

**IN THE COURT OF APPEALS OF IOWA**

No. 2-277 / 11-1536  
Filed June 13, 2012

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DAVID JAMES STEFFEN,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Tama County, Marsha Beckelman,  
Judge.

Defendant appeals his convictions for second-degree burglary and assault  
while participating in a felony. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and David Arthur Adams,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney  
General, and Brent Heeren, County Attorney, for appellee.

Considered by Tabor, P.J., Mullins, J., and Sackett, S.J.\*

\*Senior Judge assigned by order pursuant to Iowa Code section 602.9206  
(2011).

**SACKETT, S.J.**

Defendant David Steffen appeals his convictions for assault while participating in a felony and second-degree burglary, claiming the court should have granted his motion for judgment of acquittal.<sup>1</sup> We affirm.

On June 27, 2010, David Steffen went to the home of his ex-wife, Cynthia Steffen, at about 6:00 a.m. and parked in her driveway. He left after about ten minutes. At about 9:00 a.m., Steffen returned. He got out of the car and rang the front doorbell three or four times. Cynthia did not want to speak to him so she did not answer the door. Steffen walked to the back of the house, and then returned to the front door where he again rang the doorbell and knocked on the door. He also telephoned Cynthia, leaving three messages on her answering machine demanding that she open the door. Steffen was very angry, yelling and swearing at Cynthia.

Cynthia decided to open the inner door, but left the screen door closed. She stated she decided to “let him yell at me, get it out of his system, and then hopefully he would leave.” Steffen stated he wanted to talk to Cynthia about some jointly-owned property, but would not talk to her through the screen door. Cynthia refused to come outside or allow Steffen inside the house. Cynthia stated, “[h]e continued to rant and yell and curse and not want to talk about anything constructive,” so she shut the inner door and locked it.

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<sup>1</sup> We recognize that both parties have questioned whether this issue was preserved for our review. Generally, issues must be decided by the district court before we will review them on appeal. See *State v. Manna*, 534 N.W.2d 642, 644 (Iowa 1995). Although the district court did not specifically rule on Steffen’s motion for judgment of acquittal, by submitting all three counts to the jury, the court impliedly denied the motion. We conclude the issue has been preserved, and we will address it on the merits.

Steffen crashed through the screen door and the inner door and came into Cynthia's house. Cynthia yelled at him to leave, stating she was going to call the police. Steffen kept coming toward her with his arms raised. Cynthia picked up a cordless telephone, and Steffen caught up to her. Cynthia testified Steffen grabbed her robe. She stated, "it appeared he was trying to grab my arm or a part of my body so he would have a firm grip, but all he was getting was my robe." With his other hand Steffen was batting at Cynthia's hand in an attempt to get the telephone to keep her from calling the police.

Cynthia was able to run out the back door onto the patio. Steffen followed her and stood about three or four feet away. Cynthia called 911. Steffen stood staring at her, calling her names. As she was talking to the dispatcher, he left and drove away.

Steffen was charged with domestic abuse assault, second offense, in violation of Iowa Code section 708.2A (2009); assault while participating in a felony, in violation of section 708.3, with the underlying felony being burglary; and burglary in the second degree, in violation of section 713.5. He was charged with assault while participating in a felony and second-degree burglary as a habitual offender.

The case proceeded to a jury trial on May 2 and 3, 2011. Cynthia testified as outlined above. Steffen admitted kicking in Cynthia's doors, stating he was frustrated and angry. He testified he entered the home and followed her, asking her not to call the police. Steffen denied attempting to grab Cynthia or making any effort to lay a hand on her.

At the close of the evidence, defense counsel made a motion for judgment of acquittal, claiming there was insufficient evidence Steffen had any intent to cause harm to Cynthia. There is no indication in the record that the district court specifically ruled upon the motion. The court, however, submitted all three charges to the jury. The jury found Steffen guilty of domestic abuse assault, assault while participating in a felony, and second-degree burglary. Regarding his habitual offender status, Steffen admitted to two previous felony convictions.

The court sentenced Steffen to ninety days in jail on the domestic abuse assault charge, giving him credit for ninety days previously served. He was sentenced to a term of imprisonment not to exceed fifteen years on the charge of assault while participating in a felony and a term not to exceed fifteen years on the charge of second-degree burglary, to be served concurrently.

The offense of burglary requires proof that the defendant has “the intent to commit a felony, assault or theft therein.” Iowa Code § 713.1. In the present case, the State alleged Steffen had the intent to commit an assault, and it is upon this point that Steffen challenges his convictions. He admits he may have been insulting and he yelled at Cynthia, but he states he did not threaten to physically harm her. Steffen contends if we find there is insufficient evidence he committed second-degree burglary, there is also insufficient evidence that he committed assault while participating in a felony, because the underlying felony was the burglary charge.

A motion for judgment of acquittal is a means of challenging the sufficiency of the evidence, and we will review for the correction of errors at law.

*State v. Serrato*, 787 N.W.2d 462, 465 (Iowa 2010). The fact-finder's verdict will be upheld if it is supported by substantial evidence. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Heuser*, 661 N.W.2d 157, 165-66 (Iowa 2003). In reviewing challenges to the sufficiency of the evidence we give consideration to all the evidence, not just that supporting the verdict, and view the evidence in the light most favorable to the State. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000).

For a burglary conviction, one of the elements the State was required to prove was that Steffen had the intent to commit an assault at the time of entry. See *id.* “[T]he element of intent in burglary is seldom susceptible to proof by direct evidence.” *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994) (citing *State v. Olson*, 373 N.W.2d 135, 136 (Iowa 1985)). “Intent is a state of mind; it may be established by circumstantial evidence and by inferences drawn from that evidence.” *State v. Nance*, 533 N.W.2d 557, 562 (Iowa 1995). An inference of intent may be considered to have been established by proof beyond a reasonable doubt if the inference is more likely to be true than not. *State v. McFarland*, 598 N.W.2d 318, 321 (Iowa Ct. App. 1999).

“A fact finder may infer an intent to commit an assault from the circumstances of the defendant's entry into the premises and his acts preceding and following the entry.” *Finnel*, 515 N.W.2d at 42. We conclude there is substantial evidence in the record to support a finding that Steffen had the intent to commit an assault at the time he entered Cynthia's home. There was

evidence that prior to entering into the home Steffen was very angry and was swearing at Cynthia. Furthermore, Cynthia's testimony and the photographs clearly show Steffen forced his way into the home. Additionally, Cynthia testified that Steffen kept coming toward her with his arms raised, "like he was trying to catch me." Steffen grabbed at her and batted at her hand. She stated that during the entire incident, "[h]is body language told me that he was going to harm me in some way if I wouldn't stand and listen to him."

There is substantial evidence in the record to support a finding that Steffen engaged in acts which showed "he intend[ed] to cause pain or injury to the victim or to result in physical contact that would be insulting or offensive to the victim or to place the victim in fear of physical contact that will be injurious or offensive."<sup>2</sup> See *State v. Fountain*, 786 N.W.2d 260, 265 (Iowa 2010) (citing Iowa Code § 708.1(1), (2)). We conclude the district court did not err by denying Steffen's motion for judgment of acquittal.

Furthermore, even if there was insufficient evidence of Steffen's intent to commit an assault at the time of unlawful entry into the residence, there is sufficient evidence that during the time that he was in the residence unlawfully he formed the intent to commit an assault.

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<sup>2</sup> Under section 708.1, the crime of assault is committed when a person does any of the following:

1. 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.
2. 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.
3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

This case does not involve a firearm and therefore, section 708.1(3) is not applicable.

In *State v. Dible*, 538 N.W.2d 267, 269 (Iowa 1995), defendant entered his former girlfriend's home. She asked him to leave. *Dibble*, 538 N.W.2d at 269. When he refused to leave, she started to telephone 911. *Id.* At that point he assaulted her, causing bodily injury. *Id.* Defendant was found guilty of first-degree burglary. *Id.* The Supreme Court affirmed the trial court conviction, reasoning that defendant need not have the intent to commit the assault at the moment he remained in the occupied structure (after being asked to leave), but that if he formed the intent to assault at any time while he remained in the occupied structure, unauthorized, then the elements of burglary were satisfied. *Id.* at 270-71.

Based on the foregoing, we find Cynthia's testimony of defendant following her with a raised hand and reaching for her robe constitute sufficient evidence that he formed an intent to commit an assault while he was unlawfully in the residence. Thus, there was sufficient evidence to submit to the jury the allegations of second-degree burglary.

We affirm Steffen's convictions for assault while participating in a felony and second-degree burglary.<sup>3</sup>

**AFFIRMED.**

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<sup>3</sup> He did not appeal his conviction for domestic abuse assault, and we make no findings regarding that conviction.