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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Honorable R. Keith Kelly, Circuit Court Judge
Appellate Case No. 2024-000185

THE STATE,

Respondent,

vs.

BENJAMIN LOUIS NATION

Appellant.

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STATEMENT OF ISSUE ON APPEAL

"Whether the trial court erred in refusing to direct a verdict of acquittal for first-degree burglary where there was no direct or substantial circumstantial evidence that Appellant possessed the intent to commit a crime when he entered the dwelling, since a defendant is entitled to a directed verdict when the evidence merely raises a suspicion of guilt?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow err by declining to grant a directed verdict when the evidence and testimony presented during trial supported a rational and logical conclusion Appellant was guilty of all the required elements of first-degree burglary, including the "intent to commit a crime" element?

STATEMENT OF THE CASE

In January of 2023, Appellant Benjamin Louis Nation, a by-that-point-twice-convicted burglar, was arrested after deputies responded to a report of a residential break-in in progress and apprehended him while he was still inside his most-recent victims' home.[1] In August of 2023, the Spartanburg County Grand Jury indicted Appellant for one count of first-degree burglary. On January 29, 2024, a jury trial was commenced in the Spartanburg County Court of General Sessions with the Honorable R. Keith Kelly, circuit court judge, presiding. At the conclusion of the three-day trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a twenty-five-year term of imprisonment. Appellant then timely filed a notice of appeal.

[1] At the time of the incident, Appellant had numerous earlier criminal convictions, including prior convictions for second-degree and third-degree burglary. (Tr. p. 108; pp. 215-216).

ARGUMENT

The trial judge correctly declined to grant a directed verdict because the evidence and testimony presented during trial supported a rational and logical conclusion Appellant was guilty of all the required elements of first-degree burglary, including the "intent to commit a crime" element.

Relevant Facts

The victims, Gregory Wall and Randall Etters, lived together at a residence located in Spartanburg, South Carolina, and, at some point, the two began having renovation work conducted at their home. (Tr. p. 51; p. 62; p. 85). During the course of the renovations, Appellant performed paid construction work at the victims' residence on a few occasions, and Wall considered him to be an associate or friend. (Tr. pp. 65-66; p. 84; p. 86; pp. 95-96; p. 99). However, after finishing some work at the residence on December 22, 2022, Appellant refused to go despite Wall demanding he do so. (Tr. pp. 63-64; pp. 86-87). Due to Appellant's refusal, Wall contacted law enforcement, who responded to the scene and forced Appellant to leave. (Tr. p. 87). Significantly, Appellant was also placed on trespass notice for the property at that time. (Tr. p. 66; p. 68; p. 80; p. 87).

Despite receiving the trespass notice, Appellant—without any permission of any kind to do so—returned to the victims' residence in the early morning hours of January 23, 2023. (Tr. pp. 51-52; p. 90). And, upon arriving there, Appellant did *not* go to the front door and simply ring the doorbell or knock. (Tr. pp. 32-32; p. 91; pp. 135-136). Instead, Appellant headed to the residence's side gate, unlatched the gate lock, went through the home's backyard, and slowly entered the residence through the rear doors. (Tr. p. 53; p. 59; pp. 61-62; State's Ex. # 18 (Recordings)). Appellant then briefly looked at some items on the floor before heading farther into the home. (Tr. 52; State's Ex. # 18).

Meanwhile, Etters had already awakened for the day by that point and was in the process of taking a shower when he heard his dogs behaving in an unusual manner followed by an unknown voice. (Tr. p. 51). Etters quickly went to see what was happening and he encountered Appellant, who was carrying a water bottle and several cell phones, in the hallway outside the master bedroom inside his home. (Tr. pp. 52-54). Upon making that shocking discovery, Etters immediately and loudly ordered Appellant to leave. (Tr. p. 53). However, Appellant did not do so and, instead, responded by saying "crazy off-the-wall stuff." (Tr. p. 53).

Shortly after that, Wall—who was asleep at the time of Appellant's uninvited entry into the home and was awakened by the sounds of Etters and Appellant yelling at each other—exited his bedroom to find out what was going on. (Tr. pp. 87-88). Upon doing so, he, too, spotted Appellant inside his home, and, just like Etters, he directed Appellant to leave multiple times. (Tr. pp. 88-89). However, once again, Appellant refused to comply, so Wall quickly called 911 to report the shocking break-in and urged the emergency responders to "please hurry." (Tr. p. 89; State's Ex. # 1 (911 Call Recording)).

Deputies from the Spartanburg County Sheriff's Office rushed to the scene in response, and, upon arriving there, Deputy Jimmie Davis quickly headed inside the victims' residence. (Tr. p. 100; State's Ex. # 20 (Body Camera Recording). Just inside the front door, Deputy Davis found Etters, Wall, Appellant, and the victims' dogs. (State's Ex. # 20). Upon seeing the officer, Appellant immediately pointed to his cell phones, which he had apparently placed on a nearby table, and asked the deputy for permission to get them. (State's Ex. # 20). Deputy Davis then attempted to remove Appellant from the residence, and Appellant physically resisted. (State's Ex. # 20). Nevertheless, Deputy Davis was able to get Appellant outside, and Appellant was swiftly handcuffed and arrested. (State's Ex. # 20).

Subsequently, Appellant was indicted for first-degree burglary in connection to the incident. (Tr. p. 6; Indictment). Following that, the State extended an offer to Appellant that would have allowed him to avoid a burglary conviction in exchange for pleading guilty to trespassing. (Tr. p. 27). However, Appellant—with full awareness trespassing was *not* a lesser-included offense of first-degree burglary—personally rejected that offer and elected to proceed forward to trial. (Tr. p. 27).

During the course of the ensuing trial, Etters and Wall recounted the details of the shocking home invasion and identified Appellant—who had previously been placed on trespass notice for the victims' property—in the courtroom as the intruder. (Tr. pp. 51-68; pp. 85-99). Likewise, both confirmed Appellant did not have permission to enter their residence on the date of the incident, and they affirmed they had no idea why he was there. (Tr. p. 52; pp. 58-59; p. 67; pp. 88-90). Although not certain of Appellant's intentions, Wall further opined Appellant *may* have been thinking he was there to work that morning. (Tr. pp. 97-98). However, Wall confirmed Appellant never actually said he was there for such a purpose and did not have any work tools with him at that time. (Tr. p. 97).

In addition to that, evidence was presented establishing Appellant had two prior burglary convictions for the purpose of proving one of the elements of first-degree burglary. (Tr. p. 108). Furthermore, a recording of Wall's call to 911, a cell phone recording one of the victims made as the incident was occurring, and recordings captured by the body cameras of the responding deputies were all admitted into evidence and played for the jury. (Tr. pp. 56-57; p. 74; p. 89). Notably, on the victim's cell phone recording, Appellant could be heard at various times: (1) claiming he was actually a law enforcement officer after he realized his victims were on the phone with a 911 dispatcher; (2) asserting he would contact law enforcement himself on his

radio; (3) stating the victims' house was his own; (4) promising he had an explanation for "how [it] all unfolded" that was "so good"; (5) giggling and saying "stupid" or something similar; (6) alleging he was "about to go get [someone's] truck" and would "fuck" with it; (7) asking one of the victims' dogs where he could find the truck's keys; (8) discussing a "quest" and his receipt of some sort of "message" from somewhere; (9) mumbling about how "a cigarette enforces time"; (10) seemingly asserting he was a narcotics officer; and (11) taunting the victims by stating: "You see those police haven't pulled up yet." (State's Ex. # 18).

Following the presentation of all that testimony and evidence, the solicitor rested the State's case, and defense counsel promptly moved for a directed verdict. (Tr. pp. 113-114). As support for that motion, defense counsel claimed the distinguishing factor between burglary and trespassing was burglary required proof of an intent to commit a crime. (Tr. p. 114). Defense counsel then asserted one of the victims—Wall—had indicated "he believed that [Appellant] was there because he thought he might have to work." (Tr. p. 114). Based on that, defense counsel maintained there was purportedly no evidence whatsoever establishing Appellant had an intent to commit a crime when he entered the victims' dwelling. (Tr. pp. 114-115). However, in addition to that, defense counsel conceded Appellant had previously been warned he was not supposed to be at the victim's home and was, in fact, trespassing there on the date of the incident. (Tr. pp. 114-115).

Conversely, the solicitor noted an intent to trespass constituted an intent to commit a crime since trespassing was indeed a crime in South Carolina. (Tr. p. 116). The solicitor further pointed out—correctly—intent was something that ordinarily had to rest on inferences from conduct. (Tr. p. 117). Based on the circumstances involved in Appellant's case, the solicitor contended the jury could rationally conclude Appellant was "up to no good" when he entered the

victims' home, possessed an intent to commit larceny, and had only altered his original plan after he was unexpectedly caught in the act by his victims. (Tr. pp. 117-118).

Upon considering the arguments of counsel, the trial judge denied the direct verdict motion. (Tr. p. 121). In doing so, the trial judge recognized an individual's intent necessarily must be inferred from the circumstances and found Appellant's intent was a question of fact that needed to be resolved by the jury based on what had been presented. (Tr. p. 121).

Following that ruling, the trial proceeded forward, and Appellant elected to testify in his own defense. (Tr. p. 131). During his testimony, Appellant—who admittedly had been convicted in the past of trespassing, burglary, and financial transaction card theft—repeatedly claimed he only went to the victims' residence on the date of the incident because he had worked there in the past and was trying to find out if he was going to be working for Wall again that day. (Tr. pp. 131-135; p. 143). Appellant further conceded what occurred was "peculiar" but alleged he had previously entered the residence through the back door, greeted the dogs, and knocked on Wall's bedroom door to get him up for work on some earlier occasion. (Tr. pp. 136-137). Beyond that, Appellant acknowledged he had previously been at the residence in December of 2022, was asked to leave by Wall during that earlier incident, refused to do so until law enforcement arrived, and was then placed on trespass notice. (Tr. p. 137). Despite that and for reasons unclear, Appellant claimed he nevertheless believed he would be welcomed back at the victims' residence. (Tr. p. 137). Furthermore, Appellant alleged he intended to explain himself on the date of the incident but purportedly "didn't get that opportunity." (Tr. p. 139).

Thereafter, on cross-examination, Appellant initially claimed he had last spoken to Wall when he had been placed on trespass notice at the residence. (Tr. p. 140). However, perhaps realizing the damaging nature of such an admission, Appellant quickly backpedaled and alleged

that might not be accurate. (Tr. p. 140). He followed that a short time later by affirming he was now certain he had communicated with Wall in the preceding four days. (Tr. p. 144). Likewise, despite his earlier claim he was not given an opportunity to explain himself, Appellant acknowledged he was asked what he was doing there by the victims. (Tr. p. 147). Nevertheless, Appellant insisted he could not tell them he was there to perform work that day because "[t]here were dogs" and it was loud and chaotic. (Tr. p. 147). Perhaps tellingly, Appellant followed that newly-advanced claim by stating: "Yeah, we'll go with that. I like it." (Tr. p. 147). As his testimony continued, Appellant claimed he came to the victims' residence so early on the date of the incident because it was "a time sensitive matter" since he "needed to get on the road and go do some cellphone tower work" if he was not going to be working for Wall that day. (Tr. p. 152). In response to that claim, the solicitor asked Appellant where the purported alternate work was going to occur. (Tr. p. 152). Appellant responded: "Irrelevant." (Tr. p. 152). Then, when directed to answer what should have been a simple query, Appellant alleged the cellphone tower work "could be at any tower anywhere." (Tr. p. 152).

Following Appellant's testimony, the defense rested, and defense counsel quickly renewed the directed verdict motion. (Tr. p. 167; p. 172). In doing so, defense counsel—in a seemingly sarcastic fashion—characterized Appellant's testimony as "wonderful" but again insisted there was supposedly no evidence upon which the jury could conclude Appellant entered the victims' residence with an intent to commit a crime. (Tr. p. 172). Once again, the trial judge denied the directed verdict motion. (Tr. p. 172).

Thereafter, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law, including on the requisite criminal intent.[2] (Tr. pp. 174-209). The case was then submitted to the jury, and, after deliberating on the matter for a little less than ninety minutes, the jury unanimously convicted Appellant as indicted. (Tr. p. 209; pp. 211-212).

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004); see Cavazos v. Smith, 565 U.S. 1, 2 (2011) ("[I]t is the responsibility of the jury—not the court—to decide what conclusions should be drawn from evidence admitted at trial. A reviewing court may set aside the jury's verdict on the ground of insufficient evidence only if no rational trier of fact could have agreed with the jury."); see also Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938) (explaining "substantial" evidence "means such relevant evidence as a reasonable mind might accept as

[2] As part of the State's closing argument, the solicitor contended the circumstances involved supported a conclusion Appellant possessed both an intent to trespass *and* an intent to steal when he entered the victims' residence. (Tr. pp. 177-179; p. 188). The solicitor further noted the shifting nature of Appellant's own contrary claims damaged their credibility. (Tr. p. 180). Conversely, during the defense's closing argument, defense counsel alleged Appellant was just showing up for work on the date of the incident and had no intent to commit any crime whatsoever when he entered the victims' residence. (Tr. p. 192). Defense counsel further argued to the jury: "Trespass with the intent to commit a crime is burglary. Trespass with the intent to commit a trespass is not burglary." (Tr. p. 192).

adequate to support a conclusion"); United States v. Smith, 21 F.4th 122, 139-140 (4th Cir. 2021) ("Substantial evidence is that which a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." (citation and internal quotations omitted)). In other words, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986); see United States v. Ashley, 606 F.3d 135, 138 (4th Cir. 2010) ("Reversal for insufficient evidence is reserved for the rare case where the prosecution's failure is clear." (citation and internal quotations omitted)).

Analysis

Under our system of justice, the judge and jury have distinct roles when a jury trial is conducted in a criminal case. Shannon v. United States, 512 U.S. 573, 579 (1994). The judge is tasked with administering the proceedings, instructing the jury on the applicable law, and ensuring all sides receive a fair trial. See State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge has a duty to instruct the jury on the law applicable to the case); State v. Stanley, 365 S.C. 24, 39, 615 S.E.2d 455, 463 (Ct. App. 2005) ("A judge has a responsibility for safeguarding both the rights of the accused and the rights of the public in the administration of criminal justice."). Meanwhile, the jury alone has the task of finding the facts, weighing the evidence, *choosing what inferences should be drawn from it*, and ultimately deciding whether the State has met its burden of proving the defendant's guilt beyond a reasonable doubt. See United States v. Gaudin, 515 U.S. 506, 514 (1995) ("[T]he jury's constitutional responsibility is not merely to determine the facts, but to apply the law to those facts and draw the ultimate conclusion of guilt or innocence."); State v. Cheeks, 401 S.C. 322,

328, 737 S.E.2d 480, 484 (2013) ("It is always for the jury to determine the facts, and the inferences that are to be drawn from these facts."); State v. Pruitt, 187 S.C. 58, __, 196 S.E. 371, 373 (1938) (explaining the jury is the sole judge of the facts); State v. Tillman, 433 S.C. 58, 64-65, 856 S.E.2d 168, 172 (Ct. App. 2021) (instructing "it was within the *jury's* purview to determine what each piece of evidence meant, how the pieces fit together, and whether the sum of the evidence was sufficient to convict"); State v. Battle, 408 S.C. 109, 119, 757 S.E.2d 737, 742 (Ct. App. 2014) ("The task of determining the weight of the evidence lies within the exclusive province of the jury.").

Based on that distinction in roles, the question before a trial judge when presented with a directed verdict motion challenging the sufficiency of the evidence is simply whether any rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed in a light most favorable to the State. State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016); see Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."). In resolving that question, the trial judge must be concerned solely with the existence or non-existence of evidence and is *not* permitted to personally weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented. Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002); see State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997) ("When ruling on a motion for a directed verdict, the trial judge is concerned with the existence of evidence, not its weight."); see also State v. Franklin, 80 S.C. 332, __, 60 S.E. 953, 955 (1908) ("The orderly administration of justice requires that all proper

evidence should be admitted, and the jury must determine the facts, and testimony should be exceedingly clear and without contradiction where a circuit judge assumes to direct a verdict.").

Significantly, if there is *any* direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced, the trial judge should deny a directed verdict motion and submit the case to the jury. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992); see State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). By doing so under such circumstances, the trial judge correctly avoids improperly encroaching upon the jury's exclusive role to find the facts, weigh the evidence, evaluate witness credibility, and resolve any evidentiary conflicts that may have arisen during trial. See Jackson, 443 U.S. at 319 ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); see also Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("[I]t is exclusively within the jury's province to decide how much weight the evidence deserves.").

In the case sub judice, Appellant contends the trial judge reversibly erred by refusing to grant a directed verdict in his case. As support for that contention, Appellant maintains the evidence "[a]t best" raised a mere suspicion he had an intent to commit a crime when he entered

the victims' residence on the date of the incident. Accordingly, Appellant argues a directed verdict should have been granted and his first-degree burglary conviction must now be reversed.

In order to establish the statutory offense of first-degree burglary in South Carolina, the State must prove the defendant: (1) entered the dwelling of another; (2) without consent; (3) with the intent to commit "*a crime*" therein; and (4) with at least one statutorily-specified aggravating circumstance present. S.C. Code Ann. § 16-11-311(A) (emphasis added). Thus, as far as the intent element is concerned, "[t]he only requirement" based on the plain language of the applicable statute "is that there be intent to commit *any* crime at the time of entry." Pinckney v. State, 368 S.C. 502, 505, 629 S.E.2d 367, 369 (2006) (emphasis added); see State v. Gilliland, 402 S.C. 389, 398, 741 S.E.2d 521, 526 (Ct. App. 2012) (concluding the language of South Carolina's first-degree burglary statute is "unambiguous" and, based on that unambiguous language, the offense simply requires proof "that, at the time the offender entered the dwelling, he intended to commit a crime once inside"). Significantly, the broad nature of our state's first-degree burglary statute in that regard distinguishes it from more-restrictive burglary statutes some *other* states have elected to adopt.[3] See, e.g., Colo. Rev. Stat. Ann. § 18-4-202 ("A person commits first degree burglary if the person knowingly enters unlawfully, or remains unlawfully after a lawful or unlawful entry, in a building or occupied structure with intent to commit therein

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[3] Notably, the broad nature of South Carolina's burglary statute and its accompanying intent requirement is also fully consistent with the very purpose burglary laws are designed to serve. See State v. Brooks, 277 S.C. 111, 112-113, 283 S.E.2d 830, 831 (1981) ("Burglary is a crime against possession, not against property. The law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime when peace, solitude and safety are most desired and expected. . . . [A]t the heart of burglary law is protection of the individual and family from unlawful intrusion while home at night."); see also State v. Johnson, 350 S.C. 543, 547, 567 S.E.2d 486, 488 (Ct. App. 2002) (explaining "few would argue" first-degree burglary was a grave offense of a "most serious" nature); State v. Londo, 643 N.W.2d 869, 872 (Wis. Ct. App. 2002) (recognizing "[h]ousehold burglaries present real and grave risks" and carry an *inherent* potential for violence).

a crime, *other than trespass* as defined in this article, against another person or property, and if in effecting entry or while in the building or occupied structure or in immediate flight therefrom, the person or another participant in the crime assaults or menaces any person, the person or another participant is armed with explosives, or the person or another participant uses a deadly weapon or possesses and threatens the use of a deadly weapon." (emphasis added)); see also Mathis v. United States, 579 U.S. 500, 504-505 (2016) (recognizing states can have—and some do have—statutory versions of burglary that are broader than burglary in a generic sense and broad enough to encompass other offenses such as shoplifting).

With that in mind and viewing the evidence and testimony presented during Appellant's trial in a light most favorable to the State as required, there was no question Appellant entered the dwelling of another and his entry in that regard occurred without consent. The victims both testified during trial Appellant did *not* have permission to be inside their home on the date of the incident, both confirmed he was nevertheless inside their house when they unexpectedly encountered him there, and surveillance footage and other recordings were introduced that clearly showed Appellant inside the residence. Furthermore, at least one statutorily-specified aggravating circumstance was present in Appellant's case since: (1) it was clearly still dark outside when Appellant entered the victims' residence; and (2) Appellant had two prior convictions for burglary. See S.C. Code Ann. § 16-11-311(A) (identifying "the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both" and "the entering or remaining occurs in the nighttime" as aggravating circumstances for purposes of first-degree burglary). Thus, every element aside from intent was unquestionably established.

Meanwhile, regarding the necessary intent, the jury likewise could logically and rationally have found Appellant possessed an "intent to commit a crime in the dwelling" when he entered the victims' home based on the reasonable inferences that could be drawn from the evidence and testimony presented. Id. Demonstrating that fact, the jury—just as the solicitor correctly argued—could have concluded Appellant possessed the criminal intent to trespass when he entered the victims' home because he was on trespass notice for the residence, was aware he could not properly come onto the property in light of that notice, and still nevertheless did just that without permission. Critically, trespassing obviously constitutes "a crime" in South Carolina, and that crime is one that is entirely separate and distinct from the crime of burglary. Id.; see S.C. Code Ann. § 16-11-620 ("Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days."); see also State v. Cross, 323 S.C. 41, 44, 448 S.E.2d 569, 570 (Ct. App. 1994) (holding neither statutory trespass nor common law trespass are lesser-included offenses of first-degree burglary in South Carolina because each offense requires proof of elements burglary does not). And, as defense counsel readily conceded to the trial judge during trial, Appellant indisputably committed a trespass when he entered the victims' home under the circumstances involved. Therefore, without simply ignoring the plain language of the first-degree burglary statute and impermissibly altering its wording to add an exception for trespassing that does not appear in the

statute itself, Appellant's commission of an intentional unlawful trespass was, in fact, wholly sufficient to establish he had an intent to commit a crime when he entered the victims' residence that satisfied South Carolina's first-degree burglary statute's "intent to commit a crime" element. See State v. White, 338 S.C. 56, 58, 525 S.E.2d 261, 263 (Ct. App. 1999) ("We, of course, must take the statute as we find it, giving effect to the legislative intent as expressed in its language. We cannot under our power of construction *supply an omission in the statute*." (emphasis added)); see also S.C. Code Ann. § 16-11-620 (expressly stating in provision outlawing trespass after notice: "The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another."); cf. Gilliland, 402 S.C. at 398-399, 741 S.E.2d at 526 (concluding intent to violate the terms and conditions of an order of protection constitutes "intent to commit a crime" for purposes of first-degree burglary since such a violation is, in fact, a crime in South Carolina and noting neither a trial court nor an appellate court has the authority to add a limitation or exception not appearing in the applicable statutes).

However, even if the plain language of the first-degree burglary statute *could* be ignored and an intent to commit a criminal trespass could somehow properly be declared to be insufficient to support a conviction for first-degree burglary in our state, the jury in Appellant's case nevertheless *still* could logically and rationally have found Appellant possessed the necessary criminal intent when he entered the victims' home. Significantly, that is true because Appellant's unexplained and non-consensual entry into the victims' home under the cover of darkness supported a conclusion he—at a minimum—did so with an intent to steal. See McMillian v. State, 383 S.C. 480, 487-488, 680 S.E.2d 905, 908 (2009) (recognizing an unexplained entry of a residence at night constitutes evidence of an intent to commit larceny);

see also Daniel v. State, 804 S.E.2d 61, 66 (Ga. 2017) ("We have long recognized that intent may be inferred from the presence of valuables inside the place the defendant sought to access."); In re Matthew M., 780 N.E.2d 723, 728-729 (Ill. App. Ct. 2002) ("A jury may infer the offender's intent to commit a residential burglary from proof that the offender unlawfully entered a building containing personal property that could be the subject of a larceny."); People v. Armstrong, 783 N.Y.S.2d 134, 137 (N.Y. App. Div. 2004) (instructing an intent to commit a crime therein may be inferred when a defendant is discovered inside a building without permission). And, that was particularly true given the fact Appellant entered the victims' home through the rear instead of the front, offered no rational explanation for his presence inside the home upon being found there by the victims., and refused to leave despite being ordered to do so. Cf. State v. Thomas, 381 So. 3d 892, 897 (La. Ct. App. 2024) ("The jury could easily infer that Thomas had ill intentions, i.e. theft, for entering the home by choosing this method of entry, as opposed to knocking on the front door and being invited inside."); People v. Vasquez, 896 N.Y.S.2d 239, 240 (N.Y. App. Div. 2010) (explaining an intruder's intent can be inferred from—amongst other things—his actions and statements after being confronted by police or the property owner and concluding the evidence was legally sufficient to support an inference Vasquez intended to commit a crime upon entering his victim's apartment due to the fact he did not tell the victim of his purported innocent intent when he encountered her inside the apartment). Moreover, while Appellant attempted at trial to offer some innocent explanation for his entry into the victims' home, it was for the jury—and no one else, including Appellant and his defense counsel—to decide whether that explanation was a credible one or if a contrary conclusion should be drawn from the circumstances involved. See State v. Meggett, 398 S.C. 516, 527, 728 S.E.2d 492, 498 (Ct. App. 2012) ("[W]hether a defendant possessed the requisite

intent at the time the crime was committed is typically a question for jury determination because, without a statement of intent by the defendant, proof of intent must be determined by inferences from conduct."); see also State v. Larmand, 415 S.C. 23, 32, 780 S.E.2d 892, 896 (2015) ("Although Respondent presented plausible explanations for each of these facts, our duty is not to weigh the plausibility of the parties' competing explanations. Rather, we must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer Respondent's guilt."); McMillian, 383 S.C. at 487, 680 S.E.2d at 908 ("Certainly, a jury would have been free to disbelieve McMillian's version of events and find that he had the intent to commit a crime based on his conduct at the time of this offense."); cf. Wright v. West, 505 U.S. 277, 296 (1992) ("As the trier of fact, the jury was entitled to disbelieve West's uncorroborated and confused testimony. In evaluating that testimony, moreover, the jury was entitled to discount West's credibility on account of his prior felony conviction . . . and to take into account West's demeanor when testifying, which neither the Court of Appeals nor we may review. And if the jury did disbelieve West, it was further entitled to consider whatever it concluded to be perjured testimony as affirmative evidence of guilt[.]" (citations omitted)); People v. Grassi, 708 N.E.2d 976, 978 (N.Y. 1999) ("Defendant has offered myriad innocent explanations or inferences that could be drawn by a jury to counter this evidence. That, however, is not the legal standard by which this Court is bound for reviewing a sufficiency of the evidence appeal[.]"); Sandoval v. Commonwealth, 455 S.E.2d 730, 732 (Va. Ct. App. 1995) ("When an unlawful entry is made into a dwelling of another, the presumption is that the entry was made for an unlawful purpose, and the specific intent with which such entry was made may be inferred from the surrounding facts and circumstances. In the absence of evidence showing a contrary intent, the trier of fact may infer that a person's unauthorized

presence in another's house was with the intent to commit larceny. Appellant's assertion that he was a mere 'squatter' in the farmhouse is not controlling. His assertion was squarely before the trier of fact to be considered along with the presumption of his intent created by his unlawful entry into the dwelling of another. The credibility of the witnesses and the weight accorded the evidence are matters solely for the fact finder who has the opportunity to see and hear that evidence as it is presented." (citations omitted)).

Accordingly, because the evidence and testimony presented supported a fair and rational conclusion Appellant was guilty of *all* the necessary elements of first-degree burglary, the trial judge was required to submit Appellant's case to the jury so it could carry out its fact-finding role. See State v. Shaw, 258 S.C. 236, 239, 188 S.E.2d 186, 187 (1972) ("The weight to be accorded the testimony was for the jury to determine *and not this Court*." (emphasis added)); State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); see also William Shepard McAninch et al., The Criminal Law of South Carolina 413 (6th ed. 2013) ("The lesson of these [South Carolina burglary and housebreaking] cases is an uninvited entry into the home of another raises an inference of the intent to commit a crime and the matter will be *submitted to the jury* for determination." (emphasis added)). Thus, the trial judge correctly declined to grant a directed verdict in Appellant's case, and there is no legitimate basis upon which that ruling can be disturbed on appeal. See Bennett, 415 S.C. at 236-237, 781 S.E.2d at 354 ("[W]hen ruling on a directed verdict motion, the trial court views the evidence in the light most favorable to the State and *must* submit the case to the jury if there is any

substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced." (emphasis added and citation and internal quotations omitted)); cf. State v. Pinckney, 339 S.C. 346, 350, 529 S.E.2d 526, 528 (2000) (concluding the trial judge correctly refused to direct a verdict in a first-degree burglary case and instructing "it was for the jury to decide if [Pinckney] had entered the house with the intent to commit a crime inside" even though Pinckney claimed he only entered the burglarized home to escape people that were supposedly chasing him). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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