IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RONALD EUGENE HICKEY, Appellant.	No. 40329-3-II UNPUBLISHED OPINION

Armstrong, J. — Ronald Eugene Hickey appeals his conviction for unlawful imprisonment, arguing that the State failed to prove he knowingly restrained another. Finding the evidence sufficient to support the verdict, we affirm.

FACTS

In January 2009, Shelley Burgher and Ronald Hickey were dating. Burgher lived in a trailer outside the home of Melvin Butterfield. Woods surround the trailer with the closest neighbor about one-third of a mile away. In return for staying in the trailer, Burgher cooked, cleaned, and ran errands for Butterfield.

One evening, Burgher and Hickey went to Wal-Mart and began arguing. The couple returned to the Butterfield home, still arguing. Around 10:30 p.m., Burgher left, carrying her dinner, and went to her trailer.

Hickey continued the argument, following her to the trailer. He became violent: throwing her dinner against the wall and hitting her in the face with his fists. He bloodied her nose and kicked her legs. She covered herself with her hands and asked him to let her leave. When she tried to leave, Hickey blocked the doorway. He kept hitting her head until she was

"out of it" and could not "think straight." Report of Proceedings (RP) at 44.

He then told her to take off her clothes and pushed her outside. Once outside, he pushed her into the mud, threatened her life, and after a few minutes in the cold told her to get back inside. Burgher lost consciousness several times throughout the evening and gave conflicting testimony as to whether Hickey left the trailer for any significant period of time prior to 2:00 a.m. Neither party disputes that around 2:00 a.m., Hickey left the trailer and went back to the Butterfield house with Burgher's car keys. The parties disagree as to whether Burgher had access to a phone.

A jury found Hickey guilty of unlawful imprisonment and assault.

ANALYSIS

Hickey argues that the State provided insufficient evidence to prove beyond a reasonable doubt that he knowingly restrained Burgher because she had the means and multiple opportunities to escape. We disagree.

I. Standard of Review

Evidence is sufficient to support a criminal conviction when any trier of fact could have found the defendant guilty. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When considering a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State. *Salinas*, 119 Wn.2d at 201. In other words, a defendant who challenges the sufficiency of the evidence, "'admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.'" *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004) (quoting *Salinas*, 119 Wn.2d at 201).

II. Sufficient Evidence of Unlawful Imprisonment

A defendant commits unlawful imprisonment if he knowingly restrains another without consent or legal authority in a manner that substantially interferes with that person's liberty. RCW 9A.40.040(1). Restraint lacks consent when a defendant uses physical force or intimidation to prevent a person from moving. RCW 9A.40.010(1)(a); *see also State v. Davis*, 133 Wn. App. 415, 425, 138 P.3d 132 (2006), *rev'd on other grounds*, 163 Wn.2d 606, 184 P.3d 639 (2008)) (court found evidence of the victim's fear sufficient to show restraint when the defendant was acting violently toward another). That the victim had an available avenue of escape is a defense to a charge of unlawful imprisonment unless "the known means of escape . . . present[s] a danger or more than a mere inconvenience." *State v. Washington*, 135 Wn. App. 42, 50, 153 P.3d 606 (2006) (citing *State v. Kinchen*, 92 Wn. App. 442, 452 n.16, 963 P.2d 928 (1998)). Thus, even if there is a potential escape route, the defense fails where the victim does not believe she can leave or is fearful of trying to escape. *State v. Allen*, 116 Wn. App. 454, 466, 66 P.3d 653 (2003) (evidence was sufficient to show restraint when the defendant stood next to the door and told the victim she was not allowed to leave).

Hickey cites *Kinchen* to support his argument that Burgher had the means and opportunity to escape. In *Kinchen*, the defendant had locked the victims in an apartment and left them alone, but left a window and a sliding glass door open. The court found the evidence insufficient to support a verdict for unlawful imprisonment because the victims had "reasonably and readily accessible means of escape." *Kinchen*, 92 Wn. App. at 452 n.16.

But here, Burgher's means of escape was neither reasonable nor readily accessible. First, Hickey was blocking the doorway, hitting her, and threatening her life. It is reasonable for a jury to infer that she was too scared to try to escape. *Allen*, 116 Wn. App. at 466; *Davis*,

133 Wn. App. at 425. Second, unlike the victims in *Kinchen*, Hickey did not leave Burgher alone on the property. Hickey was either in the trailer or in the Butterfield home for the entire evening. Third, Burgher was scared and hurt, there were no nearby neighbors, and Hickey had taken her car keys and phone. Based on these facts, it is reasonable that a jury could find that escape would have necessarily involved more than a "mere inconvenience."

Thus, we find that the State presented sufficient evidence for a rational trier of fact to find that Hickey unlawfully imprisoned Burgher.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Penoyar, C.J.