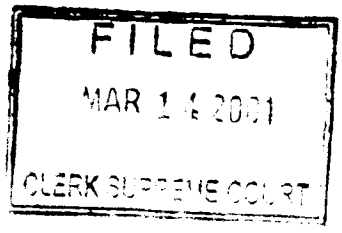
IN THE COURT OF APPEALS OF IOWA

No. 1-045 / 00-1062
Filed March 14, 2001



STATE OF IOWA,
Appellee,

vs.

CURTIS LEE RILEY,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Jeffrey Harris, Judge.

Defendant appeals following his conviction for assault while using or displaying a dangerous weapon. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and D. Raymond Walton, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Vogel and Mahan, JJ.

VOGEL, J.

Defendant, Curtis Riley, appeals his conviction for assault while using or displaying a dangerous weapon, in violation of Iowa Code section 708.2(3) (1999). He claims the district court should have granted his motion for judgment of acquittal based on the insufficiency of the evidence to support his conviction. We affirm.

In the evening on October 16, 1999, Johnny Caldwell was working on a vehicle in front of his house. He heard loud music and noticed a blue Ford Bronco coming slowly down the street. As the Bronco approached, he saw Riley was the driver. He did not see anyone in the passenger seat. After the Bronco passed Caldwell, four or five shots were fired from the passenger side of the vehicle. Caldwell ran into the house and his mother called the police.

An off-duty police officer, Larry Coffin, was in the area. He saw a blue Bronco drive by, and a few minutes later heard the sound of gunshots. He testified the driver looked similar to Riley, but he could not positively identify the driver. Shortly after hearing about the shooting incident, officer Jeremy Pohl drove by Riley's residence and saw a blue Bronco parked in front of the house. Officers found five spent shells in the street in front of Caldwell's house. There was evidence Caldwell belonged to a gang, and Riley had made disparaging remarks about that gang. Shakay Bell, a friend to both men, testified there were some problems between Riley and Campbell.

At the trial, Riley's step-father, Herbert Speller, testified he had been driving the Bronco that evening, and he had not been near Caldwell's house.

Riley's cousin, DeCarlos Hughes, testified he had seen Speller with the Bronco at a convenience store that evening. In rebuttal, Officer Coffin testified the person he had seen driving the Bronco was not Speller.

The district court denied Riley's motion for judgment of acquittal. The jury was instructed on the elements of the crime and on aiding and abetting and found Riley guilty of assault while using or displaying a dangerous weapon.[1] Riley was sentenced to a term of imprisonment not to exceed two years. He appeals, claiming there was insufficient evidence in the record to support his conviction.

We review challenges to the sufficiency of the evidence for errors at law. *State v. Rohm,* 609 N.W.2d 504, 509 (Iowa 2000). We will uphold a finding of guilt if substantial evidence supports the verdict. *Id.* Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *Id.* We view the evidence in the light most favorable to the State, but consider all of the evidence, not just the evidence which supports the verdict. *State v. Jacobs,* 607 N.W.2d 679, 682 (Iowa 2000). Circumstantial and direct evidence are equally probative. *State v. Boley,* 456 N.W.2d 674, 679 (Iowa 1990).

We find there is sufficient evidence in the record to support Riley's conviction. Caldwell identified Riley as the person driving the Bronco from which shots were fired. Although he did not see Riley actually fire the shots, he saw no

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[1] The elements of this crime are found in section 708.2(3), which provides, "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."

one else in the Bronco. Spent shells were found in front of Caldwell's house, showing shots had been fired there. An off-duty police officer saw a man similar to Riley driving a blue Bronco in the area shortly before he heard the sound of gunshots. There was evidence of problems between Riley and Caldwell.

Although there is conflicting evidence in the record as to whether Riley was driving the Bronco on the evening in question, the jury was in the best position to determine credibility. *See State v. Knox,* 536 N.W.2d 735, 742 (Iowa 1995) (citing *State v. Hulbert,* 481 N.W.2d 329, 332 (Iowa 1992)). Generally, it is for the jury and not the court to decide questions of fact and determine the credibility of witnesses. *State v. Gray,* 216 N.W.2d 306, 308 (Iowa 1984). The jury may give the evidence the weight it should receive. *State v. Simpson,* 528 N.W.2d 627, 632 (Iowa 1995). By finding Riley guilty, the jury must have found Speller and Hughes were not credible witnesses.

There is substantial evidence in the record to show Riley was driving the vehicle from which shots were fired. Even if Riley did not shoot the gun, there is substantial evidence to show he aided and abetted someone who did shoot the gun, by driving the vehicle from which the shots were fired. An aider and abetter is as culpable for a crime as the principal. *State v. Lewis,* 514 N.W.2d 63, 66 (Iowa 1994). There is sufficient evidence to show Riley committed assault while using or displaying a dangerous weapon.

We affirm Riley's conviction and sentence.

AFFIRMED.