IN THE COURT OF APPEALS OF IOWA

No. 22-1746
Filed March 6, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANDREW GEORGE THOMAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, John Telleen, Judge.

A defendant challenges the sufficiency of the evidence supporting his conviction. **AFFIRMED.**

Travis M. Visser-Armbrust of TVA Law PLLC, Sheldon, for appellant.

Brenna Bird, Attorney General, Nicholas E. Siefert and Kyle Hanson (until withdrawal), Assistant Attorneys General, and Morgan Smith, Law Student, for appellee.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

BADDING, Judge.

Andrew Thomas tells a one-sided story on appeal from his conviction for assault causing bodily injury. But our review of a challenge to the sufficiency of the evidence, like Thomas has raised here, requires us to consider *all* the evidence in the record. *See State v. Huser*, 894 N.W.2d 472, 490 (Iowa 2017). What's more, we need to view that evidence "in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence." *Id.* (citation omitted). Upon doing so, we conclude Thomas's conviction is supported by substantial evidence.

On August 22, 2021, Thomas was at the apartment of his girlfriend, A.H. She lived there with her two children and Thomas, sometimes.[1] A.H. testified that she and Thomas went to bed around 10:00 p.m., after she put her son to bed. Her daughter was staying overnight with a friend. Thomas put his arm around A.H. twice, but she scooted away, telling him: "Not tonight. I'm tired." This made Thomas mad. He got out of bed, and so did A.H. because she heard her son calling for her. Before she made it to the bedroom door, Thomas pulled her down to the floor. He got on top of her and punched her face three times.

Once Thomas let A.H. up., she went across the hall and got into bed with her son. But Thomas followed and pulled her out of the bed by her legs. He dragged her into the living room and kept hitting her in the face, with her son watching from the hallway. A.H. tried to open the front door, but Thomas shut it,

[1] The evidence at trial was conflicting on whether Thomas lived with A.H., although it was clear that he often stayed at her apartment. A.H. explained: "It was back-and-forth. It was his auntie's, my house. If [w]e would argue, then he'll go to his mom's house." They did not share children together.

telling her "you not going nowhere." A.H. made it onto the balcony of her apartment to try to call for help. But Thomas went out there too and, in A.H.'s words, "choked [her] backwards"[2] over the balcony railing. As he was squeezing her neck, she kept telling him, "I can't breathe." They moved back inside, where Thomas pinned A.H. to the ground. She yelled at her son to get help, but Thomas threw him back before he made it to the door.

Eventually, A.H. calmed Thomas down. She tried to walk to a nearby convenience store with her son, but Thomas followed them. So A.H. turned back to her apartment. With Thomas watching, "making sure [she] didn't run for help," A.H. looked for her cell phone that she lost during their struggle. After she found the phone, A.H. texted a friend for help because she was afraid of what Thomas would do if she called the police.

The friend called 911, telling dispatch that she "received a text message from a friend that said her boyfriend beat her up." Two deputies went to A.H.'s apartment. She answered the door, "very distraught" and scared. They saw that she had a "large, swollen welt on her forehead," a bloodied nose, and marks around her neck. Those injuries were documented in photographs taken of A.H. that night. One of the deputies spoke to A.H. and her son outside the apartment. Bodycam clips show the son telling the deputies that Thomas "punched mom," and "she got choked, and he smacked her right in the face."

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[2] We recognize the correct terminology for what A.H. and her son described at trial would be "strangle." *See* Mary Pat Gunderson, *Gender and the Language of Judicial Opinion Writing*, 21 Geo. J. Gender & L. 1, 11 (2019) (discussing how language matters and noting that describing acts of strangulation as "choking" can minimize or mitigate). But when quoting from the transcript or bodycam videos, we use their language.

At his trial for domestic abuse assault by impeding breathing or blood circulation causing bodily injury and child endangerment, Thomas testified in his own defense. He explained their problems started that evening because he accused A.H. of "texting other guys" after she rebuffed him in bed. Thomas painted A.H. as the aggressor, testifying that she went after him when he "snatched her phone out of her hands . . . . And me doing so, she flipped out of bed and got pinned in-between the wall and the bed frame." He denied ever punching or strangling A.H. But on rebuttal, the State played a clip from one of the deputy's bodycams where Thomas stated: "She hit me, I hit her back." The deputy testified that Thomas later told him, "Actually, I don't remember hitting her."

A jury found Thomas guilty of the lesser-included offense of assault causing bodily injury and acquitted him of child endangerment. Thomas appeals, claiming there was insufficient evidence to prove that he engaged in "an act intended to cause pain or suffering or be insulting or offensive." While he "admits to having contact" with A.H., Thomas repeats his trial testimony that "he never punched or choked her." Instead, he argues the evidence showed A.H. "was the aggressor, trying to retrieve her cell phone, and [he] was merely holding her back." That contact, according to Thomas, "does not show that he had the intent necessary for a conviction of assault causing bodily injury."

Thomas's challenge is entirely based on his slanted version of events. *See Harper v. State*, No. 17-0435, 2018 WL 4360892, at *5 (Iowa Ct. App. Sept. 12, 2018) (rejecting sufficiency-of-evidence challenge under an ineffective-assistance rubric that was based on challenger's "slanted version of the evidence and a wealth of conclusory statements in support of his position"). But the jury did

not have to accept that version. *See State v. Linderman*, 958 N.W.2d 211, 220–21 (Iowa Ct. App. 2021). "Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury is free to reject certain evidence, and credit other evidence." *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012) (cleaned up).

That other evidence included A.H.'s testimony, photographs of her injury, her son's testimony, and statements they both made to law enforcement the night of the assault. From that evidence, the jury could rationally conclude that Thomas hit A.H. in the face several times and strangled her. *See State v. Hildreth*, 582 N.W.2d 167, 170 (Iowa 1998) ("[T]he alleged victim's testimony is by itself sufficient to constitute substantial evidence of defendant's guilt."). The jury could likewise conclude that those acts resulted in physical contact intended to cause pain or injury or was insulting or offensive. *See State v. Lwishi*, No. 14-2170, 2016 WL 4543490, at *3 (Iowa Ct. App. Aug. 31, 2016) (rejecting challenge to sufficiency of evidence to support intent element for assault where defendant struck the victim "in the face with a closed fist"). After all, "defendants will ordinarily be viewed as intending the natural and probable consequences that ordinarily follow from their voluntary acts." *State v. LuCore*, 989 N.W.2d 209, 216 (Iowa Ct. App. 2023) (quoting *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003)). Pain and injury, as well as insult and offense, are natural and probable consequences of being hit in the face and strangled.

On our review for correction of errors at law, *see Huser*, 894 N.W.2d at 490, we conclude substantial evidence supports the jury's guilty verdict.

AFFIRMED.