IN THE COURT OF APPEALS OF IOWA

No. 1-420 / 00-0297
Filed September 26, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DAVID JAMES ROE,
Defendant-Appellant.

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CLERK SUPREME COURT

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, Judge.

On discretionary review, defendant appeals from his simple misdemeanor conviction, following a jury trial, for domestic abuse assault in violation of Iowa Code sections 236.2, 708.1, and 708.2A(2)(a) (1999). **AFFIRMED.**

Philip B. Mears of the Mears Law Office, Iowa City, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, J. Patrick White, County Attorney, and Michael D. Brennan, Assistant County Attorney, for appellee.

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

MILLER, J.

On discretionary review defendant David James Roe challenges his conviction, following jury trial, for domestic abuse assault. He contends the trial court erred in sentencing him for simple misdemeanor domestic abuse assault when the jury found him guilty only of simple misdemeanor assault. Because the parties had stipulated to the one element that differentiates domestic abuse assault from assault, we conclude the trial court did not err and affirm.

I. BACKGROUND FACTS.

Count I of a two-count trial information charged Roe with domestic abuse assault causing bodily injury in violation of Iowa Code sections 708.1(1), 708.2A(2)(b) and 236.2 (1999), a serious misdemeanor. Count II charged him with child endangerment, an aggravated misdemeanor. Both charges arose out of an incident in which Roe allegedly repeatedly struck his live-in girlfriend in the face while she was holding their six-month-old child, resulting in red marks and swelling of her face and the baby's head striking a wall. The jury found Roe not guilty of child endangerment. Therefore, only Count I is involved in this discretionary review and the remainder of this opinion relates only to Count I.

The parties agreed there was no dispute as to whether Roe and his girlfriend were in a domestic relationship. Everyone agreed that they were. The trial court instructed the jury that Roe was charged with domestic abuse assault causing injury. It further instructed the jury the parties had stipulated to the fact that the relationship between Roe and his girlfriend was a domestic relationship as defined by the Code of Iowa. The court submitted marshalling instructions on assault causing bodily injury and the lesser included offense of assault. It

submitted verdict forms that would allow the jury to find Roe guilty or not guilty of assault causing bodily injury, and guilty or not guilty of assault.

The jury returned verdicts finding Roe not guilty of assault causing bodily injury and guilty of assault. The trial court entered an order that stated the jury had found Roe guilty of the lesser-included offense of assault, in violation of sections 708.1 and 708.2 and scheduled a date for sentencing.

At the time set for sentencing the State requested correction of the order setting sentencing. It noted that Roe had been charged with domestic abuse assault causing bodily injury and the parties had stipulated to the domestic relationship. It requested that judgment be entered as a conviction for domestic abuse assault. Roe objected. After hearing arguments the trial court expressed the view that it had erred in characterizing the matter as a non-domestic assault and continued sentencing one week in order to review the record and hold a hearing. At the subsequent sentencing hearing the trial court noted that the parties had stipulated to the domestic relationship and proceeded to sentencing as a domestic abuse assault. The trial court entered a judgment convicting Roe of domestic abuse assault in violation of Iowa Code sections 708.1, 708.2A(2)(a) and 236.2, a simple misdemeanor, and imposed sentence.

Roe asserts the trial court improperly sentenced him for domestic abuse assault when the jury found him guilty only of assault. He asserts that he was convicted upon a theory of guilt not presented to the jury at trial, in violation of his right to due process of law.

II. SCOPE OF REVIEW.

Because Roe's due process claim involves a constitutional question, our review is de novo. *State v. Smith*, 573 N.W.2d 14, 17 (Iowa 1997).

III. MERITS.

Although the record is not clear concerning the point in the proceedings at which the parties' stipulation occurred or the manner in which it was made, it is clear and undisputed the parties stipulated to the fact that the relationship between Roe and the victim of his alleged assault was a domestic relationship as defined by Iowa law. "It is elementary that admissions made in the course of judicial proceedings are substituted for and dispose with actual proof of facts." *State v. Wilson*, 166 Iowa 309, 326, 144 N.W. 47, 53 (1913). A defendant can even eliminate an element of a crime from issue by unequivocally admitting it as a witness. *State v. Morgan*, 322 N.W.2d 68, 69 (Iowa 1982); s*ee also State v. Post*, 251 Iowa 345, 353, 99 N.W.2d 314, 320 (1959) (noting that existence of previous convictions, which would otherwise require proof, need not be submitted to the jury where there is a stipulation or formal admission thereof, or when an accused admits them even upon cross-examination). Stipulations in formal litigation include those that admit facts and thus relieve a party from the inconvenience of making proof. *In re Prop. Seized*, 501 N.W.2d 482, 485 (Iowa 1993). "[S]ubject to limitations respecting propriety, applicable statutes, or court rules, an agreement as to facts, entered into between parties to a judicial proceeding, is ordinarily binding upon those who make [it]." *Bartels v. Hennessey Bros., Inc.*, 164 N.W.2d 87, 91 (Iowa 1969).

Roe asserts there was no finding by the jury that there was a domestic relationship. He is correct. He goes on to assert that without such a finding

there is no way to characterize the jury finding as finding all the elements of domestic abuse assault. He is again correct. However, his conclusion, that he therefore cannot be convicted of domestic abuse assault, is flawed. The stipulation by Roe was one admitting a fact which constituted the one element of the charge of domestic abuse assault that differentiates it from assault, an element the State would otherwise be required to prove in order to prove him guilty of domestic abuse assault, the domestic relationship between Roe and his girlfriend. The obvious purpose of the stipulation was to eliminate the need for proof concerning an element that was not disputed, and apparently could not reasonably be disputed. It substituted for and dispensed with the need for actual proof of the domestic relationship. Under the facts and the cases cited above there was no need to submit that element to the jury.

Roe's assertion he cannot be convicted of domestic abuse assault because there was no finding by the jury that the State had proved a domestic relationship is an attempt on appeal to require proof of a fact he agreed required no proof. To sustain his position would be to render meaningless parties' stipulations as to facts and destroy the purpose, intent and beneficial effect of such stipulations. We will not do so.

The parties' stipulation established the domestic relationship as uncontested fact. The trial court therefore did not need to submit that element to the jury and did not do so. The jury's verdict finding Roe guilty of assault, together with the parties' stipulation as to the one additional element that makes an assault a domestic abuse assault, provides a complete basis for and fully

supports the trial court's entry of a judgment convicting Roe of simple misdemeanor domestic abuse assault. The trial court did not err in doing so.

AFFIRMED.