Hatter*, 414 N.W.2d 333, 335 (Iowa 1987).

In *State v. Rich*, 305 N.W.2d 739, 745 (Iowa 1981), the supreme court stated:

> Although no minimum period of confinement or distance of removal is required for conviction of kidnapping, the confinement or removal must definitely exceed that normally incidental to the commission of sexual abuse. Such confinement or removal must be more than slight, inconsequential, or an incident inherent in the crime of sexual abuse so that it has a significance independent from sexual abuse. Such confinement or removal may exist because it 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.

In the present case, we find there was confinement and removal. The confinement and removal here substantially increased the risk of harm to the victim. When defendant approached A.R., he was in the downtown area of Corning and it

was afternoon. At this time and place it was likely other people might have been around who could have interfered with defendant's plan to sexually abuse A.R. By removing A R. to his motel room and confining him there, the risk that defendant could harm A.R. was substantially increased.

By the same token, by removing A.R. to his motel room and confining him there, the risk of detection was significantly lessened. The evidence showed the door to the motel room was closed and the blinds were drawn during the time defendant kept A.R. there. The evidence shows defendant took A.R. to the motel room in order to avoid discovery while he engaged in a sex act with A.R.

Furthermore, the removal and confinement of A.R. significantly facilitated defendant's escape following the consummation of the offense. When police officers arrived at the Sunset Motel, defendant had already left. His choice of the motel as the scene of the crime aided his escape because no one was in the immediate vicinity to see him leave.

We conclude there was substantial evidence the removal and confinement in the present case was more than incidental to the crime of sexual abuse. We determine there is sufficient evidence in the record to support defendant's conviction for kidnapping in the first degree. We affirm defendant's conviction. Costs of this appeal are assessed to defendant.

AFFIRMED.