**IN THE COURT OF APPEALS OF IOWA**

No. 0-734 / 09-1882
Filed November 10, 2010

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**EDWARD MICHAEL WILSON II,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Dallas County, Virginia Cobb, District Associate Judge.

Edward Michael Wilson II appeals from his conviction, judgment, and sentence for domestic abuse assault causing bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Wayne Reisetter, County Attorney, and Stacy Ritchie, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ. Tabor, J., takes no part.

**DOYLE, J.**

Edward Wilson appeals from his conviction, judgment, and sentence following a jury verdict finding him guilty of domestic abuse assault causing bodily injury. He contends the district court erred in denying his motion for judgment of acquittal, asserting the evidence was insufficient as a matter of law to convict him of domestic abuse assault causing bodily injury. We affirm.

***I. Background Facts and Proceedings*.**

From the evidence presented at trial, a jury could have found the following facts: Defendant Edward Wilson and Julia Calhoun are the parents of P.W., born in 2006. The parents separated after the child was born and generally had a contentious relationship. Calhoun had sole custody of the child until 2008, when a formal custodial agreement was entered by the court giving the parents shared custody. The agreement allowed Wilson to have the child every other Thursday beginning after school or daycare until Saturday at 7 p.m., and on alternating weeks, he was to have the child Thursday after school or daycare until Friday when he was to return the child to school or daycare at the beginning of the day.

The parents disagreed on the interpretation of the custody agreement, specifically, when Wilson could pick up the child from daycare on Thursdays. On Thursday, March 26, 2009, Wilson went to the daycare to pick the child up after work around 4 p.m. The daycare worker told Wilson that Calhoun did not want him to pick up the child until 6 p.m. Wilson told her he had a court paper stating that he could pick her up before 6 p.m. He then presented to the daycare worker a fraudulent decree showing that he could pick the child up every Thursday at 4 p.m. The daycare worked then released the child to Wilson.

The next day, Calhoun learned Wilson had presented a decree to the daycare worker showing he could take the child at 4 p.m. and he had taken the child at 4 p.m. Calhoun called her attorney and confirmed the custody agreement had not been changed. Calhoun waited for Wilson to show up at the daycare to pick up the child, and she confronted him about the decree he had presented to the daycare worker and asked to see it. Wilson showed Calhoun the original decree and then left with the child. Calhoun remained at the daycare and called the police concerning the confrontation, but the police stated there was nothing they could do.

Thereafter, Calhoun went outside. She saw a paper in the parking lot of the daycare, where Wilson's car had been parked. It was a decree allowing Wilson to pick up the child at 4 p.m. Calhoun sent Wilson a text message later in the evening telling him "you think you're so slick. I got you now. I got the copy. I'm going to turn this in." Calhoun then went to work.

On March 30, 2009, Calhoun reported to police that Wilson had punched her in the face in the early morning of March 28. She stated she arrived at her Waukee home after work around 3 a.m. She reported that Wilson was there waiting for her and demanded that she give him the copy of the decree. She told him she had already turned the document over. She stated that Wilson threatened to have her killed and that she would never see their child again. She told the officer Wilson tried to take away her keys, and that in the struggle, the keys dropped to the ground. She stated she bent down to pick them up and Wilson punched her in the face, giving her a black eye. Wilson ran away thereafter. After talking to her attorney, she reported the incident to the police.

The responding officer observed bruising and swelling above Calhoun's eye consistent with having been punched in the face, as Calhoun reported. The officer questioned Wilson, and he denied that he had punched Calhoun, that he was at Calhoun's home on March 28, 2009, and that he was involved in the incident in any way. Wilson asserted an alibi for his whereabouts that evening. He stated he, his mother, and P.W. had stayed at a Newton hotel the night of March 27, 2009. The officer went to the hotel and found that Terrie Wilson, Wilson's mother, had made a reservation for that night. The reservation was for two adults and one child, and did not state the names of the additional individuals. The hotel provided a signature sheet to the officer that showed the room had been checked in at 7:25 p.m. on the March 27 and had been checked out of at 10:30 a.m. on March 28. Someone had signed for the room, but the signature is illegible. The officer showed pictures of Wilson and Wilson's mother to the hotel manager and to another employee. Neither remembered seeing the two individuals that evening. The investigating officer noted that a trip from Newton to Waukee took around forty to fifty minutes, depending on speed and traffic. He stated it was possible for Wilson to go and check in at the hotel in Newton, travel back to Waukee, then go back to hotel in Newton and check out the next day without any problem.

On August 21, 2009, the State filed a trial information charging Wilson with domestic assault causing bodily injury, in violation of Iowa Code sections 708.1, 236.2, and 708.2A(2)(b) (2009), and first-degree harassment, in violation of sections 708.7(1) and 708.7(2). Wilson pled not guilty and filed notice of his intent to introduce evidence of an alibi defense. The matter proceeded to trial.

At the close of the State's evidence, Wilson moved for a judgment of acquittal, asserting the State did not carry its burden in the case. He argued the "State ha[d] not established sufficiently that there was an assault in this case, and that [Wilson was] the one that committed that offense." The court denied Wilson's motion.

In Wilson's defense, Wilson's mother testified, contrary to the testimony of Calhoun, in support of Wilson's asserted alibi. Wilson's mother testified that Wilson was at her home when she arrived home around 5 p.m. on March 27, 2009. She stated that she, Wilson, and P.W. went to stay at a hotel in Newton to get their minds off things and go swimming. She made the reservation. She said that upon their arrival at the hotel, she stayed in the car and Wilson went in and paid for the room with her credit card. She stated Wilson was in the room when she went to bed that night. She testified she was unable to sleep, and she looked at the clock at 2:30 a.m., and Wilson was in the room at that time, snoring. She stated that Wilson was in the room when she awoke and they left the hotel together.

At the close of the defense's evidence, Wilson renewed his motion for judgment of acquittal, which the court denied. The matter was submitted to the jury. The jury found Wilson guilty of domestic abuse causing bodily injury and third-degree harassment.

Wilson appeals.

***II. Discussion*.**

On appeal, Wilson contends the district court erred in denying his motion for judgment of acquittal, asserting the evidence was insufficient as a matter of

law to convict him of domestic abuse assault causing bodily injury. The State contends this issue is not preserved for our review.

***A. Error Preservation*.**

To preserve error for appellate review on a claim of insufficient evidence, "the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal." *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). However, "we recognize an exception to the general error-preservation rule when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel." *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). We have reviewed the record relevant to the motion for judgment of acquittal and conclude Wilson adequately preserved error.

***B. Merits*.**

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). "The district court's findings of guilt are binding on appeal if supported by substantial evidence. Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt." *Id*. (citations omitted). In conducting our review, we consider all the evidence, not just the evidence that supports the verdict. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005) (citation omitted). "We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record." *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

At trial, the State must prove every element of the crime charged beyond a reasonable doubt. *See id*. To commit domestic abuse assault causing bodily injury, the district court instructed the jury that the State had to prove:

> 1. On or about the 28th day of March, 2009, [Wilson] did an act which was meant to cause pain, or injury or result in physical contact which would have been painful, injurious, insulting, or offensive to [Calhoun].
> 2. [Wilson] had the apparent ability to do the act. . . .
> 3. [Wilson's] act caused a bodily injury to [Calhoun] . . . .
> 4. The act occurred between persons who are the parents of the same minor child.

*See* Iowa Code §§ 708.1; 708.2A(1) & (2).

Viewing the evidence in the light most favorable to the State, we find sufficient evidence supports Wilson's conviction for domestic abuse assault causing bodily injury. From the testimony presented at trial, a rational trier of fact could have found that Wilson left his hotel room, drove to Waukee, and assaulted Calhoun. Calhoun's testimony supports her report that Wilson punched her in the face. The officer testified that he observed Calhoun's injury, and her injury was consistent with her report. The officer also testified that it was possible for Wilson to drive to Waukee and return to Newton in time to check out in the morning. Although Wilson presented an alibi, we defer to the jury to sort out the facts and determine the more credible witnesses. *State v. McPhillips*, 580 N.W.2d 748, 753 (Iowa 1998) (explaining it is the jury's duty to determine what weight to give testimony). We find the court did not err in denying Wilson's motion for judgment of acquittal, as sufficient evidence was presented for the jury to decide that the State proved Wilson committed domestic abuse assault causing bodily injury.

***III. Conclusion*.**

Upon our review, we find Wilson sufficiently preserved his claim that the district court erred in denying his motion for judgment of acquittal. Because we find the evidence was sufficient as a matter of law to convict him of domestic abuse assault causing bodily injury, we affirm Wilson's conviction, sentence, and judgment.

**AFFIRMED.**