

IN THE COURT OF APPEALS OF IOWA

No. 3-862 / 12-1744
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CORY CURTIS FYLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Mary Pat Gunderson,
Judge.

The defendant, Cory Fyler, appeals the judgment and sentence entered
upon his conviction of burglary in the third degree. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Linda J. Hines, Assistant Attorney
General, John P. Sarcone, County Attorney, Jim P. Ward, Assistant County
Attorney, and Derek Moran, Legal Student Intern, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

MULLINS, J.

The defendant, Cory Fyler, appeals the judgment and sentence entered upon his conviction of burglary in the third degree. On appeal, he argues the State failed to present sufficient evidence to find him guilty of burglary in the third degree. We affirm.

I. BACKGROUND FACTS AND PROCEEDINGS.

In the early morning hours of March 11, 2012, Des Moines Police Officer Martin Seibert was on patrol near the Old Abbey, an unused retirement home in Des Moines, when he noticed Belinda Clark walking around the side of the Abbey. Clark claimed she was on a run. Seibert noticed smudges of ash on her face and a smell of burning garbage. Giving her the benefit of the doubt, Seibert allowed her to continue.

As Seibert walked to the rear of the Abbey, he noticed a man in the entrance of the stairway into the basement. The man was later identified as Cory Fyler. Fyler wore dark clothing, his face was covered in ash, and he smelled like burnt garbage. He told Seibert that “Kevin” had given him permission to remove copper and other metals from the Abbey. Seibert observed metal working tools, and a tub and canvas bag filled with various metals, which he estimated weighed around 100 pounds. Fyler did not have a car located at the scene or a driver’s license.

Given these facts Seibert called other patrol units and told them to look for another suspect—Clark. Officer Curtis found Clark sitting in her Jeep next to a car wash directly south of the Abbey. After questioning, Clark reasserted that

she had been out for a run. Clark now wore a gray sweatshirt and her face was clean. Officer Curtis smelled smoke on Clark that he assert was identical to the smoke smell from the Abbey.

The officers contacted the Abbey property managers, David and Patricia Rogers, to determine if they had given anyone permission to remove metal from the Abbey. The Rogers told the officers that no one had permission to remove metal from the basement. David Rogers later testified that there had been a fire in the basement of the Abbey and that the basement was covered in soot and smelled like burning garbage. He also testified that while no one lived or conducted business in the Abbey, his property management company used the first floor to store building materials and equipment, which he valued at approximately \$4000.

The officers arrested Fyler and Clark. The State charged them both with burglary. A jury found Fyler guilty of burglary in the third degree. On appeal, Fyler argues the evidence was insufficient to show he broke into an “occupied structure,” as required by the Iowa Code definition of burglary.

II. SCOPE AND STANDARD OF REVIEW.

We review challenges to the sufficiency of the evidence for errors at law. *State v. Atkinson*, 620 N.W.2d 1, 3 (Iowa 2000). The State bears the burden of proving every element of the crime with which Fyler is charged. *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003).

The jury’s finding of guilt is binding on appeal if supported by substantial evidence. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007). Substantial

evidence exists to support a verdict when the record reveals evidence that could convince a rational trier of fact a defendant is guilty beyond a reasonable doubt. *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). We consider all of the evidence in the record in the light most favorable to the verdict and make all reasonable inferences that may fairly be drawn from the evidence. *Id.* But “it is the State’s ‘burden to prove every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.’” *Id.* (quoting *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004)).

III. SUFFICIENCY OF THE EVIDENCE.

Fyler argues the State failed to present sufficient evidence to convince a reasonable jury that he committed burglary in the third degree. The Iowa Code defines burglary as:

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, 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 (2011). The Iowa Legislature has classified burglary by three degrees that vary depending on the circumstances of the act. *State v. Pace*, 602 N.W.2d 764, 768 (Iowa 1999). This case involves burglary in the third degree, which “generally involves burglary where no persons are present in the occupied structure and no aggravating circumstances occur.” *Id.* (citing Iowa Code § 713.6A). Fyler concedes all but one of the elements of burglary in the third

degree. He argues the State did not prove the Abbey fits the definition of “occupied structure” under the Iowa Code.

The Iowa Code defines “occupied structure” as:

An ‘occupied structure’ is 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. Such a structure is an ‘occupied structure’ whether or not a person is actually present.

Iowa Code § 702.12). The Iowa Supreme Court developed a two-prong test to define “occupied structure.” *Pace*, 602 N.W.2d at 769. “The first [prong] describes the type of place that can be the subject of burglary, and the second [prong] considers its purpose or use.” *Id.*

Fyler concedes that the Abbey is a structure, thus satisfying the first prong. He also admits that the first floor of the Abbey was used for the safekeeping of valuables—the \$4000 of materials and equipment. The heart of Fyler’s argument is that the Abbey basement is a separate and distinct structure from the upstairs of the Abbey. He argues no one used the basement for overnight accommodation, for carrying out a business, or for storing items of value. He notes that since the fire, the basement was hazardous because everything had “burned or molded,” was covered in ash, and contained “friable asbestos.” Further, he asserts the door leading to the upstairs level—according to David Rogers’ testimony—may have been locked.

In support of his position that multiple structures can be located in one physical building, Fyler relies on *State v. Smothers*, 590 N.W.2d 721, 722 (Iowa

1999). *Smothers* involved the burglary of multiple businesses located within the same physical building connected only by fire doors. 590 N.W.2d at 722. The *Smothers* court found, based on the building's construction history, physical makeup, and the independence of the units, the businesses were located in separately occupied structures. *Id.* at 723. The State argues the facts of *Smothers* are distinguishable from the facts of this case.

The State asserts that unlike *Smothers*, the Abbey basement was not used for a separate purpose from the rest of the Abbey—one entity owned the Abbey, and the Abbey served one business purpose when it was in operation. The State supports its argument by citing *State v. Wills*, where the defendant argued that a garage connected to a house constituted a separate and distinct structure. 696 N.W.2d 20, 23 (Iowa 2005). The court disagreed, concluding that “[t]he same roof covered the garage as the rest of the residence. The living quarters surrounded the garage on two sides. It was structurally no different from any other room in the residence.” *Id.*

We find the State's argument persuasive and conclude the basement and the other floors of the Abbey are the same “occupied structure” for the purpose of the definition of burglary. Substantial evidence supports the elements of burglary. We find no error and affirm Fyler's guilty verdict of burglary in the third degree.

AFFIRMED.