IN THE COURT OF APPEALS OF IOWA

No. 1999-556 (9-817) / 99-0072
Filed April 12, 2000

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

v.

SHAWN WASHINGTON,

Defendant-Appellant.

Appeal form the Iowa District Court for Black Hawk County, K. D. Briner, Judge.

Defendant-Appellant, Shawn Washington, appeals his conviction for assaults imposed following a jury trial. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Thomas J. Ferguson, County Attorney, Linda Myers and Douglas Eichholz, Assistant County Attorneys, for appellee.

Considered by Huitink and Hecht, J.J., and Honsell, S.J.*

Senior judge assigned by order pursuant to Iowa Code Section 602.9206 (1999).

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HONSELL, S.J.

On December 14, 1997 Jennifer Thornton, who lived with Shawn Washington at the time, called her father and claimed that Mr. Washington had beaten her. After going to her father's home Ms. Thornton was taken the police department where she told the police Mr. Washington had assaulted her. Officers observed that Ms. Thornton had scrapes and bruises and seemed upset and scared. The police accompanied Ms. Thornton to the residence shared with Mr. Washington so she could get her belongings. Later that evening Ms. Thornton was at her father's house with her mother, stepfather, and two children. Mr. Washington called to talk to her, but her father refused to let him. Shortly thereafter, they heard pounding on the front door and something being thrown against the window. Mr. Thornton's father and stepfather went outside and told Mr. Washington and those with him to leave. Her mother also went outside. All three claim they were beaten by Mr. Washington and those accompanying him. Ms. Thornton's father suffered head and facial injuries requiring treatment by a plastic surgeon. Her stepfather suffered a fractured nose and a broken jaw that required insertion of a metal plate.

The State charged Mr. Washington and others with multiple counts of assault. Mr. Washington filed notice of his intent to rely on the defenses of self-defense or defense of another. At trial, Jennifer Thornton testified she had attacked Mr. Washington at their residence because she was angry about his relationship with another woman. She claimed her scrapes and bruises really occurred when she fell down the stairs while attempting to push him down them. She testified she told her mother and stepfather Mr. Washington beat her

because she thought they would not otherwise have allowed her to stay with them. Concerning the fight at her father's home, Ms. Thornton testified she saw her stepfather challenging Washington to fight. One of Mr. Washington's codefendants testified that Mr. Washington did not throw the first punch.

At the close of the State's evidence, counsel for Mr. Washington moved for a judgment of acquittal based on insufficient evidence. The court denied the motion, finding the State had generated a jury question. The jury found Mr. Washington guilty of domestic abuse assault causing bodily injury against Ms. Thornton based on the first incident, assault with intent to inflict serious injury against Ms. Thornton's stepfather, assault against her father, and assault causing bodily injury against him, and assault against her mother, all based on the second incident.

Mr. Washington claims the trial court should have granted his motion for judgment of acquittal because the evidence was insufficient to prove the State's case. He argues the evidence does not create anything more than speculation, suspicion, or conjecture. *See State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992).

I. We will uphold the district court's denial of a motion for judgment of acquittal based on the insufficiency of the evidence if there is substantial evidence in the record to support the defendant's convictions. *See State v. McPhillips*, 580 N.W.2d 748, 752 (Iowa 1998). "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Mitchell*, 568 N.W.2d 493, 502 (Iowa 1997). In determining whether the evidence is substantial, we view the evidence "in the light most

favorable to the State and . . . all reasonable inferences that may fairly be drawn from the evidence" are accorded to it. *McPhillips*, 580 N.W.2d at 753.

We consider all the evidence, not just the evidence supporting the verdict. *See State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A verdict can rest on circumstantial evidence alone. *State v. Torres*, 506 N.W.2d 470, 472 (Iowa App.1993). However, "[t]he evidence must at least raise a fair inference of guilt as to each essential element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient." *State v. Kirchner*, 600 N.W.2d 330, 334 (Iowa App. 1999). However, it is for the jury, not us, to judge the credibility of the witnesses and weigh the evidence. *See McPhillips*, 580 N.W.2d at 753. Therefore, unless the record lacks substantial evidence, we are bound by the jury's verdict. *State v. Laffey*, 600 N.W.2d 57, 59 (Iowa 1999)

II. Self-defense as a defense is two-pronged: an admission that a proscribed act was done, and the establishment of an exculpatory excuse that takes the act out of the criminal law. *State v. Jeffries*, 313 N.W.2d 508, 509 (Iowa 1981); *see* Iowa Code § 704.3. The burden to disprove self-defense rests with the State. *State v. Ceaser*, 585 N.W.2d 192, 194 (Iowa 1998). A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force. Iowa Code § 704.3. To justify a claim of self defense (1) the one making the claim must not be the aggressor in provoking or continuing the combat that resulted in an assault upon his adversary; (2) he must retreat as far

as reasonable and safe before making the assault, except in his home or place of business; (3) he must actually and honestly believe he is in imminent danger of death, great bodily harm, or some other felony; and (4) he must have reasonable grounds for such belief. *State v. Washington*, 160 N.W.2d 337, 340 (Iowa 1968)

Concerning the domestic abuse assault, there was evidence Ms. Thornton said Mr. Washington assaulted her. She testified at trial she fell down the stairs when she tried to push him down. Mr. Washington's claim of self-defense is an admission he committed the domestic abuse assault. A reasonable fact finder could find that pushing someone down a flight of stairs in response to an attack is not reasonable force. We conclude there was enough evidence to submit the question to the jury. We also conclude substantial evidence in the record supports the jury's verdict. Evidence is not insubstantial merely because it would have supported contrary inferences. *State v. Turk*, 595 N.W.2d 819, 821 (Iowa App. 1999).

Concerning the group altercation in the evening, Mr. Washington's argument revolves around self-defense. He cites evidence that others started the fight and/or made threats or used racial epithets. Mr. Washington does not argue any of the other elements of self-defense. The evidence the State presented at trial could support a finding the force used was unreasonable. *See* Iowa Code § 704.1 (defining reasonable force in part as "that force *and no more* which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss.") (emphasis added). Since the fight took place outside and not at Washington's home, the evidence could support a finding he had available alternatives, such as retreat. *See Washington*, 160 N.W.2d at 340.

Substantial evidence in the record supports the jury's verdict. Because there was sufficient evidence concerning both incidents to submit the case to the jury, and because substantial evidence supports the jury's verdicts concerning both incidents, the court did not err in denying Washington's motions for judgment of acquittal.

AFFIRMED.