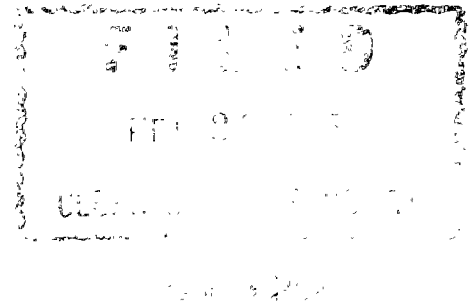
IN THE COURT OF APPEALS OF IOWA

No. 5-021 / 94-0090



STATE OF IOWA,

Plaintiff-Appellee,

vs.

MANUEL GARCIA RAMIREZ,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, Mary J. Sokolovske, District Associate Judge.

Manuel Ramirez appeals from his conviction, following a bench trial, of aggravated assault in violation of Iowa Code sections 708.1(3) and 708.2(3) (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, Thomas S. Mullin, County Attorney, and John C. Nelson, Assistant County Attorney, for appellee.

Considered by Donielson, C.J., and Sackett and Habhab, JJ.

SACKETT, J.

Defendant-appellant Manuel Ramirez appeals his conviction of aggravated assault in violation of Iowa Code sections 708.1(3) and 708.2(3) (1993).[1] Defendant waived a jury trial and the case was tried to the court. Defendant contends the State failed to introduce sufficient evidence to support the guilty verdict. We affirm.

The scope of our review on a defendant's appeal from a criminal conviction is the same whether the court or a jury is the fact finder. State v. LaPointe, 418 N.W.2d 49, 51 (Iowa 1988); State v. Hall, 287 N.W.2d 564, 565 (Iowa 1980). In reviewing the finding of guilt, this court views the evidence in a light most favorable to the State. LaPointe, 418 N.W.2d at 51. The court's finding of guilt is binding upon this court unless there is not substantial evidence in the record to support it or such finding is clearly against the weight of the evidence. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. Id. It is sufficient

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1. The statutes under which defendant was charged provide, in pertinent part:

A person commits an assault when, without justification, the person does ... display in a threatening manner any dangerous weapon toward another.

Iowa Code § 708.1(3) (1993), and

A person who commits an assault, as defined in section 708.1, and uses or displays a dangerous weapon in connection with the assault, is guilty of an aggravated misdemeanor.

Iowa Code § 708.2(3) (1993).

to raise a fair inference of guilt as to each essential element of the crime, although, the evidence must do more than raise suspicion, speculation, or conjecture. State v. Williams, 179 N.W.2d 756, 758 (Iowa 1970).

We now turn to the offense charged and the proof required for conviction. Defendant was convicted of assaulting Tammi Matt. Tammi testified defendant was her boyfriend. When the events forming the charge occurred, she and defendant were staying in a room at the Holiday Inn in Sioux City. Also staying in the room were Laurie White and Raul Magana. The assault charge arose following a disagreement between defendant and Tammi over defendant's relationship with another woman.

There was substantial evidence supporting the trial court decision. Tammi testified defendant grabbed her hair, pulled her across the room, held her face into a mirror and said he was going to kill her. She said he then took a bottle, like a beer bottle, and he threw it over the counter three times and then he broke it and held it to her throat. Tammi said she eventually got away but was afraid she might be killed.

Laurie testified she saw defendant grab Tammi and heard her yell he was killing her. She also testified she saw a bottle drop from the defendant's hand. Laurie also testified she had had a substantial amount to drink at the time.

Defendant advances, while there was a struggle, there is no indication on the record defendant attempted to use or display the bottle in connection with the struggle, rather, he broke the bottle to take out his frustrations.

Defendant, while testifying Tammi's behavior made him angry, said he only hit the bottle a couple of times on an edge in the bathroom and he denies ever trying to threaten Tammi with the bottle. He also testified he denied Tammi ever yelled he was trying to kill her.

Although defendant's testimony may contradict Tammi's and the testimony of other witnesses may not clearly support it, that does not mean, as defendant argues, there was not substantial evidence to support a finding he was guilty beyond a reasonable doubt. LaPointe, 418 N.W.2d at 51.

Defendant also contends the verdict is not supported by the evidence because it is not Tammi's apprehension or the nature of the act that is a controlling issue, rather, it is defendant's intended result.

In State v. Spears, 312 N.W.2d 79, 81 (Iowa App. 1981), this court quoted Yeager in explaining section 708.1, The Code:

> The act is described with reference to the intended results, rather than by describing the nature of the act itself. The definition is not necessarily limited to those acts which will directly lead to the stated results, but may include acts which would indirectly cause the described pain, injury, or physical contact, if

> that were the intended consequence. It is not required that the battery actually result, but only that it be intended. The actor must have the apparent ability to execute the act, but it is not stated to whom this must be apparent. Since this subsection focuses on the actor's intent, and not on the victim's apprehension, the probable meaning is that it must be so apparent to him.

J. Yeager & R. Carlson, 4 Iowa Practice, Criminal Law and Procedure, § 173 (West 1979).

Tammi testified defendant said he would kill her. This is clearly substantial evidence to support beyond a reasonable doubt that defendant intended his act to cause pain, injury, or physical contact. There was sufficient evidence for the trial court to have found beyond a reasonable doubt defendant intended an assault with a deadly weapon and he carried out this intent by holding a broken bottle to Tammi's throat and threatening to kill her. Although we review this evidence in the light most favorable to the State, we do consider all of the evidence to determine if there is sufficient evidence to support the verdict of guilty. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). In so doing, we find the verdict had ample support in the record, and the trial court was correct in overruling defendant's motion for a directed verdict.

We affirm.

AFFIRMED.