

FILED

FEB 26 1980

161

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA

)

Plaintiff-Appellee,

)

Filed February 26, 1980

vs.

)

RICKY LYNN FENTON,

)

369

53460

Defendant-Appellant.

)

Appeal from Wayne District Court - A. V. Hass, Judge.

Defendant appeals conviction for assault with intent to inflict a serious injury in violation of section 708.2(1), supplement to the Code 1977, alleging trial court erred in overruling his motion for judgment of acquittal, and that the evidence was insufficient to support a guilty verdict. - Affirmed.

James Q. Blomgren, of Williams, Clements & Blomgren, Oskaloosa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, Lona Hansen, Assistant Attorney General, and John W. Birdwell, Wayne County Attorney, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from his conviction for assault with intent to inflict a serious injury in violation of section 708.2(1), supplement to the Code 1977. Defendant alleges the trial court erred in overruling his motion for a directed verdict of acquittal, and that the jury's verdict of guilty was contrary to the law and contrary to the evidence submitted in this case. We affirm.

The record shows that defendant and his friend were driving around town when defendant spotted the victim, who at the time was engaged to defendant, driving around with some of her friends. The victim and a passenger in her car testified that defendant pulled over in front of them and blocked their forward progress on the road. Their testimony revealed that defendant then got out of his car, ran over to the victim's car, grabbed the victim by the hair and pulled her out of the car through the car window. He then picked her up and shook her, threw her across the road into the ditch, went over to where she was lying and kicked her several times. Next, he picked her up and threw her against her car and hit her several times, threw her back through the open car window into her car, and hit her several more times while she was in the car before he finally left. Defendant and his friend testified that defendant grabbed the victim by her sweatshirt and pulled her out of the car through the car window, shook her, pushed her down in the ditch, then pushed her toward her car, and left. All eyewitness testimony revealed that defendant appeared to be quite angry with the victim. The victim suffered superficial bruises and abrasions, pain in the neck region and the left ear, and extreme nervousness. The doctor who examined her testified that being kicked in the kidney area could cause severe kidney damage, and that being pulled by the hair through a car window could cause a fractured neck, paralysis, or death.

When considering the propriety of a trial court's ruling on a directed verdict, we view the evidence in the light most favorable to the State, whether or not it is contradicted, and every reasonable inference that can be deduced from the evidence must be considered to support and supplement that evidence. State v. Howard, 284 N.W.2d 201, 203 (Iowa 1979); State v. Jones, 281 N.W.2d 13, 18 (Iowa 1979). We only need to consider that evidence that would support the judgment. Howard, 284 N.W.2d at 203. If there is any substantial evidence tending to support the charge, the case should be

submitted to the jury. Id.; State v. Dykers, 239 N.W.2d 255, 359 (Iowa 1976).

Applying these principles to the record in the case at bar, we conclude that the trial court properly overruled defendant's motion for a directed verdict of acquittal and submitted the case to the jury. Defendant contends that the evidence did not show the requisite specific intent to inflict a serious injury. Serious injury is defined as a "disabling mental illness, or bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." § 702.12, supplement to the Code 1977. It was not necessary to establish that defendant actually inflicted such an injury, but only that he intended to do so. See State v. Bell, 223 N.W.2d 181, 184 (Iowa 1974). Such a showing is seldom capable of direct proof, and ordinarily is established through a consideration of all the circumstances attending the assault, along with all the relevant facts and circumstances disclosed by the evidence. See id., State v. Decklever, 172 N.W.2d 109, 110 (Iowa 1969). Considering only the evidence that would support the judgment, and every reasonable inference that can be deduced from that evidence to support and supplement it in the light most favorable to the State, we conclude that there was substantial evidence to support the charge of assault with intent to inflict a serious injury, and that the case was properly submitted to the jury.

Defendant also contends that the jury verdict of guilty was contrary to the law and contrary to the evidence submitted in this case. The proper remedy for such a contention would have been in a motion for a new trial on those grounds. State v. Sims, 239 N.W.2d 550, 554 (Iowa 1976). Nevertheless, we consider it in light of the principle that a finding of guilt by the trier of fact is binding on the appellate court unless it is found to be without substantial support in the record or is clearly against the weight thereof, State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978), and conclude that under this record, defendant's contention is without merit.

AFFIRMED.