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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA, )

Plaintiff-Appellee, ) Filed October 27, 1981

vs. )

RONALD A. JULSON, ) 1-288/65551

Defendant-Appellant. )

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Appeal from Black Hawk District Court - Carroll Engelkes, Judge.

The defendant appeals from his conviction, after trial to the court, of the crime of willful injury in violation of section 708.4, The Code. AFFIRMED.

Douglas F. Staskal, State Appellate Defender's Office, Des Moines, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Merle Fleming, Assistant Attorney General, for plaintiff-appellee.

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

PER CURIAM

The defendant appeals from his conviction, after trial to the court, of the crime of willful injury in violation of section 708.4, The Code. He asserts that the State's evidence was not sufficient to prove that he committed an act which was intended to cause serious injury to another. He also asserts that his trial attorney rendered ineffective assistance of counsel by failing to challenge the sufficiency of the evidence in the trial court.

The statute under which the defendant is charged provides as follows: "Any person who does an act which is not justified and which is intended to cause and does cause serious injury to another commits a class "C" felony." It is the State's theory of the case that defendant violated this statute by willfully setting a fire on or about the person of Max Howard Clark with intention of causing serious injury to Clark.

I. Defendant contends that the State's evidence fails to show that "defendant did an act which was intended to cause serious injury to Max Clark." In deciding the issue thus presented, we review the record as a whole in the light most favorable to the State and assisted by all reasonable inferences. State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978). If there is substantial support for the verdict of the trier of fact, its finding of guilt is conclusive. Id. at 763; State v. Overstreet, 243 N.W.2d 880, 883-84 (Iowa 1976).

As so reviewed, we find the record supports the trial court's finding of guilt in the present case. The evidence shows defendant and Clark were drinking wine on the banks of the Cedar River in downtown Waterloo. After Clark passed out, the defendant asked a nearby fisherman for a cigarette; the fisherman replied that he did not smoke but gave the defendant a book of matches. The defendant then returned and sat down beside Clark. Two other persons on the riverbank testified that they then saw the defendant bend over Clark. One of these witnesses testified that he then heard the sound of matches striking. Shortly thereafter it was observed that Clark's clothing was on fire. A passerby who helped Clark remove his coat testified that he found weeds tucked under Clark's coat in such a manner and position as to suggest that someone had broken off the weeds and stuffed them under the coat.

We believe that the foregoing evidence is sufficient, even in the face of defendant's denials, to permit the trier of fact to return a finding of guilty. In this regard, we note that immediately following the event, defendant told a story as to Clark's smoking which was contradicted by the observations of the other witnesses. Such story was immediately offered by defendant as an explanation for the fire. Consciousness of guilt

may be inferred from attempted evasion or suppression of the true facts by one suspected of crime. State v. Crowley, 309 N.W.2d 523, 524 (Iowa App. 1981).

II. Defendant also urges that he was denied effective assistance of counsel in the trial court. His only contention in this regard is counsel's failure to make a motion for judgment of acquittal in the court below. Because we have reviewed the issue of the sufficiency of the evidence on the merits and find it to be both legally and factually wanting, such failure of counsel cannot be made the basis for relief on appeal. See State v. Rand, 268 N.W.2d 642, 649 (Iowa 1979) (defendant must demonstrate substantial prejudice to sustain claim of relief based upon ineffective assitance of counsel). We have considered all issues presented and find no basis for reversal.

AFFIRMED.