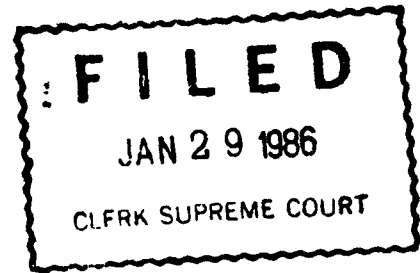


IN THE COURT OF APPEALS OF IOWA



STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed January 29, 1986

vs.

)

359

JAMES MONROE SIMS,

)

5-600
85-392

Defendant-Appellant.

)

Appeal from the Iowa District Court for Scott County - J. Hobart Darbyshire, Judge.

Defendant appeals from his conviction of assault with intent to inflict serious injury in violation of Iowa Code sections 708.1, 708.2(1); assault with injury in violation of Iowa Code sections 708.1, 708.2(2); carrying a dangerous weapon in violation of Iowa Code section 724.4; and going armed with intent in violation of Iowa Code section 708.8. **AFFIRMED.**

Charles Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Roxann M. Ryan, Assistant Attorney General, for plaintiff-appellee.

Considered by Schlegel, P.J., Hayden, and Sackett, JJ.

Defendant appeals from his conviction of assault with intent to inflict serious injury in violation of Iowa Code sections 708.1, 708.2(1); assault with injury in violation of Iowa Code sections 708.1, 708.2(2); carrying a dangerous weapon in violation of Iowa Code section 724.4; and going armed with intent in violation of Iowa Code section 708.8. He asserts that there was insufficient evidence to support the jury verdict that he committed the crime of going armed with intent. We affirm.

On September 10, 1984, James Sims and one David Stage were involved in some sort of altercation. Testimony indicates that while the two were arguing, defendant Sims threatened Stage's life. Five days later, the two encountered each other again. Stage testified that Sims approached him and made an obscene gesture. Stage then started a fight which eventually was broken up by bystanders. According to Sims and another trial witness, defendant subsequently pulled out a gun and aimed it at Stage. Stage yelled that defendant had a gun and he and everyone else at the scene ran. While running to his car, Stage was shot.

Defendant's testimony concerning the events conflicted with the victim's in some respects. Sims indicated that Stage harassed him after a disagreement arose concerning an arrangement to sell marijuana. He further testified that he pulled his gun after he observed Stage reach for something as he was coming toward him. Defendant denied that he aimed the gun.

At the close of all the evidence, Sims moved for judgment of acquittal on all the charges. The trial court overruled the motion and this appeal resulted.

The defendant's sole claim on appeal is that there was insufficient evidence to support a finding that he was guilty of going armed with intent.

In considering this claim, we view the evidence in a light most favorable to the State, including all legitimate inferences and presumptions which may

fairly and reasonably be deduced from the record. State v. Nunn, 356 N.W.2d 601, 603 (Iowa Ct. App. 1984). A verdict of guilty is considered binding if it is supported by substantial evidence. Id. Substantial evidence has been defined as "such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt." State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

Defendant does not dispute the finding that he was armed. However, he contends that the State failed to prove that he had any intent to use his weapon against another person as required by Iowa Code section 708.8. We disagree.

As we have indicated, evidence would support a finding that the defendant threatened Stage's life five days before the incident in question. Furthermore, the victim indicated that Sims provoked and threatened him when in possession of the gun. These facts would support an inference that Sims intended to use the weapon against Stage. While defendant's testimony may indicate to the contrary, this is not a sufficient basis for reversal. The determination of credibility of the witnesses and the weight of the evidence is the function of the factfinder. State v. Robinson, 288 N.W.2d at 341.

Viewing the evidence in a light most favorable to the State, we conclude the conviction should be sustained. Substantial evidence exists to satisfy the intent requirement of section 708.8.

AFFIRMED.