

IN THE COURT OF APPEALS OF IOWA

No. 8-272 / 07-1053

Filed June 25, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MITCHELL DEAN MOELLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Clayton County, Lawrence H. Fautsch, Judge.

Mitchell D. Moeller appeals his conviction for domestic abuse assault causing bodily injury. **AFFIRMED.**

Larry G. Gutz, of Moyer & Bergman, P.L.C. Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, and Kevin H. Clefisch, County Attorney, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

MILLER, P.J.

Mitchell D. Moeller appeals his conviction for domestic abuse assault causing bodily injury, claiming there was insufficient evidence to support his conviction. We affirm.

On January 9, 2007, the State charged Mitchell Moeller (Moeller), by trial information, with domestic abuse assault causing bodily injury, in violation of Iowa Code sections 708.1(1) and 708.2A(2)(b) (2005). The charges stem from an altercation he had on December 13, 2006, with Anna Moeller (Anna), to whom he was married at the time. Moeller entered a plea of not guilty and a written waiver of jury trial. The matter proceeded to a trial to the court on May 16, 2007.

Anna testified at trial that during the early evening hours of December 13, 2006, she and Moeller were engaged in an argument at their family residence, while she was standing in the doorway to their bedroom Moeller grabbed her by both wrists and started shaking her back and forth, and he then pushed her against the handle of the bedroom door causing injury and bruising to her lower back. According to Anna, Moeller then attempted to push her to the floor and in doing so his hand came in contact with her nose causing her glasses to fall off and resulting in a scrape to her right eyelid. Anna testified that during the physical altercation she was yelling at Moeller to stop, and that both his act of grabbing her wrists and the injuries she sustained caused her pain. When Moeller eventually let Anna go she gathered up their children and left the marital home. She stayed with her sister that night and the police were contacted the next day.

Kathleen Bond, who was Anna's employer at the time of the incident, also testified at trial. She stated she saw Anna the following morning at work and Anna related the events of the preceding evening to her at that time. Bond insisted on calling the police. Bond testified Anna was "very shaken up" and "literally shaking" to the extent Bond had to write Anna's police statement for her. Bond further testified she saw a scratch and swelling in the area of Anna's eyelid, and observed marks on her wrists where she had been grabbed. Robert Pope, Chief of the Strawberry Point Police Department, was the officer who responded to a call from one of Anna's co-workers and interviewed Anna. Chief Pope testified that when he first saw Anna she was crying, stammering, and was hesitant to talk. She eventually told him she was crying because her husband had hit her the night before. Pope stated that Anna told him Moeller had grabbed her and pushed her up against a doorknob, shook her, and struck her. Chief Pope took photographs of the bruise on Anna's lower back and the large red mark on her right eyelid. These photographs were admitted into evidence at trial.

Moeller also testified at trial. He agreed with Anna that they were in an argument on the night in question. He stated that in order to avoid arguing in front of their children, he attempted to "guide" or "direct" her into the bedroom. He testified that in the process of "guiding" Anna into the bedroom her wrist and forearm came in contact with the door handle and shortly thereafter she fell, but that he "did not push her hard enough to fall." He testified that when Anna got up off the floor she came at him swinging her arms in both directions. He stated he

grabbed both of Anna's wrists, and his index finger may have "grazed" her nose after he grabbed her wrists.

The parties' fourteen-year-old son, Mitchell C. Moeller also testified. He testified he had observed the scratch on Anna's eyelid prior to the altercation on the evening of December 13, 2006. Clayton County Deputy Mark Kautman interviewed Moeller on the day after the incident, and also testified. Kautman stated Moeller told him that he pushed Anna and she struck a door during an argument, and at one point during the argument he did strike Anna in the eye with his finger.

The trial court found Moeller guilty as charged and sentenced him to two days in jail, a fine of \$325.00, and one year of probation. Moeller moved for judgment of acquittal alleging the State had not proved he had "any intent to injure or harm Anna." The court overruled the motion. Moeller appeals his conviction and sentence, contending there was insufficient evidence to find he was guilty of domestic abuse assault beyond a reasonable doubt.

We review challenges to sufficiency of the evidence supporting a guilty verdict for errors at law. Iowa R. App. P. 6.4; *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996). "We review a trial court's findings in a jury-waived case as we would a jury verdict: If the verdict is supported by substantial evidence, we will affirm." *State v. Weaver*, 608 N.W.2d 797, 803 (Iowa 2000). A trial court's finding of guilt is binding on us if supported by substantial evidence. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000). Substantial evidence is evidence which would convince a rational factfinder the defendant is guilty beyond a

reasonable doubt. *State v. Dible*, 538 N.W.2d 267, 270 (Iowa 1997). “The evidence is examined in the light most favorable to the State, including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record. We consider all evidence presented, not just that of an inculpatory nature.” *Lambert*, 612 N.W.2d at 813 (citations omitted). Moeller’s claim is preserved for our review. See *State v. Abbas*, 561 N.W.2d 72, 74 (Iowa 1997) (“[W]hen a criminal case is tried to the court, a defendant may challenge the sufficiency of the evidence on appeal irrespective of whether a motion for judgment of acquittal was previously made.”).

In order to find Moeller guilty of domestic abuse assault under 708.1(1) the State was required to prove, beyond a reasonable doubt, that he did an act “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.” Iowa Code § 708.1(1). The State also had to prove that while committing this assault Moeller caused “bodily injury” to Anna. Iowa Code § 708.2(2). Proof of this element is not challenged on appeal. Moeller contends only that the State failed to prove, beyond a reasonable doubt, that he intended to cause pain or injury to Anna, or to cause physical contact that would be offensive to Anna.

For purposes of our decision we will assume that an assault under section 708.1(1) is a specific intent crime. See *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003) (stating that although a 2002 amendment states that “[a]n assault as defined in this section is a general intent crime,” the amendment “did not alter the

substantive content of the statute as it pertains to the elements of the crime” discussed in *State v. Heard*, 636 N.W.2d 227, 231 (Iowa 2001), in which the court stated the section 708.1(2) alternative of assault is a specific intent crime). Intent is seldom capable of direct proof. *State v. Salkil*, 441 N.W.2d 386, 387 (Iowa Ct. App. 1989). Intent instead must frequently be proved by circumstantial evidence. *Id.* Because intent is rarely susceptible to direct proof, the factfinder may determine intent by such reasonable inference and deduction as may be drawn from the facts proved by evidence in accordance with common experience and observation. *Id.* at 388. Circumstantial and direct evidence are equally probative. *State v. Knox*, 536 N.W.2d 735, 742 (Iowa 1995). In fact, inferences from circumstantial evidence are a staple of the adversarial fact-finding system. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998).

All of the testimony set forth above was before the trial court and it was for the court, as factfinder, to determine witness credibility and the weight of the evidence as a whole. See *State v. Laffey*, 600 N.W.2d 57, 59 (Iowa 1999). Trial court findings on credibility of witnesses are entitled to considerable deference by this court. *State v. Liggins*, 524 N.W.2d 181, 186 (Iowa 1994). The trial court here found Anna’s testimony to be “a more credible version of what transpired” on the evening in question than Moeller’s testimony. We defer to this credibility determination. Furthermore, although there were some inconsistencies between Anna’s testimony and that of other witnesses, we do not find that such inconsistencies were “so impossible and absurd and self-contradictory” that we

should deem Anna's or any of the other witnesses' testimony a nullity. *State v. Smith*, 508 N.W.2d 101, 103 (Iowa Ct. App. 1993).

Anna testified Moeller grabbed both of her wrists and started to shake her. He pushed her up against the bedroom doorknob causing bruising to her lower back. He tried to throw her to the floor and in the process knocked her glasses off and caused a scratch to her eyelid. Anna stated this conduct was painful to her. We, like the trial court, are "guided by the maxim that defendants will ordinarily be viewed as intending the natural and probable consequences that ordinarily follow from their voluntary acts." *Bedard*, 668 N.W.2d at 601. Based on these acts, we conclude there was more than enough evidence to convince a rational factfinder, beyond a reasonable doubt, that Moeller intended to cause pain or injury to, or offensively contact, Anna.

Accordingly, we conclude there was sufficient evidence for the trial court to find Moeller guilty beyond a reasonable doubt of domestic abuse assault causing bodily injury.

AFFIRMED.