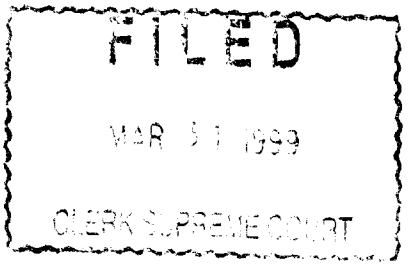
IN THE COURT OF APPEALS OF IOWA

No. 9-082 / 98-0098

STATE OF IOWA,
Appellee,

vs.

SEAN DREW WILLIAMS,
Appellant.



Appeal from the Iowa District Court for Marshall County, Carl D. Baker, Judge.

Sean Williams appeals from the judgments and sentences entered upon his convictions of first-degree burglary and two counts of assault causing bodily injury, in violation of Iowa Code sections 713.1, 713.3, 708.1(1), and 708.2(2) (1997).

AFFIRMED.

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Roxann M. Ryan, Assistant Attorney General, James DeTaeye, County Attorney, and Paul G. Crawford, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Zimmer, JJ.

STREIT, P.J.

Sean Williams appeals his conviction for burglary and two counts of assault claiming the burglary conviction is not supported by sufficient evidence and the assault charges are lesser-included offenses to burglary. Because we find sufficient evidence Williams had no authority to enter his father's home and the assaults were not lesser-included offenses to first-degree burglary, we affirm.

I. Background & Facts.

Sean Williams went to the home of his father, Ward Williams, the afternoon of June 19, 1997, where he slept for awhile and then left. When he returned, Ward and Miriam Reiser were at the residence. Sean entered the home and an altercation ensued in which Sean struck both Reiser and his father. Sean left for a few minutes, then returned. Both Ward and Miriam denied him entry. At that time, he broke down the door, entered the home, and struck Reiser.

Williams was charged with first-degree burglary and two counts of assault causing bodily injury. A jury found Williams guilty of all three offenses. Williams was sentenced to an indeterminate twenty-five year term of incarceration on the burglary offense and one-year terms on the assault offenses, plus fines of $250. Williams appeals.

II. Sufficiency of the Evidence.

Williams contends the State presented insufficient evidence to establish the burglary offense.

Iowa Code section 713.1 defines burglary as follows:

> Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, or who remains therein after it is closed to the public, or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure commits burglary.

Iowa Code § 713.1 (1997).

Williams contends he was an occupant of his father's home, and the State did not prove he had no "right, license, or privilege" to enter. It is true the occupant of a home would ordinarily have the right to enter and therefore could not be guilty of burglary. *State v. Peck*, 539 N.W.2d 170, 173 (Iowa 1995). The exception to this rule is that a person who has a general right of entry is guilty of burglary if he exceeds his rights either with respect to the time of entering or the place into which he enters. *Id.* An occupant of a home, such as a servant, employee, guest, or boarder, with the right to be in the dwelling, may be convicted of burglary on proof he broke and entered at a time or place beyond his authority. *Id.*

Contrary to Williams's contention, we think there was substantial evidence to establish he had "no right, license, or privilege" to enter his father's home. Williams entered his father's home three separate times on June 19, 1997. The first and second time his father allowed him to enter. The third time, Williams was denied entry, but forced his way into the residence. This entry was separate from the first and second, and this time the entry was without "right, license, or privilege." *See State v. Riles-El*, 453 N.W.2d 538, 539-40 (Iowa App. 1990).

The State put forth the following evidence: (1) Williams, as a family member, was a guest in his father's home, but lacked ownership or possessory interest in it; and (2) his father refused Williams entry to his home before Williams kicked in the door. Williams put forth evidence he had a possessory interest in his father's home and his father had consented to his entry. The jury was at liberty to believe and give weight to the evidence as it chose. *See State v. Fetters*, 562 N.W.2d 770, 775 (Iowa App. 1997). The very function of a jury is to sort out the evidence presented and place credibility where it belongs. *Id.* The jury believed the State's evidence—that Williams was a guest in his father's home and had been denied entry. Under this set of facts, Williams's forced entry into the home was beyond his authority and constituted a burglary. Substantial evidence supported the jury's verdict the defendant lacked the right to enter the premises.

III. Assault as a Lesser-Included Offense of First-Degree Burglary.

Williams contends the assaults were lesser-included offenses of first-degree burglary and the court erred by imposing judgment and sentences for the assault convictions.

A lesser offense is included within the greater offense under the legal test if it is not possible to commit the greater crime without also committing the lesser crime. *State v. Hernandez*, 538 N.W.2d 884, 888 (Iowa App. 1995); *State v. McNitt*, 451 N.W.2d 824, 825 (Iowa 1990); *State v. Jeffries*, 430 N.W.2d 728, 737 (Iowa 1988). Under this test, it is clear the crime of assault while participating in a felony is a

lesser-included offense of burglary in the first degree when charged under the "intentionally or recklessly inflicts bodily injury" alternative. A person who intentionally inflicts bodily injury upon another necessarily commits an assault. *State v. Hernandez*, 538 N.W.2d at 888.

This analysis does not apply here because the assaults Williams was convicted of were not done during the commission of the burglary. The assaults and the burglary resulted from separate entries. Williams committed the assaults upon his second entry into his father's home on June 19, 1997. This entry was consensual. He returned to his father's home a third time and entered the home without consent. This entry and the resulting charge of burglary in the first degree remain separate from the assaults previously committed. *See State v. Riles-El*, 453 N.W.2d 538, 539-40 (Iowa App.1990)(two separate entries in same day resulted in conviction of two separate burglary convictions). The earlier assaults were not lesser-included offenses of the later committed burglary. The trial court did not err in entering judgment or sentence for two counts of assault and one count of first-degree burglary.

AFFIRMED.