

IN THE COURT OF APPEALS OF IOWA

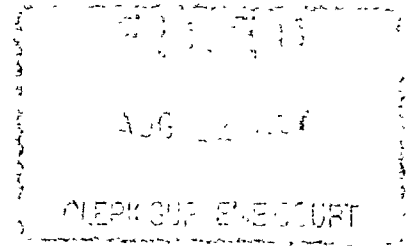
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No. 7-219 / 96-0801

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TODD ALLEN HEARD,
Defendant-Appellant.



Appeal from the Iowa District Court for Lee County (North), William L. Dowell, Judge.

Todd Heard appeals the judgment and sentence entered upon his conviction of first-degree kidnapping in violation of Iowa Code sections 710.1(3) and 710.2 (1995).

AFFIRMED.

Barry Anderson, Keokuk, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett and Robert J. Glaser, Assistant Attorneys General, Michael Short, County Attorney, and David A. Andrusyk, Assistant County Attorney, for appellee.

Heard by Sackett, P.J., and Vogel, J., and Schlegel, S.J.*

*Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

SCHLEGEL, S. J.

Todd Allen Heard appeals his conviction and sentence for kidnaping in the first degree in violation of Iowa Code sections 710.1(3) and 710.2 (1995); false imprisonment in violation of Iowa Code section 710.7; burglary in violation of Iowa Code sections 713.1, 713.3, and 902.7; sexual abuse in the second degree, in violation of Iowa Code sections 709.1(1), 709.3(1), and 902.7; theft in the first degree, in violation of Iowa Code sections 714.1(4) and 714.2(1); and escape in violation of Iowa Code section 719.4(1). We affirm.

I. Background Facts and Proceedings.

The record contains evidence of the following: During the evening of August 12, 1995, Heard escaped from a prison farm in Fort Madison where he was serving a sentence for a felony conviction. Heard unlawfully entered the residence of a Fort Madison husband and wife, J.W. and N.W., either sometime that evening or during the early morning hours of August 13. When the couple awoke around 6:30 a.m., they were confronted by Heard who pointed a shotgun at them and ordered them to lie down in the hallway. Heard tied the husband's hands and feet as well as the hands of the wife. He found and took possession of the couple's car keys, the husband's wallet, and the wife's purse.

Heard forced the husband to crawl into the spare bedroom where he placed a pillow case over the man's head and closed the door. He untied the wife's hands and

ordered her into the master bedroom. Heard sexually assaulted the wife and then retied her hands and tied her ankles together.

Heard used bindings to secure the doors to both bedrooms where the victims remained bound, hand and foot. He then left the home in the couple's Ford Explorer. Heard was captured shortly thereafter following a police chase.

Following a bench trial, Heard was convicted of kidnapping in the first degree, false imprisonment, burglary in the first degree, sexual abuse in the second degree, theft in the first degree, and escape. In April 1996, Heard received a mandatory sentence of life imprisonment without possibility of parole.

Heard appeals his conviction and sentence arguing there is insufficient evidence to support the charge of kidnapping in the first degree. He also asserts that the mandatory sentence of life imprisonment for first-degree kidnapping is cruel and unusual punishment in violation of the U.S. and Iowa constitutions.

II. Sufficiency of the Evidence.

Heard argues the evidence is insufficient to support his conviction for first-degree kidnapping. He asserts the State failed to establish that he confined N.W. with the intent to commit sexual abuse. Accordingly, Heard submits the trial court erred in overruling both his motion for judgment of acquittal on the first-degree kidnapping charge as well as his motion for new trial.

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A verdict of guilty is binding on appeal unless there is no substantial evidence in the record to support it or it is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* In determining the sufficiency of evidence, we view the record in a light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). All evidence is considered, not simply the evidence supporting the verdict. *Id.*

Iowa Code section 710.1 states:

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:

...

3. The intent to inflict serious injury upon such person, or to subject that person to sexual abuse.

...

Iowa Code section 710.2 defines kidnapping in the first degree as follows:

Kidnapping is kidnapping in the first degree when the person kidnaped, as a consequence of the kidnapping, suffers serious injury, or is intentionally subjected to torture or sexual abuse.

...

In *State v. Rich*, 305 N.W.2d 739 (Iowa 1981), the supreme court held the terms “confines” and “removes” require more than the confinement or removal that

is an inherent incident of commission of the crime of sexual abuse. *Id.* at 745. The court provided the following standards by which a jury could determine whether the evidence demonstrated a confinement or removal sufficient to support a charge of kidnapping in the first degree:

1. No minimum period of confinement or distance of removal is required for conviction of kidnapping.
2. The period of confinement or distance of removal must exceed what is normally incidental to the commission of sexual abuse.
3. The confinement or removal must have significance independent from the act of sexual abuse itself in one of the following ways:
 - a. Substantially increase the risk of harm to the victim.
 - b. Significantly lessen the risk of detection.
 - c. Significantly facilitate escape following the consummation of the sex abuse offense.

Id. at 745; *see also State v. Tyron*, 431 N.W.2d 11, 14 (Iowa App. 1988).

Heard argues the movement of N.W. from the hallway to the bedroom did not exceed that which is inherent in the commission of the crime of sexual abuse. Furthermore, he emphasizes that N.W. was not bound during the sexual abuse. Heard contends the facts support a conviction for false imprisonment rather than first-degree kidnapping. We disagree.

Several factors indicate that the confinement and removal of N.W. substantially exceeded that which is inherent in the commission of sexual abuse. Heard was armed with a shot gun during the entire ordeal. The use of a weapon is not inherent in the crime of sexual abuse, but instead, in this instance, substantially

restrained N.W.'s freedom as well as increased her risk of harm. *See State v. Tyron*, 431 N.W.2d at 13-14. N.W. was removed from the hallway into the bedroom where Heard closed the door. Heard also confined J.W. to another bedroom thus secluding N.W. from her husband. N.W. was bound before the assault and was only briefly untied during the assault itself. Afterwards she was tied by hand and foot. Before he left, Heard used bindings to secure both bedroom doors where each victim remained bound. *See State v. Rich*, 305 N.W.2d at 745-46 (binding a victim's hands is not necessary to the commission of sexual abuse). The evidence also indicates Heard closed the drapes and covered other windows in the home with blankets. These acts substantially lessened detection and increased the risk of harm to N.W. Moreover, the act of leaving the victims bound in the two bedrooms facilitated Heard's escape. Based on the foregoing, we find sufficient evidence to support the conviction for first-degree kidnapping.

Heard also challenges his first-degree kidnapping conviction by arguing the State failed to establish he confined N.W. with the intent to commit sexual abuse. He submits the evidence demonstrates he entered the home with the intent to find and take possession of money and a vehicle. Heard emphasizes that the night he escaped from custody, several Fort Madison garages and vehicles were burglarized. After Heard entered the victims' home, he asked about money and a vehicle but did not

make any sexual advances or statements. He contends the sexual abuse was brief and “non-brutal” and also that N.W. was not tied up during the assault itself.

We conclude the State presented overwhelming evidence from which the trial judge could have inferred Heard had the requisite intent to commit sexual assault when he confined N.W. *See State v. Hernandez*, 538 N.W.2d 884, 887 (Iowa App. 1995) (element of intent is seldom susceptible to proof by direct evidence; it often depends on circumstantial evidence and inferences drawn from such evidence).

After Heard obtained money and keys to the couple’s vehicle, N.W. pleaded with him to leave. Heard answered “In due time, in due time.” He then proceeded to force J.W. into the spare bedroom where he closed the door behind him. He ordered N.W. into the master bedroom where he forced her at gunpoint to remove her clothing. After she complied, Heard sexually assaulted her. Accordingly, Heard’s assertion that he merely intended to obtain money and a get-away car when he confined and removed N.W. is without merit. We reject Heard’s arguments and affirm on this issue.

We have considered Heard’s arguments challenging his conviction for first-degree kidnapping. We find sufficient evidence supporting the verdict and affirm the decision of the district court in its entirety.

III. Cruel and Unusual Punishment.

Heard argues his sentence of life imprisonment without parole for first-degree kidnapping qualifies as cruel and unusual punishment under both the U.S. and Iowa constitutions. He asserts the gravity of his offense is disproportionate to the penalty imposed. Heard emphasizes the victim, N.W., was left unharmed beyond the trauma of the sexual abuse and the confinement incident to the sexual abuse was brief. Furthermore, he contends sexual assault, rather than kidnapping, was the “central crime.” Finally, Heard claims the punishment greatly exceeds that imposed in this jurisdiction and in most other jurisdictions for similar or even graver offenses.

Punishment may be cruel and unusual in violation of the eighth amendment to the constitution because it inflicts torture or is barbaric or is disproportionate to the offense charged. *Bear v. State*, 417 N.W.2d 467, 474 (Iowa App. 1987) (citing *State v. Robbins*, 257 N.W.2d 63, 68 (Iowa 1977)). Heard has asserted an alleged deprivation of a constitutional right, therefore, we review de novo the factual as well as the legal determinations. *State v. Spencer*, 519 N.W.2d 357, 359 (Iowa 1994).

Iowa law imposes a strict penalty for kidnapping in the first degree, a decision by the state legislature that Iowa courts have consistently upheld. *See Hatter v. Iowa Men's Reformatory*, 932 F.2d 701, 702 (8th Cir. 1991); *see also Lamphere v. State*, 348 N.W.2d 212, 220-21 (Iowa 1984). The United States Eighth Circuit Court of

Appeals has determined that the Iowa sentence, although severe, is not “so disproportionate to the crime as to be unconstitutional.” *Hatter*, 932 F.2d at 703.

Heard has presented no new arguments in support of his challenge to the imposition of a life sentence without parole. Accordingly, we find no merit in his assertions that his sentence is unconstitutionally disproportionate. The sentence imposed by the district court is affirmed.

AFFIRMED.