IN THE COURT OF APPEALS OF IOWA

No. 0-539 / 99-2011
Filed September 27, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

WARREN FAYETTE STEARNS,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

Warren Stearns appeals from his conviction and sentence for assault on a peace officer. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Darrel L. Mullins, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Danielle Davis, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Streit and Vaitheswaran, JJ.

VAITHESWARAN, J.

Warren Stearns appeals his conviction for assault on a peace officer, contending the evidence was insufficient to support his conviction. We affirm.

I. Background Facts and Proceedings

A jury could have found the following facts. Evansdale police officer Thomas Skinner stopped Stearns because he recognized him and believed he was driving with a suspended and barred license. Officer Skinner told Stearns to get out of his car. After Stearns did so, Skinner began to handcuff him. Stearns stated he did not want to go to jail and got back into the car. Officer Skinner reached in and placed the other handcuff on Stearns. As he did so, Stearns attempted to close the car door. The door hit Skinner on the forehead. Skinner attempted to regain control of the situation by using a pain compliance technique which required placing his thumb in the handcuff. As he did so, Stearns pulled Skinner's arm back, hyperextending his thumb, then started the vehicle and drove about 150 feet. Officer Skinner ultimately freed himself, returned to his patrol car, and stopped Stearns after a brief chase.

The State charged Stearns with assault on a police officer by use of a dangerous weapon, as well as additional counts not at issue in this appeal. A jury convicted him of the lesser included offense of assault on a peace officer, in violation of Iowa Code section 708.3A(4) (1997). Stearns appealed following entry of judgment and sentence.

II. Sufficiency of Evidence

Stearns contends the evidence was insufficient to support his conviction. Preliminarily, the State responds that Stearns failed to preserve error. Following

the close of the State's case, Stearns moved for judgment of acquittal. The district court denied the motion. The State maintains Stearns's motion did not focus on the argument he now makes, which is whether Stearns had the general intent to assault an officer. Instead, the State argues, his motion addressed only whether the evidence was sufficient to support a finding of specific intent to assault a peace officer with a dangerous weapon. We elect to pass on this error preservation issue and proceed to the merits. *See State v. Taylor*, 596 N.W.2d 55, 56 (Iowa 1999).

Our review is limited to assigned error. *State v. Westeen*, 591 N.W.2d 203, 206 (Iowa 1999). We will uphold a district court's ruling on a motion for judgment of acquittal "if there is substantial evidence in the record to support the defendant's conviction." *Id.* (quoting *State v. McPhillips*, 580 N.W.2d 748, 752 (Iowa 1998)). While we consider all the evidence, not just the evidence supporting the verdict, it is up to the jury to judge the credibility of witnesses and weigh the evidence. *State v. Laffey*, 600 N.W.2d 57, 59 (Iowa 1999).

The jury was instructed that to find Stearns guilty of the lesser included offense of assault on a peace officer, it would have to find the State proved Stearns: (1) intentionally, dragged or pulled Thomas Skinner alongside defendant's car and (2) knew Thomas Skinner was a law enforcement officer. Stearns concedes the State proved the second element. As for the first element, a reasonable jury could have found, based on the facts set forth above, that Stearns intentionally pulled or dragged Skinner beside his car. We conclude

Steams's conviction is supported by substantial evidence. Accordingly, we affirm.

AFFIRMED.