

IN THE COURT OF APPEALS OF IOWA

No. 6-568 94-2089

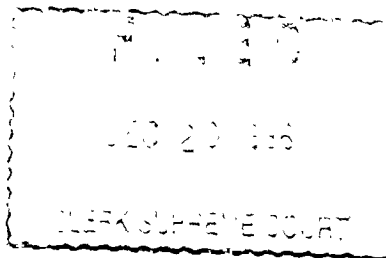
STATE OF IOWA,

Plaintiff-Appellee,

vs.

GEORGE WOODS, JR. II,

Defendant-Appellant.



Appeal from the Iowa District Court for Polk County, Rodney J. Ryan, Judge.

Defendant was convicted of going armed with intent in violation of Iowa Code section 708.8 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Sarah E. Hennesy, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, John P. Sarcone, County Attorney, and Frank Severino, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Cady and Huitink, JJ.

HUITINK, J.

Defendant George Woods, Jr., II appeals from his conviction of going armed with intent, a class “D” felony, in violation of Iowa Code section 708.8 (1993). We affirm.

The charge against Woods arose out of the following events: Woods and a long-time acquaintance, Jimmy Seals, became involved in an argument on June 19, 1994. The two men had been playing dominoes and drinking beer on Seals’ porch. Seals testified Woods suddenly jumped up and held a knife to his throat. He also stated that Woods slapped him knocking his cap off his head. Carla Dixon, a next-door neighbor, witnessed Woods holding the knife to Seals’ throat and had her mother notify the police. Officer John Wade testified that when he arrived on the scene, he observed Woods on Seals’ porch removing a knife from his waistband. As the police officers approached, Woods attempted to hide the knife behind the porch furniture. The officers retrieved a seven-inch knife from behind the furniture.

Woods was convicted following a jury trial of going armed with intent and assault with a weapon. The court later found Woods to be a habitual offender. The two charges were ultimately merged by the court pursuant to Iowa Code section 708.2(1993) and Woods was sentenced to a term not to exceed fifteen years.

Woods challenges the sufficiency of the evidence to support the going armed with intent conviction. He asserts the State failed to establish proof beyond a reasonable doubt that Woods went armed with the “intent to use” the knife against

Seals. He emphasizes that he and Seals have been friends for thirty years. On the day of the altercation, the two had been playing dominoes and drinking beer on Seals' porch. Seals indicated in his testimony that Woods jumped up suddenly during an argument and held the knife to Seals' throat. Woods contends that mere possession of the knife did not create a jury question on the "intent to use" element. He further argues the evidence demonstrated nothing more than an intent on behalf of Woods to intimidate or threaten Seals with the knife.

We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A verdict of guilty is binding on appeal unless there is no substantial evidence in the record to support it, or it is clearly against the weight of the evidence. *State v. Schrier*, 300 N.W.2d 305, 306 (Iowa 1981). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* In determining the sufficiency of evidence, we view the record in a light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). All evidence is considered, not simply the evidence supporting the verdict. *Id.*

Iowa Code section 708.8 (1993) reads as follows:

A person who goes armed with any dangerous weapon with the intent to use without justification such weapon against the person of another commits a class "D" felony.

Iowa Code § 708.8 (1993).

Woods cites *Slayton v. Slayton*, 417 N.W.2d 432 (Iowa 1987) in support of his arguments. In *Slayton*, the court held that absent additional proof, intentionally

pointing a firearm toward another or displaying any dangerous weapon to harass or intimidate is an assault punishable as a simple misdemeanor and not as a felony under section 708.8. *Id.* at 434. The court concluded that in the defendant's case, the State was required to prove intent to shoot a firearm beyond a reasonable doubt.

Upon review of the record, we find ample evidence demonstrating that Woods went armed to Seals' home and later intended to use the weapon against him. *See Slayton*, 417 N.W.2d at 435 (court found sufficient evidence of intent to use where defendant put a shell in the gun and came after his mother when she attempted to escape). Seals testified that the knife used to assault him was not laying somewhere on the porch but that Woods had the knife with him. Seals described the knife as being held "right up against that vein right there" on his neck. He expressed the fear that Woods was going to hurt him. Carla Dixon testified that she witnessed Woods holding the knife up against Seals' neck for "a good forty seconds." The evidence clearly supports the inference that by Woods' actions, he did not intend to merely point the weapon at Seals to intimidate him. We find that given the circumstances, it was reasonable for the jury to conclude that Woods intended to use the knife against Seals.

We reject Woods assertions and affirm the conviction for going armed with intent.

AFFIRMED.