IN THE COURT OF APPEALS OF IOWA

FILED
DEC 17 1987
CLERK SUPREME COURT

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| **STATE OF IOWA,** | ) | |
| Plaintiff-Appellee, | ) | |
| vs. | ) | Filed December 17, 1987 |
| **BRENDA J. PHILLIPS,** | ) | 7-495 368<br>87-188 |
| Defendant-Appellant. | ) | |

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Appeal from the Iowa District Court for Muscatine County (No. 1702-986) - Jack L. Burns, Judge.

The defendant appeals from her conviction, following a jury trial, for burglary in the first degree. **AFFIRMED.**

Charles L. Harrington, Appellate Defender, and Linda Del Gallo, Assistant Appellate Defender, for the defendant-appellant.

Thomas J. Miller, Attorney General; and Julie Ann Halligan, Assistant Attorney General; and Stephen S. Peterson, County Attorney, for plaintiff-appellee.

Considered by Oxberger, C.J., and Donielson, and Sackett, JJ.

**SACKETT, J.** 389

Defendant, Brenda J. Phillips, appeals from her conviction of first-degree burglary claiming (1) the evidence was insufficient to support the conviction, and (2) the trial court erred by refusing to instruct the jury that an "occupied structure" does not include common hallways and stairways. We affirm.

The victims, Brett and Kimberly Busch, testified Rodney and Daryl Adcock came to their second-floor apartment one evening. Mr. Busch unlatched the lock on his apartment door, and the door was pushed open by the Adcocks, who began hitting Busch. Defendant and her friend, Shelly Kopf, arrived behind the Adcocks and the brawl proceeded into the apartment. Mr. and Mrs. Busch were pushed onto their bed, which was located just inside the door. Defendant then broke a whiskey bottle she had brought with her over Mr. Busch's head and stabbed Busch with the broken bottle neck behind his ear and down the side of his neck. Mrs. Busch's arm was also cut by broken glass.

Defendant's version of the facts is she and her three friends went to the apartment to tell Mr. Busch "to stop harassing them." Several months earlier Busch allegedly struck defendant or one of the Adcocks. Kopf testified the Adcocks went up to the Busch apartment while the girls waited outside the building. When they heard Mrs. Busch screaming, defendant and Kopf ran up the stairs to the hallway outside the Busches' door. They observed Mr. Busch choking Rodney Adcock in the doorway and defendant hit Busch with the whiskey bottle to stop the fight.

The Adcocks, defendant, and Kopf were codefendants at trial.

## I.

Defendant claims the evidence was insufficient to show she entered the victims' apartment, or to show that she entered it with the intent to commit

an assault. See Iowa Code §§713.1, .3 (1985). Defendant raised this argument in her motion for judgment of acquittal and in her motion for new trial.

When considering a challenge to the sufficiency of the evidence we view the evidence in a light most favorable to the State and we consider all evidence and inferences that may be drawn from it. State v. Freeman, 404 N.W.2d 188, 191 (Iowa App. 1987). Evidence is sufficient to sustain the verdict where there is substantial evidence from which a rational fact finder could determine defendant's guilt beyond a reasonable doubt. Id. After reviewing the record, we conclude the evidence was sufficient to support defendant's conviction.

The victims' neighbor testified she entered the victims' apartment immediately after the assault and observed their bed shoved up against the baby's bed. Police photographs show pieces of glass on the bedroom floor and a blood stain on the bedroom wall. Defendant's contention she broke the whiskey bottle over Mr. Busch's head in the hallway is not plausible.

Defendant alleges she did not intend to assault the Busches but only wished to stop the fight between Mr. Busch and Rodney Adcock. Kopf, the only codefendant who testified, stated defendant ran up the stairs carrying the whiskey bottle in response to Mrs. Busch's screams. The jury could reasonably find defendant intended to commit an assault when she entered the Busch apartment.

Considering all of defendant's arguments, we find substantial evidence in the record to support her conviction of first-degree burglary.

II.

Defendant contends the trial court erred by refusing to instruct the jury that an "occupied structure" does not include common hallways and stairways. She argues the instructions were confusing and could have led the jury to believe an entry into the common hallway and stairway of the building constituted an

entry into the Busch apartment, thus satisfying that element of the offense of burglary.

In reviewing instructions for error we start with the cardinal rule that all instructions given must be read and considered together and related to each other. Gremmel v. Junnie's Lounge, Ltd., 397 N.W.2d 717, 722 (Iowa 1986).

The trial court's instruction defining "occupied structure" was consistent with 2 Iowa Uniform Jury Instruction 1312 (1984). See also Iowa Code §702.12. The marshalling instruction plainly referred to the occupied structure at issue as "the apartment" of the Busches. We further note the record reflects the prosecutor, in his opening statement, told the jury "the simplest way to explain [burglary] is going into someone's apartment." Also, a codefendant's counsel expressed his intention to explain the marshalling instruction's references to "the apartment" in his closing argument to the jury.

We conclude the instructions given fully and fairly advised the jury of the issues they were to decide and the law which was applicable. See State v. Doss, 355 N.W.2d 874, 881 (Iowa 1984). The trial court did not err in refusing to more specifically define "occupied structure."

**AFFIRMED.**