

IN THE COURT OF APPEALS OF IOWA

No. 8-325 / 07-1061

Filed May 29, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN RUSSELL ALLARD,
Defendant-Appellant.

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson,
Judge.

Appeal from judgment and sentence for assault causing serious injury and
first degree harassment. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney
General, and Mark Tremmel, County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

SACKETT, C.J.

The defendant-appellant, John Allard, appeals from the judgment and sentence following a jury trial, for assault causing serious injury, domestic abuse assault, and harassment in the first degree. He contends there was insufficient evidence to support the guilty verdicts and the court erred in admitting the court record of his felony convictions in another state. We affirm.

I. Scope and Standards of Review.

We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Bower*, 725 N.W.2d 435, 440-41 (Iowa 2007). A jury's finding of guilt is binding on appeal if supported by substantial evidence. *State v. Nitchee*, 720 N.W.2d 547, 556 (Iowa 2007). "[E]vidence is substantial if a rational fact finder could find the defendant guilty beyond a reasonable doubt." *State v. Lane*, 743 N.W.2d 178, 181 (Iowa 2007). We consider all the evidence in the record, not just the evidence supporting the defendant's guilt. *State v. Randle*, 555 N.W.2d 666, 671 (Iowa 1996). We also consider legitimate inferences and presumptions that may reasonably be deduced from the evidence in the record, and we view the evidence in the light most favorable to the State. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). "Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *Nitchee*, 720 N.W.2d at 556 (quoting *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994)). Weighing the evidence and assessing the credibility of witnesses are matters left to the jury, and not the reviewing court on appeal. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006).

Ordinarily, we review a district court's decision to admit evidence for an abuse of discretion. *State v. Boggs*, 741 N.W.2d 492, 499 (Iowa 2007). However, to the extent admission of evidence turns on the interpretation of a statute, our review is for errors at law. *State v. Kjos*, 524 N.W.2d 195, 196 (Iowa 1994).

II. Discussion.

Insufficient Evidence. Appellant first contends the State did not prove every element of the crimes because the victim is mentally ill, has delusions, and her testimony is not credible. Appellant lived with the victim at the time of the incident. The victim identified appellant as her assailant after he took her to the hospital. The attending nurse testified to the victim's injuries. She also testified appellant tried to discourage the victim and the hospital from contacting the police and that when the police were called, appellant took the car keys and "left the emergency department quickly." The responding police officer verified the victim's injuries and photographed them. The victim described appellant's attack on her. The responding police officer investigated the scene and described how it verified the victim's account. The treating physician's testimony and hospital records support the seriousness of the victim's injuries.

While we agree that the victim suffers from mental illness and some of her testimony could be considered incredible, we conclude there is substantial evidence in the record from which the jury could find the State proved all the elements of the crimes and render a guilty verdict. We therefore affirm the appellant's convictions of assault causing serious injury, domestic abuse assault, and harassment in the first degree.

Habitual Offender. In a separate trial to the court following appellant's convictions in the jury trial, the State alleged appellant was a habitual offender. Over appellant's objections, the court admitted an exhibit containing court records from California that showed at least two felony convictions in that state. Appellant challenged the adequacy of the certification of the California records—that it did not comply with the requirements of Iowa Code section 622.53 (2005), which provides:

[A judicial record] of another state may be proved by the attestation of the clerk and the seal of the court annexed, if there is a seal, together with a certificate of a judge, chief justice, or presiding magistrate that the attestation is in due form of law.

The exhibit contained a “certificate of authentication” comprising three certifications: the clerk of court's certification the records are a true and correct copy; the judge's certification the person who signed the clerk's certification is a deputy clerk, the clerk is the keeper of the court records, and the “attestation is in due form of law and by the proper officer”; and a clerk's certification the judge who signed the judge's certification is a judge of the court. The judge's certification contained a space for the name of the deputy clerk who signed the clerk's certification, but the space was blank. The judge signed the certification the day after the clerk's certification was signed.

Appellant argued at trial that the judge's certification “says nothing” because the blank for the name of the clerk was not filled in. The judge's certification reads:

I, Charles Peven, Judge of the Superior Court of the State of California, in and for the County of Los Angeles, do hereby certify that _____, who signed the foregoing Certificate of Attestation, now is and was at the time of the signing and sealing of the same, a Deputy Clerk of the Superior Court of the State of California in

and for the County of Los Angeles; that he/she is a legal keeper of the records and seal of said Superior Court; that his/her signature, as it appears signed to the said Certificate of Attestation, is his/her genuine signature; that the seal affixed to said Certificate of Attestation is the Seal of said Superior Court, and that the attestation is in due form of law and by the proper officer.

Section 622.53 requires a judge to certify that the clerk's attestation "is in due form." Appellant did not challenge the clerk's attestation, but only the judge's certification. The form used in this case was a California form. It provides for the judge to certify more than is required by Iowa law. We conclude that the lack of a name in the blank in the judge's certification portion of the form does not affect the judge's certification that the clerk's attestation "is in due form" for purposes of admissibility of the records in a proceeding in Iowa. The district court did not err in admitting the exhibit. Substantial evidence exists to support appellant's conviction as a habitual offender.

AFFIRMED.