

IN THE COURT OF APPEALS OF IOWA

No. 3-020 / 12-0272
Filed February 13, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DELVONN MARK BATTLE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, William A. Price,
District Associate Judge.

Delvonn Mark Battle appeals from his conviction of first-degree
harassment. **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, John Sarcone, County Attorney, and Kevin Hathaway, Assistant County
Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

Delvonn Mark Battle appeals from his conviction of harassment in the first degree following a bench trial on the minutes of testimony. Battle contends there is insufficient evidence to support the conviction. We affirm.

I. Background Proceedings

The State charged Battle with harassment in the first degree for threatening to kill a police officer, the police officer's parents, and the police officer's children. Battle stipulated to a bench trial on the minutes of testimony. The district court found Battle guilty. At a subsequent sentencing hearing, the court sentenced Battle to an indeterminate term of imprisonment not to exceed two years. Battle appeals his conviction.

II. Standard of Review

We review a conviction following a bench trial in the same manner as we would review a jury verdict. *State v. Kemp*, 688 N.W.2d 785, 788–89 (Iowa 2004). We will uphold a verdict if it is supported by substantial evidence. *Id.* at 789. “Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt.” *Id.* To determine whether a verdict is supported by substantial evidence, we view the evidence in a light most favorable to the State. *Id.*

III. Analysis

To convict a defendant of harassment, the State must show the defendant “purposefully and without legitimate purpose, has personal contact with another person, with the intent to threaten, intimidate, or alarm that other person.” Iowa

Code § 708.7(1)(b) (2011). “Personal contact” is defined as “an encounter in which two or more people are in visual or physical proximity to each other.” *Id.* A person commits first-degree harassment when the harassment involves “a threat to commit a forcible felony.” *Id.* § 708.7(2)(a).

The minutes of testimony incorporated a report from Police Officer Andrew Weispfenning. According to the minutes, on July 2, 2011, Officer Weispfenning was working off-duty at a QuikTrip store in Des Moines. At approximately 2:20 a.m., Officer Weispfenning called dispatch and requested assistance in dispersing a large crowd outside the store. Officer Luke Wilson arrived on the scene in a marked patrol car. Officers observed Battle carrying a partially consumed bottle of vodka. Officers made contact with Battle and noticed he smelled of alcohol. Battle admitted he was intoxicated, but refused to take a preliminary breath test. Officers poured out the vodka and placed Battle under arrest.

Battle became highly agitated and directed his anger toward Officer Wilson. While Officer Weispfenning was standing near Battle and Officer Wilson, he heard Battle threaten Officer Wilson. Battle made the following statements to Officer Wilson: “you[’re] going to fucking die”; “ I’m going to fucking kill you”; I’ll kill your momma, your dad, and your kids”; and “I wish you would die, if you don’t die on your own, I’ll do it for you.”

Battle argues the minutes of testimony failed to establish that he had personal contact with the police officer. The minutes of testimony incorporated Officer Weispfenning’s police report. In his report, he clearly stated he was

“standing near Battle[] and Officer Wilson” while Battle threatened Officer Wilson’s life. We find the minutes of testimony provides substantial evidence from which the trial court could find beyond a reasonable doubt that Battle had personal contact with Officer Wilson. See *id.* § 708.7(1)(b) (defining personal contact).

Battle contends the minutes of testimony failed to establish the requisite intent. “Harassment is a specific intent crime.” *State v. Button*, 622 N.W.2d 480, 483 (Iowa 2001). In many cases, the State must present circumstantial evidence of the defendant’s intent. *Id.* Voluntary intoxication may, in some cases, negate criminal intent. *State v. Caldwell*, 385 N.W.2d 553, 557 (Iowa 1986).

In this case, Battle told Officer Wilson, “I’m going to fucking kill you” and “I’m going to kill your momma, your dad, and your kids.” Battle did not raise voluntary intoxication as a defense to the trial court. Thus, Battle waived voluntary intoxication as a defense. See Iowa R. Crim. P. 2.11(3).

Viewing the evidence in the light most favorable to the State, we find there is substantial evidence to support the trial court’s finding beyond a reasonable doubt that Battle purposefully and without legitimate purpose, had personal contact with Officer Wilson, communicated a threat to commit a forcible felony, and did so with the specific intent to threaten, intimidate, or alarm Officer Wilson. See *Button*, 622 N.W.2d at 483–84.

AFFIRMED.