

IN THE COURT OF APPEALS OF IOWA

FILED

JAN 27 1988

CLERK SUPREME COURT

STATE OF IOWA,

)

Plaintiff-Appellee,

)

vs.

)

Filed January 27, 1988

ANTHONY N. CARROLL,

)

7-336
86-1558

215

Defendant-Appellant.

)

Appeal from the Iowa District Court for Dubuque County (No. 16121),
Thomas H. Nelson, Judge.

Defendant appeals from his conviction and sentence for going armed with intent, contending that there was insufficient evidence to find that he intended to use the knife in the manner proscribed by Iowa Code section 708.8. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and B. John Burns, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General; Bruce Kempkes, Assistant Attorney General; and Ralph P. Potter, Assistant County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

PER CURIAM

On June 20, 1986, the appellant, Anthony N. Carroll, was charged by trial information with going armed with intent. See Iowa Code § 708.8 (1985). Trial commenced on August 25, 1986, and, one day later, the jury found Carroll guilty as charged. Carroll's motion for new trial was denied and, on October 9, 1986, he was sentenced to an indeterminate term of incarceration not to exceed five years. This appeal followed. Our review is limited to the correction of legal errors. Iowa R. App. P. 4.

Carroll poses a single issue for our review. He contends the evidence produced at trial was insufficient as a matter of law to support the jury's verdict. The principles which guide our review of the sufficiency of the evidence were outlined in State v. McFadden, 320 N.W.2d 608, 614 (Iowa 1982), as follows:

[T]he evidence is viewed in the light most favorable to the State; that all of the evidence must be considered, and not just that which supports the verdict; that the verdict must be upheld if supported by substantial evidence; and that substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt.

In addition, we allow the State all legitimate inferences and presumptions which may fairly and reasonably be deduced from the record evidence. State v. Blair, 347 N.W.2d 416, 419 (Iowa 1984). Direct and circumstantial evidence are equally probative in our analysis. State v. Duncan, 312 N.W.2d 519, 522 (Iowa 1981); see State v. O'Connell, 275 N.W.2d 197, 204-05 (Iowa 1979).

The charge against Carroll arose out of events occurring during the night of June 13-14, 1986. During the previous afternoon, Carroll had been drinking heavily as a result of a distressed relationship with his girlfriend, Jackie Johnson. Carroll spent a good deal of the afternoon drinking with Jackie's brother, Robert Johnson. That night Robert was awakened by knocking at the door of his home and found Carroll crawling in through a bathroom window. Carroll grabbed

a butcher's knife and began talking about committing suicide. The police were called and, upon arrival, confronted Carroll. The "suicidal" talk apparently shifted focus at this point with Carroll now attempting, at times, to force the policemen to shoot him, telling them at one point to "go ahead and shoot . . . him if [they] had the guts." Attempts to persuade Carroll to drop the knife failed. Carroll, standing at the top of a staircase, warned the policemen that the "first person that comes up these steps is getting it." An officer started up the stairs while Carroll was preoccupied with another tenant of Johnson's apartment building; Carroll noticed the officer and started towards him with the knife upraised; the officer shot Carroll.

Iowa Code section 708.8 (1985), under which Carroll was charged, provides as follows:

A person who goes armed with any dangerous weapon with the intent to use without justification such weapon against the person of another commits a class "D" felony.

Carroll's argument that the evidence is legally insufficient to support a verdict under this section has two premises: 1) insufficient evidence tends to show that he intended to use the weapon against the person of another; and 2) insufficient evidence tended to demonstrate that he intended to "use" the weapon within section 708.8's meaning of that term.

Initially, the State maintains Carroll's motion for acquittal was insufficient to preserve his current claim for appeal. Generally, when determining the sufficiency of an objection to preserve error, the test is whether the objection taken alerted the trial court to the error which is urged on appeal. Goetzman v. Wichern, 327 N.W.2d 742, 745 (Iowa 1982); State v. Nimmo, 247 N.W.2d 228, 230-31 (Iowa 1976); see State v. Lewis, 242 N.W.2d 711, 716 (Iowa 1976). The purpose underlying this requirement is that the trial judge be afforded an opportunity to catch exactly what is in counsel's mind and thereby determine whether

the objection possesses merit. Goetzman, 327 N.W.2d at 745. These principles apply as well to motions such as Carroll's. See State v. Rosewall, 239 N.W.2d 171, 173 (Iowa 1976) ("The grounds urged in the motions for directed verdict set the limits for our review of any action by a trial court in overruling them.") We pass on a determination of the State's preservation argument and, granting Carroll the benefit of the doubt, address the merits of his appeal.

Carroll maintains insufficient evidence was adduced tending to demonstrate the requisite intent to use the weapon against another. The record contains, however, testimony that Carroll had threatened the policemen and approached them with the knife in an upraised position. We think this sufficient to generate a jury issue on Carroll's intent to use the knife against another. Similarly, we disagree with Carroll's contention that no evidence tended to show his intent to "use" the weapon within the meaning accorded that term by the statute. This, he argues, is because the "use" intended by the statute does not include the use of a weapon in an attempt at goading another into shooting the user. We disagree. First, we note the record contains ample evidence that Carroll used the weapon in a manner which threatened the policemen's personal physical safety. Such evidence is alone sufficient to bring his actions within the statute. In addition, and assuming that Carroll was motivated by suicidal impulses, we do not think such impulses sufficient to render the statute inapplicable. As the present fact pattern may well prove, these impulses are not mutually exclusive of the intent to use the weapon unjustifiably against another. If Carroll intended to use the weapon against the policemen until they had no alternative but to shoot him, as the jury may well have believed from the present record, such would be sufficient to satisfy the statute.

The district court is affirmed.

AFFIRMED.