

IN THE COURT OF APPEALS OF IOWA

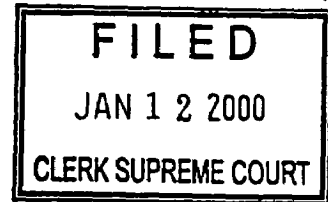
No. 1999-336 (9-589) / 98-1558

Filed January 12, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

PATRICK KITTLER,
Defendant-Appellant.



Appeal from the Iowa District Court for Lee (South) County, John G. Linn,
Judge.

Patrick Kittler appeals his conviction and sentence following a jury trial, for terrorism without intent and carrying a weapon in violation of Iowa Code sections 708.6 and 724.4 (1997). **AFFIRMED.**

Barry M. Anderson, Keokuk, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Michael Short, County Attorney, for appellee.

Considered by Mahan, P.J., and Zimmer and Vaitheswaran, JJ.

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MAHAN, P.J.

Patrick Kittler appeals his conviction and sentence following a jury trial, for terrorism without intent and carrying a weapon in violation of Iowa Code sections 708.6 and 724.4 (1997). Kittler contends the trial court (1) erred in submitting the terrorism charge to the jury as there was insufficient evidence presented to prove he did not act in self-defense, and (2) abused its discretion in sentencing him to consecutive sentences. We affirm.

The charges against Kittler stem from an incident during which he fired three shots at a moving car. Kittler admitted he owned the handgun and fired the shots but claimed he discharged his weapon in self-defense. A jury convicted Kittler of terrorism without intent and carrying weapons and acquitted him of going armed with intent.

At sentencing Kittler requested, and the county attorney recommended, concurrent sentences. Kittler was sentenced to a five-year indeterminate term on the terrorism charge and a two-year indeterminate term on the carrying weapons charge, to be served consecutively. The sentencing court stated, in part:

Mr. Kittler, in making a sentencing decision, the Court must do that which would provide the maximum opportunity for your rehabilitation and at the same time protect the community from further offenses by you or others.

In making a sentencing decision, the Court reads through the presentence investigation. I take into consideration the comments of the attorneys. I've read the court file, and, of course, I presided over the trial of this case. So I'm very familiar with the facts.

....

I guess the major decision the Court has to make in this case is whether or not to sentence you to two years on [the carrying weapons] count and whether or not to run the sentence concurrent or consecutive with the terrorism charge.

The factors which would be in favor of a more lenient sentence would be that you do have your GED, and the Court would note that you have no prior record, and in addition, the county attorney is recommending a concurrent sentence.

Those factors which would be in favor of a more harsh sentence, a sentence not focusing so much on rehabilitation but on deterrence, would be that you have a minimal employment record, you lack substantial ties to this geographic area.

It's the Court's opinion you don't have a stable residence, and the facts of this case, the facts of this crime weigh heavily in the Court's mind. This was a dangerous, violent act. Basically, the defendant was discharging a pistol on a public street here in Keokuk, Iowa.

The individuals at whom you were firing that pistol could have been shot and killed. This is the type of crime which robs society of a sense of peace and a sense of feeling free because people are afraid to go out on the sidewalk because of this type of crime.

In weighing those factors, the Court determines that because of the serious nature of the facts of the case, that both you, Mr. Kittler, and others in society must be deterred, and it's the judgment of this Court that the two-year sentence I'm going to impose on the weapons charge run consecutive to the five-year sentence on the terrorism charge.

Kittler appeals.

I. Sufficiency of the Evidence. We will uphold the trial court's denial of a motion for judgment of acquittal if there is substantial evidence in the record to support the defendant's conviction. *State v. McPhillips*, 580 N.W.2d 748, 752 (Iowa 1998). Our review of sufficiency-of-evidence challenges is for correction of errors at

law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). The jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998); *State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984). Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Allen*, 348 N.W.2d at 247. If there is substantial evidence of self-defense, the State has the burden of proving the defendant was not justified in his use of force in his defense. *State v. Stallings*, 541 N.W.2d 855, 857 (Iowa 1995) (citing *State v. Delay*, 320 N.W.2d 831, 834 (Iowa 1982)).

In deciding whether there is such substantial evidence, we view the record evidence in the light most favorable to the State. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A verdict can rest on circumstantial evidence alone. *State v. Torres*, 506 N.W.2d 470, 472 (Iowa App. 1993). However, "[t]he evidence must at least raise a fair inference of guilt as to each essential element of the crime. Evidence which merely raises suspicion, speculation, or conjecture is insufficient." *State v. Casady*, 491 N.W.2d 782, 787 (Iowa 1992) (citations omitted).

Kittler contends the district court erred in overruling his motion for judgment of acquittal because the State did not establish beyond a reasonable doubt he lacked justification for shooting at the car. Specifically, Kittler argues the testimony of victims Anthony Moody and Aaron Dunlop is contradicted by other witnesses' testimony and is not believable. The jury must sort out the credibility of witnesses

and may believe or disbelieve the testimony of witnesses as it chooses. *See State v. Pierson*, 554 N.W.2d 555, 559 (Iowa App. 1996) (citations omitted). The jury must also assign the evidence presented whatever weight it deemed proper. *Id.* We have reviewed the record and conclude there is substantial evidence to support a finding Kittler's actions were not justified. The district court did not err in overruling Kittler's motion for judgment of acquittal.

II. Consecutive Sentences. We review the sentencing court's imposition of consecutive sentences for abuse of discretion. *State v. Harris*, 528 N.W.2d 133, 135 (Iowa App. 1994). We will not find an abuse of discretion unless such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. *State v. Selestian*, 515 N.W.2d 356, 358 (Iowa App. 1994). Defendant has the burden of showing an abuse of discretion. *Harris*, 528 N.W.2d at 135.

Kittler contends the district court abused its discretion in sentencing him to consecutive sentences. We disagree. The trial court generally has discretion to impose concurrent or consecutive sentences for convictions on separate counts. *State v. Delaney*, 526 N.W.2d 170, 178 (Iowa App. 1994); *see also* Iowa Code § 901.8. Under Iowa Code section 901.5, when considering authorized sentencing options, the trial court should consider:

[W]hich of them or which combination of them, in the discretion of the court, will provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others.

Iowa Code § 901.5; *Harris*, 528 N.W.2d at 135. In addition, when determining a proper sentence, a court should consider the nature of the offense, the attending circumstances, and the defendant's age, character, and propensities or chances for reform. *Id.*

The trial court is required to state on the record its reasons for selecting the particular sentence in a criminal case, including the reasons for imposing consecutive sentences. Iowa R. Crim. P. 22(3)(d); *see also Delaney*, 526 N.W.2d at 178. The reasons, however, are not required to be specifically tied to the imposition of consecutive sentences, but may be found from the particular reasons expressed for the overall sentencing plan. *Id.* Thus, we look to all parts of the record to find the supporting reasons. *Id.*

We have reviewed the record and conclude the district court considered the sentencing options and did not abuse its discretion in ordering the sentences to be served consecutively.

For these reasons, we affirm.

AFFIRMED.