

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTIN DAMEON FLOYD,

APPELLANT.

APPELLATE CASE NO. 2013-002736

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Appellant is entitled to a directed verdict on the charge of first degree burglary where the State did not present any evidence that Appellant had any intent to commit a crime within the trailer when he entered the trailer.

- II. Appellant is entitled to a directed verdict on the charge of first degree burglary because the State did not prove that the property entered by Appellant qualified as a dwelling where the sole owner of the property was deceased at the time of entry.

STATEMENT OF THE CASE

On November 4, 2013, Appellant Martin Floyd was indicted by the Dorchester County Grand Jury for one count of first degree burglary in violation of S.C. CODE ANN. § 16-11-311. R.*. The State alleged that Appellant “did willfully and unlawfully enter the dwelling of the Estate of Charles Alvin Rearick, without consent and with the intent to commit a crime therein” Id.

Appellant proceeded to trial on December 17, 2013 before the Honorable Maité Murphy and a jury. R. 1. Appellant was represented by Mary P. LeMatty and Michelle R. Suggs. The State was represented by Assistant Solicitors Glenn P. Justis and Mandy W. Kimmons. Id.

On December 19, 2013, the jury found Appellant guilty as charged. R. 188, ll. 11-16. Pursuant to S.C. CODE ANN. § 17-25-45, Judge Murphy sentenced Appellant to life without parole. Tr. 288, ll. 15-17; Sentencing sheet.

Appellant timely filed and served his Notice of Appeal.

STATEMENT OF FACTS

On January 17, 2013, Charlie Rearick was involved in a tragic accident and passed away. R. 91, l. 11 – 92, l. 11. Appellant used to live with Mr. Rearick, and while Appellant had since moved out, Appellant continued to do renovation work for Mr. Rearick at Mr. Rearick's trailer. R. 16, ll. 5-11; 30, ll. 6-12; 39, ll. 4-11.

That evening, Appellant's girlfriend, Angela Fleeman, testified that Appellant received a telephone call from his mother who let him know that Mr. Rearick had passed away. R. 14, l. 4 – 15, l. 15. According to Angela, Appellant was very upset and crying. R. 15, ll. 9-15.

Angela testified that later that evening, their friends Rusty and Candace came over and the four of them were talking in the living room. R. 15, ll. 17-23. Appellant was still sad. Appellant told his girlfriend and his friends that he probably needed to go over and get some of his stuff from Mr. Rearick's trailer because he had been helping him remodel his trailer. R. 16, ll. 1-6. Because Appellant also used to live with Mr. Rearick along with Appellant's ex-girlfriend and daughter, Appellant said he needed to probably go get his possessions still over at Mr. Rearick's trailer before Appellant's possessions ended up in probate. R. 16, ll. 6-11. This conversation took place at approximately 9:30 or 10:00 in the evening. R. 16, ll. 18-20.

After the conversation, the four of them rode over to Mr. Rearick's trailer together. R. 16, l. 21 – 17, l. 1. Candace drove the four of them in her truck. R. 17, ll. 2-5. When the four of them arrived at the property, the four of them got out of the truck. Appellant went to the front door and it was locked. Either Candace or Rusty pushed up on a window, and Candace went through the window. R. 17, ll. 11-16.

Candace opened the front door and the other three went in through the front door. Appellant turned on all the lights and asked Angela to go look at the back at the master bathroom which he had just finished remodeling before Mr. Rearick passed away. R. 17, ll. 19-21. The four walked back there and looked at the master bedroom and then went to the room where Appellant had stayed and saw some of Appellant's clothes on the foot of the bed, along with a bottle belonging to Appellant's daughter. R. 17, l. 22 – 18, l. 19.

Angela said that Appellant did not tell her that he was looking for anything specific other than that Appellant just wanted to get his possessions. R. 22, ll. 1-6. Appellant did notice that Mr. Rearick's guns were missing, and Appellant was worried that someone had already come in the trailer before they got there and stolen Mr. Rearick's guns. R. 22, l. 7 – 23, l. 7.

The four sat in the living room of the trailer and reminisced about Mr. Rearick and then they got ready to leave. When they left the trailer, Appellant walked around one more time, making sure the windows were locked, and the four left through the front door. R. 23, l. 22 – 24, l. 12.

Angela went to the truck. She was not sure where Appellant and Rusty went. Candace came back to the truck and talked with Angela. R. 24, ll. 13-21. Candace then left the truck and went behind the trailer because she needed to relieve herself, and Appellant came back to the truck and talked with Angela. Rusty went with Candace. R. 25, ll. 2-5. Appellant debated with Angela whether he should go home with her or stay at the trailer to make sure no one tried to rob it. R. 25, ll. 6 – 16.

Angela then saw bright lights. The police pulled their vehicle right behind the truck. The police took Appellant and placed him in the back of a police car. They handcuffed

Angela. The police went looking for Rusty and Candace behind the trailer. R. 25, l. 17 – 26, l. 12. Angela was arrested that night and charged with first degree burglary. R. 26, ll. 19-24. Candace apparently ended up running that night and did not turn herself in for a couple of days. R. 27, ll. 20-25.

On cross-examination, Angela testified that during the course of her relationship with Appellant, she knew that Appellant worked on Mr. Rearick's trailer and had tools, items, and clothing at Mr. Rearick's house. R. 30, ll. 6-12. She confirmed that Appellant was very upset about Mr. Rearick's death and was concerned about Mr. Rearick's property. She also reiterated that Appellant wanted to go over to Mr. Rearick's property to secure the place and retrieve some items belonging to him. R. 30, ll. 13-21. She testified that Appellant turned on all the lights in the trailer, and that they saw a neighbor in a golf cart but no problems arose from seeing the neighbor. R. 33, ll. 6-18. Angela also testified that Appellant did not run when the police pulled up. R. 31, ll. 19-24.

Rusty Don Norris testified at trial and stated that he was also charged with first degree burglary in this case. His girlfriend at the time was Candace. He recalled receiving a call from Appellant that a good friend of Appellant's had passed away. Appellant wanted a ride to the friend's trailer. Rusty and Candace drove over to Angela's residence. Appellant told them that since he had lived with Mr. Rearick, he wanted to go over there to secure his own possessions. R. 36, l. 12 – 39, l. 11.

Rusty believed they left Angela's to go to the trailer around 11:00 p.m. R. 39, ll. 20-23. He confirmed that when the four arrived at the trailer, Candace went through the window and unlocked the front door. Rusty testified that they turned on the living room light and then turned on pretty much every light in the trailer. R. 40, ll. 13 – 24.

Appellant told Rusty that he was looking for his own possessions that he left at the trailer since he used to live there with his ex-girlfriend and child. Rusty said that Appellant did mention that Mr. Rearick had a gun collection but Rusty testified that they were not there specifically looking for the guns. R. 41, ll. 4-14. Rusty testified that Appellant was worried that someone had already robbed the place when he realized the guns and a large welder were missing. R. 41, l. 17 – 42, l. 3.

Rusty testified that Appellant mentioned he had some tools in the shed so they walked back to the shed. The light was on inside the shed, but it was padlocked. Appellant told Rusty that some of the tools inside the shed were his, including a table saw and floor nailer. Rusty kept bolt cutters in his tool box of his truck, so he cut the lock off the shed so they could get Appellant's tools. R. 42, ll. 4-24; 44, ll. 4-15. Rusty testified that essentially right after that, the police pulled up. R. 43, ll. 1-25. He said Candace ran because she was on probation. R. 43, ll. 14-17.

Rusty admitted when the police found him, he had the lock he cut off the shed, a flashlight, and some gloves in his coat pocket. He further admitted that he had some other items in his coat pocket that he had taken from the trailer, including a wood stain, an air grinder, a blood pressure monitor, some scissors, a belt, and three pills. R. 51, l. 4 – 58, l. 11.

On cross-examination, Rusty testified that it was his understanding that the four of them went to Mr. Rearick's trailer to protect Mr. Rearick's property and allow Appellant to retrieve some of his own possessions. When the four arrived at the trailer, they turned on all the lights and made no efforts to hide that they were there. They stayed at the trailer for

a good while, well over an hour. Rusty further testified that Appellant was concerned that someone had already burglarized Mr. Rearick's trailer. R. 160, ll. 2-22.

Deputy Shawn Angelo of the Dorchester County Sheriff's Department responded to a call about Mr. Rearick's trailer. He testified that no lights were on at the trailer, but that the lights were on at the shed. R. 61, l. 8 – 64, l. 8. Deputy Angelo testified that on Appellant's person, he found scrap metal yard receipt, a pen shell, and a silver pocketknife. R. 70, ll. 10-20.

Deputy Angelo acknowledged that Appellant did not run from him or make any effort to hide. Deputy Angelo did not observe Appellant putting any items in the truck or anything like that. He confirmed that he only collected a pocketknife, a pen shell, and a receipt off of Appellant's person. R. 71, l. 25 – 72, l. 13.

Detective Stephanie Stover of the Dorchester County Sheriff's Department testified that she was dispatched to the trailer around 1:40 in the morning on January 18, 2013. R. 77, l. 22 – 78, l. 22. She obtained a search warrant to search the truck. Inside the truck, she found some pillows, a shop vac, a painting, and a Microsoft Windows XP Professional computer software box. The software box was found behind a seat in the truck. R. 79, l. 11 – 80, l. 2.

On cross-examination, Detective Stover said she also found many other items in the truck such as laundry, personal hygiene products, and laundry detergent. She said that with respect to the items she actually took from the truck, she did not conduct any testing on those items. R. 86, ll. 6-25.

Kevin Felkel was Mr. Rearick's son-in-law. R. 91, ll. 4 – 14. He received news of Mr. Rearick's passing on January 17, 2013, and he and his wife, Jennifer, drove down from

Lexington to Summerville and went to Mr. Rearick's trailer. They arrived around 4:00 p.m. R. 92, l. 1 – 93, l. 24. They collected some of Mr. Rearick's sentimental and other valuable items, such as his war medals, his guns, checkbooks, and bank records. R. 94, l. 17 – 95, l. 7. They did not go into the shed. They left around 9:00 that evening. R. 94, ll. 8-18.

Jennifer Felkel, Mr. Rearick's daughter, confirmed that Appellant used to live with her father and did renovation work at her father's trailer. R. 103, l. 24 – 106, l. 24.

Appellant's mother testified at trial and said she had known Mr. Rearick for about eight years. She testified that there was a period of time that Appellant lived with his ex-girlfriend and child at Mr. Rearick's trailer. She said Appellant also did remodeling work for Mr. Rearick. Appellant's mother testified that Appellant had all sorts of items at Mr. Rearick's trailer, including clothes, tools, furniture, artwork, and miscellaneous personal items. She also testified that the painting police retrieved from the truck was a painting that Appellant drew. R. 126, l. 24 – 130, l. 14.

Appellant's mother testified that even though Appellant moved out of Mr. Rearick's trailer around July 2012, Appellant continued to do remodeling work for Mr. Rearick. R. 133, l. 9 – 134, l. 22.

ARGUMENT

- I. Appellant is entitled to a directed verdict on the charge of first degree burglary where the State did not present any evidence that Appellant had any intent to commit a crime within the trailer when he entered the trailer.**

At the conclusion of the State's evidence, Appellant moved for a directed verdict on the charge of first degree burglary where the State failed to prove that Appellant had no intent to commit a crime when he entered the trailer. R. 117, l. 10 – 121, l. 14. Appellant pointed out that the State's witnesses testified consistently with each other that Appellant had no intention to do anything wrong when he entered the property. The State's witnesses testified that Appellant went to the property to protect it and to retrieve his own possessions. Therefore, Appellant argued, the State failed to present any evidence of an intent to commit a crime at the time of entry which is a required element to sustain a first degree burglary conviction. R. 120, l. 25 – 121, l. 13.

The Trial Court denied Appellant's directed verdict motion and ruled there was direct evidence of intent to commit a crime therein, including evidence that items belonging to Mr. Rearick were found on the co-defendants. R. 124, ll. 8-21. At the conclusion of the presentation of Appellant's evidence, Appellant renewed his motion for a directed verdict on the ground that the State had not satisfied the element of intent to commit a crime at the time of entry into the trailer. R. 144, l. 18 – 145, l. 9. The Trial Court again denied the motion. R. 146, ll. 6-11.

Appellant is entitled to a directed verdict on the charge of first degree burglary where the State did not prove that Appellant entered the trailer "with intent to commit a crime therein." S.C. CODE ANN. § 16-11-311 ("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”).

“First-degree burglary requires that, *at the time the offender entered the dwelling*, he intended to commit a crime once inside.” State v. Gilliland, 402 S.C. 389, 398, 741 S.E.2d 521, 526 (Ct. App. 2012) (emphasis added). Where the State failed to present evidence on this material element of first degree burglary, a directed verdict for Appellant is mandated. See, e.g., State v. Brown, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); see also Jackson v. Virginia, 443 U.S. 307, 316 (1979) (“[N]o person shall be made to suffer the onus of a criminal conviction except upon sufficient proof-defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense.”).

Both Angela and Rusty testified that Appellant wanted to go over to Mr. Rearick’s trailer solely to protect and secure the property since Mr. Rearick had died and to secure and retrieve his own possessions that he had at the trailer since Appellant used to live there and still did remodeling work there. There was no testimony otherwise of what Appellant intended to do by going to Mr. Rearick’s trailer and entering the trailer. The four individuals went over to the trailer, turned on all the lights, made no effort to hide themselves, were not concerned about a neighbor riding his golf cart nearby, and stayed for over an hour. That does not equate to the actions of a person entering a property with the intent to commit a crime therein. The intent to commit a crime must exist at the time the accused enters the dwelling, and the State presented no evidence of any such intent on the part of Appellant. See Gilliland, 402 S.C. at 397, 741 S.E.2d at 526.

While the jury may base its determination of intent upon evidence of the accused's actions once inside the dwelling, there is no evidence in this case that Appellant committed any crime inside the trailer. While his co-defendants may have been found with items belonging to the victims, that is simply not enough in this case to prove that Appellant had any criminal intent when he entered the trailer. This is not an accomplice liability or the "hand of one is the hand of all" case. That was not charged by the Trial Court to the jury. R. 175, l. 17 – 186, l. 1.

Furthermore, if the intent to commit a crime is formed after the entry, there is no burglary. R. 183, ll. 15-17. The State's evidence simply does not prove any intent of Appellant to commit a crime before he entered the property. Accordingly, Appellant is entitled to a directed verdict on the charge of first degree burglary.

II. Appellant is entitled to a directed verdict on the charge of first degree burglary because the State did not prove that the property entered by Appellant qualified as a dwelling where the sole owner of the property was deceased at the time of entry.

At the conclusion of the State's case, Appellant also moved for a directed verdict on the charge of first degree burglary where the State failed to prove that the location at issue constituted a dwelling because at the time of the incident, there was no occupant of the premises as Mr. Rearick was deceased. R. 117, l. 10 – 121, l. 14. The Trial Court denied the motion, ruling that when Mr. Rearick left his home that morning, he intended to come back except for his death and that Mr. Rearick had not abandoned the property but was clearly living there. R. 124, l. 22 – 125, l. 8. Appellant renewed his directed verdict motion on this ground following the Appellant's evidence, which the Trial Court again denied. R. 144, l. 18 – 146, l. 11.

A person is only guilty of first degree burglary if the person enters a "dwelling."

S.C. CODE ANN. § 16-11-311. In S.C. CODE ANN. § 16-11-10, "dwelling" is defined as:

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.

§ 16-11-10.

Under S.C. CODE ANN. § 16-11-310(2), a "dwelling" also means "the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person."

In State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979), this State's Supreme Court held that a property must have an identifiable occupant sleeping or residing

therein for it to qualify as a dwelling. While a temporary absence of occupants will not prevent a residence from becoming the subject of a burglary, it is required that such occupants leave with the purpose of returning. The mere fact that a building is suitable for use as a dwelling is insufficient. Id.

Courts in other jurisdictions have held that when a property is left vacant by the death of its sole owner and occupant, the property could not be considered a dwelling for the purposes of the offense of burglary. In People v. Hider, 351 N.W.2d 905, 906 (Mich. Ct. App. 1984), the occupant had died the day before the breaking and entering. The Michigan Court of Appeals concluded that the property was not an occupied dwelling at the time of the crime because the deceased occupant's absence could hardly be considered temporary. Id. at 907-08.

In People v. Ramos, 52 Cal. App. 4th 300 (1997), the court held that the house was not inhabited as required to sustain a conviction for first degree burglary where the occupant of the house was deceased at the time of the defendant's entry. The occupant in this case died at his home from natural causes on the very day of the breaking and entering. Id. at 301. The court observed that a dwelling is inhabited if the occupant is absent but intends to return and use the house as a dwelling. It then stated: "To put it plainly, a dead body is not using a house for a 'dwelling' and there is no way to say that a dead man is going to return or that he had an 'intent' of any kind." Id. at 302. The court rejected the attorney general's suggestion that the house was inhabited since the occupant went to sleep, fully intending to remain in his house. According to the court, the deceased man was "unable to entertain any intent of any kind." Therefore, the house was no longer occupied for purposes of first degree burglary. Id. at 303.

The Court of Appeals for North Carolina also held that a second degree arson charge should have been dismissed upon evidence that former occupants of the trailer were permanently absent from the trailer at the time it burned. State v. Ward, 379 S.E.2d 251 (Cr. App. 1989). One occupant had permanently abandoned the trailer, and the other died several days before the trailer was burned. The court held: “While temporary absence from a dwelling will not affect its status as an inhabited dwelling, the inhabitant’s death certainly renders it uninhabited since someone must ‘live’ in a dwelling for it to be ‘inhabited.’” Id. at 253-54.

In reaching its holding, the court recognized that the main purpose of common law arson was to protect against danger to those persons who might be in the dwelling house when it is burned. Id. at 253. South Carolina’s first degree burglary statute is also aimed at protecting occupants inside a dwelling who could be harmed when intruders break in with an intent to commit a crime inside. Our Supreme Court has observed: “The rationale for requiring that an identifiable occupant reside and sleep within the dwelling rests upon the development of burglary as an offense against habitation rather than against property.” Ferebee, 273 S.C. at 406, 257 S.E.2d at 155. The Virginia Court of Appeals explained the purpose behind burglary laws:

Burglary laws are based primarily upon a recognition of the dangers to personal safety created by the usual burglary situation—the danger that the intruder will harm the occupants in attempting to perpetrate the intended crime or to escape and the danger that the occupants will in anger or panic react violently to the invasion, thereby inviting more violence. The laws are primarily designed, not to deter the trespass and the intended crime, which are prohibited by other laws, so much as to forestall the germination of a situation dangerous to personal safety.

Rash v. Commonwealth, 383 S.E.2d 749, 751 (Va. Ct. App. 1989) (internal citations omitted).

In this case, there was no identifiable occupant of the trailer when Appellant entered it because Mr. Rearick was deceased. Whether Mr. Rearick had any intent to return could not be determined because he was no longer able to entertain any type of intent. The rationale under the first degree burglary statute for protecting occupants was absent with respect to the trailer when Mr. Rearick died. Accordingly, because the State did not prove that the property entered by Appellant qualified as a dwelling, Appellant is entitled to a directed verdict on the charge of first degree burglary.

CONCLUSION

For the reasons set forth herein, Appellant Martin Floyd respectfully requests that this Court reverse his conviction for first degree burglary and issue an Order of Acquittal.

Respectfully submitted,

A handwritten signature in cursive script, reading "Laura R. Baer", written over a horizontal line.

Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of January, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARTIN DAMEON FLOYD,

APPELLANT.

APPELLATE CASE NO. 2013-002736

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant 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 12th day of January, 2015.



Laura R. Baer
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021



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January 12, 2015

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Re: The State v. Martin D. Floyd

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Laura R. Baer
Appellate Defender

LRB/brr

Enclosure