

No. 97-1928. [9-068] STATE v. McFARLAND

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.
AFFIRMED. Heard by Streit, P.J., and Vogel and Zimmer, JJ. Opinion by Streit, P.J.
(8 pages \$3.20)

Phillip McFarland appeals his conviction and sentence for **first-degree burglary** contending the State presented insufficient evidence of **burglarious intent** and the trial court erred in refusing to instruct the jury on his proffered citizen's **arrest affirmative defense**. Philip McFarland and Edward Green **claimed to be bounty hunters** who pursued individuals who failed to appear at criminal proceedings **after obtaining bail bonds**. McFarland broke into the Leach home in search of Maurecio Gomez. **Tthe No.**

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circumstances of McFarland's entry into the home, including the time, manner, and nature of the entry, could have led the jury to the conclusion McFarland had the specific intent to **assault** whoever was in the Leach home when he broke down the door. If not an **intent to assault Gomez**, the jury could have reasonably concluded an intent to assault occupants inside who hampered his arrest of Gomez. McFarland contends the trial court erred in refusing to instruct the jury on the authority of private persons to arrest. Under the evidence in this case, McFarland was not entitled to his requested theory of defense instruction. We hold the citizen's arrest defense can not be used as an affirmative defense to **burglary** or **assault** when the unlawful entry or force is used against an innocent third person, who is neither a felon or a person interfering with the lawful arrest of a felon.