IN THE COURT OF APPEALS OF IOWA

No. 9-291 / 88-1571

FILED
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CLERK SUPREME COURT

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STATE OF IOWA,

Plaintiff-Appellee,

vs.

CANDY THOMAS,

Defendant-Appellant.

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

Defendant appeals from her conviction, following a bench trial, for the crime of assault causing bodily injury in violation of Iowa Code sections 708.1(1) and 708.2(2). She challenges the sufficiency of the evidence to prove she committed the crime of assault. **AFFIRMED.**

Gregory J. Epping of Terpstra, Terpstra & Epping, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General; Amy M. Anderson, Assistant Attorney General; and William Croghan, Assistant County Attorney, for plaintiff-appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

The defendant was involved in a bar fight with her boyfriend's ex-wife (Cindee Lee) on April 8, 1988. As a result of this altercation, the defendant was charged with assault causing bodily injury, a violation of Iowa Code section 708.2(2). After a bench trial, the court found her guilty of this crime. She has appealed from the resulting conviction.

The defendant challenges the sufficiency of the evidence to prove she committed the crime of assault. She contends the evidence did not establish she had initiated the altercation, and any actions she took were justified by self-defense. Our review in this action is for errors at law. Iowa R. App. P. 4.

Defendant challenges the trial court's decision and contends it was not supported by substantial evidence. Error with respect to the sufficiency of the evidence to support defendant's conviction, was preserved by defendant's motion for acquittal at the conclusion of the State's evidence. State v. Miles, 346 N.W.2d 517, 519 (Iowa 1984).[1] We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Wheeler, 403 N.W.2d 58, 60 (Iowa App.

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1. The State is correct in that any challenge by the defendant to the sufficiency of the trial court's findings of fact, was not preserved for appeal. The failure to make a motion for a new trial waived defendant's right on appeal to challenge the sufficiency of the court's findings. Miles, 346 N.W.2d at 519.

1987). The standards governing a challenge to the sufficiency of the evidence are well established:

> When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Hall, 371 N.W.2d 187, 188 (Iowa App. 1985); State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). 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." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). 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. Hall, 371 N.W.2d at 188; Bass, 349 N.W.2d at 500. Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. Hall, 371 N.W.2d at 188; State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

Id.

Viewing the evidence in the light most favorable to the State, the trial court could reasonably conclude defendant assaulted and caused bodily injury to Cindee Lee. The State presented two witnesses who testified as to defendant's involvement in the assault. Cindee Lee, the victim, testified she knew defendant because defendant was dating her ex-husband, James Lynch. On the evening of the alleged assault, Lee and her sister, Rachelle Neal, were at the bar where the defendant worked. Lee testified defendant was verbally abusive to her at the bar and the assault occurred as she was leaving the bar to go home. Lee stated the defendant followed her out of the bar and

said, "[b]itch, if you want a piece of my ass, you take it now." Lee said she tried to walk away from the defendant and defendant said, "[d]o you hear me?" Lee testified she told defendant she did not want to fight because she did not want to jeopardize the custody of her son. At that point, Lee claims the defendant physically assaulted her. Lee's sister, Rachelle Neal, similarly testified as to the defendant's assaultive behavior.

The defendant's testimony and that of two of her friends (Denise Snitker and Jud Fisher) contradicted Lee's version of the events. Defendant claims Lee initiated the altercation and she only reacted with such force as was necessary to defend herself.

It is the task of the fact finder to resolve questions of fact and assess the credibility of the witnesses. State v. Dahlstrom, 224 N.W.2d 443, 448 (Iowa 1974). A fact finder is not required to accept a defendant's version of the facts. State v. Wilkens, 346 N.W.2d 16, 20 (Iowa 1984). A finding of guilt is binding on an appellate court unless it is without substantial support in the record or is clearly against the weight thereof. Dahlstrom, 224 N.W.2d at 448. It was within the realm of the trial court's fact finding role, to determine the State's version of the events was more credible and believable than the evidence presented by defendant. There was substantial

evidence from which the trial court could conclude beyond a reasonable doubt, defendant assaulted Cindee Lee on April 8, 1988, and defendant's conduct was not reasonable force used to defend herself.

The decision of the trial court is affirmed.

AFFIRMED.