

IN THE COURT OF APPEALS OF IOWA

No. 7-605 / 06-1818
Filed November 29, 2007

STATE OF IOWA,
Plaintiff-Appellant,

vs.

DANIEL FRANCIS PULVER,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge.

The State of Iowa appeals from the district court's order granting the defendant's motion to adjudicate law points. **REVERSED AND REMANDED.**

Patrick W. O'Bryan, Des Moines, and Rick Olson, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik and Mary Tabor, Assistant Attorneys General, John P. Sarcone, County Attorney, and Michael Hunter, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Miller and Eisenhauer, JJ.

HUITINK, P.J.

The State of Iowa appeals from a district court ruling that held the sidewalk outside of a motel constitutes a dwelling. We reverse and remand for further proceedings.

I. Background Facts and Prior Proceedings

Daniel Francis Pulver was charged with willful injury causing serious injury in violation of Iowa Code section 708.4(1) (2005) for a physical altercation between himself and another individual outside of a Des Moines motel on May 26, 2006.

Pulver filed a notice of self-defense. Pulver intended to use section 704.1 as a defense to the charged crime. Section 704.1 states, in pertinent part:

Reasonable force, including deadly force, may be used even if an alternative course of action is available if the alternative . . . requires one to abandon or retreat from one's *dwelling*

(Emphasis added.) Pursuant to this defense, Pulver filed a pretrial motion asking the court to find that the altercation occurred at his dwelling.

Pulver testified briefly at the hearing on the motion. He stated that he had checked in to the Days Inn motel on May 25. Sometime after 6:00 p.m. on May 26, he left his room, walked down an interior hallway, walked down a flight of stairs, and then through a door to exit the building. He then followed the sidewalk a very short distance to the entrance of a bar that was connected to the motel. Later that evening, he left the bar through the same exterior door and became involved in a physical altercation with a bar patron on the sidewalk between the bar and the exterior door of the motel. This physical altercation took place on the sidewalk approximately seventy to one hundred feet from the door

of his second-level motel room. According to the minutes of testimony attached to the trial information, Pulver inflicted life threatening injuries on the other person. As a result of Pulver's blows, the other person spent a week in a coma and will suffer permanent serious disfigurement.

The district court entered a ruling sustaining Pulver's motion. The ruling stated, in pertinent part:

Whether Section 704.1 applies to this location appears to be a matter of first impression. Clearly a motel room falls within the definition of a "dwelling" in Iowa Code Section 702.10. A public sidewalk outside a motel is a means to reach the dwelling place of the motel resident. An altercation on that sidewalk could give rise to the Defendant's use of deadly force as an alternative to abandoning or retreating from his dwelling place, just as if the incident occurred on a public sidewalk adjacent to a private home. The extent that Defendant was using deadly force as an alternative to abandoning or retreating from his dwelling place poses a factual question for the jury.

The State filed an application for discretionary review with the Iowa Supreme Court. The court granted the application, stayed the district court proceedings, and transferred the case to our court.

II. Standard of Review

We review a trial court's ruling on a motion to adjudicate law points for the correction of legal error. *State v. Muhlenbruch*, 728 N.W.2d 212, 214 (Iowa 2007). "The appropriateness of the district court's action turns on the correctness of its interpretation of the relevant statutes, which are reviewable for correction of errors at law as well." *Id.*

III. Merits

The State argues the district court erred in finding the sidewalk outside the motel constituted Pulver's dwelling for the purposes of Iowa Code section 704.1.

The district court cited section 702.10 as the sole authority to support its conclusion that the sidewalk constituted a part of Pulver's dwelling. Section 702.10 states

A "*dwelling*" is any building or structure, permanent or temporary, or any land, water or air vehicle, adapted for overnight accommodation of persons, and actually in use by some person or persons as permanent or temporary sleeping quarters, whether such person is present or not.

Under the plain terms of this statute, a dwelling must be a building, a structure, or a vehicle. The facts of this case clearly indicate that Pulver was on a sidewalk at the time of the incident. He was not inside the hotel, the hotel stairway, or the second-level interior hallway leading to his hotel room. The district court did not state how a sidewalk could be classified as a building, structure, or a vehicle. Instead, the district court interpreted section 704.1 to find that the public sidewalk outside the motel was a dwelling under these circumstances because it was "a means *to reach*" Pulver's motel room, which the court classified as a dwelling.¹ (Emphasis added.)

We find the district court's interpretation of section 704.1 was erroneous. Section 704.1 does not state that a person may use deadly force "to reach" a dwelling. Conversely, it states that a person may use deadly force as an alternative to abandoning or retreating from his or her dwelling. We find there is a distinct difference between using deadly force to gain access to a dwelling and using deadly force as an alternative to abandoning or retreating from a dwelling. In this case, there is no question that Pulver was not in a position to retreat from

¹ The State concedes for the purposes of this appeal that the interior of the motel room constitutes a dwelling.

his motel room because he had not been in his motel room for some time. Also, an exterior door and one flight of stairs placed him seventy to one hundred feet from even reaching the door to his motel room. The district court's conclusion that an individual may use deadly force to reach his or her dwelling went beyond any fair reading of sections 702.10 or 704.1 and was erroneous.

In his appellate brief, Pulver argues our supreme court's interpretation of the term "occupied structure" supports the district court's ultimate conclusion that the sidewalk was a part of his dwelling. In *State v. Baker*, 560 N.W.2d 10, 13 (Iowa 1997), a defendant challenged his conviction for first-degree burglary, claiming that the elements of the offense were not met because the burglary occurred in the driveway to the victim's home, not in an "occupied structure." Our supreme court rejected this challenge, noting that the term "occupied structure," as defined in section 702.12, included "appurtenances to buildings and structures." *Baker*, 560 N.W.2d at 13. The court interpreted the phrase "appurtenances to buildings and structures" to include the victim's driveway and therefore affirmed the burglary conviction. *Id.* at 14.

Pulver claims the statutory definition of the terms "dwelling" and "occupied structure" are remarkably similar. He goes on to argue that a sidewalk is equivalent to a driveway, so the district court was justified when it concluded the sidewalk was part of the dwelling.

We disagree. Unlike the statutory definition of "occupied structure," the statutory definition of the term "dwelling" does not include the phrase "appurtenances to buildings and structures." See Iowa Code §§ 702.10, .12. Because the *Baker* decision rested on the interpretation of what constitutes an

appurtenance, we find the *Baker* decision wholly inapplicable to our analysis of the term “dwelling.”

IV. Conclusion

We find the location of this incident was not within Pulver’s dwelling for purposes of section 704.1. Accordingly, we reverse the district court’s ruling sustaining Pulver’s motion and remand this case for further proceedings not inconsistent with this opinion.

REVERSED AND REMANDED.