



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )

Plaintiff-Appellee, )

vs. )

Filed November 24, 1981

SAMUEL MORTON POST, JR., )

1-298

Defendant-Appellant.

65754

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Appeal from Polk District Court, Dale S. Missildine, Judge.

Defendant appeals from his convictions for terrorism in violation of section 708.6, The Code 1979, and assault with intent to inflict serious injury in violation of sections 708.1 and 708.2(1) The Code 1979. AFFIRMED.

Douglas F. Staskal, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

## PER CURIAM

Defendant appeals from his convictions for terrorism in violation of section 708.6, The Code 1979, and assault with intent to inflict serious injury in violation of sections 708.1 and 708.2(1) The Code 1979. We affirm.

Defendant, Samuel Morton Post, Jr., was charged by information with assault to inflict serious injury and terrorism by threatening to commit a forcible felony. The charges arose from an incident in which defendant blocked the exit of Suzanne Post, his former wife, from a driveway by pulling his car up behind her car. Defendant then approached the car occupied by Suzanne and shattered the glass of the left door with a claw hammer. He then unlocked the door, entered the car, and struggled with the victim. Suzanne testified the defendant said he was going to kill her. Suzanne was treated at a hospital for the injuries sustained during the scuffle.

After trial to the court, the judge concluded the State had proved, beyond a reasonable doubt, defendant was guilty of terrorism and assault with intent to inflict serious injury.

Our scope of review is limited to correction of errors at law. Iowa R. App. P. 4; State v. Bucklin, 304 N.W.2d 452, 453 (Iowa 1981). The scope of review of a criminal case tried to the court is the same as the scope of review of a case tried to a jury. State v. Hall, 287 N.W.2d 564, 565 (Iowa 1980). The trial court's findings of fact are binding on this court if supported by substantial evidence. State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976). We are not, however, bound by the trial court's determinations of law. State v. Davis, 271 N.W.2d 693, 695 (Iowa 1978). In determining whether the evidence is substantial, we construe it in the light most favorable to sustaining the trial court's judgment, and we will not weigh the evidence or pass on the credibility of witnesses. State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976). We must, however, consider all the evidence when determining the sufficiency of the evidence to support a guilty verdict. Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560, 573, rehearing denied, 444 U.S. 890, 100 S. Ct. 195, 62 L. Ed. 2d 126 (1979); State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

I. Defendant asserts there was insufficient evidence and the court's findings of fact were insufficient as a matter of law to sustain a conviction of terrorism. We find those assignments meritless.

The trial court, as reflected by its findings of fact and conclusions of law, concluded the State had proved beyond a reasonable doubt the defendant was guilty of terrorism. Section 708.3(2), The Code 1979, provides: "A person commits a class 'D' felony when the person does any of the following with the intent to injure or provoke fear or anger in another.... 2. Threatens to commit a forcible felony under circumstances raising a reasonable expectation that the threat will be carried out." We are of the opinion there is substantial evidence in the record supporting the defendant's conviction for terrorism. Each element of section 708.6(2) was discussed by the trial court in its findings of fact. Specifically, the trial court found defendant threatened Suzanne with serious injury with the intent, established from the defendant's own testimony, to inflict serious injury, and Suzanne was put in very real apprehension that the defendant's threat would materialize. The last fact, however, is not an essential element of terrorism. State v. Jackson, No. 64419, 305 N.W.2d 420 (Iowa May 13, 1981). We find no error on the record regarding the sufficiency of the evidence to support the trial court's conclusions.

II. The defendant's final contention is the trial court committed reversible error in denying the defendant's pretrial motion to compel discovery of Suzanne's psychiatric records. Defendant alleges the trial court committed error and thus abused its discretion by denying the motion to compel discovery on the basis of an incorrect statement of the law.

Iowa R. Crim. P. 13(b)(6)(a)(3) permits the court to limit discovery if granting the motion to discover would result in the disclosure of privileged information. The defendant sought to discover the contents of Suzanne's psychiatric records, which could be protected by the physician-patient privilege. See State v. Nowlin, 244 N.W.2d 596, 602-03 (Iowa 1976); see also State v. Munro, 295 N.W.2d 437, 443 (Iowa 1980), where the court held the records from a psychological examination of the defendant were not privileged because the examinations were conducted to ascertain the defendant's mental condition rather than for treating him; see also State v. Cole, 295 N.W.2d 29, 33-37 (Iowa 1980). The record indicates Suzanne's psychiatric records were the direct product of her psychiatric treatment. The records, therefore, can be said to be protected by the physician-patient privilege. See In Interest of O'Neal, 303 N.W.2d 596, 602-03 (Iowa 1976).

The trial court evidently exercised its discretion in denying the defendant's motion to compel discovery of privileged information pursuant to Iowa R. Crim. P. 13(b)(6)(a)(3). As held in State v. Gates, 306 N.W.2d 720, 725 (Iowa 1981), "Discovery matters are committed to the sound discretion of the trial court, and are reviewable only upon an abuse of that discretion." In State v. Noonan, 246 N.W.2d 236, 237 (Iowa 1976), the court, in discussing abuse of discretion, stated, "In order to have an 'abuse' in reaching [a resolution of competing considerations], the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather passion or bias." We cannot say, after careful review of the record, the trial court abused its discretion. Therefore, we affirm the trial court's denial of defendant's motion to compel discovery.

**AFFIRMED.**