IN THE COURT OF APPEALS OF IOWA

No. 6-034 / 95-786

000367

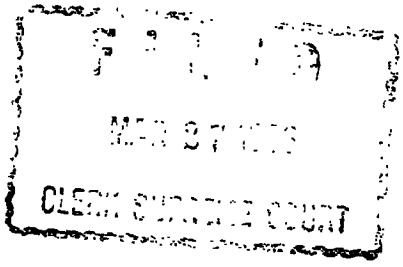
STATE OF IOWA,

Appellee,

vs.

MARCUS DESHANE SMITH,

Appellant.



Appeal from the Iowa District Court for Black Hawk County, James D. Coil, Judge.

Marcus D. Smith appeals from his conviction, following a jury trial, for riot, interference with official acts and failure to disperse in violation of Iowa Code sections 719.1, 723.1, 723.3 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sharon R. Stevens, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and D. Raymond Walton, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., Cady, J., and Peterson, S.J.*

*Senior judge from the 1st judicial district serving on this court by order of the Iowa Supreme Court.

CADY, J.

Marcus Smith appeals his convictions and sentences for riot and failure to disperse. We affirm the conviction and sentences.

Waterloo police officer Carl Carrier was called to the scene of a fight in the early morning hours of October 29, 1994. Upon his arrival, Carrier discovered 150 to 200 persons surrounding two beaten and injured men in the middle of an empty parking lot. Carrier went to the aid of the injured men, as the crowd yelled, shouted profanities, and threw rocks and bottles at them. After other officers and paramedics arrived on the scene, attempts to disperse the crowd began. The crowd ignored the officers, and remained antagonistic toward them. Several officers noticed Smith yelling to other crowd members that the area was a public place and they did not have to leave. He was also heard using profanities and telling officers he did not have to leave the area. Each time officers warned Smith, he would return to the crowd, and continue to yell, use profanities at others, and tell others they did not have to obey the police.

Officers informed Smith he had to disperse or go to jail. Smith replied ". . . try to take [me] to jail." As officers handcuffed Smith, he resisted by kicking and punching officers, causing injury to Carrier. After Smith was placed in police custody, officers eventually dispersed the crowd, using police dogs and large canisters of pepper spray.

Smith was charged with riot, failure to disperse, and interference with official acts. The jury convicted him of all three charges. Smith's motion for judgment of acquittal was denied. The district court sentenced him to a two-year term of imprisonment for the riot charge and two thirty-day terms for the other charges.

Smith appeals his riot and failure to disperse convictions contending insufficient evidence supports the "riot" element portion of both convictions. He argues the crowd became angry and violent only after his arrest and, therefore, the State failed to prove he took part in or failed to disperse from a riot.

I. Standard of Review

Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

II. Insufficient Evidence for Riot and Failure to Disperse Convictions

A defendant commits the crime of riot if he or she willingly joins in a riot or remains part of a riot, knowing or having reasonable grounds to believe it is a riot.

Iowa Code § 723.1 (1993); *Williams v. Osmundson*, 281 N.W.2d 622, 624 (Iowa 1979). Similarly, a defendant fails to disperse when a peace officer orders the participants of a riot or unlawful assembly to disperse, and a person within hearing distance of the order refuses to obey. Iowa Code § 723.3 (Iowa 1993). A riot is defined as

> . . . three or more persons assembled together in a violent manner to the disturbance of others, and with any use of unlawful force or violence by them or any of them against another person, or causing property damage.

Iowa Code § 723.1 (1993).

Officer Carrier testified that while he awaited the arrival of additional officers and paramedics, the crowd of at least 150 persons, assembled together, yelled, shouted obscenities, and threw rocks and bottles in his direction. The crowd continued their actions after medical and police personnel arrived on the scene, causing a difficulties in administering aid to the injured men. Testimony indicated the injured men were attacked by several members of the crowd assembled together, resulting in severe physical injury.

Clearly, the evidence a large group assembled together in a violent manner to the disturbance of the injured men, police and the paramedic, with the resulting violence causing injury to men, is sufficient to support the "riot" element of the riot and failure to disperse convictions. Moreover, evidence shows Smith remained a part

of the riot, knowing it to be a riot.[1] Smith continued to shout profanities toward officers and encouraged persons to ignore the commands of police officers despite the repeated warnings given to him. Smith acknowledged hearing the officer's commands, yet failed to heed them or disperse.

We find sufficient evidence to support Smith's riot and failure to disperse convictions. The district court committed no error in denying Smith's motion for judgment of acquittal.

AFFIRMED.

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[1] The State presented evidence of Smith's prior riot conviction to show his knowledge of what constituted a riot under Iowa R. Evid. 404(b). This evidence, coupled with the nature of the crowd's activities and violent behavior toward the men, police officers, and medical personnel, constitutes sufficient evidence from which a jury could find Smith knew or reasonably should have known he was involved in a riot.