FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)

Plaintiff-Appellee,) Filed January 24, 1984 130

vs.)

DENNIS LYNN CHAPLIN and) 3-419
LAWRENCE THOMAS GLADSON,) 83-217

Defendants-Appellants.)

Appeal from the Iowa District Court for Warren County - Van Wifvat, Judge.

The codefendants appeal their convictions of: (a) extortion, a violation of Iowa Code section 711.4(1) (1981); and (b) assault while participating in a felony, a violation of Iowa Code section 708.3 (1981). They assert that: (1) there was insufficient evidence to prove the intent elements of extortion; and (2) there was sufficient evidence to prove the statutory defense to extortion regarding defendants' reasonable belief that they could make threats in order to recover a debt to which they had a good faith claim. AFFIRMED.

Linda Del Gallo, Assistant Appellate Defender, for defendants-appellants.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

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

Defendants Dennis Lynn Chaplin and Lawrence Thomas Gladson were jointly charged by information with second degree kidnapping, second degree robbery, first degree theft, extortion, and assault while participating in a felony, all arising out of defendants' apparent attempt to collect a bad debt in a drug deal. The matter was tried to a jury. The jury subsequently found defendants guilty of false imprisonment, assault, fifth degree theft, extortion, and assault while participating in a felony. Trial court subsequently sentenced defendants to one year in jail for fifth degree theft, an indeterminate five-year term of imprisonment for extortion, and an indeterminate five-year term of imprisonment for assault while participating in a felony. All sentences were ordered to run concurrently. The court did not impose judgment and sentence on the assault verdict on the ground that it merged with defendants' conviction of assault while participating in a felony.

Testimony and evidence at trial indicated that the victim, Lyle Keeney, obtained from defendants in Indianola $490 with which to purchase a pound of marijuana for them. Instead, Keeney went on vacation for approximately three weeks and spent some of the money. After he returned, defendant Gladson found Keeney at approximately 3:00 a.m. walking in downtown Indianola after he had spent the day consuming beer, marijuana and LSD. Gladson asked Keeney about the money and requested that Keeney come with him, which Keeney did, allegedly out of fear for his own safety. Gladson took Keeney to defendants' apartment where the defendants punched him several times with their fists after inquiring about their money. Keeney claimed, and the defendants denied, that the defendants threatened to kill him.

It was eventually decided that Keeney should obtain $750 from his sister to repay the defendants. At approximately 8:00 a.m., Keeney and defendant Gladson telephoned Keeney's sister from a nearby pay phone. Keeney told his sister that he needed $750. Keeney and his sister claimed, and defendant Gladson denied,

that Gladson told Keeney's sister that Keeney would be sent to her in pieces if she did not get the money. A time and place was set up for delivering the money to defendants.

Keeney's sister called the sheriff's department, subsequently obtained $750 from a local bank, and proceeded to the parking lot of a local store where she gave the money to defendant Chaplin. Law enforcement authorities then arrested defendants.

Following the jury's verdict, defendants filed a motion for new trial and arrest of judgment asserting, inter alia, that the evidence was insufficient to support the jury verdicts regarding extortion and assault while participating in a felony. The trial court overruled the motion and sentenced defendants.

Defendants challenge the sufficiency of the evidence for either the intent element of assault or the felony element of assault while participating in a felony. The standard of review in challenging the sufficiency of the evidence is well established. See State v. Welton, 300 N.W.2d 157, 159-60 (Iowa 1981); State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). We will uphold a verdict if there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981); State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). Keeping in mind the principle that the credibility of witnesses and the weight to be given their testimony is a function of the factfinder, Robinson at 341, we find "such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt." Id. at 339.

The Iowa Code provides that a person commits extortion when he threatens to inflict physical injury on another person with the purpose of obtaining for himself or another anything of value. Iowa Code § 711.4(1) (1981). Extortion is a felony. Any person who commits an assault, which includes doing any act intended to place another in fear of injurious or offensive immediate physical contact, while participating in a felony, is guilty of assault while participating in a felony.

Iowa Code §§ 708.1(2), 708.3 (1981).

Although the testimony of the witnesses is contradictory, the jury was capable of determining the weight to be given the evidence. Assuming the jury believed the victim's testimony, there was sufficient evidence that the defendants threatened the victim with physical injury to obtain money, thus committing extortion, and that they placed the defendant in fear of injury while committing the extortion, thus committing assault while participating in a felony.

Although it may be true that there is sufficient evidence to support defendants' defense that they cannot be guilty of extortion because the victim stole the money from them and they believed they were entitled to retrieve it, the State correctly argues that threats of violence to compel payment of stolen money may constitute malicious threats even though the money or property is stolen. See Hall v. Montgomery Ward & Co., 252 N.W.2d 421, 425 (Iowa 1977). The jury evidently found defendants took part in maliciously threatening the victim to obtain money, despite their claims that they believed the money was rightfully theirs. The jury's conclusion is based on substantial evidence.

AFFIRMED.