

IN THE COURT OF APPEALS OF IOWA

No. 6-341 / 05-0769
Filed June 14, 2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KENNETH DEAN MURRAY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil,
District Associate Judge.

Defendant appeals his conviction, following a jury trial, for assault causing
bodily injury. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, Thomas J. Ferguson, County Attorney, and Jill S. Dasher, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran, J., and Schechtman, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(2005).

SCHECHTMAN, S.J.

Kenneth Murray was charged with assault causing bodily injury, a serious misdemeanor, in violation of Iowa Code sections 708.1 and 708.2(2) (2003). He filed a notice of self-defense. Murray moved for judgment of acquittal, which was overruled. The jury found him guilty. He was sentenced to 180 days in the county jail, with all but sixty days suspended. Murray appeals, challenging the sufficiency of the evidence to support his conviction.

I. Scope of Review

If the jury's verdict is supported by substantial evidence, it is binding on the court. *State v. Speicher*, 625 N.W.2d 738, 740 (Iowa 2001). Our review is for corrections of errors of law. *Id.*

II. Sufficiency of the Evidence

Evidence is substantial if it could convince a rational jury of the defendant's guilt beyond a reasonable doubt. *State v. Corsi*, 686 N.W.2d 215, 218 (Iowa 2004). If it only raises suspicion or speculation, it is not substantial. *Id.* In assessing the sufficiency of the evidence, we consider all the evidence in the record, but we review the record in the light most favorable to the State. *Id.*

III. Background Facts

David Brigance (Brigance) met Dawne Stocks-Brimmer (Brimmer) late on the evening of November 10, 2003. She was upset as she had only recently broken off her live-in relationship with Murray. Brimmer invited Brigance to her apartment as she was frightened of Murray, who was continually contacting her on her cell phone. Brigance and Brimmer talked until the early morning hours.

At 6:00 a.m., there was a loud knocking on the apartment's outside door. Brimmer said it was Murray. She told Murray to leave. The knocking and pounding persisted until Murray was observed coming through the locked door. Brimmer attempted to hold the inside door, but Murray entered the apartment through that door. Murray started punching Brigance, who responded by pushing him through the inside door and wrestling him down between the two doors. Brigance exited to the street and called the police. Two Waterloo police officers responded. In the interim, Murray had fled the scene. Brigance sustained a slight concussion, contusions on his hands, face and nose, and some damage to dental bridgework. The officers observed these injuries, as well as damage to each of the doors. Brigance indicated that the injuries caused him pain.

At the time of trial, Murray and Brimmer had reconciled. Brimmer denied any prior fear of Murray, although she was afraid of his reaction if he discovered Brigance's presence in her apartment. Murray testified that Brigance "come swinging out at me, and I was swinging back." Murray admitted to being angry, that he was not invited inside the apartment, had caused damage to both doors, and "believed" that he hit Brigance.

IV. Self-defense

Iowa Code section 708.1 defines an assault, in part, as "[a]ny act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act" when done "without justification." The "without justification" language in section 708.1 gives rise to the affirmative defense of

justification to a charge of assault. *State v. Ceaser*, 585 N.W.2d 192, 194 (Iowa 1998). The justification of self-defense, upon which Murray relies, is found in section 704.3, which provides, “A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force.” “*Reasonable force*’ is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss” Iowa Code § 704.1.

The burden to disprove self-defense is with the State. *State v. Bedard*, 668 N.W.2d 598, 600 (Iowa 2003). The jury was instructed that the defendant was not justified if any one of the following elements occurred: (1) the defendant started or continued the incident which resulted in injury; (2) an alternative course of action was available to the defendant; (3) the defendant did not believe he was in imminent danger of death or injury, and the use of force was not necessary to save himself; (4) the defendant did not have reasonable grounds for the belief; and (5) the force used by the defendant was unreasonable. See *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993); Iowa Crim. Jury Instructions 400.2.

V. Merits

The very function of a jury trial is to sort out the evidence and place credibility where it belongs. *State v. Blair*, 347 N.W.2d 417, 420 (Iowa 1984). The jury is free to believe or disbelieve as it chooses, and to give weight to the evidence as in its judgment such evidence should receive. *Id.* A jury is obviously

not bound to believe a defendant's account of the subject events. *State v. Garr*, 461 N.W.2d 171, 174 (Iowa 1990).

It is apparent that the jury found Brigance to be more credible than the defense witnesses. It is reasonable to have found that an admitted angry and upset assailant burst through two secured doors and punched a man found in his girlfriend's apartment at an unusual hour. The testimony of Brigance and the police officers, together with defendant's admissions, viewed in a light most favorable to the State, constitutes substantial evidence for the jury to have found an assault and lack of justification for it, by the appropriate proof.

We affirm Murray's conviction.

AFFIRMED.