

**IN THE COURT OF APPEALS OF IOWA**

No. 9-900 / 08-1851  
Filed December 17, 2009

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

**vs.**

**DOUGLAS LEE DAUGHERTY,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Linn County, Mitchell E. Turner,  
Judge.

Douglas Daugherty appeals from the judgment and sentence entered on  
his convictions for three counts of burglary in the third degree. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney  
General, Harold Denton, County Attorney, and Susan Nehring, Assistant County  
Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Danilson, JJ.

**DANILSON, J.**

Douglas Daugherty appeals from the judgment and sentence entered on his convictions for three counts of burglary in the third degree, in violation of Iowa Code sections 713.1 and 713.6A(1) (2007), and as being an habitual offender, in violation of section 902.8. Daugherty argues there was insufficient evidence to support his convictions. He also raises several pro se claims. We affirm.

**I. Background Facts and Proceedings.**

On March 10, 2008, someone stole a Community Electric company truck from a KFC parking lot in Clinton. The truck was a white 2005 Ford Ranger with a red topper and a green “CE” logo emblazoned on the door. In the afternoon of March 19, 2008, the truck pulled up next to an outdoor can shed that stored bags, each containing thirty to fifty dollars worth of smashed cans, on the side of a Wal-Mart store in Cedar Rapids. A skinny, balding, white male got out of the driver’s seat and retrieved a pair of yellow bolt cutters from the rear of the truck. The man cut the lock on the can shed with the bolt cutters, removed several bags of cans from the shed, put the bags in the rear of the truck, and drove away. The next afternoon, March 20, 2008, the same truck appeared, and the same man got out, cut the lock with the bolt cutters, and left with several bags of cans. A few hours later, the man driving the truck arrived again and took several more bags of cans (the door to the can shed remained unlocked from his break-in earlier that day).

By this time, Wal-Mart store management had become aware of the break-ins at the shed. Video surveillance depicting the outside of the can shed revealed the truck and the driver. The driver had worn the same clothes for each

break-in (dark pants, a dark shirt with some small lighter words across the front, a leather jacket, and dark shoes with white embellishments). Wal-Mart management had informed store employees of the break-ins at the can shed and told them to be on alert for the white truck.

On the afternoon of March 22, 2008, the truck again pulled up next to the can shed, and the driver got out, cut the lock with the bolt cutters, and loaded several bags into the rear of the truck. The driver was wearing the same clothing as the prior burglaries. Meanwhile, an employee spotted the truck and notified management. Store manager Greg Cason heard a walkie-talkie call about the truck and ran out the front door of the store to his car. From his car, Cason could see the driver near the shed putting bags of cans in the rear of the truck. Cason drove to the can shed to try to block the truck from leaving. The driver spotted Cason before Cason was able to block him in. The driver looked at Cason face-to-face, enabling Cason to get a good look at his face (from within five feet), before the driver got into the truck and sped away.<sup>1</sup> Cason tried to follow to get a license plate number, but the truck was going too fast.

Officer Jason Weininger of the Cedar Rapids Police Department was on patrol later that day when he spotted the truck.<sup>2</sup> Officer Weininger began to follow the truck and saw two people inside. The truck turned a corner and Officer Weininger lost sight of it for a few seconds. When Officer Weininger saw the

---

<sup>1</sup> At trial, Cason made an in-court identification of defendant Daugherty as the driver of the truck he saw stealing cans from Wal-Mart. Cason testified he was one hundred percent sure Daugherty was the person he saw. He based his identification on Daugherty's facial features, neck, and hair.

<sup>2</sup> Officer Weininger had received descriptive information about the stolen truck at the beginning of his shift that afternoon.

truck again, it was parked on a corner. As Officer Weininger approached the truck, he saw no one was inside.<sup>3</sup> He then noticed a woman several feet away who appeared to be hiding from him. Officer Weininger told the woman to stay where she was, and she pointed, stating, "He went that way." Several neighbors were also pointing the same direction. Officer Weininger was unable to locate the other person.

Officer Weininger identified the woman as Gayle Yeakle. Because of her suspected involvement with the stolen vehicle, Yeakle was transported to the Cedar Rapids police station for an interview. Yeakle stated she lived several blocks away (within walking distance) from where Officer Weininger discovered her. Upon Yeakle's request, officers went to her home to make sure that it was secure. The first time officers went to her home, it appeared empty. However, when officers returned a second time later in the evening, they saw a light and a television on. The person inside identified himself as Douglas Daugherty.

Because Daugherty's clothing matched the description given to officers earlier that day of the man conducting the burglaries at Wal-Mart, officers transported him to the police station to be interviewed and took a series of photographs to memorialize his appearance. Daugherty denied driving the stolen truck, but admitted he was at the Kum & Go store earlier that day, just a block away from where Officer Weininger discovered the stolen truck. Daugherty also admitted he had been living with Yeakle, but denied seeing her that day.

---

<sup>3</sup> The truck was impounded and processed. Officers were unable to find any usable fingerprints, but could tell the truck had been used. One or two bags of cans were discovered in the rear of the truck. When the truck was returned to its owner, the owner noticed the jaws of the yellow bolt cutters used in the burglaries had been damaged.

Detective Martin Devore examined the Wal-Mart surveillance videos taken of the burglaries, and determined that Daugherty's clothing matched that worn by the burglar.

The State charged Daugherty with three counts of burglary in the third degree in violation of Iowa Code sections 713.1 and 713.6A(1), and as being an habitual offender in violation of section 902.8. A jury found Daugherty guilty on all counts, and the court found Daugherty guilty of being a habitual offender. Daugherty filed a motion for new trial and motion in arrest of judgment. After a hearing, the court denied the motion. The court sentenced Daugherty to fifteen years for each conviction as an habitual offender. Each sentence was suspended with supervised probation of four years. Daugherty now appeals.

## **II. Merits.**

Daugherty argues there was insufficient evidence to support his convictions for burglary in the third degree. We review challenges to the sufficiency of the evidence for the correction of errors of law. Iowa R. App. P. 6.4; *State v. Keeton*, 710 N.W.2d 531, 532 (Iowa 2006). In reviewing challenges to the sufficiency of the evidence supporting a guilty verdict, we consider all of the evidence in the record in the light most favorable to the State and make all reasonable inferences that may fairly be drawn from the evidence. *Keeton*, 710 N.W.2d at 532.

As the district court aptly noted in its ruling on Daugherty's motion for new trial and motion in arrest of judgment:

Mr. Daugherty alleges that there was a complete lack of any credible evidence identifying the Defendant as being the perpetrator in any of the alleged burglaries. Even if the Court were

to completely disregard the in-court identification of the Defendant as the perpetrator by Mr. Greg Cason . . . , a vast array of circumstantial evidence was still presented from which a jury could conclude that Mr. Daugherty was, in fact, the perpetrator of these burglaries. As the jury was properly instructed, evidence may be either direct or circumstantial, and the weight to be given any evidence is for the jury to decide. If substantial evidence supports the verdict, it should not be disturbed. Evidence is substantial if, in the light most favorable to the State, the evidence is such as could convince a rational jury that the Defendant is guilty beyond a reasonable doubt. In the case at bar, Mr. Daugherty fails to take into account the surveillance videotapes, the credible and accurate description of the perpetrator at the scene, the fact that he was wearing identical clothing at the time of his arrest of that worn by the perpetrator in the surveillance videotapes, his nexus to the truck used in the burglaries, and his relationship to Gayle Yeakle (who was found with the truck, while the second person in the vehicle escaped), and finally the timing of his arrest at Ms. Yeakle's house. While circumstantial, the evidence against Mr. Daugherty in this case could almost be termed as overwhelming. The Defendant's Motion for New Trial and Motion in Arrest of Judgment referable to the alleged lack of evidence is overruled and denied in its entirety.

Upon our review of the record, particularly including Wal-Mart manager Cason's eyewitness identification, the surveillance videos, and the pictures taken of Daugherty upon his arrest, we agree with the district court's conclusion in this case. We cannot contribute anything to that opinion that will add to or change the disposition of this case. Considering the record in the light most favorable to the State and making all reasonable inferences that may fairly be drawn, we find the evidence substantially supports Daugherty's convictions for burglary in the third degree. We affirm on this issue.

Through a pro se brief, Daugherty contends the district court abused its discretion in denying Daugherty's claim of alleged prosecutorial misconduct, and in denying Daugherty's claim that the in-court identification made by Wal-Mart manager Cason was improper or mistaken. The State argues these issues have

not been preserved for our review. Even if we assume Daugherty properly preserved these issues, we find his pro se claims to be without merit. The district court more than adequately addressed these issues in its ruling on Daugherty's motion for new trial and motion in arrest of judgment, and we agree with the court's determinations in that ruling.

Having considered all issues raised on appeal, we affirm Daugherty's convictions and sentence.

**AFFIRMED.**