

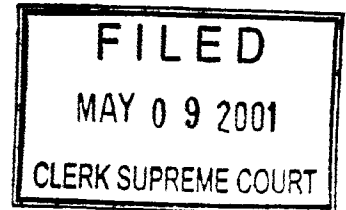
IN THE COURT OF APPEALS OF IOWA

No. 1-141 / 00-1190
Filed May 9, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SCOTT KEVIN DILLARD,
Defendant-Appellant.



Appeal from the Iowa District Court for Warren County, Joe E. Smith (trial and sentencing) and Richard B. Clogg (no-contact order), Judges.

Kevin Scott Dillard appeals the district court's judgment and sentence, following a bench trial, for domestic abuse assault with injury. **AFFIRMED.**

Kimberly G. Haddox and Phillip F. Elgin of Elgin, Clogg, and Patin, L.C., for appellant.

Thomas J. Miller, Attorney General, Cristen C. Odell, Assistant Attorney General, Kevin Parker, County Attorney, and Jane Orlanes, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Hecht and Vaitheswaran, JJ.

PER CURIAM

The defendant-appellant, Kevin Scott Dillard, appeals the district court's judgment and sentence, following a bench trial, for domestic abuse assault with injury. He claims the court should have granted his motion for judgment of acquittal because the evidence was insufficient to support the court's finding he intended his act to be offensive or injurious to his wife. We affirm.

Background Facts. Scott and Cindy Dillard lived for two years in an apartment connected to the Dillard Family Trucking business, which Scott ran. Cindy received a check from her insurance company in settlement of a personal injury claim from a traffic accident. Cindy used the settlement proceeds to buy a car and insure it for a year. Scott became furious, and they argued about it all evening. The argument resumed in the morning until Scott went into the shop to work.

At some point during the morning, Cindy started to go from their apartment to the attached shop area used by the family business. Scott met her at the door, turned her around, and pushed her back into the apartment. Cindy fell and twisted her ankle. Scott helped her up and back into the apartment. Cindy called the police later that day to report the assault.

Bench trial. Scott was charged with and convicted of domestic abuse assault with injury in violation of Iowa Code sections 708.1 and 708.2A(2)(b) (1999). The court found:

He said words to the effect that she wasn't going to be in the [work] area of the building and pushed her back into the apartment. As a result of the push, Cynthia fell to the floor and injured her leg

The court concluded:

No doubt, both were tired of being embroiled in the controversy. Scott did not want his employees to see the disagreement and that is understandable. He feared Cynthia would bring the fight to the shop area and that is understandable. He did not want this to occur and he wanted to show Cynthia that he was in charge of the shop. Pushing Cynthia in a situation like this is certainly going to be offensive to her. One witness characterized the action saying Scott, "herded her like a little kid." Such an action, treating an adult woman, "like a little kid," would certainly be offensive. . . . When all the evidence is viewed, the court cannot escape the conclusion that after fighting for over twelve hours, Scott intended his action to be offensive.

Scott filed a motion for new trial, a motion to reconsider, and a motion to reduce the charge to simple assault. The court denied the motions.

Appellate claim. On appeal, Scott contends he was entitled to a judgment of acquittal because the evidence was insufficient to support the court's finding he intended his act to be offensive to Cindy. He argues there is no evidence in the record he intended to cause Cindy pain or injury, to do an act intended to result in harmful or offensive contact, or to place her in immediate physical contact which would be painful, injurious, insulting, or offensive. See Iowa Code § 708.1 (1999). He claims he just wanted to keep her out of the shop so he could get something done.

Analysis. We will affirm the district court's denial of a motion for judgment of acquittal if the defendant's conviction is supported by substantial evidence. *State v. Anderson*, 618 N.W.2d 369, 372 (Iowa 2000). We review the record in the light most favorable to the State, accepting all legitimate inferences that fairly and reasonably may be drawn from the evidence. *State v. Limbrecht*, 600 N.W.2d 316, 317 (Iowa 1999).

In Iowa assault is a general intent crime. *State v. Brown*, 376 N.W.2d 910, 913-14 (Iowa App.1985). "For assault, it is sufficient if the defendant intends to offensively touch someone" *State v. Johnson*, 291 N.W.2d 6, 9 (Iowa 1980). The court can infer one intends the consequences of one's actions. See, e.g., *State v. Chang*, 587 N.W.2d 459, 462 (Iowa 1998). Intent seldom is capable of direct proof, but frequently must be inferred from the circumstances. *State v. Kirchner*, 600 N.W.2d 330, 334 (Iowa App. 1999). "The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not the inference of intent is valid." *State v. Lambert*, 612 N.W.2d 810, 813-14 (Iowa 2000).

Scott and Cindy had been fighting for much of the twelve hours preceding the incident. He screamed at her, broke her cellular phone, ordered her to get rid of her new car, threatened to destroy her car, and "completely flipped out." When Cindy attempted to enter the shop area, Scott refused her entry. He physically turned her around and gave her a two-handed shove back into the apartment. Substantial evidence in the record supports the district court's finding Scott intended offensive contact. We therefore affirm the court's denial of Scott's motion for judgment of acquittal.

AFFIRMED.