IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
EDWARD LOVE,	)	8-205 87-805
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Woodbury County (No. 42296) - Michael S. Walsh, Judge.

The defendant's appeal follows a jury trial in which he was found guilty of first-degree kidnapping. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and J. Keith Rigg and Steven C. Pals, Assistant County Attorneys, for the plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Sackett, JJ.

OXBERGER, C.J. 272

This is an appeal from Defendant Edward Love's conviction, following a jury trial, for first-degree kidnapping in violation of Iowa Code section 710.2 (1987). On appeal defendant contends (1) that the evidence was insufficient to support a verdict of guilty beyond a reasonable doubt and (2) that the trial court erred in excluding testimony from defense witnesses as to the victim's past spousal abuse by her husband. We affirm.

Our scope of review is on errors assigned. The trial court's findings of fact are binding upon this court if supported by substantial evidence. Iowa R. App. P. 14(1).

This appeal presents two issues: (1) was there sufficient evidence presented at trial to establish the elements of first-degree kidnapping beyond a reasonable doubt; and (2) did the trial court err in excluding evidence of prior acts of spousal abuse by the victim's husband.

I.

At the close of the State's case and at the close of all the evidence, the defendant moved for judgment of acquittal urging that insufficient evidence existed to establish the elements for first-degree kidnapping.

When reviewing the propriety of a ruling or a motion for judgment of acquittal in a criminal case, we view the evidence in a light favorable to the state. Iowa R. App. P. 14(f)(2); State v. Weaver, 405 N.W.2d 852, 853 (Iowa 1987).

All legitimate inferences that may reasonably be deduced from the evidence will be accepted. State v. Schertz, 328 N.W.2d 320, 321 (Iowa 1982). A refusal to grant a motion for judgment of acquittal will withstand challenge if there is any substantial evidence in the record to support the charge. State v. Weaver, 405 N.W.2d 852, 853 (Iowa 1987); State v. Schertz, 328 N.W.2d 320, 321 (Iowa 1982). Substantial evidence means evidence which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. Id.

The defendant asserts that he did not "confine" or "remove" the victim in her car but that she voluntarily accompanied him. Defendant claims that the State failed to prove that "confinement" or "removal" definitely exceeded that normally incident to the commission of sexual abuse and thus failed to establish the elements of first-degree kidnapping.

The section 710.1 requirement of "confinement" or "removal" must be more than slight, inconsequential, or an incident inherent to the crime of sexual abuse so that it has significant independence from sexual abuse. State v. Rich, 305 N.W.2d 739, 745 (Iowa 1981). Such confinement or removal exists when it substantially increases the risk of harm to the victim, significantly loses the risk of detection, or significantly facilitates escape following the consummation of the offense. Id.

The scenario which Janice Dickes testified to: that she felt "something cold in the back of her neck she thought to be a gun; that she was pushed into the car; and that she was taken to a secluded place" presents substantial evidence to support a finding of "removal" under Iowa Code section 710.1.

While this court considers the evidence in the light most favorable to the State on a review of a motion for acquittal of judgment, it considers all the evidence presented at trial and not just the evidence which supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). This court has considered all the evidence presented in the record including the disputed testimony between the defendant and the victim. However, the credibility of witnesses and the weight to be given their testimony are determinations properly reserved for the jury. State v. Schertz, 328 N.W.2d 320, 322 (Iowa 1982).

We find substantial evidence in the record from which a reasonable jury could find the defendant guilty beyond a reasonable doubt of kidnapping in the first degree.

II.

The second issue is whether or not the trial court erred in excluding testimony of witnesses with knowledge of the victim's husband's past spousal abuse. These witnesses are the sole support for the defense theory that the husband caused the victim's injuries, not the defendant.

The three items of evidence which were not allowed were: (1) the testimony of the victim's former neighbor who observed her with a black eye in 1985 and heard her complain that her husband had assaulted her; (2) the testimony of a convicted felon who saw the victim's husband hit her twice in an argument in 1983 and heard her complain in 1986 that her husband had beaten her; and (3) the testimony of a social worker as an expert witness who would testify that victims of domestic abuse might remain in the same household with their abuser and might not complain of any abuse to investigating officers.

The admissibility of evidence is a matter for the exercise of the trial court's discretion. State v. Chadwick, 328 N.W.2d 913, 917 (Iowa 1983); State v. Clark, 325 N.W.2d 381, 384 (Iowa 1982). Iowa Rule of Evidence 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith.

Iowa R. Evid. 404(b). While Rule 404(b) has surfaced frequently with respect to the conduct of accused persons in criminal trials, this rule is equally applicable to witnesses generally. State v. Roth, 403 N.W.2d 762, 765 (Iowa 1987).

The defendant proposes to use evidence of the victim's prior bad acts of spousal abuse in precisely the manner which Rule 404(b) proscribes, to create an inference that

because the victim's husband had beat her in the past, he was the one who caused her injuries on November 4, 1986. The purpose of the rule barring admission of prior acts except for certain purposes is to prevent the jury from engaging in speculation or drawing inferences based on mere suspicion. State v. Spargo, 364 N.W.2d 203, 209 (Iowa 1985).

Rule 404(b) provides for exceptions, instances when evidence of prior acts are admissible, for proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Iowa R. Evid. 404(b). None of these is applicable here. Accordingly, we find that the trial court did not abuse its discretion in refusing to admit evidence of prior acts.

As to the opinion testimony of the social worker, the trial court found that such testimony would not be helpful but would confuse the jury. Further, such testimony was found to be prejudicial to the state and irrelevant. See Iowa R. Evid. 403.

The trial court did allow questions to be asked of the victim's husband concerning whether or not he caused his wife's injuries on November 4, 1986. As such, the content of the expert's testimony tends toward the truthfulness or untruthfulness of the witness' testimony. "[E]xpert opinions on the truthfulness of a witness should generally be excluded because weighing the truthfulness of a witness is a

matter reserved exclusively to the fact finder. State v. Myers, 382 N.W.2d 91, 95 (Iowa 1986). Accordingly, we find no abuse of discretion in not allowing this expert to testify.

We affirm the trial court's ruling in denying the defendant's motion for judgment of acquittal as we find substantial evidence to support a conviction of first-degree kidnapping beyond a reasonable doubt. We also affirm the trial court's ruling in refusing to admit prior act testimony and in refusing to allow expert testimony.

AFFIRMED.