IN THE COURT OF APPEALS OF IOWA

No. 1999-361 (9-614) / 98-1895
Filed January 26, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DIANE MARGARET WARTH,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Lee (North) County, Joel J. Kamp, District Associate Judge.

Defendant appeals the judgment and sentence entered upon her conviction of carrying a concealed weapon. **REVERSED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Michael Short, County Attorney, and Gordon Liles, Assistant County Attorney, for appellee.

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

PER CURIAM

Defendant-appellant, Diane Warth, appeals her conviction for carrying a concealed weapon, in violation of Iowa Code section 724.4(3)(b) (1997). She claims there was insufficient evidence of concealment to support the conviction. We reverse the conviction and dismiss the charge.

Factual background. Deputy Henshaw, responding to reports of a woman tearing up a house, observed Warth at the home of Tim Vincent, with whom she had a no-contact order. The deputy saw Warth coming out of the house and approached to within a couple of feet of her. She was wearing a t-shirt that reached the top of her jeans. While the deputy spoke with Warth, she sat down on the edge of a brick flowerbed. As she leaned forward, the deputy observed the handle of a knife sticking up from the back of her jeans near the small of her back. He removed the knife and placed Warth under arrest.

Bench trial. The State charged Warth with carrying a concealed weapon. Warth testified she placed the knife in the back waistband of her jeans. At the trial to the court, a neighbor, who was standing to the side some ten to twenty feet away, testified the knife was visible from that vantage point. The court made a specific finding Deputy Henshaw's testimony was more credible than Warth's because of her intoxication at the time. However, neither the deputy nor Warth testified whether or not the knife was concealed. The deputy only testified he "assumed" it was, but couldn't tell because he couldn't see it while standing in front of Warth. The court found Warth guilty of carrying a concealed weapon. The court also cited her for contempt of court for violating the no-contact order but that judgment and sentence is not under appeal.

Appellate claim. Warth appeals her conviction for carrying a concealed weapon. She claims there is insufficient evidence of concealment to support her conviction. She argues the evidence showed the knife was visible to anyone behind her or to either side and that concealment is not established merely because a weapon was not visible from one particular vantage point, Deputy Henshaw's.

Discussion. Our review is for errors of law. Iowa R. App. P. 4. Iowa uses an objective test of concealment. *State v. Newsom*, 563 N.W.2d 618, 620 (Iowa 1997). The State argues a weapon is concealed if it is not visible from the vantage point of one approaching, citing *Newsom*. *Id.* Although the State acknowledges the "one approaching" language in *Newsom* specifically relates to one approaching a vehicle, it argues the knife was concealed because Deputy Henshaw could not see it when he approached Warth. The knife was plainly visible to him when Warth sat down. A neighbor testified to seeing the knife as Warth stepped off the porch and that it was clearly visible, from the neighbor's vantage point, from twenty feet away.

In reviewing the findings of the trial court, we consider all the evidence "in the light most favorable to the State" and make "all reasonable inferences that may fairly be drawn from the evidence." *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998). The guilty verdict is binding unless "no substantial evidence in the record exists to support it, or it is clearly against the weight of the evidence." *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa App. 1998). The evidence must "raise a fair inference of guilt as to each element of the crime." *Id.* The district court, as fact finder, can "reject certain evidence, and credit other evidence." *McPhillips*, 580 N.W.2d at 753.

Taking the evidence in the record in the light most favorable to the State, we see an intoxicated, belligerent Warth, but not a concealed weapon. We conclude the finding the knife was concealed is not supported by the evidence. Even under the analysis in *Newsome*, the knife is not concealed merely because it was not seen from the deputy's position in front of Warth. Deputy Henshaw could see the knife when Warth's back was visible to him. We decline to extend the vehicle rationale in *Newsome* to include the circumstances before us. *See, e.g., State v. Lamb*, 573 N.W.2d 267, 269 (Iowa 1998); *State v. Werner*, 181 N.W.2d 221, 224 (Iowa 1970). We conclude the evidence is insufficient to sustain a conviction for carrying a concealed weapon. *See* Iowa Code 724.4.

We therefore reverse Warth's conviction for carrying a concealed weapon and dismiss the charge against her.

REVERSED.