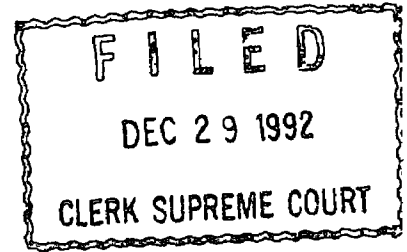


IN THE COURT OF APPEALS OF IOWA

No. 2-487 / 91-1690



STATE OF IOWA,

Appellee,

vs.

JOEY LEE GLOVER,

Appellant.

Appeal from the Iowa District Court for Linn County,
John F. Siebenmann, Judge.

Glover appeals from his conviction and sentence,
following a bench trial, of one count of assault causing
bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and
Patricia Reynolds Lapointe, Assistant State Appellate
Defender, for appellant.

Bonnie J. Campbell, Attorney General, and Maureen
McGuire, Assistant Attorney General, for appellee.

Heard by Oxberger, C.J., and Hayden, J., and Keefe,
S.J.* Schlegel, J., takes no part.

*Senior Judge from the 1st Judicial District serving on
this court by order of the Iowa Supreme Court.

KEEFE, S.J.

Defendant Joey Lee Glover was charged with assault causing bodily injury, in violation of Iowa Code sections 708.1 and 708.2(2). After a bench trial, the district associate court found him guilty of that crime. Glover now appeals. We affirm.

On May 14, 1991, Glover attended a Queensryche concert at the Five Seasons Center in Cedar Rapids, Iowa, with several friends. During the opening act, Suicidal Tendencies, he was standing on the floor of the auditorium, near the front, where a group was engaging in slam dancing. Glover did not actually participate in the slam dancing.

Amelia Kopplin attended the same concert with her friends, Chris Condon and Kiernan Baker. As Kopplin and her friends were attempting to walk from the front of the auditorium to the back, they apparently got into some kind of an altercation with Glover's female friends. A tussle developed and Kopplin ended up with a broken nose.

Kopplin received first aid at the concert. There were several police officers at the concert, and Kopplin pointed Glover out to them as the person who had hit her in the nose. Charges were then filed against him.

The case was tried to the court. Kopplin testified that Glover had put her in a headlock with one arm and punched her in the nose with his other hand. Glover and

two of his friends, Allison Hines and Jennifer Edwards, testified that another woman in their group, Missey Gilliams, had hit Kopplin. In rebuttal, Baker testified she observed Glover having Kopplin in a headlock. Condon testified she saw Glover put Kopplin in a headlock and then punch her.

As noted above, Glover was convicted of assault causing bodily injury, which is a serious misdemeanor. The court found the act was meant to cause pain or injury to Kopplin, and he in fact caused bodily injury to her, which was without justification. Glover was sentenced to serve thirty days in the county jail. His sentence was suspended, conditioned on good behavior and no further law violations. Glover has appealed.

Glover contends there was not sufficient evidence to support his conviction. He claims the court should have granted his motion for directed verdict of acquittal. In particular, he points to the conflicting evidence about who hit Kopplin. Glover states that due to the slam dancing going on around them, there was some confusion about the events in question. He points out, however, that his witnesses were very certain in their testimony that Kopplin had been hit by Gilliams. He notes that Baker testified she did not see who hit Kopplin, and that Kopplin herself admitted at one point that because she was in a headlock, she could not really see who hit her.

A trial court's refusal to direct a verdict for defendant will withstand challenge if there is any substantial evidence in the record tending to support the charge. State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). Substantial evidence is evidence that could convince a rational factfinder that a defendant is guilty beyond a reasonable doubt. State v. Garr, 461 N.W.2d 171, 173 (Iowa 1990). The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture. Hamilton, 309 N.W.2d at 479.

We apply the same substantial evidence rule as to the findings of fact whether tried to a jury or to the court. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). The trial court, as the finder of fact, must weigh the evidence and determine the credibility of the witnesses. Id.

We conclude there is substantial evidence in the record to support the charge of assault causing bodily injury. Condon testified she saw Glover hit Kopplin, and Kopplin testified she felt it was Glover. Baker supported their testimony by stating it was Glover who had Kopplin in a headlock. While there is certainly some conflict in the testimony of the witnesses, the district court was in the best position to determine their credibility. We affirm Glover's conviction for assault causing bodily injury.

AFFIRMED.