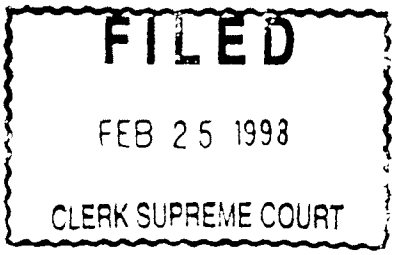
IN THE COURT OF APPEALS OF IOWA

No. 8-009 / 97-0081

000405



STATE OF IOWA,

Plaintiff-Appellee,

vs.

STACEN DEMONT BOTTS,

Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Arthur E. Gamble, Judge.

Defendant appeals from his conviction for second-degree murder in violation of Iowa Code sections 707.1 and 707.3 (1995). **AFFIRMED.**

Maggi Moss and Matthew S. Sheeley of Parrish, Kruidenier, Moss, Dunn & Montgomery, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor and Karen Doland, Assistant Attorneys General, John P. Sarcone, County Attorney, and Steve Foritano, Assistant County Attorney, for appellee.

Heard by Cady, C.J., and Sackett and Mahan, JJ.

SACKETT, J.

Defendant-appellant Stacen Demont Botts appeals following his conviction for second-degree murder in violation of Iowa Code sections 707.1 and 707.3 (1995). He contends the district court erred in admitting a statement he made to a police officer. He contends there was not substantial evidence to support his conviction. He further contends he was denied a fair trial because of juror misconduct. We affirm.

Defendant and the victim, Nicholas Young, attended a late-night party on Des Moines' east side. In the early-morning hours, Young's body was reported lying in Union Park and neighbors described hearing gun shots and seeing a white or light-colored Cadillac leaving Union Park shortly thereafter.

A deputy stopped defendant's light-colored Cadillac. Defendant was handcuffed and taken from the car. The deputy saw empty shell casings on the floor of the passenger side and asked defendant about the rounds. Defendant responded, "Some people made me mad tonight."

Defendant admitted he shot Young but claimed it was done in self-defense. There was testimony Young was intoxicated, someone gave him a gun at the party, and he made threats to kill defendant and steal his car. There was also evidence Young was belligerent to defendant at the party. A witness testified he saw Young push his way into defendant's car and scream, "Drive, nigger, drive."

Defendant testified Young made threats at the party to kill him, forced his way into his car, and threatened to kill him as they drove toward Union Park. Defendant

also testified Young was shot as the two of them struggled for the gun. Substantial evidence was introduced by defendant seeking to prove Young was a violent man who carried a gun, engaged in fights, and was abusive to women throughout his life.

Defendant first contends the trial court erred in admitting his statement to the deputy, "Some people made me mad tonight." Defendant, while advancing the statement was not specific with regard to time or place and was too vague for impeachment purposes, contends the trial court in admitting it unduly emphasized defendant's purported state of mind at the time of the shooting. There is an inherent inconsistency in defendant's argument.

The statement was not introduced during the State's case. Defendant testified on direct examination he was mad to a degree when Young was going to take his mother's car, and mad that Young had a gun on him. During cross-examination by the State, defendant related that during the evening's course of events he was irritated, mad to a degree, and mad. The evidence defendant was mad is cumulative. It was proper impeachment testimony under the facts of this record. Furthermore, it is, as defendant advances, neither specific to time nor place. We fail to find defendant prejudiced by its admission. *See State v. Gardner*, 490 N.W.2d 838, 841-42 (Iowa 1992).

Defendant contends there was not substantial evidence to support his guilt. We review the record in the light most favorable to the State. *State v. Wheeler*, 403 N.W.2d 58, 60 (Iowa App. 1987). All inferences that are fairly and reasonably

deducted from the evidence are accepted; and all the evidence, not just that supporting the verdict, is considered. *State v. Wilkens*, 346 N.W.2d 16, 20 (Iowa 1984). The verdict will be upheld if supported by substantial evidence. *Id.* That is, such evidence which would convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. *State v. Freie*, 335 N.W.2d 169, 171 (Iowa 1983).

Defendant at trial admitted he shot Young several times. Young was shot five times. Defendant claims he acted in self-defense and the shooting was justified. Defendant contends there is not substantial evidence to prove he was not acting in self-defense.

The defense of self-defense is statutorily denominated as a defense of justification. *State v. Dunson*, 433 N.W.2d 676, 677 (Iowa 1988). The defense is codified in Iowa Code section 704.3, which provides, "A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force." *Id.* The State is required to prove beyond a reasonable doubt the defendant was not acting in self-defense. *State v. Sharkey*, 311 N.W.2d 68, 72 (Iowa 1981).

There was evidence defendant and Young were ready to fight, defendant told Young they would go somewhere else to handle it, and the men left the party together intending to fight. There was no physical evidence supporting defendant's theory there was a struggle.

Due process requires the State prove all elements of a crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 2787, 61 L. Ed. 2d 560, 571 (1979). The jury is not, however, required to accept the defendant's version of the facts. *State v. Pletka*, 310 N.W.2d 525, 527 (Iowa 1981); *State v. Hall*, 214 N.W.2d 205, 210 (Iowa 1974). There is substantial evidence supporting the verdict. We affirm on this issue.

Defendant contends there was juror misconduct. Defendant's former girlfriend, Natasha Lovejoy, was present in the courtroom during the trial. Lovejoy danced for three years at several Iowa nightclubs. Lovejoy testified on the first day of trial the jury foreman made eye contact and winked at her. She testified she had performed lap dances on the juror twice and he had paid her for sexual favors at least four times in the three years prior to trial. Lovejoy said the juror knew defendant and had offered her money to have a tattoo with defendant's name removed from her buttocks. Lovejoy further testified the juror phoned her during trial asking her to meet him at a motel for a sexual encounter, but she said no. She said at the time the juror said he did not know if defendant would be okay as he had been in trouble before.

To support any of defendant's theories, Lovejoy's testimony must be believed. The trial court found Lovejoy's testimony not credible. We give credence to the trial court's finding of credibility. *See Neimann v. Butterfield*, 551 N.W.2d 652, 654-55 (Iowa App. 1996). Defendant has failed to prove this contention.

We affirm defendant's conviction.

AFFIRMED.