IN THE COURT OF APPEALS OF IOWA

No. 5-556 / 94-1662

001157

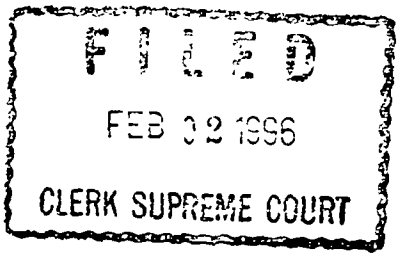
STATE OF IOWA,

Plaintiff-Appellee,

vs.

RUSSELL JASON RAHM,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Carol S. Egly, Judge.

Russell Rahm appeals the judgment and sentence entered upon his conviction of assault causing bodily injury in violation of Iowa Code section 708.2 (1993). **AFFIRMED.**

William L. Kutmus of Kutmus & Pennington, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank S. Severino, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., Cady, J., and Schlegel, S.J.*

* Senior judge from the Iowa Court of Appeals serving on this court by order of the Iowa Supreme Court.

HABHAB, P.J.

On November 24, 1993, Russell Rahm was at the Cabaret Lounge with his friends, Shay Adamson, John Blaylock, and Bret Fear. Keith Yates and his friends were seated nearby. When Rahm and his friends got ready to leave, they discovered Fear's black leather coat was missing. Rahm and his friends thought someone from Yates' group, who had left the Cabaret a short time earlier, might have picked up the coat by mistake. Rahm's group spotted Yates and his friends in the parking lot. Rahm's group got into their vehicle and tried to get Yates' car to pull over. When Yates stopped his car, Rahm and his friends exited their vehicle. Rahm asked Yates if someone in his car may have mistakenly taken the leather coat. He requested that Yates turn on the dome light so he could see if the coat was in the car. Yates suggested they call the police. When defendant and his friends stated they wanted to search Yates' car, Yates again suggested they call the police.

At some point, Adamson walked to the front of Yates' car in order to get the license plate number. Yates told Rahm he was leaving. Rahm claimed he thought Yates was going to hit Adamson with the car and tried to take Yates' keys away. Rahm was elbowed when he reached in the car. After being elbowed, Rahm struck Yates in the face breaking Yates' glasses and causing severe injury to Yates' eye. Yates testified he pulled the key out of the ignition and threw the keys on the floor after Rahm reached in the car and before getting hit in the face. After striking Yates,

defendant and his friends returned to their car and drove away. Officer Somsky, who responded to a 911 call, testified he found Fear's coat outside the bar against a bush.

Rahm was charged with assault causing bodily injury pursuant to Iowa Code section 708.2 (1993). Following a bench trial, the district court found Rahm guilty as charged. Although the court noted the incident started from the assumption someone in Yates' car did steal the leather coat, it found Rahm did not act in self-defense when he struck Yates.

The court sentenced Rahm to one year imprisonment and suspended the sentence. Rahm was placed on informal probation, ordered to attend an assaultive behavior program, complete fifty hours of community service, and pay $16,581.87 in restitution.

Rahm appeals.

On appeal, Rahm contends there was insufficient evidence to support his conviction. Specifically, Rahm argues the district court erred in failing to find him not guilty by reason of self-defense.

We review a challenge to the sufficiency of the evidence on assigned error. *State v. P[redacted]*, 342 N.W.2d 792, 795 (Iowa 1983). A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable

doubt. *Id.* The same standard for substantial evidence applies to both jury trials and trials to the court. *State v. Frake*, 450 N.W.2d 817, 818 (Iowa 1990).

The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Phanhsouvanh*, 494 N.W.2d 219, 223 (Iowa 1992); *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

When the justification of self-defense is asserted, the burden of proof is on the State to prove the justification did not exist. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993). The absence of justification may be proven by demonstrating any one of the following:

(1) the defendant initiated or continued the incident which resulted in the injury;
(2) an alternative course of action was available to the defendant;
(3) the defendant did not believe he was in imminent danger of death or injury and the use of force was not necessary to save himself;
(4) the defendant did not have reasonable grounds for the belief;
(5) the force used by the defendant was unreasonable.

Thornton, 498 N.W.2d at 673; *see also State v. Elam*, 328 N.W.2d 314, 319 (Iowa 1982); *State v. Mayes*, 286 N.W.2d 387, 392-93 (Iowa 1979). We find all five of the possible factors from *Thornton* were proven by the State.

001161

First, while Yates' group initiated the chain of events leading up to the assault, it was Rahm who initiated the confrontation by forcing Yates' car to pull over. In addition, Rahm continued the confrontation after Yates made attempts to end the confrontation by suggesting the police be called.

Second, there were several alternative courses of action which could have been taken rather than assaulting Yates. Rahm could have cut short the confrontation or avoided it altogether by simply copying Yates' license plate number and giving the information to the police. If Rahm felt Adamson was in danger, he could have warned Adamson to move instead of assaulting Yates.

Third, Rahm did not stay at the scene to report his version of the events to police. If he believed Adamson was in imminent danger and if he indeed had acted in self-defense, it would be reasonable for him to inform the police of what happened. In addition, the record appears to indicate Rahm hit Yates in retaliation for being elbowed rather than to protect Adamson.[1] Further, according to Yates' testimony, the keys were already out of the ignition at the time Rahm hit Yates in the face.

Fourth, as was stated previously, there was no reasonable basis for Rahm to believe Adamson was in imminent danger. Fear told police after the incident and reiterated at trial that Adamson intentionally placed himself in front of the car to

---

[1] Indeed, the district court's findings support this inference based upon the record. The district court, in its findings, stated, "In the defendant's own words, he was elbowed, and the Court finds that the defendant believes he was elbowed. Then instead of removing himself from the incident, he went back after the driver and struck him in the face causing injury."

prevent it from leaving. Also, Adamson never reported to police he was almost run over by Yates' car.

Last, we find the force used by Rahm was both unreasonable and unnecessary. There were numerous other means available to Rahm which would have produced the same result of keeping Adamson from getting hit. Rahm hitting Yates in the face and shattering Yates' glasses was unreasonable force given the circumstances in this case.

We find, in viewing the evidence in the light most favorable to the State, there is substantial evidence to support the charge against Rahm. The State carried its burden in proving there was an absence of justification. Accordingly, we affirm Rahm's conviction.

AFFIRMED.