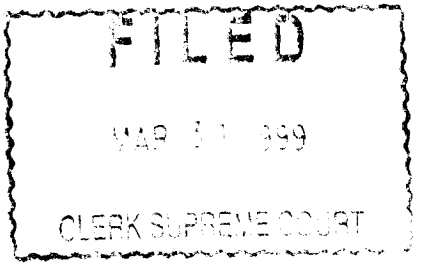
IN THE COURT OF APPEALS OF IOWA

No. 9-073 / 97-2203
Filed March 31, 1999



STATE OF IOWA,
Appellee,

vs.

PETER DALE VAN REGENMORTER,
Appellant.

Appeal from the Iowa District Court for Lyon County, Robert J. Dull, Judge.

The defendant challenges the sufficiency of the evidence to support his conviction for domestic abuse assault. **AFFIRMED.**

Steven C. Pals of Klay, Veldhuizen, Bindner, De Jong & Pals, Orange City, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, and Paul L. White, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Peter Dale Van Regenmorter challenges the sufficiency of the evidence supporting his conviction for domestic abuse assault. We affirm.

I. Background Facts and Procedure.

Following an altercation in their home, Peter Van Regenmorter and his wife, Carmen, were both charged with domestic abuse assault. The charge against Carmen was subsequently dismissed and Peter's case was tried to the court. The district court concluded the testimony of Carmen was more credible and found Peter guilty of domestic abuse assault causing bodily injury in violation of Iowa Code sections 708.2A(1) and 708.2A(2)(b) (1995).

On appeal, Peter challenges the sufficiency of the evidence to support his conviction. He contends the court made little effort to reconcile the conflicting testimony of the witnesses. Additionally, Peter argues the district court erred in finding any of the victim's alleged injuries were sufficient to establish a bodily injury since there was no evidence of impairment.

II. Standard of Review.

We review claims challenging the sufficiency of the evidence for errors at law. *State v. Phams*, 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 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. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). The same standard for substantial evidence applies to both jury trials and trials to the court. *State v. Ledezma*, 549 N.W.2d 307, 311 (Iowa App. 1996).

III. The Merits.

In order to convict Peter of the offense of domestic abuse assault causing bodily injury, the State was required to prove that he: (1) did an act which was meant to cause pain or injury, result in physical contact which was insulting or offensive, or place Carmen in fear of an immediate physical contact which would have been painful, injurious, insulting, or offensive to her; (2) had the apparent ability to do the act; (3) the act caused a bodily injury to Carmen; and--as the offense was specified in this case--(4) at the time the act occurred, Peter and Carmen were family or household members who resided together. *See* Iowa Code §§ 708.2A(1), 708.2A(2)(b); *State v. Brown*, 569 N.W.2d 113, 115-16 (Iowa 1997).

At trial, Carmen testified as follows:

> He [Peter] was choking me. Like -- And I got away from him. I went upstairs. And he continue on following me. I made it to the dining room table, and then he grabbed me there, grabbed me out of my arm, pulled my arm way back, throwed me against the wall, and then again he's slapping me around and hitting my stomach.

> And then he's continue on with my arm, which is why I had the bruises. He grabbed me out of my arm and throwed me against the wall, picked me up like picking up an object and --
>
> Q. Okay.
>
> A. -- picked me up and throw me outside on the cement and slammed the door.
>
> Q. Okay.
>
> A. And that's what -- Then I tried to get up, and this is why I had this bump on my head. And I tried to run to the neighbors.
>
> Q. Okay. Did you suffer any injuries as a result of the Defendant's assault on you?
>
> A. Yeah. My shoulders and my arm, and then the bump I had on my head and a couple of bruises and a scratch on my elbows.

Carmen's testimony concerning her injuries was corroborated by the investigating officers, Lyon County Sheriff's Deputies Birkey and Zylstra. Both deputies testified they observed abrasions on Carmen's elbows, a sizable bruise on the triceps muscle of one of her arms, and that she was complaining of a bump on her head.[1]

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[1] Our supreme court has held "welts, bruises, or similar markings are not physical injuries per se but may be and frequently are evidence from which the existence of a physical injury can be found." *State v. Gordon*, 560 N.W.2d 4, 6 (Iowa 1997). We therefore find the testimony of Carmen and deputies Birkey and Zylstra, along with the photographic exhibits in the record, provide sufficient evidence for a rational jury to determine Carmen had in fact suffered a bodily injury as a result of the assault by Peter.

We find the record contains sufficient evidence to support the findings of the district court. Peter's contention the district court erroneously gave Carmen's testimony too much weight is without merit. Generally, decisions on the credibility of witnesses and the weight given to evidence and testimony are for the fact finder. *See State v. Mitchell*, 568 N.W.2d 493, 503 (Iowa 1997). We find a rational jury could find beyond a reasonable doubt that Peter assaulted Carmen causing her bodily injury and that the two were family or household members who resided together. We therefore affirm the judgment and conviction of Peter Van Regenmorter.

AFFIRMED.