

IN THE COURT OF APPEALS OF IOWA

No. 9-639 / 88-1469

STATE OF IOWA,

Appellee,

vs.

MICHAEL H. LANG,

Appellant.

FILED

MAR 27 1990

CLERK SUPREME COURT

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Appeal from the Iowa District Court for Woodbury County, Terry L. Huitink and Phillip S. Dandos, Judges.

The defendant appeals from his conviction, following a jury trial, for first-degree kidnapping. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, for the appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Thomas S. Mullin, Woodbury County Attorney, for the appellee.

Heard by Oxberger, C.J., and Schlegel and Hayden, JJ.

OXBERGER, C.J.

Michael Lang appeals from his conviction, following a jury trial, for first-degree kidnapping. He challenges the sufficiency of the evidence to establish an element of the crime of kidnapping; that at the most, the confinement of the victim was merely incidental to the commission of the underlying crime of torture. He also challenges an evidentiary ruling. We affirm.

Michael Lang allegedly (1) confined a woman overnight, part of the time by threats and part of the time by chaining her to furniture, and (2) beat and struck her repeatedly during the night. Lang presented these events as a consensual sadomasochistic sexual encounter. However, the victim denied that she had consented, and she also denied that sexual activity occurred. She reported that Lang was trying to elicit information from her concerning local drug dealers and other persons.

Lang was charged with first-degree kidnapping. A jury found him guilty of that charge, and he has appealed from the resulting conviction.

Lang challenges the sufficiency of the evidence to establish one of the elements of first-degree kidnapping. He alleges there was no evidence of confinement which went beyond the confinement incident to the underlying assaults.

Our standard of review in sufficiency of the evidence challenges is to view the evidence in the light most

favorable to the State, "'including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record.'" State v. Tryon, 431 N.W.2d 11, 15 (Iowa App. 1988). We are bound by a jury verdict and we will uphold it on review unless the record lacks substantial evidence to support the charge. Id. Substantial evidence means evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

Lang argues that the confinement herein was, at most, incidental to the torture upon the victim. He asserts the State only proved that the victim was confined as a consequence of the underlying crime of torture.

Iowa Code section 710.1 states:

A person commits kidnapping when he or she confines a person or removes a person from one place to another, knowing that he or she 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 the person to a sexual abuse. . . .

Iowa Code 710.2 (1989).

Kidnapping in the first degree exists "when the person kidnapped, as a consequence of the kidnapping, suffers injury or is intentionally subjected to torture or sexual abuse." Iowa Code 710.2 (1989).

The State relies heavily on this court's opinion issued in State v. Tryon, 431 N.W.2d 11 (Iowa App. 1988). In Tryon, we addressed the question regarding the amount of confinement necessary to sustain a kidnapping conviction when there is an underlying crime. In Tryon, we held that the confinement necessary to sustain a kidnapping conviction must be more than the confinement "that is an inherent incident of the commission of the crime of sexual abuse." Id. at 14 (citing State v. Misner, 410 N.W.2d 216, 222 (Iowa 1987)). Additionally, in Tryon, we noted that the standards by which a jury could determine whether the evidence demonstrated a confinement sufficient to support a charge of kidnapping provide:

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.

Tryon, 431 N.W.2d at 14 (quoting State v. Misner, 410 N.W.2d 216, 222 (Iowa 1987)).

Lang maintains that the Tryon case is inapplicable in the analysis of the case at bar because the underlying offense in Tryon was sexual abuse, whereas the underlying offense in the case at bar is torture. We disagree.

We believe our analysis in Tryon is equally applicable in this case where the underlying offense is torture. We believe the jury, based upon the evidence presented, could reasonably have found that Lang's restraining of this victim in folding chairs with a lumber chain and threatening the victim not only facilitated the prolonged torture which occurred, but also that it had significance independent of the torture, substantially increased the risk of harm to the victim, and significantly lessened the risk of detection for Lang.

The record reveals that Lang confined the victim to two folding chairs with a big lumber chain for at least eight hours. The torture to the victim consisted of threatening the victim, urinating on her, kicking her, hitting her, cutting her, and striking her with a frying pan, belt buckle, and an object the victim thought to be a gun. The victim testified:

It was light out, but finally he had me end up -- Where he finally had me end up -- He was standing behind me and urinated on me, and then he made me crawl again until I got to the wall. And I was cornered up against the wall and I couldn't go nowhere from there, and he kept going in the kitchen to get water to pour on me. And I was trying to get my legs free from the chair so I could go run and jump out the front window to get away from him, and he came in and caught me moving my legs and started hollering and screaming, "What are you doing, what are you doing." And he was kicking me and took his shoes off and started hitting me. And I started praying, and he got mad because I was praying, and I kept -- I started screaming there at the end in the morning, because it hurt so bad when he hit me. And he kept telling me not to move, "Don't move." I couldn't help it, and I started screaming.

Upon our review of the evidence, we find Lang's actions both increased the risk of harm to the victim and significantly lessened the risk of Lang's detection. In viewing the evidence in the light most favorable to the state, we find there was substantial evidence to support the kidnapping charge and that a jury question was engendered.

Lang also contends the district court erred by excluding his proposed evidence of semen stains found in the victim's undergarments. He sought to introduce this evidence to buttress his claims of a consensual sadomasochistic sexual encounter.

It is within the trial court's discretion to determine the admissibility of the evidence. Evidence is admissible if it is relevant and its probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. State v. Wilson, 406 N.W.2d 442, 447 (Iowa 1987). We will reverse a decision only if the trial court abused that discretion. State v. Russell, 261 N.W.2d 490, 495-96 (Iowa 1978). Upon our review of the record, we find no abuse of discretion in excluding the evidence. We affirm the decision of the district court in all respects.

AFFIRMED.