IN THE COURT OF APPEALS OF IOWA

FILED
NOV 29 1988
CLERK SUPREME COURT

449

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
HARLAN MOTT, JR.,) 8-546 / 87-1542
Defendant-Appellant.)

Appeal from the Iowa District Court for Polk County (No. 35355), Theodore H. Miller, Judge.

Defendant appeals his conviction, after a jury trial, for the crime of assault with intent to inflict serious injury. **AFFIRMED.**

Raymond E. Rogers, Acting Chief Appellate Defender, and Michael J. Laughlin, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; Sarah J. Coates, Assistant Attorney General; and Melodee Hanes, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

PER CURIAM 459

Defendant Harlan Mott, Jr. appeals his conviction, following a jury trial, for the crime of assault with intent to inflict serious injury. His sole challenge is to the sufficiency of the evidence to prove the intent element of that crime.

The evidence in this case, considered in the light most favorable to the State, would enable the jury to find that during the early morning hours of July 25, 1987, the defendant entered a Quik Trip store, and there began arguing with Angie Lust, his fiance, who had entered the store separately. During that argument, Kevin Colby, Angie's date that evening, went into the store, walked up to Angie and asked if she was all right and if she wanted to leave. The jury could then find that following those questions, the defendant hit Kevin Colby in the face four or five times, causing him to fall to the floor. Colby suffered severe injuries as a result of the blows including a fractured jaw, four broken teeth, a swollen eye, and various contusions on his face.

The defendant testified in his own behalf. He claimed Colby shoved him or went to grab him and that he did punch Colby in the face two or three times. He stated he had no intent to seriously injure Colby or break his jaw.

The case was submitted to the jury on the charge of willful injury. The jury found him guilty of the lesser

included offense of assault with intent to inflict serious injury.

In reviewing this conviction, we view the evidence in the light most favorable to the State, without regard to contradiction or inconsistencies and assisted by all reasonable inferences. If there is substantial support for the verdict in the record, the jury verdict is conclusive. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980) (citation omitted).

Under Iowa Code section 708.4 (1987), three elements must be proved before willful injury may be found: (1) that there was an assault; (2) with intent to commit serious injury upon another; and (3) serious injury is in fact inflicted upon another. State v. Hilpipre, 395 N.W.2d 899, 902 (Iowa App. 1986). In this case, there is no doubt the defendant assaulted the victim. It is not contradicted there was serious injury to the victim as a result of the assault. Defendant claims there is insufficient evidence in the record to permit the jury to find the assault was committed with intent to inflict serious injury upon the victim.

In Hilpipre, 395 N.W.2d 899 at 903, we said:

> Iowa law clearly recognizes that "[i]ntent is rarely capable of direct proof and must usually be shown by circumstantial evidence." State v. Delay, 320 N.W.2d 831, 835 (Iowa 1982). Given that criminal intent is rarely susceptible to direct proof, the fact finder may determine intent by such reasonable inferences and deductions as may be drawn from facts proved by evidence in accordance with common experience and

observation. State v. Serr, 322 N.W.2d 96, 101 (Iowa App. 1982).

In view of the circumstances surrounding the incident in this case and the defendant's obvious anger and apparent jealousy, the jury would be justified in believing he intended to inflict serious injury upon Colby. The jury would also be justified in finding he intended to inflict serious injury on the victim because of the multiple blows struck by him. He admitted to two or three, while Colby testified to four or five. There was sufficient evidence to support a finding the defendant intended to inflict serious injury upon Colby.

We hold that there was sufficient evidence to support the jury verdict, and it must be affirmed.

AFFIRMED.