

IN THE COURT OF APPEALS OF IOWA

DEC 23 1980

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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

Filed December 23, 1980

vs.

LYNETTE EDGETON,

Defendant-Appellant.

0-322

64067

Appeal from Linn District Court - Harold Swalles, Judge.

Defendant appeals from her conviction for attempted murder in violation of section 707.11, The Code 1979, alleging 1) that the evidence was insufficient both to show that she did not act in self-defense and to show that she did commit attempted murder and 2) that a jury instruction on intent unconstitutionally shifted the burden of proof to her. AFFIRMED.

John C. Platt of Chipokas, Platt, Maher & Forte, Cedar Rapids, Iowa, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Julie F. Pottorff, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Lynette Edgeton, appeals from her conviction for attempted murder in violation of section 707.11, The Code 1979. She alleges 1) that the evidence was insufficient both to show that she did not act in self-defense and to show that she did commit attempted murder and 2) that a jury instruction on intent unconstitutionally shifted the burden of proof to her. We affirm defendant's conviction.

On March 29, 1979, defendant was charged with attempted murder as a result of stabbing her boyfriend. The jury returned a guilty verdict on June 27, 1979. Trial court denied defendant's motion for new trial on July 26, 1979. Defendant's appeal followed.

I. Scope of Review. Since this is an action at law, our review is on assigned error only. Iowa R. App. P. 4.

II. Sufficiency of Evidence. Defendant contends that the evidence is insufficient to prove beyond a reasonable doubt both that she did not act in self-defense and that she did commit attempted murder. Defendant further asserts that trial court erred in overruling her motion for judgment of acquittal because the evidence merely raised a speculation of her guilt of attempted murder rather than a fair inference. We disagree.

While we view the evidence in the light most favorable to the State, we must consider all of the evidence to determine its sufficiency to support a guilty verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). Both direct and circumstantial evidence are equally probative for proving guilt beyond a reasonable doubt. State v. O'Connell, 275 N.W.2d 197, 205 (Iowa 1979). Determining the credibility of the witnesses and the weight of the evidence is for the factfinder. Robinson, 288 N.W.2d at 341. Further, when the defense of self-defense is urged, the factfinder is free to disbelieve the defense testimony. State v. Hall, 287 N.W.2d 564, 566 (Iowa 1980).

Upon application of these principles to the evidence presented, we find that the State has established 1) defendant was not justified in her use of force against her boyfriend and 2) each element of the crime of attempted murder. Trial court's instruction on self-defense (instruction number 24) required the State to prove beyond a reasonable doubt any one of the following elements:

1. The defendant was the provocator in initiating or continuing the difficulty which resulted in injury; or
2. An alternative course of action was available . . . , or
3. She did not believe that she was in imminent danger of death or injury and that the use of force was not necessary to save herself; or

4. She did not have reasonable grounds for such belief; or

5. The force used was unreasonable.

Jury instruction number 18 stated:

The law provides that a person attempts to commit murder when, with the intent to cause the death of another, she does any act which she expects to set in motion a chain of events which will cause or result in death of such other person.

In reviewing all of the evidence presented, we note, without a lengthy repetition here, the strong conflict between defendant's version of the incident and the version given by the victim of the stabbing, her boyfriend. We therefore will focus particularly on the testimony of the independent witnesses, namely the police officers who investigated the incident. Defendant, in essence, claimed she stabbed her boyfriend in self-defense after he kept grabbing at her while taking her, together with her belongings, to her mother's home following a lovers' quarrel in her boyfriend's apartment. Defendant testified that her boyfriend had acted violently towards her on previous occasions.

The boyfriend's version was that at approximately 4:30 a.m. on March 29, 1979, the defendant began pounding on the patio door of the apartment they had shared for approximately six months, and, upon being let in, saw another female in the same bed which she had previously shared with him. Pushing, hitting, yelling, and name-calling ensued. Defendant asked to be driven to her mother's apartment; during the drive, defendant asked her boyfriend to remove his coat; he declined. She then stabbed him repeatedly. The van, which was driven by the boyfriend, left the traveled roadway; both individuals fell out onto the ground while struggling over the knife. A passerby stopped, apparently thinking the defendant was being raped due to her cries of "rape," and declined to help the boyfriend. The boyfriend, bleeding profusely from the numerous stab wounds, reached a nearby grocery store and summoned police.

Several police officers were involved in investigating the incident. One spoke with defendant's boyfriend shortly after the stabbing, but before the ambulance arrived; the boyfriend claimed at that time defendant was the assailant. The same officer testified that defendant said she had been out drinking before arriving at her boyfriend's apartment. Defendant told this officer her version of the events, including the fight at the apartment, and claimed defendant pulled the knife on her while driving her to her mother's home. She further claimed that she, in some manner, took the knife away from her boyfriend and stabbed him several times. This officer testified that defendant

said nothing to him about rape or about the presence of another female at the apartment. The officer stated that he observed no injuries on defendant.

The second police officer who testified also noticed no bruises on defendant. The third officer testified that defendant made no claims of being beaten by her boyfriend, that she stated she was sitting in the front seat of the van when the stabbing occurred (at trial she testified to being in the back of the van), and that she was jealous of her boyfriend. We conclude the evidence was sufficient to establish both that the defendant did not act in self-defense and that she did commit attempted murder.

III. The Intent Instruction. Defendant also alleges that the burden of proof was unconstitutionally shifted to her by jury instruction number 15 which stated, in part, that the jury had a right to infer that defendant intended the natural and probable consequences which ordinarily follow her acts. Defendant relies on Sandstrom v. Montana, 442 U.S. 510, 99 S. Ct. 2450, 61 L. Ed. 2d 39 (1979). The State asserts that defendant failed to preserve error and expressly waived any objections to the instruction at issue. The State further contends that, on the merits, the instruction does not violate due process.

Defendant acknowledges that no objection was made to instruction number 15 at the time of trial, but asserts that this was because Sandstrom had been decided just seven days prior to trial and that he therefore could not with due diligence have learned of the decision in time to have made an objection to the court prior to instruction of the jury. Our rejection of defendant's diligence argument would justify a finding under State v. Williams, 285 N.W.2d 248, 269 (Iowa 1979), that defendant expressly waived this objection, but we make no express finding on this issue. Considering the merits of defendant's argument, since the challenged instruction is identical to that upheld in State v. Rinehart, 283 N.W.2d 319 (Iowa 1979), we conclude no error occurred. Rinehart, 283 N.W.2d at 321-23.

Having found no error in either of defendant's contentions, we affirm trial court's order denying defendant's motion for new trial.

AFFIRMED.