

IN THE COURT OF APPEALS OF IOWA

No. 9-839 / 08-1846
Filed November 12, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ALEJANDRO SALAZAR JARAMILLO,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Nathan Callahan, District Associate Judge.

Defendant appeals his conviction for domestic abuse assault causing bodily injury. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Jeremy Westendorf, Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

ZIMMER, S.J.

Alejandro Salazar Jaramillo appeals his conviction for domestic abuse assault causing bodily injury following a jury trial. He contends the evidence is insufficient to support his conviction and argues that the jury's verdict is contrary to the weight of the evidence. We affirm.

I. Background Facts & Proceedings

On May 18, 2008, at about 12:30 a.m., a resident of an apartment building heard the sounds of a fight in his building and heard a woman yell, "Help, someone help me," so he called 911. Officer Nicholas Berry of the Waterloo Police Department responded to the call about three to five minutes later. As officer Berry approached the apartment building, he could hear yelling and screaming coming from an upstairs apartment. He approached the door of the apartment and heard a woman yell, "Don't f***ing choke me again," and "Don't ever put your hands on me again."

Officer Berry entered the apartment and saw Susan Butler sitting on the floor. Alejandro Jamarillo was straddling Butler's stomach area, facing toward her face. Officer Berry handcuffed Jamarillo. Another person, Leroy Cannon, was also in the apartment. Cannon stated he had been sleeping and did not see anything. Immediately after Jamarillo was handcuffed, Butler screamed, "Don't take my husband to jail." Butler was intoxicated and hysterical. She had two scratches on the front of her neck. She claimed the marks on her neck were "hickeys."

After another officer arrived at the apartment, Officer Berry took Jamarillo out to his patrol car and read the Miranda warnings to him. On the way to the police station, Jamarillo admitted Butler was speaking to him when she said, "Don't f***ing choke me again." Jamarillo stated Butler had actually been assaulted by another roommate, Daniel Meyer.¹ Jaramillo claimed the marks on Butler's neck were hickeys. When Officer Berry told Jaramillo the marks looked like scratches, Jaramillo stated that Butler was the aggressor and had pushed him (Jamarillo).

Officer Thomas Sullivan arrived at the apartment after Jamarillo had been placed in handcuffs. Officer Sullivan testified Butler had two fresh scratch marks on her neck that were bleeding a little bit. He stated the marks did not look like hickeys. Butler was very uncooperative and physically aggressive. At one point, Officer Sullivan threatened to use his taser on Butler because her behavior was so out of control. Butler told Officer Sullivan that Meyer had assaulted her. She refused to let a police photographer take a picture of her neck. After Butler gave Cannon a "mean glare," Cannon changed his story. He said he had not been sleeping, and had seen Meyer assault Butler.

Jaramillo was charged with domestic abuse assault causing bodily injury, in violation of Iowa Code section 708.2A(2)(b) (2007). Butler testified for the defense at Jaramillo's jury trial. She stated she, Jamarillo, Cannon, and Meyer were drinking and watching television that evening. Butler stated that she and

¹ Officer Berry testified he was acquainted with Daniel Meyer. He described Meyer as a homeless person who had one leg and used crutches. Officer Berry testified he did not see Meyer anywhere in the area of the apartment that evening.

Jamarillo came out of the bathroom together and Meyer started calling her names. She testified Meyer grabbed her by the arm, and she grabbed one of his crutches and was going to hit him with it when Jamarillo intervened. She stated Meyer then shot out the door although “[h]e didn’t even have his prosthetic leg on.” Butler testified Jamarillo took her to the bedroom to try to calm her down. She claimed she was still in the bedroom when the police arrived. She stated the only mark on her neck was “a three-day-old hickey.”

The jury found Jamarillo guilty of domestic abuse assault causing bodily injury. Jamarillo moved for a judgment of acquittal and also filed a motion for a new trial. The district court denied the motion for judgment of acquittal and addressed Jamarillo’s motion for new trial at his sentencing hearing. The court considered whether the weight of the evidence was contrary to the jury’s verdict. The court stated, “having heard the recording that Officer Berry produced of the screaming and the fright that was inherent and the anger that was inherent and all of the comments made by Ms. Butler that the motion for new trial should be overruled.”² Jamarillo was sentenced to the time already served. He was ordered to attend a batterer’s education program. Jamarillo appeals his conviction.

II. Sufficiency of the Evidence

Jaramillo first contends there is not sufficient evidence in the record to show he assaulted Butler. He points out that all of the witnesses to the event

² Officer Berry had a recording device on him, and an audio recording of his interactions during this incident was admitted as an exhibit.

stated Butler had been assaulted by Meyer. He also notes that he and Butler both told the officers the marks on Butler's neck were hickeys.

We review challenges to the sufficiency of the evidence in a criminal case for the correction of errors at law. *State v. Heuser*, 661 N.W.2d 157, 165 (Iowa 2003). A jury's verdict will be upheld if it is supported by substantial evidence. *Id.* at 165-66. Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). We view the evidence in the light most favorable to the State. *State v. Padavich*, 536 N.W.2d 743, 751 (Iowa 1995).

We find substantial evidence to support the jury's verdict that Jamarillo was the person who assaulted Butler in the circumstantial evidence presented by the police officers. See Iowa R. App. P. 6.14(6)(p) ("Direct and circumstantial evidence are equally probative."). A neighbor heard a woman call out for help and heard a fight in a nearby apartment. When an officer responded to the scene, he heard a woman scream "Don't f***ing choke me again," and "Don't ever put your hands on me again." The officer immediately entered the apartment and saw the Butler on the ground, with Jaramillo straddling her. Butler had fresh scratch marks on her neck, which were bleeding slightly. Butler also had bruising on her upper arm. Jaramillo later admitted to the officer that Butler's statements were directed to him. This evidence could convince a rational fact finder that Jaramillo had just assaulted Butler.

In considering the evidence, the jury could certainly have found Butler's testimony was not credible. See *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005) (noting the credibility of witnesses is for the jury, not the court, to determine). Both officers who were present at the scene testified Butler's injuries were not consistent with a hickey as Butler contended. Butler testified she was in the bedroom when the officer arrived; however, officer Berry saw Jaramillo straddling Butler as she lay on the living room floor as soon as he entered the apartment. In addition, Butler claimed she was assaulted by someone who was not present in the apartment when police arrived and was not seen in the area. Finally, Butler could not explain why she screamed "Don't f***ing choke me again."

On appeal, Jamarillo also contends there is insufficient evidence to show Butler suffered "bodily injury." The term "bodily injury" as used in chapter 708 means "physical pain, illness, or any impairment of physical condition." *State v. Taylor*, 689 N.W.2d 116, 135 (Iowa 2004). We first note that this issue is being raised for the first time on appeal, and has not been preserved for our review. See *State v. Talbert*, 622 N.W.2d 297, 300 (Iowa 2001). Even if the issue had been preserved, however, we would find substantial evidence in the record to support the jury's verdict. Butler had fresh scratch marks on her neck when police arrived at her apartment. Butler also testified that the person who assaulted her caused bruises, and that the attack hurt and caused her pain. We find this evidence is sufficient to show that Butler suffered bodily injury.

We conclude there is substantial evidence in the record to support the jury's verdict.

III. Motion for New Trial

Jaramillo asserts the district court should have granted his motion for a new trial because the jury's verdict is contrary to the weight of the evidence. Courts have wide discretion in ruling on a motion for new trial. *State v. Ellis*, 578 N.W.2d 655, 659 (Iowa 1998). A new trial may be granted when the verdict is contrary to the weight of the evidence. *Id.* In considering the weight of the evidence the court must make a determination whether the greater weight of the credible evidence supports one side of an issue more than the other side. *Id.* at 658.

The record reveals the trial court applied the correct standard and weighed the credible evidence to determine whether the verdict was contrary to the weight of the evidence. We conclude the court did not abuse its discretion in finding the jury's verdict was not contrary to the weight of the evidence. The court noted that the marks on Butler's neck were consistent with being choked. The court also noted that Butler's screamed statements showed she was frightened and angry. In addition, officer Berry saw Jaramillo astraddle Butler after she had just screamed at him not to choke her again.

We affirm Jaramillo's conviction for domestic abuse assault causing bodily injury.

AFFIRMED.