IN THE COURT OF APPEALS OF IOWA

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CLERK SUPREME COURT

No. 1-543 / 00-1558
Filed November 16, 2001

STATE OF IOWA,
Plaintiff-Appellee,

vs.

REGINALD FITZGERALD DOUGLAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge.

Reginald Douglas appeals from his conviction and sentence for first-degree burglary in violation of Iowa Code sections 713.1 and 713.3(1)(c) (1999). **REVERSED AND REMANDED.**

Linda Del Gallo, State Appellate Defender, and David Arthur Adams, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, Ron Robertsen, County Attorney, and Timothy Schott, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Hecht and Vaitheswaran, JJ.

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HECHT, J.

Reginald Douglas appeals from his conviction and sentence for first-degree burglary in violation of Iowa Code sections 713.1 and 713.3(1)(c) (1999). Douglas contends (1) the evidence was insufficient to support a conviction, (2) the trial court erred in holding he would not be able to present sufficient evidence to support a defense of insanity without expert testimony, and (3) his trial counsel was ineffective in a number of respects. Because we find insufficient evidence to prove the elements of the offense of burglary, we reverse the judgment of conviction and remand for dismissal of the charge.

I. **Facts and Background Proceedings.** On April 6, 2000, Douglas was placed into a padded cell at the Webster County jail where he had been an inmate since March 13, 2000.[1] While in the padded cell, Douglas pounded on the door, cried, talked to himself, and claimed he was seeing people. At around twelve midnight, Douglas was moved to the detox cell, where his unusual behavior continued. Throughout the night, Douglas talked to himself continuously, stood at the cell door for periods at a time, demanded his friends be let in to see him, pounded on the cell walls and door, and requested a new blanket because his had turned into a chicken.

At approximately five in the morning, Douglas began to pound on the glass of the detox cell window. Two jailers on duty at the time decided to transfer Douglas back to the padded cell. However, once outside the detox cell, he refused to voluntarily return to the padded cell. One of the jailers went into the

[1] The reason for Douglas's incarceration on March 13, 2000, is not specified in the record.

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adjacent control room to call for assistance. Douglas ran into the control room after the jailer, who grabbed him as they jointly moved into the corner. While there, Douglas attempted to remove the jailer's keys, which were in her hands, twisting her arm in the process. At that time, the other jailer entered the room and physically restrained Douglas, moving him into the booking area. Once there, Douglas momentarily broke free and ran headfirst into a door, knocking himself unconscious.

On May 30, 2000, the State charged Douglas with assaulting a jailer in violation of Iowa Code sections 708.1 and 708.3A(3), burglary in the first degree in violation of sections 713.1 and 713.3(a)(c), and robbery in the second degree in violation of sections 711.1 and 711.3. The case against Douglas was tried by a jury. At the close of the State's case, Douglas moved for a judgment of acquittal on all three counts. The trial court overruled the motion. The jury returned a guilty verdict on the first two counts and acquitted him of robbery. Douglas was sentenced to two years on the assault conviction and twenty-five years on the burglary conviction, to be served concurrently. Douglas appeals his burglary conviction.

II. Scope of Review. We review sufficiency of the evidence challenges for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). The trial court's findings of guilt are binding on appeal if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Substantial evidence is evidence upon which a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Robinson*, 288 N.W.2d 337, 341 (Iowa 1980). In

reviewing challenges to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, "including all legitimate inferences and presumptions which may be fairly and reasonably deduced from the record." *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000). All evidence is considered, "not just that of an inculpatory nature." *Id.* Evidence that merely raises suspicion, speculation, or conjecture is not substantial evidence. *Id.*

III. Sufficiency of the Evidence to Prove Burglary. Douglas contends the district court erred in finding sufficient evidence to support his conviction for burglary in the first degree. The Iowa Code defines the crime of burglary as follows:

> [a]ny 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, such occupied structure not being open to the public, 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 (1999). In particular, Douglas argues the State failed to prove the elements of the offense of burglary, including the element he entered an occupied structure not open to the public.

An occupied structure is defined in Iowa Code section 702.12 as:

> any building, structure, appurtenances to buildings and structures, land, water or air vehicle, or similar place adapted for overnight accommodation of persons, or occupied by persons for the purpose of carrying on business or other activity therein, or for the storage or safekeeping of anything of value.

Iowa Code § 702.12 (1999). Douglas's burglary conviction was based on the theory he entered the control room, an occupied structure, without permission or

authority, with the specific intent to commit the felony of escape, and in doing so injured one of the jailers. The control room is an area containing equipment and such items as computers, video monitors, and telephones. It is adjacent to the detox cell and booking area with two doors, one door leading to a hallway which is always open and one door leading to the booking area which locks upon closure. No signs or labels are posted on either door. Douglas contends the control room is not an independent occupied structure in terms of the burglary statute, but another room in the facility to which he was lawfully admitted and detained.

This court has previously addressed the issue of whether a room within a larger building is considered an occupied structure in terms of the burglary statute. In *Bailey v. State*, 493 N.W.2d 419, 422 (Iowa Ct. App. 1992), *overruled on other grounds by State v. O'Shea*, __ N.W.2d ___ (Iowa Ct. App. 2001), we held a private office in a public truck stop was an occupied structure, emphasizing the office "was enclosed with four walls and a door" which had an "automatic closer and was always closed." *Bailey*, 493 N.W.2d at 422. Furthermore, in *State v. Smothers*, 590 N.W.2d 721 (Iowa 1999), the Iowa Supreme Court addressed the issue of whether or not two businesses were located in a single occupied structure. The businesses were located in a building encompassing one-half a city block that consisted of an original building with two additions on each side. *Smothers*, 590 N.W.2d at 723. "Heavy brick walls were constructed between the buildings, and fire doors were erected connecting each of the buildings." *Id.* In *Smothers*, the defendant contended the three buildings

consisted of one occupied structure since there was accessibility between the two businesses by interior fire doors. *Id.* The court disagreed, holding the businesses were separate occupied structures as "each has its own entrance from the street, each is separately owned, and each is secured for the most part from access by the other." *Id.*

When deciding whether a structure is occupied for purposes of the burglary statute, this court has considered whether or not the enclosure is open to the public. In *State v. Chambers*, 529 N.W.2d 617, 619 (Iowa Ct. App. 1994), the defendant admitted he stole money from the desk of a juvenile court office, but challenged his burglary conviction with respect to the "not open to the public" element. On a sufficiency of the evidence challenge, the court found the "Authorized Personnel Only" sign on the door demonstrated the office was not open to the public and affirmed the defendant's burglary conviction. *Id.* at 620-21.

We conclude the control room is not an independent structure within the jail as it fails to meet the qualifying factors discussed in *Bailey*, *Smothers*, and *Chambers*. Unlike the private office in *Bailey*, the control room is not completely enclosed as one door is open at all times. Likewise, unlike the offices in *Smothers*, the control room does not have its own entrance, is not separately owned, and is not secured from the rest of the jail. Moreover, unlike the office in *Chambers*, the control room does not have any signs or marking on its doors indicating it is not open to the public. The control room is simply part of the jail as a kitchen is part of a house. To hold otherwise would permit the State to

prosecute a defendant who, with the intent to commit theft, enters a home without right, license, or privilege and traverses several rooms while there, for multiple burglaries.

The State counters Douglas's claim by arguing the control room is an occupied structure as an appurtenance to the jail. In *State v. Baker*, 560 N.W.2d 10, 14 (Iowa 1997), the court held a driveway was an occupied structure as an appurtenance to a home. Later, in *State v. Pace*, 602 N.W.2d 764, 772 (Iowa 1999), the court concluded a driveway, stoop, and sidewalk were not occupied structures and limited the holding of *Baker* to its facts. We find these cases unpersuasive as they involve structures in proximity to, but outside of, occupied buildings, not rooms within them. *See State v. Hill*, 449 N.W.2d 626, 628 (Iowa 1989) (holding a fenced enclosure behind an auto parts store was an occupied structure as an appurtenance to the building). Just as a kitchen in a dwelling would not be an appurtenance to an adjacent dining room, the control room was not an appurtenance to the booking area and detox cell within the jail.

IV. Conclusion. Having determined Douglas did not enter an occupied structure, we hold there is insufficient evidence to support his conviction of first-degree burglary. Accordingly, we need not address the other alleged errors urged by Douglas on appeal. We reverse Douglas's burglary conviction and remand this case for entry of judgment of acquittal on that charge.

REVERSED AND REMANDED.

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