IN THE COURT OF APPEALS OF IOWA

No. 3-942 / 13-0049
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHAD ALAN STECHCON,
Defendant-Appellant.

Appeal from the Iowa District Court for Benton County, Douglas S. Russell, Judge.

Defendant appeals from judgment and sentences entered upon his convictions of burglary in the first degree, domestic abuse assault while using or displaying a dangerous weapon, and false imprisonment. **AFFIRMED.**

Alfred E. Willett and Keith J. Larson of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant.

Thomas J. Miller, Attorney General, Darrel Mullins, Assistant Attorney General, David C. Thompson, County Attorney, and Emily Nydle, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Danilson and Tabor, JJ.

DANILSON, J.

Chad Stechcon appeals from the judgment and sentences entered upon his convictions of burglary in the first degree, in violation of Iowa Code sections 713.1 and 713.3 (2011); domestic abuse assault while using or displaying a dangerous weapon, in violation of section 708.2A(1) and (2)(c); and false imprisonment in violation of section 701.7. On appeal, he asserts there is insufficient evidence to support each of the convictions. He also maintains the court erred in denying his motion for new trial and motion in arrest of judgment, as the verdicts are contrary to the weight of the evidence. After considering the trial record, we conclude there is sufficient evidence to support the guilty verdicts. Furthermore, we find the district court did not abuse its discretion in overruling Stechcon's motions for a new trial and in arrest of judgment. We affirm.

I. Background Facts and Proceedings.

Stechcon was the common-law husband of Bridget Barr. From 2001 to June 1, 2011, they lived together at her home in Van Horn, Iowa. Barr owned the residence, but Stechcon contributed to the maintenance and residential expenses during the period he lived there. In June 2011, Barr and a friend moved Stechcon's belongings to the living room of the house. She later hired people to move the items to the garage so Stechcon could retrieve them. Also in the garage were two vehicles in need of repair that Stechcon owned. Some winter coats and boots of Stechcon's were left in the basement of the home.

After Stechcon moved out on June 1, Barr allowed him to work on the vehicles in the garage on various occasions. One night, Barr invited him to have

supper with her in the home. On Father's Day, he and his children visited in the living room before going out to eat dinner.

At trial, Barr testified that at some point before July 15, 2011, she refused Stechcon's request to move back into the residence and told him she did not want him on her property at all. She also changed the locks on the two doors for which he had keys.

Near midnight on July 15, 2011, Stechcon entered Barr's residence without her knowledge. Barr realized Stechcon was in the residence when she came around a corner and encountered him. She testified Stechcon was wearing rubber gloves and dark clothing. She also testified that he grabbed her arms and dragged her down the hallway to her bedroom. It is undisputed that once they reached the bedroom, Barr retrieved her cell phone and attempted to use it to call for help, but Stechcon knocked it out of her hands. It is also undisputed that Stechcon punched her in the stomach during the altercation. Stechcon then attempted to bind Barr with zip ties he had brought with him. However, Barr struggled against him, and Stechcon was unsuccessful. She testified he then choked her and hit her head against the wall.

Barr had taken a butcher knife up to her room at some point earlier in the night, purportedly because she was afraid of Stechcon. She testified he noticed it, grabbed it, and stabbed both the floor and the wall next to her head, stating, "This will be the last day you are going to live." She also testified he held the knife to her neck, cutting her.

Barr testified she had a "safety plan." She planned to act like she wanted to get back together with Stechcon until he calmed down and she felt safe enough to escape. Barr testified she crawled into Stechcon's lap and apologized to him, saying they would attend counseling and "make it work." He then put the knife down and stopped hitting her.

Barr and Stechcon then attempted to go to sleep but were unable to because Barr's stomach was upset. They went for a walk around Van Horn, which lasted approximately forty-five minutes.

Once they returned to Barr's residence, the two slept in Barr's room. Barr woke up around 6:30 a.m. When she awoke, Stechcon woke too. She told him she going downstairs to let her dogs out. She then went downstairs, let the dogs out, read the paper, and gathered the recycling until she heard Stechcon snoring. Once she heard him snoring, she called her parents and 911. The police arrived at her residence within a few minutes.

Police found Barr to be emotional and to have been crying when they arrived. They spotted Stechcon at the door and ordered him to exit the house. He then ran back into the house and ultimately out onto the roof where he remained for approximately four hours while a negotiator and state troopers stood by. Once he left the roof, he was arrested.

During the following investigation, authorities retrieved zip ties, a pair of rubber gloves, and a roll of electrical tap which had been placed between the mattress and box springs in Barr's room. The authorities also photographed

Barr's injuries: bruising on her neck, arm, under her left breast, and under her eyes, as well as a cut on the left side of her neck and a bump on her head.

At trial, the State offered a letter Stechcon had written to his mother concerning the night in question. It stated, in part:

> After entering house we ran into each other in the dark upstairs hallway. She yelled 'Chad' as in help me. Realizing it was me she's like what are you doing here? I said we need to talk after you called me tonight how many times screaming at the top of your lungs while I was in Elberon with kids. As we entered bedroom she went for cell phone which I didn't want her to use so I threw it under the bed. Then noticing our dicing knife from the kitchen on the nightstand next to the bed I said what the hell are you doing with that? She said her and Jena were joking around about it earlier on the phone. And said let's joke then I threw it in the night stand drawer and said that was stupid to joke around about. . . .
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> I did hit her as she tried to go for phone in the stomach and acted like I was gonna tie her up with zip ties. But did not cause all I wanted to do is scare her, calm her down from earlier and talk. Shortly after me being upset I hit her with zip ties with all the crying she's put me through the days before. She began to cry and say why don't we do what I think we'd both rather be doing. Hold me, hold me tight. I did, it felt so right. She wanted to make love as I did too. We layed (sic) down together in bed, but with the meds, I could tell I'd not able to perform. We layed (sic) there with pups talking caressing but me feeling bad. I asked if she'd like to go for a walk knowing she'd enjoy this and neither of us were tired for it being 3:00 to 3:30 a.m. We let dogs out then we walked the town talking about couples (sic) counseling and how I was sorry, sitting at the park swings, swinging together. Hand and hand we walked back home. We was gonna do garbage recycle but declined at that time. 4:30 to 5:00. We go back in house were (sic) she was gonna lay on couch. I thought she may be more comfortable up in bed so we both headed up with pups going down to underwear for total comfort and relaxation of being my own bed again with my best friend, my wife and the four wiener dogs. Life was whole again and it felt right. . . .
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> I rubbed her as she loved me to do back, shoulders, legs until we both feel (sic) asleep to wake shortly after 6:00 to find pups gone and recycle bin sitting next to bed. I figured she was letting pups out. I thought I'd help with recycle and went downstairs with pail to greet her and pups as I opened front door I noticed five police/state troopers in front of house, so I ran to back scared out of

> my mind seeing one by garage. I ran upstairs got dressed and to the attic, where I knew that big windstorm had blew out the window a few nights before. So I climbed onto the roof which I had been in and out of those windows so many times before from painting different colors on trim on this old Victorian dormers. . . .

At the conclusion of the trial, the jury returned guilty verdicts for each of the three charges: burglary in the first degree, domestic abuse assault while using or displaying a dangerous weapon, and false imprisonment. Stechcon was sentenced to an indeterminate term not to exceed twenty-five years for the burglary in the first degree conviction. He was ordered to serve a minimum of five years before being eligible for parole. His other two sentences were set to run concurrently. He appeals.

II. Standard of Review.

We review challenges to the sufficiency of evidence for errors at law. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012). We review the evidence "in the light most favorable to the State, including all reasonable inferences that may be deduced from" it to determine whether the finding of guilt is supported by substantial evidence and should be upheld. *Id*. Evidence is substantial if it would convince a rational fact-finder of the defendant's guilt beyond a reasonable doubt. *Id*.

The district court has broad discretion when ruling on motions for a new trial in which the defendant alleges the verdict is contrary to the weight of the evidence, and we review its decision for an abuse of that discretion. *State v. Nitcher*, 720 N.W.2d 547, 559 (Iowa 2006). The weight-of-the-evidence standard differs from the sufficiency-of-the-evidence standard in that the district court does

not view the evidence from a standpoint most favorable to the government. *State v. Taylor*, 689 N.W.2d 116, 134 (Iowa 2004). Rather, the court weighs the evidence and considers the credibility of the witnesses. *Id*. While it has the discretion to grant a new trial where a verdict rendered by the jury is contrary to law or evidence, the court should do so only "carefully or sparingly." *Id*. In our review, we limit ourselves to the question of whether the trial court abused its discretion; we do not consider the underlying question of whether the verdict is against the weight of the evidence. *State v. Reeves*, 670 N.W.2d 199, 203 (Iowa 2003).

III. Discussion.

A. Sufficiency of Evidence.

1. First Degree Burglary.

At trial, the State had the burden to prove beyond a reasonable doubt each of the elements for burglary in the first degree. The marshalling instructions provide the following elements: (1) the defendant entered the home; (2) the home was an occupied structure; (3) one or more persons were present in the occupied structure; (4) the occupied structure was not open to the public; (5) defendant did not have permission or authority to enter the home; (6) with the specific intent to commit an assault; and (7) during the incident defendant intentionally or recklessly inflicted bodily injury. On appeal, Stechcon challenges the sufficiency of evidence for only the fifth and sixth elements, namely whether he had permission or authority to enter the home and whether he entered with the specific intent to commit an assault.

a. Permission or Authority to Enter Home.

Stechcon contends there was insufficient evidence for the jury to find he did not have the permission or authority to enter Barr's home on the night in question. In support of his contention, he relies on the fact Barr retained a few of his belongings, such as winter coats and boots, in the basement of the home. He also notes Barr had invited him into the home on two occasions after he moved out June 1, 2011, and Barr never asked him to return his house keys.

We believe the facts of the present case are analogous to those in *State v. Hagedorn*, 679 N.W.2d 666 (Iowa 2004). In *Hagedorn*, the defendant and his wife had lived together with their children in a duplex which the wife leased. *Id.* at 667. The parties separated and each moved out of the duplex, although the defendant's possessions remained in the home. *Id*. at 667–68. At some point, the defendant's estranged wife moved back into the marital home. *Id*. at 668. She placed the defendant's possessions on the porch for him to retrieve them. *Id*. Following this, the defendant entered the home and confronted his estranged wife's new partner. *Id*. The wife told the defendant to leave and had the locks changed. *Id*. She also told the defendant "on at least four or five occasions that he was to stay away from the duplex." *Id*. However, one night, the defendant removed a screen from a window, entered the bedroom, and bludgeoned his wife's new partner. *Id*. The defendant was found guilty of burglary in the first degree. *Id*. On appeal, he challenged whether he had the right, license, or privilege to enter the home, arguing although he was "temporarily" absent from

the residence, it remained the marital home and he had a right to be there. *Id*. at 669. The Iowa Supreme Court affirmed the defendant's conviction, stating:

> The . . . cases stand for the proposition that the existence of a domestic relationship between the accused and the victim of a crime does not lessen the applicability of or protection afforded by our criminal statutes. Moreover, our decision . . . is consistent with the legislative purpose underlying section 713.1 to protect the security of *occupancy*, rather than ownership rights, and to promote personal safety. . . . To allow the existence of a marital relationship to immunize a defendant from the consequences of a burglary hearkens back to the day when the law provided no protection to the victims of domestic assault under the misguided view that it was a private matter between a husband and wife. Surely a spouse who stays in the marital residence after the other spouse has moved out should be able to enjoy the security and sanctity of his or her home without the necessity of obtaining a restraining order.

Id. at 670–71.

We are not persuaded Stechcon retained an occupancy interest in the marital home. He had moved out and had retrieved most of his possessions. Even more importantly, Barr had changed the locks and told Stechcon he was not welcome on the property. Barr had no reason to ask Stechcon to return his keys since they were no longer of any value. Furthermore, inviting him into the residence on two separate occasions implies that Stechcon was now only a guest in the home; one that Barr had the right to exclude. There was sufficient evidence to support the finding that Stechcon did not have the permission or authority to enter Barr's home on the night in question.

b. Intent to Commit Assault.

Stechcon also argues there was insufficient evidence to support a finding he entered Barr's home with the intent to commit an assault. In our review of the sufficiency of the evidence, "we find circumstantial evidence equally as probative as direct." *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

On appeal, Stechcon contends he did not intend to commit an assault at the time he entered the property but rather that his actions stemmed from an argument he had with Barr after he entered. However, the State presented evidence Stechcon entered Barr's home wearing rubber gloves and carrying zip ties and electrical tape. Barr testified Stechcon attempted to bind and restrain her with the zip ties, although he was unsuccessful. Corroborating her testimony, the police officers recovered each of the items Barr reported from her room during their investigation.

A jury could reasonably infer that Stechcon entered with the zip ties and electrical tape with the intent to bind Barr.[1] *See State v. Evans*, 671 N.W.2d 720, 724–25 (Iowa 2003) ("Intent is seldom capable of direct proof . . . and a trier of fact may infer intent from the normal consequences of one's actions." (internal citations omitted)). Thus, there is sufficient evidence to support a finding Stechcon entered the home with the intent to commit assault. Because there

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[1] Pursuant to Iowa Code section 708.1(2), assault is defined as:

> a. Any 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.
>
> b. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

was also sufficient evidence to support a finding that Stechcon lacked permission or authority to enter Barr's residence on the night in question, we find sufficient evidence supports Stechcon's conviction for burglary in the first degree.

2. Domestic Abuse Assault while Displaying a Dangerous Weapon.

Iowa Code section 708.2A(2)(c) states a defendant commits an aggravated misdemeanor, "if the domestic abuse assault is committed with the intent to inflict a serious injury upon another, or if the person uses or displays a dangerous weapon in connection with the assault." On appeal, Stechcon concedes the State proved there was both a domestic relationship and an assault, but he challenges whether there was sufficient evidence to show he used or displayed a dangerous weapon in connection with the assault.

Barr testified Stechcon, after noticing the butcher knife she had taken to her room, picked up the knife, held it to her neck and told her, "This will be the last day you are going to live." She also testified that he stabbed the floor and the wall near her head. Attempting to raise doubt about the credibility of Barr's testimony, Stechcon argues the physical evidence does not corroborate Barr's testimony. He notes none of the officers questioned at trial were able to testify about any holes they had found in either the floor or the wall. He also notes that the officers never tested any of the physical evidence for fingerprints.

Although we consider Stechcon's contention that none of the police officers testified about physical evidence corroborating Barr's testimony about Stechcon stabbing the floor and wall, we are not convinced it did not occur. One

of the officers testified he did not look for the knife marks while another testified he was aware of the report but did not process the scene. The third deputy testified that he did not notice any stab marks on the wall and that he did not look for any holes in the carpet, as it would require pulling the carpet up and checking the back side for knife marks. None of the officers testified affirmatively that the marks did not exist, just that they did not have personal knowledge of them.

Stechcon also attempts to raise questions about the evidence presented by suggesting it should have been tested for fingerprints and was not. While it is true the physical evidence was not tested for fingerprints, the officers explained at trial that fingerprinting is only useful in identifying suspects. Because Barr specifically named Stechcon and because he was still in the house at the time the officers arrived, there was no need to use fingerprinting to determine if he was the person in question. As explained at trial, testing the knife for fingerprints would not have provided the officers with any information regarding when or how an item, such as the knife, was used.

His final argument regarding the sufficiency of evidence for his conviction of domestic abuse assault while displaying a dangerous weapon is that Barr's testimony, the only evidence presented by the State to support the charge, was not credible and should be given little or no weight. In support of his contention, he argues Barr's testimony was impeached with prior statements. Barr testified Stechcon had held the knife to her neck as he stated, "This will be the last day you are going to live," and that the knife cut her neck at that time. Stechcon claims this was proven false because Detective Phippen testified he did not

notice blood on the knife when he retrieved it from the scene. Furthermore, when Detective Phippen was questioned about Barr's injuries at trial, he referred to the injury on the left side of her neck as "an abrasion or scrape" rather than a cut.

We are not persuaded by Stechcon's arguments. "The jury members were free to give [Barr's] testimony such weight as they thought it should receive. They were free to accept or reject any of [her] testimony. The function of the jury is to weigh the evidence and place credibility where it belongs." *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006) (internal citations omitted). Although a reviewing court should disregard the testimony of a witness when it is "so impossible and absurd and self-contradictory," we do not believe this is one of those rare cases. *See State v. Smith*, 508 N.W.2d 101, 103 (Iowa Ct. App. 1993) (holding that inconsistent and self-contradictory statements and testimony of alleged the victims, as sole evidence of guilt, were insufficient to sustain a conviction).

Substantial evidence supported the jury's guilty verdict regarding the charge of domestic abuse assault while displaying a dangerous weapon.

3. False Imprisonment.

Iowa Code section 710.7 provides, in part, "A person commits false imprisonment when, having no reasonable belief that the person has any right or authority to do so, the person intentionally confines another against the other's will. A person is confined when the person's freedom to move about is substantially restricted by force, threat, or deception." On appeal, Stechcon

contends there was insufficient evidence to show he intended to confine Barr. He contends Barr was free to leave the home at any time, noting that she could have tried to leave while Stechcon and Barr were walking or at any time while he was asleep. He also argues again that Barr was impeached during the trial, and thus her testimony should be disregarded.

Even disregarding Barr's testimony, in Stechcon's letter, he admits he punched Barr in the stomach when she tried to use her cell phone to obtain help. Also, he "acted like [he] was gonna tie her up with zip ties" because he wanted her to stay and talk to him. Although Barr did not attempt to leave Stechcon's presence again until he was sleeping, a jury could reasonably infer Stechcon's prior use of force and the threat of more violence prevented Barr from doing so. Thus, there is sufficient evidence supporting the jury's guilty verdict for false imprisonment.

Based on our review of the evidence in the record, we conclude the substantial evidence exists to support all three convictions.

B. Weight of the Evidence.

Stechcon asserts the trial court abused its discretion in denying his motions for new trial and in arrest of judgment. In support of his contention, Stechcon reasserts his argument that Barr is not a credible witness and claims the physical evidence does not support her testimony.

We disagree with Stechcon's characterization of the physical evidence. Although it is true none of the officers were able to testify about knife holes in the wall or floor, the zip ties, gloves, and electrical tape were found in Barr's room,

where she testified Stechcon left them. Furthermore, photographs taken by the police officers corroborate Barr's stories regarding Stechcon's physical assault. Finally, Stechcon himself was still in Barr's house at the time the police arrived. In a letter to his mother, Stechcon admitted that he came into Barr's house late at night and punched her in the stomach. He also admitted he took her cell phone from her when she attempted to use it. Although there is some question whether Barr changed her story regarding whether she and Stechcon engaged in intercourse on the night in question,[2] this was not an issue the State was required to prove, and Stechcon had the opportunity to impeach Barr's testimony in front of the jury. "The jury is free to believe or disbelieve any testimony as it chooses and to give weight to the evidence as in its judgment such evidence should receive. In fact, the very function of the jury is to sort out the evidence and place credibility where it belongs." *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993).

"Except in the extraordinary case, where the evidence preponderates heavily against the verdict, trial courts should not lessen the jury's role as the primary trier of facts and invoke their power to grant a new trial." *Shanahan*, 712 N.W.2d at 135. This is not such a case. Barr's testimony was not impeached such that weight should be withheld, and Stechcon did not dispute many of the facts. The district court did not abuse its discretion in overruling Stechcon's

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[2] The transcript of a sworn deposition shows Barr was asked if her and Stechcon had "sex twice" the night in question. She answered affirmatively. At trial, Barr testified, although she and Stechcon did kiss, they were not intimate. She claimed she was asked at the deposition if she and Stechcon had "sex toys" and answered the question affirmatively. She also testified that she had not been asked to review the deposition transcript and did not realize the error it contained until trial.

motion for new trial and motion in arrest of judgment as it related to all three offenses. We affirm.

AFFIRMED.