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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDDIE MACK STEWART,

APPELLANT

APPELLATE CASE NO. 2014-001324

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in interpreting the statutory definition of "dwelling" for purposes of a burglary charge and in in failing to conclude that the evidence could not support a finding that Appellant entered a dwelling.

STATEMENT OF THE CASE

On March 7, 2013, the Aiken County Grand Jury indicted Appellant Eddie Mack Stewart for grand larceny and first degree burglary. On June 10, 2012, Appellant and a codefendant proceeded to trial before The Honorable Doyet A. Early, III and a jury. Michael Chesser represented Appellant and Bill weeks and Bethann Young represented the State. Tr. 1. After the State's case, Appellant entered a plea of guilty as charged, and Judge Early accepted the plea and sentenced Appellant to concurrent sentences of twenty-five years for the burglary and ten years for the larceny. Tr. 412, line 15—417, line 23; Tr. 520, line 21-24.

ARGUMENT

THE TRIAL JUDGE ERRED IN INTERPRETING "DWELLING" AND IN FAILING TO CONCLUDE THAT THE EVIDENCE COULD NOT SUPPORT A FINDING THAT APPELLANT ENTERED A DWELLING.

FACTS

The State alleged that on August 9, 2012, Appellant and two other men crashed a stolen van into a gun store after hours to steal firearms. The owner of the store appeared and fired a rifle at the men, killing one and sending Appellant and the other fleeing. Tr. 73, line 7—Tr. 74, line 18. The State called the owner of the store, Stephen Bayzes, to describe the events. Tr. 88, line 13–Tr. 139, line 24.

Bayzes testified he lives with his wife in Builder, South Carolina on a three-and-one-quarter-acre lot on a highway. The lot has a 3,600 square foot building for a business called The Yard Shop and another 7,200 square foot building housing a retail gun store. Tr. 94, 11-25; 101, 11-14. The gun store building has multiple sections. One section "is donated straight to [his] personal dwellings that [they] actually live in," and it consists of two stories. Tr. 88, line 23—Tr. 90, line 19; Tr. 140, lines 20-23. This section includes a kitchen, a combination bathroom and laundry, and bed. Tr. 105, line 6—Tr. 106, line 1. In a small room on the first floor of this section, Bayzes typically spends his nights on a couch. Tr. 91, line 20—Tr. 92, line 2; Tr. 101, line 21—Tr. 102, line 24; Tr. 140, line 24—Tr. 141, line 1. This "flat," as Bayzes refers to it, is connected by a foyer and a door to a large garage area. Tr. 101, line 21—Tr. 102, line 24; Tr. 141, line 25—Tr. 142, line 15. The garage area is divided into two spaces by a firewall not connected at the ceiling. Bayzes's wife kept her vehicles in the area directly adjoining the flat. The only two entries to this area, and from

there to the flat, are a garage door and a door in the firewall. Tr. 92, lines 18-20; Tr. 142, line 22—Tr. 143, line 18.

In the garage area on the other side of the firewall, Bayzes keeps his vehicles and boats. From this area, a doorway leads to the retail gun store. The doorway has hanging, ten inch wide flaps to "keep cold air in and out." Tr. 90, lines 3-19; Tr. 94, lines 11-17; Tr. 119, lines 16-19.

Bayzes testified that he keeps an ADT alarm system in the building: "Zone 1 is just isolated to a portion of the firearms in the very front of the store; Zone 2 is on the personal safe that we have in the store, and Zone 3 is our immediate living quarters we actually live in." Tr. 90, line 22—Tr. 91, line 5.

Appellant and his codefendant moved for a directed verdict on the first degree burglary charge on grounds that the evidence could not establish he entered a dwelling because forty feet of garage, a firewall, another twenty feet of garage, a locked door, and then a fifteen foot walkway separated the gun store portion of the building from the ground floor living area. Tr. 373, line 13—Tr. 376, line 1. The State argued that the entire building was a dwelling under the definition in South Carolina Code section 16-11-10. Tr. 377, lines 7-18. Appellant and his codefendant responded that South Carolina Code section 16-11-310 applied instead. Tr. 404, line 13—406, line 8. Judge Early agreed with the State and denied the motion. Tr. 401, lines 2-16; Tr. 406, lines 9-16. On the same grounds, Judge Early also denied the codefendants' request for a jury instruction on the lesser-included offense of second degree burglary. Tr. 397, lines 17-22; Tr. 401, lines 12-16; Tr. 404, line 24—Tr. 406, line 16.

DISCUSSION

The trial judge erred in interpreting "dwelling" and in failing to conclude that the evidence could not support a finding that Appellant entered a dwelling. The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) ("Lest there remain any doubt about the constitutional stature of the reasonable-doubt standard, we explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); *see also State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004). When considering a motion for directed verdict of acquittal, "the trial court is concerned with the existence or non-existence of evidence, not its weight." *Brown*, 360 S.C. at 586, 602 S.E.2d at 395.

South Carolina Code section 16-11-311(A) [1] criminalizes first degree burglary:

> A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:
>
> (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or

[1] S.C. Code §§ 16-11-312 and 313 address second and third degree burglary, respectively. Second degree burglary involves entry into a dwelling without aggravating circumstances or entering a building with aggravating circumstances. Third degree burglary involves entering a building without aggravating circumstances.

> (2) 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; or
>
> (3) the entering or remaining occurs in the nighttime.

Burglary has its roots as an offense against habitation. *State v. Ferebee*, 273 S.C. 403, 406, 257 S.E.2d 154, 155 (1979). South Carolina Code section 16-11-10 provides a generally applicable definition of "dwelling":

> With respect to the crimes of burglary and arson and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it or to the same establishment of which it is an appurtenance shall be deemed parcels.

However, South Carolina Code section 16-11-310 specifically describes "dwelling" and "building" for purposes of subsection 311(A):

> For purposes of §§ 16-11-311 through 16-11-313:
>
> (1) "Building" means any structure, vehicle, watercraft, or aircraft: (a) Where any person lodges or lives; or (b) Where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is deemed both a separate building in itself and a part of the main building.
>
> (2) "Dwelling" means its definition found in § 16-11-10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person.

As an initial matter, construing these statutes together means that for purposes of a first degree burglary charge, a person entering a building with distinct areas devoted to different purposes does not enter a "dwelling" unless he enters an area used as a quarters for sleeping and living. The cardinal rule of statutory construction is to give effect to the intent of the Legislature. *S.C. Coastal Conservation League v. S.C. Dep't of Health and Envtl. Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. District v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). Legislative intent is first and foremost determined by the language of the statute. *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161 (2007) (citing *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997)). "[A] statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). "The general rule of statutory construction is that a specific statute prevails over a more general one." *State v. Taub*, 336 S.C. 310, 317, 519 S.E.2d 797, 801 (Ct. App. 1999). Additionally, "[w]hen interpreting a statute, courts must presume the legislature did not intend to do a futile act." *State v. Sweat*, 386 S.C. 339, 377, 688 S.E.2d 569, 651 (2010). Thus, a "'statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous.'" *Id.* at 351, 688 S.E.2d at 575 (quoting *In re Decker*, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995)). *See also Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) ("It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby conveying some meaning."). "[A] penal statute must be strictly construed against the

State." *State v.Hill*, 361 S.C. 297, 305-306, 604 S.E.2d 696, 700 (2004) (holding "separately occupied or secured" under section 16-11-310 requires an objective manifestation that the unit is secure). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers." *Greenville Baseball v. Bearden*, 200 S.C. 363, 20 S.E.2d 813, 815-16 (1942).

Based on the foregoing, when a building has areas used for different purposes, the statutory scheme limits "dwelling" to a distinct area specifically used as a quarters for sleeping and living for four reasons. First, the plain language of sections 10 and 310 expressly limit the term as such. Section 311 plainly modifies the background definition in section 10 for the burglary statutes: where section 10 requires a person to lodge while protecting property, section 311 removes the requirement of protecting property; section 10 includes in the definition of dwelling a "building" generally, subsection 311(1)(b) narrows the term such that it is to be considered independent of a larger structure of which it is a part; similarly, where section 10 includes in "dwelling" any structure or box in which a person sleeps, subsection 311(2) narrows the term such that it is to be considered independent of a larger structure of which it is a part.

Second, the specific definition in section 310 prevails over the general definition in section 10. Section 10 provides a definition of dwelling with generalized applicability to Chapter 11, "Offenses against Property," of Title 16. The definition is also general insofar as it lists examples of overall structures but does not expressly address subdivided structures. However, section 310 expressly addresses subdivided structures in the context

of a specific application to the burglary statutes. Thus the latter statute prevails in cases of subdivided structures for purposes of the burglary statutes.

Third, section 310 must apply to the exclusion of section 10 when a building has areas used for different purposes because otherwise, the latter description would be superfluous. The definition in section 10 is broad—it expressly includes any building, erection, or box in which a person sleeps to protect property—and it already encompasses a building with an area in which a person sleeps to protect property in addition to other areas used for different purposes. Interpreting the broad definition to apply in cases in which a building is used for different purposes would make the description of the subcategory in section 310 unnecessary, and that interpretation is therefore improper.

Fourth, when a building has areas used for different purposes, limiting "dwelling" to a distinct area specifically used as a quarters for sleeping and living is most consistent with the policy underlying the burglary statutes. Because burglary has been foremost a crime against habitation, the statutory scheme makes more culpable an invasion of a person's sleeping and living space. Accordingly, the scheme distinguishes invasions of space that people occupy for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Thus, when a defendant invades a space for non-living use that is structurally connected to a separately secured living space, such as a retail store on the first floor of a mixed-use apartment building, the statutes ascribe less culpability than had the defendant invaded an actual habitation.

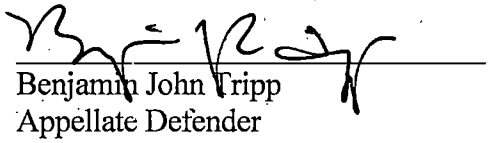
Judge Early erred in incorrectly interpreting the applicable definition of "dwelling." As a consequence, he erred in failing to conclude that the evidence could not support a

finding that Appellant entered a dwelling. The transcript plainly shows that Appellant entered retail gun store that was entirely unconnected from Bayzes's flat outside of being structurally adjoined and used by the same people. In denying both the motion for directed verdict on first degree burglary and the request for a jury instruction on second degree burglary, Judge Early's rulings constituted reversible error.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this court reverse his conviction and dismiss the first degree burglary charge.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of April, 2015.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of April, 2015.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of April, 2015.

Daily Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021.