**IN THE COURT OF APPEALS OF IOWA**

No. 9-223 / 08-0803
Filed May 6, 2009

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

**vs.**

**FERLIN JAY SHERIDAN,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Ferlin Sheridan appeals his convictions, following jury trial, for burglary in the first degree, willful injury, and assault while participating in a felony. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Patrick Jennings, County Attorney, and Jill Esteves, Assistant County Attorney, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Doyle, JJ.

**MILLER, J.**

Ferlin Sheridan appeals his convictions, following jury trial, for burglary in the first degree, willful injury, and assault while participating in a felony. He contends there was insufficient evidence to support the convictions. We affirm.

The State charged Sheridan, by trial information, with burglary in the first degree (Count I), willful injury (Count II), and assault while participating in a felony (Count III). The charges stem from events that occurred in the early morning hours of November 4, 2007, when Sheridan and two of his friends, Williamson and Sonichsen, assaulted Steven Jackson based on their belief Jackson had been involved in the theft of two television sets from them. Williamson had called Marlee Faulk, Jackson's girlfriend with whom Jackson lived, that night regarding the television sets. Williamson allegedly threatened to come over and beat up Jackson or Faulk, so Faulk hung up on him.

Jackson called Williamson back. Jackson testified that during the call Williamson told Jackson that Williamson was coming over. According to Faulk's testimony, Jackson may have responded with words something like, "Do you think you're tough coming over here to beat up a girl? Well, if that's what you really want to do, come on over." Sheridan, Williamson, and Sonichsen later arrived at the residence Jackson shared with Faulk. Faulk saw their car arrive, and called 9-1-1. The three entered the house, searched for Jackson and Faulk, and found them in the basement to which they had retreated and from which Faulk was on the phone with the police dispatcher. Jackson was punched, was hit in the back of the head hard enough to drop him to the ground, and was

kicked in the face by more than one person. He believed it was Sheridan who hit him in the back of the head and knocked him down.

At the jury trial Jackson and Faulk testified they did not give permission to Sheridan or the others to enter the house. Sheridan and co-defendant Williamson testified they thought they had permission to enter the house. The jury convicted Sheridan as charged. The jury was instructed on two alternatives of first-degree burglary, "Entry Into Home" and "Remaining In Home." The verdict form clearly shows the jury found Sheridan guilty of the "Entry Into Home" alternative. Following the jury's verdict Sheridan admitted to being an habitual offender for purposes of sentencing enhancement under Iowa Code section 902.8 (2007). The court sentenced Sheridan to twenty-five years imprisonment on Count I and fifteen years each on Counts II and III, all to be served concurrently.

Sheridan appeals, contending there is not sufficient evidence to support the convictions. The State argues that although Sheridan frames his issue on appeal to include all three convictions, his argument goes only to the burglary conviction. It contends that because Sheridan makes only one brief statement with regard to his other two convictions and has failed to cite authority or present an argument in support of the issue he has waived the argument on appeal concerning these two convictions. We agree with the State. Because Sheridan has not presented an argument or cited any authority as to why sufficient evidence does not support his convictions for willful injury and assault while participating in a felony, we conclude he has waived the issue concerning those

two convictions. *See* Iowa R. App. P. 6.14(*c*) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue.") Thus we need address only Sheridan's sufficiency argument as to his conviction for burglary in the first degree.

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Lambert*, 612 N.W.2d 810, 813 (Iowa 2000). In reviewing such challenges we give consideration to all the evidence, not just that supporting the verdict, and view such evidence in the light most favorable to the State. *Id.* A jury's findings of guilt are binding on appeal if supported by substantial evidence. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). If a rational trier of fact could conceivably find the defendant guilty beyond a reasonable doubt, the evidence is substantial. *Lambert*, 612 N.W.2d at 813.

Sheridan was tried, and the case against him submitted, on the theory he aided and abetted Williamson. He only challenges the sufficiency of the evidence on one of the elements of the alternative of burglary in the first degree of which he was convicted. He claims there is insufficient evidence to prove he knew that Williamson did not have permission or authority to enter Jackson's residence, because Jackson invited the confrontation by taunting Williamson on the phone to "come on over," and Jackson was dressed and waiting for them when they arrived.

However, Jackson testified to the contrary. On direct examination Jackson was asked if, after the phone call with Williamson, he expected anyone to come over to his house. He answered, "Not really. I mean it was regular

tussle words that, I'm bigger and badder than you are. I just figured it was a shit-talk call." In addition, Jackson testified that when confronted by Williamson in the basement, he yelled at Williamson that he was unwelcome and to get out. Jackson's yelling at Williamson was so loud that the 9-1-1 dispatcher could hear it while on the phone with Faulk. Faulk also testified that neither she nor Jackson gave anyone permission to come into their house on the night in question.

"Inherent in our standard of review of jury verdicts in criminal cases is the recognition that the jury was free to reject certain evidence, and credit other evidence." *State v. Arne*, 579 N.W.2d 326, 328 (Iowa 1998). "A jury is free to believe or disbelieve any testimony as it chooses and to give as much weight to the evidence as, in its judgment, such evidence should receive." *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996).

The jury could reasonably conclude that Jackson's statement to Williamson to, "come on over," if made, was not an invitation to enter the house itself. Here the jury clearly determined, as was within its discretion, that Jackson's and Faulk's testimony that Williamson did not have permission to enter their house was more credible than Sheridan's and Williamson's testimony to the contrary. Accordingly, we conclude there is sufficient evidence in the record from which a rational jury could find beyond a reasonable doubt that Sheridan knew Williamson did not have permission or authority to enter Jackson's house, and thus sufficient evidence to support Sheridan's conviction for burglary in the first degree as an aider and abettor.

**AFFIRMED.**