

IN THE COURT OF APPEALS OF IOWA

No. 2-738 / 11-1528
Filed October 17, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RAY GENE TRIPLETT,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark D. Cleve,
Judge.

Ray Triplett appeals his conviction for first-degree sexual abuse.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Nan Jennisch, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, Michael Walton, County Attorney, and Melissa K. Zaehring, Assistant
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

TABOR, J.

Ray Triplett appeals his conviction for first-degree sexual abuse. He argues the State offered insufficient evidence to prove he inflicted a serious injury when he struck the victim's forehead with a mallet—leaving a scar. The jury received instructions defining serious injury as a bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement.

Viewing the evidence in the light most favorable to the verdict, we find ample support for both alternative definitions of serious injury. Accordingly, we affirm the conviction.

I. Background Facts and Proceedings

The State presented evidence that on March 2, 2011, Jenni Johnson drove Ray Triplett and Charles Schwartz around Davenport—helping Schwartz shop for a vehicle. The trio spent the rest of the day and much of the night at Triplett's house drinking beer and using crack cocaine. Triplett drove Schwartz home around 11:00 p.m. and returned to Johnson's company. Because Johnson felt too intoxicated to drive, she stayed the night at Triplett's residence, sleeping in his bed while he slept in a chair.

At 6:00 a.m. the next morning, Johnson awoke to Triplett's arm around her. She declined his request to have sex and started to leave. Triplett stopped her by placing a knife to her throat. He then told her he was "just kidding" and she responded he "wasn't very funny." When Johnson again tried to leave the house, Triplett grabbed her and pulled her back. Johnson testified:

He told me that he was going to kill me and that he was going to throw my body in the river. And he began to unbutton his

belt and his pants and pull his pants down, and unbutton my pants and pull my pants down.

. . . .
He told me to stop fighting him off or he was going to hit me in the head with a rubber mallet that he had.

As Johnson continued to struggle during the sexual assault, Triplett struck her in the head with a mallet. Johnson's wound began to bleed profusely. Triplett tried to staunch the flow by pressing a blanket against her forehead. After Triplett ended his assault, Johnson fled on foot to the home of her friend Kimberly Cummins. Johnson left a trail of blood through Triplett's bedroom.

At around 7:00 a.m., Cummins opened the door to find Johnson, "crying and bloody and scared." Cummins recalled blood on Johnson's hands and clothes, and "her hair was matted with it." Cummins drove her friend to the emergency room. En route, they drove past Triplett's house to record the address for the police.

An examination at the hospital revealed Johnson sustained bruising and abrasions to much of her body. Her face was very swollen, and her lips and teeth were tender, which she attributed to Triplett "smothering [her] with a blanket." Her most notable injury was a puncture wound and significant swelling to her forehead caused by the mallet's impact. The medical staff sutured the wound on her forehead. During her eight hours at the hospital, Johnson received x-rays and a CT scan of her head. She also underwent a sex assault examination. A vaginal swab and semen found on the victim's underwear both contained Triplett's DNA.

On March 18, 2011, the State filed a trial information charging Triplett with first-degree sexual abuse, in violation of Iowa Code section 709.2 (2011), and assault resulting in serious injury, in violation of Iowa Code section 708.2(4). A jury found him guilty of both counts. On September 8, the district court merged the two convictions and imposed judgment on the sexual abuse conviction. After receiving the court's sentence of life imprisonment under section 903B.1, Triplett timely filed this appeal.

II. Scope and Standard of Review

We review challenges to the sufficiency of the evidence for correction of legal error. *State v. Hearn*, 797 N.W.2d 577, 579 (Iowa 2011). The jury's verdict is binding on appeal if supported by substantial evidence. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). Substantial evidence is proof which would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* We view the record in the light most favorable to the verdict, including legitimate presumptions and inferences which we may fairly and reasonably deduce from the evidence. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

III. Analysis

In finding Triplett guilty, the jury found the prosecution satisfied the following elements:

1. On or about the 3rd day of March, 2011, the Defendant performed a sex act with Jenni Johnson.
2. The Defendant performed the sex act by force or against the will of Jenni Johnson.
3. During the commission of sexual abuse, the Defendant caused a serious injury to Jenni Johnson.

The district court defined “serious injury” for the jury as “a bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement.” See Iowa Code § 702.18(1)(b). The court defined “bodily injury” as “physical pain, illness or any impairment of physical condition.” See *State v. Gordon*, 560 N.W.2d 4, 6 (Iowa 1997).

Triplett focuses his appeal on a single question: Did the State produce substantial evidence to prove Johnson’s wound met the definition of “serious injury” to enhance his offense to sexual abuse in the first degree? He contends the victim’s bodily injury was neither life threatening nor a serious permanent disfigurement.

The State defends the jury’s finding of serious injury under both definitions, though substantial evidence of either alternative will sustain the verdict. We will address each alternative definition in turn.

A. Substantial risk of death

To prove the victim suffered a serious injury, the State must offer evidence showing infliction of harm more severe than the “pain or injury” element in the assault statute. See *State v. Phams*, 342 N.W.2d 792, 796 (Iowa 1983). While a substantial risk of death means more than any risk of death, death does not need to be the likely result of the injury. *State v. Carter*, 602 N.W.2d 818, 821 (Iowa 1999); see *State v. Anderson*, 308 N.W.2d 42, 46–47 (Iowa 1981) (defining “substantial” for term “substantial risk of death” as “generally mean[ing] real, important, not illusive”). If a real hazard or danger of death exists, a “serious injury” is established. *Carter*, 602 N.W.2d at 821. Medical certainty as to a

victim's percentage chance of death is not necessary; for each case, the jury must consider the facts present when deciding whether the victim sustained a serious injury. See *id.* (finding defendant inflicted serious injury by causing extensive injuries including cutting victim's trachea in half); *Anderson*, 308 N.W.2d at 47 (finding eighty-five-year-old woman who suffered two broken ribs, as well as bruises on her body and head faced substantial risk of death).

In this case, the State sought to prove a substantial risk of death through the testimony of emergency room nurse Elsa Durr, who tended to Johnson on the morning of the assault. She described the victim's head injury as "a puncture wound with significant swelling and significant deformity on her forehead." Durr explained that medical personnel performed a CT scan of Johnson's head and sutured the puncture wound. The prosecutor then asked Durr:

Q. Are head injuries dangerous? A. Yes.

Q. What is dangerous about a head injury? A. Head injuries can be very dangerous. People can have brain injury, frontal lobe injury, you can have bleeding in the brain, they can ultimately cause death. They can be potentially very dangerous.

Triplett argues this testimony was too generic, proving only that head injuries as a category can be life-threatening but not that Johnson's particular injury posed a substantial risk of death. We believe reasonable jurors would not have viewed the nurse's testimony so parsimoniously. Although Nurse Durr did not expressly testify Johnson's forehead injury posed a substantial risk of death, the context of her response suggests as much. Moreover, medical personnel's decision to order a CT scan and x-ray could lead a reasonable juror to believe the head trauma to be severe.

In addition, the jury heard testimony and saw photographs documenting the copious amounts of blood Johnson lost due to the head gash. Reasonable jurors could consider that evidence as contributing to the proof that the blow placed her life in danger. See *State v. Hilpipre*, 395 N.W.2d 899, 904 (Iowa Ct. App. 1986) (considering risk of death before treatment when determining whether victim suffered a serious injury). Given the medical evidence, in combination with photographs of the gash and the crime scene, we believe a jury could reasonably conclude Triplett's bludgeoning posed a substantial risk of death to Johnson.

B. Serious permanent disfigurement

In some circumstances, scarring may rise to the level of serious permanent disfigurement, but it is not per se proof. *State v. Hanes*, 790 N.W.2d 545, 554 (Iowa 2010). Iowa cases have contrasted serious permanent disfigurement with minor and temporary defects such as black eyes and bloody noses. See *Phams*, 342 N.W.2d at 796.

The prosecution offered several close-up photographs of Johnson's face when she was in the hospital to show the severity of the injury. They portray a bloody sutured indentation roughly an inch above her right eye. The State also offered a photograph of the victim's forehead taken at the time of the trial to document the existence of a scar. In addition, the prosecutor asked the victim to walk in front of the jury box so the jurors could see the mark left by the blow to her forehead.

Reasonable jurors could have determined a visible scar on the victim's forehead rose to the level of a serious permanent disfigurement. See *State v.*

Bledsoe, 920 S.W.2d 538, 540 (Mo. Ct. App. 1996) (discussing relevance of facial scars in determination of serious disfigurement). The issue of serious permanent disfigurement was properly left to the jury's determination.

When taken in the light most favorable to the verdict, the evidence supports the conclusion that Johnson's bodily injury created a substantial risk of death and caused serious permanent disfigurement. Accordingly, we do not disturb the jury's guilty verdict.

AFFIRMED.