

**IN THE COURT OF APPEALS OF IOWA**

No. 6-296 / 05-0154  
Filed May 24, 2006

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

**vs.**

**THOMAS EVERETT REITER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Dickinson County, David C. Larson, District Associate Judge.

Thomas Everett Reiter appeals his conviction for assault causing bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Theresa Wilson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Ann Brenden, Assistant Attorney General, Rosalise Olson, County Attorney, and Jon Martin, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

**MAHAN, P.J.**

Thomas Everett Reiter appeals his conviction for assault causing bodily injury. He argues the district court erred when it treated assault as a general intent crime. We affirm.

**I. Background Facts and Proceedings**

Thomas Reiter and Sally Reiter were divorced in 2001. They had one daughter during their marriage. Sometime after the divorce, Sally and the couple's daughter moved in with Kevin Willemssen. Reiter called Sally nearly every night. Most of the calls were of a general nature, but they became increasingly threatening after November 2002. At that time, Reiter began asking to speak with Willemssen. He told Willemssen that he would "kick [his] ass" and kill him.

At around 8 p.m. on February 4, 2003, Reiter again called to talk to Sally. He also asked to speak to Willemssen. He told Willemssen repeatedly that "you need to leave me alone" and "I'm going to come to your house and kick your ass." After listening to the threats for fifteen minutes, Willemssen told Reiter, "If this is what you're going to do, do it." Willemssen hung up the telephone. Willemssen, believing Reiter's threats to be empty, then went to bed.

Several minutes later, Reiter appeared at the front door of Willemssen's home. Willemssen went to the attached garage to meet Reiter on the driveway. Reiter approached Willemssen and pushed him with his hands. Willemssen went to push Reiter back, and Reiter threw Willemssen to the ground. He landed on top of Willemssen and punched him in the head. Reiter then got up and went home. Willemssen crawled back into the house for help. He went to the

emergency room for treatment that evening. As a result of the altercation, he received a dislocated shoulder and a torn ACL.

The State initially charged Reiter with willful injury, a class D felony, in violation of Iowa Code section 708.4 (2001) (Count I) and stalking, an aggravated misdemeanor in violation of section 708.11 (Count II). The trial information was amended on July 30 to include Counts III and IV: assault with intent to commit serious injury, an aggravated misdemeanor in violation of sections 708.1 and 708.2(1), and assault causing bodily injury, a serious misdemeanor in violation of sections 708.1 and 708.2(2).

Pursuant to a plea agreement, trial was presented to the court on Counts II, III, and IV, with Count I dismissed by the State at the conclusion of trial. The trial court concluded that Willemssen was more credible than Reiter, and that the events of February 4, 2003, occurred as Willemssen described. Reiter was acquitted of stalking (Count II) and assault with intent to commit serious injury (Count III). He was convicted of assault causing bodily injury (Count IV).

In making its findings, the court wrote:

In relation to the incident itself, the court finds that Mr. Reiter intended to grab Mr. Willemssen and throw him to the ground, but the court is not convinced beyond a reasonable doubt that Mr. Reiter had specific intent to inflict serious injury when he threw Mr. Willemssen to the ground, fell on top of him and struck him. Clearly, Mr. Reiter was angry, he intentionally took Mr. Willemssen to the ground and intentionally struck Mr. Willemssen in the head, but the court is not convinced beyond a reasonable doubt that Mr. Reiter specifically intended to inflict serious injury within the meaning of section 702.18, Code of Iowa. Accordingly, the court finds that Thomas Everett Reiter is not guilty of the offense of Assault with Intent to Inflict Serious Injury as charged in Count III of the Amended Trial Information.

Although the court is not convinced that Mr. Reiter intended to inflict serious injury, Mr. Reiter did have the requisite general

intent to commit an assault within the meaning of Section 708.1, Code of Iowa, and bodily injury resulted in the meaning of Section 708.2(2), Code of Iowa. Accordingly, the court finds Thomas Everett Reiter guilty of the offense of Assault Causing Bodily Injury as charged in Count IV of the Amended Trial Information.

Reiter appeals, alleging the court's characterization of assault as a general intent crime was incorrect.

## **II. Standard of Review**

We review for errors at law. Iowa R. App. P. 6.4.

## **III. Merits**

### **A. Error Preservation**

The State contends Reiter failed to preserve his argument because he did not raise the issue in a motion for new trial under Iowa Rule of Criminal Procedure 2.24(2) or in a motion to amend the district court's findings of fact and conclusions of law under rule 2.24(2)(c). While we require a defendant to file such motions to preserve an argument based on the sufficiency of the court's findings, they are not required in order to preserve an argument based on sufficiency of the evidence or other legal error. See *State v. Miles*, 346 N.W.2d 517, 518-19 (Iowa 1984).

### **B. Assault as General or Specific Intent Crime**

Reiter argues the district committed reversible error when it considered assault under section 708.1(1) and 708.2(2) a general intent crime. He relies primarily on two cases: *State v. Heard*, 636 N.W.2d 227 (Iowa 2001), and *State v. Bedard*, 668 N.W.2d 598 (Iowa 2003), *cert. denied*, 543 U.S. 932, 125 S. Ct. 336, 106 L. Ed. 2d 234 (2004). In *State v. Heard*, the supreme court established that assault is a specific intent crime. *Heard*, 636 N.W.2d at 231. In doing so, it

specifically overruled any case that held otherwise. *Id.* In 2002, however, the state legislature amended section 708.1 to include the sentence, “An assault as defined in this section is a general intent crime.” 2002 Iowa Acts ch. 1094, § 1, (codified at Iowa Code § 708.1 (2003)). Nonetheless, in *State v. Bedard*, the supreme court appeared to stand by its holding in *Heard*. The court explained that because the “amendment did not alter the substantive content of the statute as it pertains to the elements of the crime,” the intent elements of the offense remain the same as they were when they were discussed in *Heard*. *Bedard*, 668 N.W.2d at 601. As a result, they “continue to be matters that the State must prove by evidence beyond a reasonable doubt.” *Id.*

The State argues vehemently against classifying assault as a specific intent crime. It argues the legislature’s amendment and case law predating *Heard* establish that assault is a general intent crime. It claims that unless we make a definitive ruling classifying the offense as one type of intent or the other, chaos will reign in subsequent cases involving diminished responsibility defenses or assault as a lesser-included crime.

When faced with a similar question we now face, however, our supreme court acknowledged that it was relatively unhelpful to frame the discussion as a debate between specific and general intent. *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004). This is true because,

regardless of whether assault is a specific intent or general intent crime, the State must prove by evidence beyond a reasonable doubt that the defendant intended his act to cause pain or injury to the victim or to result in physical contact that would be insulting or offensive to the victim.

*Id.* (citing *Bedard*, 668 N.W.2d at 600-01). The court went on to evaluate the sufficiency of the evidence to establish each of the elements of the charged assault. In the instant case, we agree that framing the issue as a debate between specific and general intent is unhelpful. We therefore evaluate Reiter's claim by determining whether there is sufficient evidence to affirm his conviction of assault causing bodily injury.

In reviewing for the sufficiency of the evidence, we will affirm the district court's finding of guilt if there is substantial supporting evidence in the record. *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005). The evidence is considered substantial if a trier of fact could reasonably find the defendant guilty beyond a reasonable doubt. *Id.* We view the evidence in the light most favorable to the State. We do, however, entertain evidence that detracts from the verdict. *Id.* at 856-57. We also give weight to the trial court's credibility determinations. *State v. O'Shea*, 634 N.W.2d 150, 156 (Iowa Ct. App. 2001).

The district court determined that (1) the events that took place on February 4, 2003, occurred as described by Willemssen; (2) Reiter intended to grab Willemssen; (3) Reiter intended to throw Willemssen to the ground; and (4) Willemssen sustained substantial injuries as a result of the incident. Together with Reiter's statements that he wanted to "kick [Willemssen's] ass" and that he wanted to kill Willemssen, we conclude there is sufficient evidence to find beyond a reasonable doubt Reiter committed an "act which [was] intended to cause pain or injury to, or which [was] intended to result in physical contact which [was] insulting or offensive to another." See Iowa Code § 708.1. We also conclude that Reiter had the apparent ability to execute his acts. *Id.* Finally, Reiter's acts

caused Willemsen bodily injury. *Id.* § 708.2(2). We therefore affirm Reiter's conviction for assault under sections 708.1 and 708.2(2).

**AFFIRMED.**