IN THE COURT OF APPEALS OF IOWA

No. 5-211 / 94-595

FILED
JUN 27 1995
CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

MICHAEL ANTHONY SANDERS,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge.

Defendant appeals from judgment and sentences, following jury trial, entered upon his convictions of third-degree kidnapping and third-degree sexual abuse, in violation of Iowa Code sections 710.4 and 709.4 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher and Karrie J. Kelly, Assistant County Attorneys, for appellee.

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

CADY, J.

The sole issue in this appeal is whether sufficient evidence supports the verdict. We find sufficient evidence in the record and affirm the convictions.

Michael Sanders was charged with first-degree kidnapping and second-degree sexual abuse. At trial, seventeen-year-old Carisa Lyons, the prosecuting victim, and thirty-four-year-old Sanders offered opposing testimony about the events of the evening of October 17, 1993.

Lyons testified she was walking home when Sanders forced her into his car and threatened to kill her if she "screamed or anything." Lyons testified that Sanders used a choke hold to get her into the car. He then drove her to an empty apartment, told her to undress, and engaged in various sex acts, which included oral and anal sex.

Lyons indicated that Sanders did not physically force her from the vehicle into the apartment, but that she followed him into the apartment from the vehicle because she was afraid. Lyons also acknowledged she removed her own clothing once inside the apartment because Sanders directed her to do so and because she was scared. She also disclosed that Sanders left her alone in a room for approximately one minute and that she did not attempt to run from the apartment because she "didn't know what to do." Lyons further acknowledged she did not physically resist the various sex acts, but "just laid there" because she "didn't know what to do" and she did not know what he was "going to do if [she] didn't do it." Sanders made no threats to Lyons once they were inside the apartment, and the two never struggled.

Lyons promptly reported the incident to her brother after Sanders drove her from the apartment to a point near her home. Police were immediately called and Lyons was examined at a hospital. The examining physician noted Lyons was tearful, and indicated she had been sexually assaulted that evening. The doctor also determined Lyons had sustained a recent laceration of her anus.

Sanders testified that he asked Lyons if she wanted a ride in his car, and that she willingly went along with him. He also testified that she willingly engaged in several acts of consensual sex at the apartment.

The jury returned guilty verdicts on the lesser-included offenses of third-degree kidnapping and third-degree sexual abuse. Sanders' motions for new trial and judgment of acquittal were denied. The district court sentenced Sanders to two concurrent terms of imprisonment not to exceed ten years.

Sanders appeals. He contends there was insufficient evidence of intent to sexually abuse or removal without consent to sustain the kidnapping conviction. He also contends there is insufficient evidence that the sex acts were committed by force or against the will of Lyons to support the sexual abuse conviction.

Our review of a claim of insufficient evidence requires us to consider the evidence in a light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). All legitimate inferences reasonably and fairly derived from the evidence may be considered to support the verdict. *State v. Mulder*, 313 N.W.2d 885, 888 (Iowa 1981). The weight of the evidence and credibility of witnesses rests with the finder of fact. *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984).

All the evidence presented at trial is considered, not just the evidence which supports the verdict. *Robinson*, 288 N.W.2d at 340. The record must reveal sufficient evidence as could convince a rational fact finder that the accused was guilty beyond a reasonable doubt. *Id.* at 339.

Sanders argues that two of the three elements of kidnapping in the third degree were not supported by the evidence. He asserts there was no evidence he had any intent to sexually abuse Lyons, and he did not remove Lyons from one place to another without her consent. He also claims there was insufficient evidence to show

he performed the sex acts by force or against the will of Lyons to support the crime of sexual abuse in the third degree. We disagree.

The claims articulated by Sanders ignore the essence of Lyons' testimony. Although Lyons did not physically resist entering the apartment and engaging in the subsequent sex acts, her lack of outward resistance at that time does not mean she gave her consent. Lyons consistently indicated she did not resist Sanders after the initial threats and physical confrontation in the car out of fear and apprehension. The law does not require victims of sex abuse to physically resist their aggressors. *State v. Bauer*, 324 N.W.2d 320, 322 (Iowa 1982).

The jury in this case was required to resolve the opposing testimony and the two versions of events as told by Sanders and Lyons. Considering all the evidence presented, there was sufficient evidence to support a finding that Sanders committed the crimes beyond a reasonable doubt.

AFFIRMED.