IN THE COURT OF APPEALS OF IOWA

No. 0-567 / 00-711
Filed October 25, 2000

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CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARTONYA LEE SHIVERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Joel E. Swanson and Allan L. Goode, Judges.

Dartonya Lee Shivers appeals from the judgment and sentence entered following his conviction of domestic abuse assault enhanced and as a habitual offender. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Ron Robertsen, County Attorney, and Ricki Williamson, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Miller, JJ.

STREIT, P.J.

Dartonya Shivers was convicted of assaulting his wife. He claims the district court should have granted his motion for a new trial because she recanted. We affirm.

I. Background Facts & Proceedings.

Shivers was charged with enhanced domestic abuse assault as a habitual offender after his wife Melissa told police officers he had struck her. After a jury convicted Shivers, Melissa claimed she had lied. Shivers filed a motion for a new trial following Melissa's recantation, but the district court denied the motion. Shivers maintains the court should have granted him a new trial.

II. Standard of Review.

We review the court's denial of Shivers's motion for a new trial for an abuse of discretion. *See State v. Atley*, 564 N.W.2d 817, 821 (Iowa 1997). Shivers must show the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *See id.* (citations omitted).

III. The Merits.

The court did not abuse its discretion. "A witness' recantation of her testimony is looked upon with utmost suspicion." *State v. Tharp*, 372 N.W.2d 280, 282 (Iowa App. 1985). Following a recantation, the court must determine whether to grant a defendant's motion for a new trial "based on the facts of the whole trial and those in conjunction with the motion." *Id.* Here, Melissa testified at trial Shivers struck her on the head. Her testimony was consistent with her

initial complaint, her sworn statement to a police officer and a county attorney, and her deposition. Melissa's mother also testified Melissa had told her Shivers had hit her.

Melissa recanted on three occasions. Shortly after giving her sworn statement, Melissa told Shivers's attorney Shiver had not done anything to her. She explained at trial she had said this because she "didn't want to get [Shivers] in trouble." Before Shivers was sentenced, Melissa also wrote a letter to the trial judge claiming "there was no abuse that took place." Melissa admitted at the hearing on Shivers's motion for a new trial she had attempted to retrieve the letter from the clerk of court. Finally, she testified at the hearing her initial complaint, her sworn statement, her deposition, and her trial testimony were all lies. The court found Melissa's testimony was not believable and denied Shivers's motion for new trial. Given the facts of this case, it did not do so "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *See Atley*, 564 N.W.2d at 821. We affirm the district court.

AFFIRMED.