

IN THE COURT OF APPEALS OF IOWA

FILED

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CLERK SUPREME COURT

STATE OF IOWA,)
)
Plaintiff-Appellee,)
)
vs.)
)
RICKY LEE CAMPBELL,)
)
Defendant-Appellant.)

287

Filed September 6, 1984

4-241
83-625

Appeal from the Iowa District Court for Polk County--Rodney J. Ryan, Judge.

Defendant appeals from his conviction of willful injury as defined in Iowa Code section 708.4. He asserts that there was not sufficient evidence to support the jury verdict. AFFIRMED.

Charles Harrington, Appellate Defender and Fern S. Shupeck, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General and Rebecca L. Claypool, Assistant Attorney General, for plaintiff-appellee.

Considered by Snell, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

I. Issue Presented On Appeal

The issue presented for our review is whether the State has presented sufficient evidence from which a rational trier of fact could be convinced that the defendant is guilty of the offense charged beyond a reasonable doubt.

II. Required Quantum Of Evidence

Our standard of review on an issue regarding sufficiency of evidence is the "substantial evidence rule." The Iowa Supreme Court has followed this rule as far back as 1919. See State v. Gibson, 189 Iowa 1212, 1233, 174 N.W. 34, 42 (1919)(perhaps the source of the rule, as the case is without supporting authorities). "Substantial evidence" means evidence which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Schwertz, 328 N.W.2d 320, 328 (Iowa 1982); State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

In United States v. Brown, 605 F.2d 389, 393 (8th Cir. 1979), Chief Judge Markey recited what he considered to be a well-stated explanation of the standard of review in cases involving allegations of insufficiency of evidence. He quoted from a prior Eighth Circuit opinion where it was written:

On appellate review of the sufficiency of the evidence, the court must view the evidence in the light most favorable to the verdict rendered. It must accept as established any and all reasonable inferences from the evidence which tend to support the jury's verdict. The evidence need not "exclude every reasonable hypothesis except that of guilt [; it is enough] that it be sufficient to convince the jury beyond a reasonable doubt that the defendant is guilty."

Duras v. United States, 562 F.2d 542, 545-46 (8th Cir. 1977), cert. denied 484 U.S. 959, 98 S. Ct. 490, 54 L. Ed.2d 319 (1977). Evidence is viewed in the light most favorable to the state to determine sufficiency to support a conviction, State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976), and once rendered a jury verdict will

be overturned only if it is contrary to the weight of the evidence. Id. A jury verdict is binding upon the Supreme Court of Iowa if there is substantial evidence to support it. State v. Newman, 326 N.W.2d 788 (Iowa 1982). However, "where the verdict is clearly against the weight of the evidence" a new trial should be granted. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980); State v. Tokatlian, 203 N.W.2d 116, 119 (Iowa 1972); See Iowa R. Criminal P. 23 (2)(b)(6)(1983) (new trial may be granted where verdict is contrary to law or evidence).

III. Sufficiency Of The Evidence

The defendant, Ricky Lee Campbell, was convicted under the Iowa criminal statute which provides that:

Any person who does an act which is not justified and which is intended to cause and does cause serious injury to another commits a class "C" felony.

Iowa Code 708.4 (1981).

The defendant claims that the record made at trial does not contain sufficient, substantial evidence so as could convince a rational trier of fact that he acted with the requisite intent required in order to support a guilty verdict, beyond a reasonable doubt, for the crime of willful injury. See State v. Schmartz, 328 N.W.2d 320, 328 (1982). We believe that a reading of the trial court record proves otherwise.

Except as to the issue of intent, the record is undisputed as to the events which happened the night Tom Krusel was shot.

Terry Lee Maier testified that he was with the defendant the entire evening. The two spent the time driving from place to place, in a green AMC Javelin visiting friends. They consumed at least one quart of beer, a fifth of whiskey, and smoked some marijuana. Around 10:30 or 11:00 p.m., on November 10, 1982 they pulled up along side an automobile at the intersection of 29th Street and Euclid Avenue in Des Moines, Iowa.

Tom Krusel was in a Chevrolet Camero. After the light changed, both cars proceeded through the intersection for approximately 150 feet, where the two lanes merged into one northbound lane. The Camero accelerated to enter the single lane ahead of the defendant's car. As the defendant later attempted to pass the Camero, something apparently hit and cracked the windshield of the Javelin. The defendant was convinced that someone had purposely thrown something from the Camero, however there is no evidence in the record to suggest that the defendant actually saw anything thrown. Campbell followed the Camero to find out where the occupants lived. Their residence was, in fact, right in the defendant's neighborhood. Defendant was intent on getting some "revenge" and obtained a .22 caliber rifle and four rounds of ammunition from Terry Maier, then returned to the Krusel residence.

The defendant passed the home of Tom Krusel's father twice, and fired a round at the Camero each time. On the third pass Tom Krusel approached the car. Krusel was only two feet from the defendant's vehicle and leaning over to look inside when Campbell fired another round, which struck Krusel in the chest causing serious injury.

The defendant's intent to injure Tom Krusel can be presumed from the natural and probable consequences of his actions. Every person is presumed to contemplate the ordinary and natural consequences of their own acts; and statements made at the time of the occurrence to indicate intentions are admissible as part of the res gestae. See State v. Shelledy, 8 Iowa 477, 8 Clarke 477 (1859). But where the declaration and the act are inconsistent, if the act goes beyond the declaration, or contradicts it, the presumption of intention is to be gathered from the actions of the party, upon the plain and obvious principle that the party must be presumed to intend to do that which he voluntarily and willfully does in fact do. Id.

The victim and his father came out of the house after the second shot was fired by the defendant. A reasonable juror could conclude that defendant should have known that residents would come out to investigate. The defendant knew that people had just returned to the house. A reasonable juror could have concluded that defendant intended to lure someone out of the house by shooting at their vehicle for the purpose of shooting them. The record indicates that immediately upon seeing the Javelin coming back toward their house for a third time, Krusel stepped out from behind a row of bare and leafless hedges and headed down the driveway toward the road. He waited there for a little bit as the defendant's car approached slowly, waiting to see who was in the automobile. Krusel was only about two feet from the car when he was shot and seriously injured. By the defendant's own admission he had one to two seconds between the time Krusel approached the car and when the rifle was fired. Clearly the shooting was not the result of a startling event as defendant would have us believe.

Defendant's intent to injure can be assumed from his decision to shoot the gun despite Krusel's proximity. The facts recited above clearly indicate that there was time for the defendant to contemplate his actions. The assertion that the victim's sudden appearance and entry into the line of fire led to his accidental injury is without support in the record. Krusel did not suddenly appear. He had time to walk to the end of the driveway and wait for the car to approach.

The defendant was driving slowly. At the time the gun was fired Krusel was only two feet away from the defendant's car.

A reasonable juror could have concluded that the defendant saw Krusel before he fired the rifle. A rational juror could also have concluded that the defendant had an opportunity to prevent injury to Krusel.

The defendant asserts that poor visibility caused by inadequate lighting contributed to this accident. This assertion is unsupported by the record. Evidence introduced at trial tends to prove that there were lights on in the house. There was a street light on the corner just one-half block away from the Krugel residence. A neighbor, Bob Vangorp, testified that he could see the victim and his father in their driveway as the defendant's car approached. Bob Vangorp was some 100 feet from the scene. Further, both Tom Krusel and his father testified that they could see each other when they were standing in the driveway. Therefore, the defendant's argument that poor lighting prevented him from seeing the victim lacks persuasive appeal.

Ricky Campbell also claims that his own impaired physical and visual reflexes led to the shooting. This is not substantiated by the evidence introduced at trial. There was evidence that the defendant and Terry Maier consumed a great deal of alcohol on November 10, 1982, the night of the accident. However, Mr. Maier testified that Campbell had no trouble driving that evening. Also, the defendant was able to load, aim, fire and reload the .22 caliber rifle on at least three occasions despite its disrepair. The defendant was able to drive away from the victim's residence, go to the Maier home and return with no apparent difficulty despite his admission that he was not able to recognize the house.

IV. Conclusion

We conclude that the conviction of the defendant, Ricky Lee Campbell, should be affirmed. There is sufficient evidence from which a rational trier of fact could find, beyond a reasonable doubt, that the defendant was guilty of the crime of willful injury. See Iowa Code §708.4 (1981). The evidence when read in the light most favorable to the prosecution, is sufficient to support this conviction.

AFFIRMED.