IN THE COURT OF APPEALS OF IOWA

No. 1999-355 (9-608) / 98-1815
Filed February 23, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANN MARIE PETERSON,
Defendant-Appellant.

FILED
FEB 23 2000
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Patrick J. Madden, Judge.

Ann Peterson appeals from her conviction of assault resulting in bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Andrews, Assistant Attorney General, William E. Davis, County Attorney, and Joseph A. Grubisich, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., Mahan and Hecht, JJ.

HECHT, J.

Ann Marie Peterson appeals her conviction for assault resulting in bodily injury, in violation of Iowa Code sections 708.1 and 708.2(2) (1997). She claims she received ineffective assistance of counsel due to her trial attorney's failure to file a motion for judgment of acquittal. We affirm on appeal.

Peterson owned rental property in Davenport. On May 8, 1998, she went to an apartment rented by Amy Lackey intending to have Lackey sign a notice of vacating the premises or to acknowledge a notice of rent increase. Peterson saw Lackey outside the apartment and asked her to sign the papers, but Lackey refused. Lackey testified Peterson then blocked the door to the apartment and told her she could not enter. Lackey's children were in the apartment and she pushed Peterson aside. Peterson struck at Lackey and they proceeded to fight. Lackey was struck in the hand and the head with an ink pen. The pen lodged in Lackey's scalp, and she extracted it with some difficulty.

Both Peterson and Lackey telephoned the police. When officers arrived they observed Lackey's bleeding wounds. Peterson told officers somehow Lackey's head accidentally hit the pen. Lackey was taken from the scene in an ambulance and her injuries required stitches. Peterson was arrested and charged with assault resulting in bodily injury.

The case was tried to a jury. Peterson relied on a defense of self-defense. She claimed Lackey started the argument; she only tried to push Lackey away and Lackey accidentally got stuck with the pen. As rebuttal, the State presented the testimony of Terry Christner, Lackey's nephew. He stated he saw Peterson

strike the first blow, and then the two women began exchanging blows, which resulted in Lackey being stabbed with the pen.

The jury found Peterson guilty of the crime charged. She was given a suspended sentence and placed on probation. Peterson appealed, claiming she received ineffective assistance of counsel.

Our review of an allegation of ineffective assistance of counsel is de novo. *Cox v. State,* 554 N.W.2d 712, 714 (Iowa App. 1996). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *Bettis v. State,* 547 N.W.2d 635, 637 (Iowa App. 1996).

Peterson contends her trial counsel failed to perform an essential duty because he did not file a motion for judgment of acquittal. The failure to move for judgment of acquittal precludes Peterson from challenging on appeal the sufficiency of the evidence. *See State v. Heidebrink,* 334 N.W.2d 344, 346 (Iowa App. 1983). Peterson asserts the motion for acquittal would have been successful because there was not sufficient evidence in the record to convict her.

In determining whether a motion for judgment of acquittal would be successful, the relevant inquiry is whether the evidence presented is sufficient to sustain the conviction. *State v. Breitbach,* 488 N.W.2d 444, 446 (Iowa 1992). We are bound by the fact-finder's decision unless the verdict is not supported by substantial evidence. *State v. Walker,* 574 N.W.2d 280, 284 (Iowa 1998). Evidence is substantial if it could convince a rational fact-finder the defendant is

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guilty beyond a reasonable doubt. *State v. Sanborn*, 564 N.W.2d 813, 816 (Iowa 1997).

We determine there was substantial evidence in the record to support Peterson's conviction. Lackey testified Peterson struck the first blow. Her testimony was supported by that of her nephew. Lackey received injuries to her hand and head from the pen which Peterson held. The force of the blow to Lackey's head was such that the pen became stuck in her scalp and was extracted with some difficulty. If a motion for judgment of acquittal had been made it would have been unsuccessful. Peterson was not prejudiced by counsel's failure to file a motion for acquittal. She has failed to show she received ineffective assistance of counsel.

We affirm Peterson's conviction for assault resulting in bodily injury.

AFFIRMED.