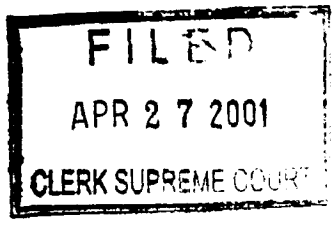
IN THE COURT OF APPEALS OF IOWA

No. 0-773 / 99-1443
Filed April 27, 2001



STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL DARRELL KEELING,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal, District Associate Judge.

The court found the defendant guilty of second-degree harassment. He appeals, arguing there is insufficient evidence to support his conviction for second-degree harassment. He alternatively argues that if the court determines his conviction arose from a guilty plea rather than a bench trial, then his trial counsel was ineffective in failing to object to the lack of a factual basis for the plea. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Martha J. Lucey, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, John P. Sarcone, County Attorney, and Michelle Chenoweth, Assistant County Attorney, for appellee.

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

MILLER, J.

Michael Darrell Keeling appeals his conviction for harassment in the second degree, contending there was insufficient evidence to support the conviction. In the alternative, Keeling argues his conviction should be vacated due to the district court's failure to clarify whether the proceeding was a bench trial on the minutes or a guilty plea. He further asserts that if we determine the proceeding was a guilty plea then his trial counsel was ineffective for failing to object to the lack of a factual basis for the plea. We affirm.

I. BACKGROUND FACTS

Certain facts could be found from the minutes of evidence filed with the trial information. Altoona police were dispatched to Barbara Cooper's residence on March 3, 1999. When the officers arrived, Ms. Cooper was in the front yard and her son, the defendant Keeling, was standing on the porch yelling at her. Ms. Cooper complained to the officers that Keeling had assaulted her and she wanted him arrested. While Cooper went inside to speak with an officer Keeling remained outside with two other officers.

Ms. Cooper reported to the officer that the confrontation began when Keeling overheard her speaking on the telephone with mental health professionals regarding him. Keeling became upset and hit the telephone out of Cooper's hand. When Cooper picked up the phone to call her other son for help Keeling knocked the telephone out of her hand again and the phone broke. Cooper then grabbed her cell phone and went outside to call the police.

While Cooper was in the house relating the events to the officer, Keeling reportedly made threats to the officers who were outside with him that he was

going to kill his mother for calling the police and that he was going to burn something down. Keeling was arrested, removed from the home, and charged with harassment in the first degree.

Keeling waived his right to a jury trial and signed a document entitled "Petition to Stipulate to a non jury trial" for harassment in the second degree.[1] The court found Keeling guilty and sentenced him to a one-year suspended jail sentence and probation. Keeling appeals arguing there was insufficient evidence to support his conviction. He alleges the minutes of evidence demonstrate that his alleged threat to kill his mother was made solely to the police officers while he was outside the home and there is no indication his mother ever heard the statements or that he directed them to her. The State argues such a threat does not have to be received by the intended victim in order to constitute second-degree harassment.

In the alternative Keeling alleges it was unclear whether the proceeding below was a trial on the minutes or a guilty plea and the trial court erred in failing to clarify the nature of the proceeding. Keeling asserts that if we determine the proceeding was a guilty plea, then his trial counsel was ineffective in failing to object to the lack of a factual basis for his plea.

II. SCOPE AND STANDARDS OF REVIEW

Our scope of review is on assigned error. Iowa R. App. P. 4; *State v. Dible*, 538 N.W.2d 267, 270 (Iowa 1995). It is the same on a defendant's appeal

[1] Although it is unclear from the record before us on appeal, apparently an oral agreement had been reached prior to the hearing to amend the charge in the trial information from first-degree to second-degree harassment.

from a criminal conviction whether the court or a jury is the fact finder. *State v. LaPointe*, 418 N.W.2d 49, 51 (Iowa 1988).

The standard of review in a challenge to the sufficiency of the evidence is well established. *Dible*, 538 N.W.2d at 270. We will uphold a verdict where substantial evidence in the record tends to support the charge. *Id.* A trial court's finding of guilt is binding on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(1); *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997).

> In a criminal case tried to the court, as in a civil case tried to the court at law, the court's verdict is like a jury verdict. Upon review of the sufficiency of evidence to support the verdict, we view the evidence in the light most favorable to the verdict, and we accept as established all reasonable inferences tending to support it. Findings of the trial court are to be broadly and liberally construed, rather than narrowly or technically, and, in case of ambiguity, we will construe findings to uphold, rather than defeat, the judgment. Direct and circumstantial evidence are equally probative so long as the evidence raises a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture. It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt.

Dible, 538 N.W.2d at 270 (internal quotations and citations omitted).

III. MERITS

Keeling submits that he was found guilty after a bench trial on the minutes of evidence. The State agrees. The transcript of the trial court proceeding supports and confirms the parties' views that the proceeding was a trial on the minutes rather than a guilty plea. Therefore, we find the proceeding below was a bench trial on the minutes of evidence. Thus, we need not address Keeling's alternative ground on appeal, a claim of ineffective assistance of trial counsel.

Keeling asserts that the evidence within the minutes of evidence was insufficient to support the trial court's verdict finding him guilty of harassment in the second degree. Under the amended charge and the facts, in order to establish the offense of harassment the State had to prove the defendant "purposefully and without legitimate purpose, ha[d] personal contact with another person, with the intent to threaten, intimidate or alarm that other person." Iowa Code §708.7(1)(b) (1999). This Code section further provides,

> unless the context otherwise requires, "*personal contact*" means an encounter in which two or more people are in visual or physical proximity to each other. "*Personal contact*" does not require a physical touching or oral communication, although it may include these types of contacts.

Id. In order to prove harassment in the second degree the State had to show the defendant committed harassment, as set forth above, which involved a threat to commit bodily injury. Iowa Code §708.7(3).

Keeling argues his threat to kill his mother was outside her presence and there is no evidence in the record either that she heard this threat or that Keeling intended her to be aware of such threat. Therefore, he asserts the threat cannot satisfy the "personal contact" requirement of section 708.7(1)(b). Whether the threat to commit bodily injury must be committed simultaneously with the personal contact or whether such threat has to be received by the intended victim appear to be issues of first impression in Iowa. However, we do not believe it is necessary for us to determine these apparent issues of first impression in deciding this case.

In a bench-tried criminal case, in the absence of a motion for new trial pursuant to rule of criminal procedure 23(2)(c) this court assumes the trial court

found all facts necessary to support its judgment. *State v. Miles*, 346 N.W.2d 517, 519 (Iowa 1984). "This assumption is derived from the concept that the decision in a case tried to the court at law has the force of a jury verdict." *Id.* Therefore, we "will presume the finding of any facts supported by the record that would warrant the judgment." *Id.*

Included in the minutes of evidence upon which Keeling was convicted is the written statement of Barbara Cooper regarding the events that occurred on the day in question. She states, "He [Keeling] hit the phone out of my hand - had his face and finger in my face and threatened to hit me in the G.D. face - still yelling." We find the evidence of Keeling hitting the phone out of Cooper's hand together with the up close, face-to-face, threat to hit her in the face is substantial evidence that Keeling, purposefully and without legitimate purpose, had personal contact with Cooper with the intent to threaten, intimidate, or alarm her and such contact involved a threat to commit bodily injury. *See* Iowa Code §§708.7(1)(b) and (3). We conclude there is substantial evidence in the record to convince a rational factfinder that Keeling is guilty of harassment in the second degree beyond a reasonable doubt. Thus, the trial court's finding of guilt is binding on this appeal.

AFFIRMED.