

**IN THE COURT OF APPEALS OF IOWA**

No. 1-498 / 10-1709  
Filed July 27, 2011

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

**vs.**

**DEREK JOSEPH HIGGINS,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Jasper County, Gregory A. Hulse,  
Judge.

The defendant appeals his conviction for domestic abuse assault while using or displaying a dangerous weapon contending there is insufficient evidence to support his conviction. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Theresa R. Wilson,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant  
Attorney General, Michael K. Jacobsen, County Attorney, and Scott Nicholson,  
Assistant County Attorney, for appellee.

Considered by Eisenhauer, P.J., and Potterfield and Tabor, JJ.

**EISENHAUER, P.J.**

Derek Joseph Higgins appeals from his conviction and sentence following a jury verdict finding him guilty of attempt to commit murder, willful injury causing serious injury against one victim, and domestic abuse assault while using or displaying a dangerous weapon against a second victim. The jury answered a special interrogatory on the willful injury charge and found Higgins “was armed with a Dangerous Weapon while participating” in the willful injury. The jury found Higgins not guilty of going armed with intent.

Higgins only appeals from the domestic abuse assault conviction, admitting he committed the assault, but arguing there is insufficient evidence he used or displayed a weapon during the assault. We affirm.

**I. Scope and Standard of Review.**

We review challenges to the sufficiency of the evidence to support a conviction for corrections of errors at law. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005). The jury’s verdict is binding upon a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). “When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record.” *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). Additionally, the jury is “free to

reject certain evidence and credit other evidence.” *State v. Nitchee*, 720 N.W.2d 547, 559 (Iowa 2006).

## II. Insufficient Evidence.

Higgins challenges the State’s proof of element three of the domestic abuse assault jury instruction:

1. On or about the 30th day of March 2010, [Higgins] . . . did an act which was meant to place Shawna Severini in fear of immediate physical contact which would have been painful, injurious, insulting or offensive to her.
2. [Higgins] had the apparent ability to do the act.
3. At the time [Higgins] used or displayed a dangerous weapon.

Iowa Code section 708.2A(2)(c) (2009) categorizes first offense domestic abuse assault as an aggravated misdemeanor when the “the person uses or displays a dangerous weapon *in connection with* the assault.” (Emphasis added.)

Shawna Severini, Higgins, and their daughter lived in a house belonging to Severini in Ira, Iowa. In early March 2010, Higgins told Severini if she and Higgins ever broke up, he would kill her parents.

On the evening of March 30, 2010, Severini’s mother, Kathy Clark, drove Severini to the Ira house in Clark’s large, four-passenger, pickup truck. While Severini and her mother were inside the house, Higgins came home. Severini and Higgins began arguing. Clark left and waited in the driver’s seat of her truck. Severini and Higgins continued to argue. While Severini watched, Higgins took a knife out of his pocket, cut up a food stamp card, and put the knife back in his pocket. Higgins took several loads of his belongings to his vehicle. Severini took a laptop computer and got in the passenger seat of the truck. Severini and Clark

waited in the truck for Higgins to leave because Severini was worried Higgins would do something to the dogs or burn down the house.

As Higgins approached the truck, Clark locked the doors. Severini's window was open a few inches. Higgins stood outside the truck on the passenger side and told Severini to give him the laptop computer. Severini refused, and she and Higgins continued to argue. At some point Clark called 911. Higgins pounded on the passenger window with his fist. Severini did not see a knife when Higgins was pounding on the window. On Higgins's fourth hit the window shattered and Higgins hit Severini in the jaw and knocked her unconscious. Higgins then lunged through the window, lay on top of Severini, and began repeatedly stabbing and slashing Clark in the face, chest, and abdomen. Clark dropped her cell phone. The 911 operator heard screaming and dispatched the police.

When Severini came to, she heard Clark screaming. Severini could not tell why her mother was screaming but she "wiggled" out from under Higgins and made it halfway into the truck's backseat. Severini began hitting Higgins in the face and telling him to leave her mother alone. Severini did not see the knife during the time Higgins was in the truck. Severini testified:

Q. And what happened next? A. [Higgins] jumped out of the truck.

.....

Q. And then what? A. He raised the knife up at me.

Q. Okay. When you say "knife," what knife are you talking about? A. The long blade.

Q. The knife that Mr. Higgins used earlier to cut up the food stamp card? A. Yes.

.....

Q. And when he—when Mr. Higgins raised up the knife, what did he do? A. He raised the knife at me like this (indicating), and then my mom drove off.

Clark put the truck in reverse and drove across the street to a neighbor's house. Severini called 911 and Higgins drove away. After help arrived, Clark was taken by helicopter to a Des Moines hospital and Severini, who was five-months pregnant, was taken by ambulance to the Newton hospital.

Higgins testified at trial. He admitted cutting the food stamp card, but claimed he had previously lost the specific knife Severini testified he used to cut the card. Higgins testified he would carry a knife “[a]bout 90 percent of the time unless I laid it down and lost it somewhere. Then I wouldn’t have one.” Higgins admitted shattering the window, but testified he “blacked out when I broke the window.” Higgins explained he sometimes blacks out when he gets mad. Further:

Q. You remember throwing the knife out of your truck, don't you? . . . A. I threw something out of my truck. I don't know exactly what it was.

Q. And that was on a gravel road outside of Ira, wasn't it?  
A. Yes.

On appeal Higgins argues the State did not establish he “used or displayed a dangerous weapon *during* the admitted, domestic assault.” Higgins contends Severini’s observation of a knife when he was standing outside the truck is an observation “after the assaults upon both Severini and Clark were completed.” We disagree. Assault is “an act which was meant to place Shawna Severini in fear of immediate physical contact which would have been painful, injurious, insulting or offensive to her.” Higgins’s assault on Severini did not end when he struck her and knocked her unconscious. The assault continued as

Higgins lay on top of Severini while stabbing Severini's mother and Severini regained consciousness. The assault continued while Severini moved out from under Higgins and hit him in an attempt to stop his attack on her mother. The assault continued as Higgins jumped out of the truck and then raised the knife at Severini. During this assault, Higgins used or displayed the knife "in connection with the assault." See Iowa Code § 708.2A(2)(c).

When viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found Higgins guilty of domestic abuse assault while using or displaying a dangerous weapon. Accordingly, substantial evidence supports the jury's verdict.

**AFFIRMED.**