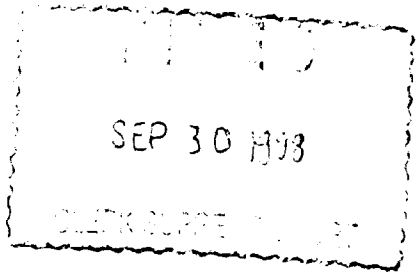
IN THE COURT OF APPEALS OF IOWA

No. 8-365 / 97-1667



STATE OF IOWA,

Appellee,

vs.

DAWN MARIE KESTER, a/k/a DAWN MARIE HARRISON,

Appellant.

Appeal from the Iowa District Court for Calhoun County, William C. Ostlund, Judge.

Defendant-Appellant appeals the judgment and sentence entered upon her conviction of willful injury in violation of Iowa Code section 708.4 (1997). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Cynthia Voorde, County Attorney, and for appellee.

Considered by Cady, C.J., and Streit, and Mahan, JJ.

CADY, C.J.

The defendant, Dawn Kester, appeals her conviction of willful injury in violation of Iowa Code section 708.4 (1997). She argues the district court erred in denying her motion for judgment of acquittal based upon the insufficiency of evidence the victim sustained a serious injury. We affirm by memorandum opinion pursuant to Iowa Supreme Court rule 9.

The State charged Kester with willful injury following an incident in which she beat Shanda Kicklighter after learning Kicklighter was involved with her boyfriend. At trial Kicklighter testified she sustained cuts requiring stitches on her left eyebrow and scalp. Kicklighter also explained that chunks of her hair and scalp had been pulled off her head. Her physician testified the cut to her eyebrow would leave a scar and he was uncertain whether all of her hair would grow back. Some of the hair had not grown back by the time of trial, more than three months after the incident. Kicklighter suffered headaches for about a week following the incident. She also had popped blood vessels, swelling, and cuts on her right hand and was unable to use her hand normally for approximately a week and a half. At the time of trial Kicklighter's hand still hurt her when she used it for an extended period of time.

Kester moved for a judgment of acquittal at the close of the State's case and again after all the evidence was presented, based on the sufficiency of the evidence of "serious injury." The court denied the motions.

We review a challenge to the sufficiency of evidence for errors at law. Iowa R. App. P. 4; *State v. Newsom*, 563 N.W.2d 618, 619 (Iowa 1997). We view all the

evidence in the record in the light most favorable to the State including any inferences arising from the evidence which support the verdict. *State v. Crone*, 545 N.W.2d 267, 270 (Iowa 1996). Substantial evidence is evidence which would convince a rational jury the defendant is guilty of the offense beyond a reasonable doubt. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993).

Iowa Code section 702.18 (1997) defines "serious injury" in part as a "bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. . . ." The court's instruction number 18 to the jury was identical except it substituted "extended" for "protracted" and "part" for "member." Kester asserts Kicklighter's injuries do not meet the definition of "serious injury" as an element of willful injury. We disagree. We, like the defendant, look for guidance in *State v. Welton*, 300 N.W.2d 157 (Iowa 1981); *State v. Epps*, 313 N.W.2d 553 (Iowa 1981); and *State v. Hilpipre*, 395 N.W.2d 899 (Iowa App. 1986). Based on the courts' interpretation of "serious injury" in those cases and a comparison of Kicklighter's injuries with those sustained by the victims in those cases, we determine the trial court did not err in denying Kester's motions and submitting this issue to the jury. We find substantial evidence in the record supports the verdict of the jury and the conviction.

AFFIRMED.