

MISSOURI COURT OF APPEALS EASTERN DISTRICT
OPINION SUMMARY

STATE OF MISSOURI,)	No. ED103010
)	
Respondent,)	Appeal from the Circuit Court
)	of Ste. Genevieve County
vs.)	
)	
ORLANDO NAYLOR,)	Hon. Wendy Horn
)	
Appellant.)	FILED: June 21, 2016

Appellant Orlando Naylor (“Naylor”) appeals from the judgment of the trial court convicting Naylor as a prior and persistent offender of first-degree burglary, misdemeanor stealing, and driving with a revoked license in connection with the theft of cash located in the interior office of a restaurant. On appeal, Naylor contends that (1) the trial court erred in overruling his motion for judgment of acquittal for the charge of first-degree burglary because the State failed to present sufficient evidence from which a reasonable juror could have found that Naylor knowingly entered unlawfully into the office area of the restaurant; (2) the trial court erred in overruling his motion for judgment of acquittal for the charge of first-degree burglary because the State failed to present sufficient evidence that any person was present in the room at the time he entered and took money; and (3) the trial court abused its discretion in allowing evidence of different theft and an attempted theft in which Naylor was involved on the day before the crimes with which Naylor was charged.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

DIVISION FOUR HOLDS: Because the door to the room which Naylor entered was clearly marked with a sign reading “office” and was located at the end of a hallway, the State presented sufficient evidence from which a rational juror could reasonably infer that Naylor knew the office was not open to the public, and thus, that he was aware his entry into the office was unlawful. Because the State presented no evidence that Giesler or anyone else was present in the “room”—specifically the office—that Naylor unlawfully entered, either at the time he entered the office, at the time he remained in the office, or during the time he fled therefrom, the State failed to present sufficient evidence to support Naylor’s conviction for first-degree burglary. However, the record contains sufficient evidence from which a jury could have found each of the elements necessary to convict Naylor of second-degree burglary. Finally, because the testimony of the theft and an attempted theft in which Naylor was involved one day prior to the burglary with which Naylor was charged tended to establish Naylor’s identity as the man who committed the crime for which he was charged, the trial court did not abuse its discretion in admitting the evidence.

Accordingly, we affirm the judgment of the trial court with respect to Points One and Three and reverse the judgment of the trial court with respect to Point Two. We vacate Naylor’s conviction for first-degree burglary, enter a conviction for second-degree burglary, and remand the case for re-sentencing.

Opinion by: Kurt S. Odenwald, Judge
concur.

Sherri B. Sullivan, P.J., and Lisa P. Page, J.,

Attorney for Appellant: Casey A. Taylor

Attorney for Respondent: Christ Koster and Dora A. Fichter

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