

FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Appellee,

)

Filed October 19, 1978

vs.

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JOSEPH NEAL PINECAR,

)

60465

Appellant.

)

Appeal from Polk District Court - Ray Hanrahan, Judge.

Defendant appeals assault with intent to inflict great bodily injury conviction claiming insufficiency of evidence. - Affirmed.

Larry Krpan, Des Moines, for Appellant.

Richard C. Turner, Attorney General of Iowa, Ray Sullins, Assistant Attorney General, and Dan L. Johnston, Polk County Attorney, for Appellee.

Submitted to Danielsor, Acting C.J., and Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant Joseph Neal Pinegar appeals his conviction for assault with intent to inflict great bodily injury, a violation of § 694.6, The Code, 1975. We affirm.

Defendant first argues that trial court committed reversible error by refusing to grant his motion for a directed verdict on the grounds that the State failed to present substantial evidence of specific intent to commit the crime charged. When sufficiency of the evidence is challenged, we view the evidence in the light most favorable to the State, and we accept all reasonable inferences which tend to support the jury's verdict. Furthermore, we need only consider the evidence which supports the verdict whether contradicted or not. *State v. Bell*, 223 N.W.2d 181 (Iowa 1974). We recognize that the "specific intent" necessary to prove the commission of the instant crime is seldom shown by direct evidence. *State v. Deeklever*, 172 N.W.2d 109 (Iowa 1972). After considering all of the evidence in support of the verdict, we find ample proof of defendant's intent to inflict great bodily injury on George William Heiss.

There was evidence that defendant pointed and fired a gun at least twice into a roomful of people which included George Heiss, his wife and their infant niece. Witnesses testified that defendant stopped outside of George Heiss' apartment, yelled "freeze", and then fired a shot in the general direction of where Mr. Heiss was sitting. Evidence also indicated that in the morning of the day the shooting occurred, defendant was involved in an altercation with Kurt Heiss, George's brother, and with a friend of Kurt. The record is replete with references to ill feelings between the Heiss brothers and defendant and his brother, George Pinegar. We hold there was sufficient evidence to generate a jury question on the issue of defendant's specific intent.

Defendant also contends that trial court erred in denying his motion for a directed verdict on the grounds that there was insufficient evidence to show that defendant did not act in self defense. What we have said above concerning our review of a ruling on motion for directed verdict applies equally here.

Since defendant raised the issue of self defense, it was incumbent upon the State to prove the nonexistence of that defense beyond a reasonable doubt. *State*

v. Beyer, 258 N.W.2d 353, 356 (Iowa 1977). The elements of self defense are well established: (1) defendant must not be the aggressor; (2) he must retreat as far as is reasonable and safe, except in his home or place of business; (3) he must honestly believe he is in imminent danger of death or great bodily injury; (4) he must have reasonable grounds for such a belief. State v. Badgett, 167 N.W.2d 680, 683 (Iowa 1969). If there was substantial evidence on which a jury could reasonably have found any of the above elements were lacking, then trial court was correct in overruling defendant's motion for directed verdict. State v. Cruse, 228 N.W.2d 28, 30 (Iowa 1975).

There was evidence at trial that defendant fired the first shot without provocation into the Heiss apartment. This would support a finding by the jury that defendant was the aggressor. We conclude, therefore, that trial court properly overruled defendant's motion for directed verdict.

AFFIRMED.