STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HAMPTON COUNTY
Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2014-000260

THE STATE,

Respondent,

vs.

TRAVIS HAIR,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence from which the jury could fairly and logically find that Appellant had intent to commit a crime when he entered the residence.

STATEMENT OF THE CASE

Appellant was indicted during the December 2013 term of the Hampton County Grand Jury for first-degree burglary (2103-GS-24-0435). Appellant was represented by Stephanie Smart-Gittings, Esquire. On February 3, 2014, Appellant proceeded to a jury trial before the Honorable Brooks P. Goldsmith alongside co-defendant Tonya McAlhaney, who was represented by Steve Plexico, Esquire. The State was represented by Assistant Solicitor Kelvin Wright. On February 4, 2014, the jury convicted Appellant and McAlhaney as indicted. Judge Goldsmith sentenced Appellant and McAlhaney to fifteen years imprisonment. Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On the evening of November 23, 2013, the Hampton Police Department received a complaint regarding a burglary in progress at the home of Charles DeLoach located at 108 Plywood Street in Hampton, South Carolina. (R. pp. 144, 149). DeLoach had passed away in September, 2013 and his daughter and other family members frequently stayed at the home while tending to DeLoach's affairs and closing his estate. (R. pp. 19-22, 128-29). Lt. Cook from the Hampton Police Department completed an incident report and listed that multiple suspects were seen leaving the home with bags. (R. p. 149).

The following morning, November 24, 2013, law enforcement with the Hampton Police Department received another complaint regarding a home invasion at the DeLoach residence. (R. p. 21). Sergeant Bradford Drowdy responded to the home and heard movement inside. (R. p. 21). Drowdy requested backup from the Varnville Police Department. (R. p. 21). When back-up arrived, Drowdy let the occupant of the home know that law enforcement was on the scene and would be gaining entry into the home. (R. p. 22). One of the officers noticed that a rear door was open and law enforcement made entry through the opened door. (R. p. 22). Once inside, law enforcement found Tonya McAlhaney in a rear bedroom. (R. p. 22). She was taken into custody, read her rights, and placed in handcuffs. (R. pp. 22-23). As she was being cuffed, a men's watch fell out of her pocket. (R. p. 23). She was transported to the police station. (R. pp. 22-23).

Once at the station, McAlhaney was interviewed by Assistant Chief James Bolton. (R. p. 143). Bolton read McAlhaney her rights and she signed a waiver of rights acknowledgment. (R. pp. 143-44). Bolton noticed a bottle of prescription medication sticking out from McAlhaney's blouse and asked her what it was. (R. p. 144). McAlhaney replied that it was her medication, but upon closer inspection, Bolton noted

that the medicine was cough syrup prescribed to DeLoach. (R. p. 144). Bolton asked for permission to search McAlhaney's home and she gave consent. (R. p. 144). She memorialized her consent in by signing a consent to search form. (R. p. 144).

After receiving McAlhaney's consent, law enforcement proceeded to her home at 510 Bobwhite Trail. (R. p. 145). McAlhaney accompanied law enforcement and unlocked the door. (R. p. 145). Appellant and Ricky Sauls were present at McAlhaney's home. (R. p. 145). Law enforcement asked Sauls where the items taken from DeLoach's residence were located. (R. p. 145). Sauls assisted law enforcement in recovering a bag, which contained mail addressed to DeLoach, jewelry, medication prescribed to DeLoach, Christmas decorations, and other household items. (R. pp. 145-46). Sauls also showed law enforcement where knives and liquor taken from DeLoach's home was located. (R. p. 146). Law enforcement also found more of Deloach's mail that had been burned or attempted to be burned. (R. p. 52). Thereafter, Appellant, McAlhaney, and Sauls were charged with first-degree burglary in connection with the November 23, 2013, home invasion.

Appellant and McAlhaney proceeded to a joint trial before the Honorable Brooks P. Goldsmith and a jury. Sauls testified as a State's witness against his two co-defendants. Sauls testified he was with Appellant, McAlhaney, and Larry Crosby on the evening of November 23, 2013. (R. p. 80). Appellant and Crosby worked for DeLoach's daughter and had been helping her move items out of the 108 Plywood Street residence. (R. pp. 81, 129-31). Larry Crosby informed the group that there were pills in the home and asked them to go into inside to retrieve prescription medications. (R. p. 81). Sauls testified he was romantically involved with McAlhaney and asked her not to participate. (R. p. 81). However, Appellant, McAlhaney, and Sauls all entered DeLoach's home at

approximately 7 p.m. (R. pp. 81-82, 101). Sauls testified Appellant went to sleep inside the home, but testified that all three took items from the home. (R. pp. 83, 89-90, 124). He elaborated that all three, including Appellant, were "plundering" the home for items to take. (R. p. 124). He testified they took knives, liquor, medications, Christmas ornaments, documents, and other sundries from the home. (R. p. 83). Sauls testified that they knew they did not have permission to be in the home. (R. p. 126). After the "plundering" concluded, the three called Crosby to pick them up. (R. p. 89).

DeLoach's daughter, Amanda DeLoach Brown, also testified for the State. She testified that she and her children had been primarily living at her father's home since his passing so that she could manage his business and other affairs while closing his estate. (R. pp. 128-29, 134). She testified that the house was fully furnished with operation utilities and there was food in the refrigerator and clothing in the closets. (R. p. 132). She testified that she had been moving some of her grandmother's things out of the home, but the house was not being vacated. (R. p. 130). She testified that she left the home on Tuesday, November 19, 2013 to take her son to a dental appointment in Greenville and let employees, including Appellant and Crosby, know she would be out of town for a few days. (R. pp. 129-30). She testified she intended to return to the home shortly. (R. p. 129). She did not give Appellant, McAlhaney, Sauls, Crosby, or anyone else permission to be in the home. (R. p. 131). She testified that she secured the home as she always did when leaving. (R. p. 132).

DeLoach's sister, Roma Muller, also testified for the State. She testified that the 108 Plywood Street home was originally her mother's home and DeLoach had lived there alone after her mother's passing. (R. pp. 48-50). She testified that the house was used by various members of the family, but as of recent, was primarily used by DeLoach's

daughter Amanda. (R. pp. 49-50). She testified that the house was currently in probate and she was a partial owner. (R. pp. 48-50). She was able to identify various belongings taken from the DeLoach home. (R. pp. 52-53, 57-60). She testified that she did not give any of the co-defendants permission to be in the home. (R. p. 63).

At the conclusion of the State's case, Appellant moved for a directed verdict, arguing that the State failed to establish that Appellant had the intent to commit a crime when he entered the residence. (R. pp. 160-61). The State replied that intent can be inferred from his entry into the home at nighttime through a closed door without permission. (R. pp. 161-63). The Court denied Appellant's motion and submitted the case to the jury. (R. pp. 163-64). Appellant elected not to present a defense. The jury convicted Appellant and McAlhaney of first degree burglary as indicted.

ARGUMENT

I. The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence from which the jury could fairly and logically find that Appellant had intent to commit a crime when he entered the residence.

Appellant contends the trial court erred in denying his motion for a directed verdict on the charge of first-degree burglary because the State failed to establish intent. Appellant maintains no evidence was presented establishing he possessed the requisite intent to commit a crime in the 108 Plywood Street residence at the time he entered the home. To the contrary, the trial court committed no error in denying Appellant's directed verdict motion because the State presented substantial evidence from which the jury could reasonably conclude Appellant possessed the intent to commit a crime at 108 Plywood Street at the time he entered. Therefore, the trial court was required to deny the directed verdict motion and submit the case to the jury for proper resolution. Appellant's conviction should be affirmed.

When presented with a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial court should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). 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 court's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial court's denial of a directed verdict motion if there is no evidence supporting the trial court's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "**[U]nless there is a total failure of evidence tending to establish the charge** laid in the indictment, the trial court'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) (emphasis added).

In order to support a conviction for first-degree burglary, the State must prove the defendant: (1) entered the dwelling of another; (2) without consent; (3) with the intent to commit a crime therein; (4) with at least one aggravating circumstance present. State v. Cross, 323 S.C. 41, 43, 448 S.E.2d 569, 570 (Ct. App. 1994). Aggravating circumstances include entering or remaining in the dwelling at night. S.C. Code Ann. § 16-11-311. Regarding the element of intent, "[t]he only requirement 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).

In State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971), the South Carolina Supreme Court examined criminal intent:

> The question of criminal intent with which an act is done is one of fact and **is ordinarily for jury determination except in extreme cases** where there is no evidence thereon. The intent with which an act is done denotes a state of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.

(emphasis added) (internal citations omitted). Thus, the issue of whether a defendant possessed the requisite intent at the time a crime was committed is typically a question for jury determination because, without a statement of intent by an actor, proof of intent must be determined by inferences from conduct. State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971).

In determining whether a defendant possessed the necessary criminal intent in a burglary case, a defendant's actions after he entered a dwelling can constitute evidence of his intent at the time of his unlawful entry. State v. Pinckney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). In explaining this principle, our Supreme Court instructed: "For example, if a defendant entered a house and committed criminal sexual conduct (CSC), the jury could find him guilty of burglary even though there may not have been any specific evidence that at the time he entered the house he intended to commit CSC. His actions after entering the house (i.e. the commission of the CSC) would be evidence of his reason for entering the house and would at least support the denial of a directed verdict." Id. at 349, 529 S.E.2d at 527-28.

In the case at bar, the evidence presented clearly established Appellant possessed the requisite criminal intent to commit a crime at 108 Plywood Street when he entered the home. Viewing the evidence in a light most favorable to the State as required, Appellant entered the home at night without any permission from Muller, Brown, or anyone else of authority. Although Appellant had previously been inside the home moving items for Brown, he did not have permission to enter freely and did not have a key or other lawful means to access the home. Furthermore, Appellant and his co-defendants entered the home, which had been secured by Brown prior to her departure, through a closed rear

door. Additionally, Appellant and his co-defendant knew Brown had left town and the home would be unoccupied and available for them to loot.

After entering the home, Appellant and his co-defendants plundered the home looking for items to take, such a prescription medication, jewelry, knives, and liquor. Sauls testified that Appellant took part in the looting and that all involved took items from the home. Appellant and his co-defendants then amassed the belongings into bags for easy transport and left the home. Logically, based on his conduct, Appellant's actions after entering the 108 Plywood Street home supported a reasonable inference Appellant possessed the intent to commit a crime (larceny) at the time of his unlawful entry.

Appellant seeks to negate the natural and logical inferences to be drawn from his conduct by arguing the circumstances of the home invasion were inconsistent with him possessing criminal intent at the time he entered the home because he merely slept during the brief time he and his co-defendants were in the home. However, the fact Appellant claims to have only entered the home with intent to sleep does not foreclose further examination of his conduct when attempting to determine what Appellant's intent was at the time he entered the home. Appellant broke into the secured residence during the night without permission or prior invitation. See McMillian v. State, 383 S.C. 480, 488, 680 S.E.2d 905, 909 (2009) ("A reasonable mind recognizes that people do not usually break into and enter the building of another under the shroud of darkness with innocent intent[.]" (citing Mirich v. State, 593 P.2d 590, 593 (Wyo. 1979)). He and his co-defendants then proceeded to gather and take items belonging to DeLoach. These actions do not solely support an inference he intended to innocently sleep inside the residence. Instead, these actions are consistent with an inference that Appellant entered the 108

Plywood Street house with the intent to commit larceny and that his claims of sleepiness were merely an attempt to negate his involvement in the larceny.[1]

Appellant did not give any statement to law enforcement and did not testify at trial. Therefore, without a statement of intent by Appellant, Appellant's intent at the time of his entry into the home can only properly be determined by looking to his actions and conduct after entry. See State v. Johnson, 84 S.C. 45, 47, 65 S.E. 1023, 1024 (1909) ("The intent with which an act is done denotes a state of mind, and it can be proved only from expressions, or conduct, or both, considered in light of the given circumstances."). After entering the 108 Plywood Street residence through a closed door at night, knowing the occupant was out of town, Appellant and his co-defendants proceeded to ransack the home looking for prescription medication and valuables, which were then either hidden on their own person or amassed into bag and taken from the residence. These actions clearly support an inference Appellant possessed criminal intent at the time he entered the home. Based on the fact intent typically can only be ascertained by examining an actor's conduct, the trial court properly submitted the case to the jury for it to decide whether or not Appellant possessed the requisite criminal intent based on his conduct. See Tuckness, 257 S.C. at 299, 185 S.E.2d at 608 ("The question of criminal intent with which an act is

[1] Furthermore, even if Appellant's actions somehow did not support an inference he specifically intended to commit the crime of larceny, his entry into the home in the middle of the night without prior invitation supported an inference he possessed the intent to commit the crime of trespassing at the time of entry. See McMillian, 383 S.C. at 486-87, 680 S.E.2d at 907-08 (noting our Supreme Court has previously recognized the crime of trespass as sufficient to satisfy the element of intent to commit a crime required for the offense of housebreaking and finding defense counsel was not ineffective for advising McMillian that intent to commit a crime could be inferred from a trespass). The closed door of the unoccupied residence put Appellant on notice he was not permitted to enter the home. See, e.g., State v. Christensen, 194 S.C. 131, 141, 9 S.E.2d 555, 560 (1940) (holding an instruction to the jury that the presence of closed doors and locked windows was notice to the world entry is forbidden constituted a correct statement of the law). Therefore, Appellant's entry into the home through an closed door without consent to enter established Appellant's intent to commit the crime of trespass, which supported the denial of Appellant's directed verdict motion even if his intent to commit larceny could somehow not be inferred from his conduct. See McMillian, 383 S.C. at 487, 680 S.E.2d at 908 ("In its general sense, to 'trespass' is 'to make an unwarranted or uninvited incursion' onto the property of another." (citations omitted)).

done is one of fact and **is ordinarily for jury determination except in extreme cases**[.]")(emphasis added). Thereafter, the jury was left to properly decide whether Appellant's conduct demonstrated intent to commit a crime at the time of entry. See 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."). Based on the evidence presented, the trial court properly denied Appellant's directed verdict motion. Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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May 6, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Megan Harrigan Jameson, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
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I further certify that all parties required by Rule to be served have been served. This 6th day of May, 2015.

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