STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2015-002195

THE STATE,

Respondent,

v.

JOHN HENRY HOLMES, JR.,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant was indicted during the October 6, 2014 term of the Charleston County Grand Jury for first-degree burglary (2013-GS-18-0364). On October 12, 2015, Appellant proceeded to a jury trial before the Honorable Roger E. Henderson. Assistant Public Defenders John Kozelski and Annie Andrews represented Appellant, and Assistant Solicitors Chris Lietzow and Charles Condon represented the State. The jury found Appellant guilty, and Judge Henderson sentenced him to a term of eighteen years' imprisonment pursuant to S.C. Code Ann § 16-11-311. (Tr. 239, 249).

Appellant filed a timely notice of intent to appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On July 30, 2014, at 12:31 a.m., the North Charleston Police Department received a call from a vigilant citizen. (Tr. 82, line 6–Tr. 83, line 1). The dispatcher was told the caller heard glass breaking and saw a person entering the rear of a residence. (Tr. 82, lines 14–16; Tr. 98, 17–23). Officer Tony Bunch responded to the dispatch call and arrived at the residence within four and a half minutes. (Tr. 83, lines 2–8). The residence was owned by Anne Blandin, who was not home because she was either in the hospital or staying at her daughter's house. (Tr. 114, lines 2–3; 120, lines 2–23).

Once Officer Bunch arrived on the scene, he and fellow officers surrounded Blandin's residence. (Tr. 83, lines 18–16–19). Thereafter, the officers proceeded to the rear of the residence, where they observed broken glass in one of the patio windows and an interior door that was wide open and had a broken glass pane. (Tr. 83, lines 18–23; Tr. 90, lines 2–6; Tr. 90, line 24–Tr. 91, line 14). Officer Bunch, along with his partner, entered the residence by climbing through the broken patio window. (Tr. 83, lines 19–22). The officers drew their weapons for safety. (Tr. 84, line 21–Tr. 85, line 16).

Next, Officer Bunch announced that the North Charleston Police Department was present and told Appellant to come out with his hands up. (Tr. 83, line 23–Tr. 84, line 1). After making the announcement multiple times, Appellant was seen ducking into a room briefly and coming back out with his hands up. (Tr. 85, line 20–Tr. 86, line 6). Appellant was handcuffed and detained, while the residence was cleared for other individuals. (Tr. 86, lines 9–16). No others were found. (Tr. 86, lines 17–18). Officer Bunch subsequently searched Appellant, finding nothing but trash in his pocket. (Tr. 87, lines 4–9). He read Appellant his Miranda rights and testified Appellant appeared to understand them. (Tr. 88, line 5–Tr. 89, line 15). He

testified Appellant did not appear mentally impaired or disoriented in any way. (Tr. 89, lines 16–21). After initially being uncooperative, Appellant eventually waived his Miranda rights and submitted to questioning from Officer Bunch. (Tr. 89, lines 2–25).

At first, Appellant stated he did not know why he was inside Blandin's residence. (Tr. P. 89). Eventually, Appellant told Officer Bunch he was homeless and looking for a place to sleep. (Tr. 107, line 10–Tr. 109, line 22). Appellant stated he entered through the patio window and open door in the rear of Blandin's residence. (Tr. 90, lines 2–3). Additionally, Appellant told Officer Bunch he did not know the owner and did not have permission to be at Blandin's residence. (Tr. 90, lines 9–18). Officer Bunch testified Appellant followed his instructions while being detained. (Tr. 101, lines 17–25). No burglary tools were found on Appellant. (Tr. 102, lines 24–25).

Later on the night of the incident, Corona Campbell (Blandin's daughter) spoke with Officer Bunch. Campbell informed Officer Bunch that her mother had not been staying at the residence for about a week, due to issues with her air conditioning. (Tr. 104, lines 2–12). Campbell confirmed that Appellant did not have permission to be inside Blandin's residence. (Tr. 124, lines 5–10). Also, Campbell stated there was no personal property missing from the property following the burglary. (Tr. 134, lines 19–23).

During the trial, Campbell testified that the address where the burglary occurred was her mother's permanent address. (Tr. 114, lines 19–24). Furthermore, Campbell stated that her mother kept a refrigerator, clothes, and medicine there and received mail at the residence. (Tr. 115, lines 18–25). However, Campbell also testified her mother frequently stayed at Campbell's residence due to her health. (Tr. 114, line 24–Tr. 115, line 14). Her mother became sick during October 2013 due to kidney failure and was in the hospital during the trial because of a car

accident and medical complications. (Tr. 114–115). Campbell testified her mother's health dictated where she stayed. (Tr. 115, lines 12–14). However, she made clear that Blandin's residence was not abandoned. (Tr. 126, lines 9–16). She stated that as the primary caretaker of her mother, she also maintained Blandin's residence. Some of her duties included cutting the grass, trimming bushes, making repairs, and gathering mail. (Tr. 116, lines 7–19). Campbell stated she visited Blandin's residence every day. (Tr. 116, line 25–Tr. 117, line 1; Tr. 126, line 25–Tr. 127, line 1).

Officer Bunch testified Blandin's residence was located in a "hot crime area." (Tr. 97, lines 5–10). Campbell's mother's residence was frequently broken into, which caused Campbell to sometimes remedy the property damage by putting boards over windows and doors. (Tr. 126, lines 20–22; Tr. 127, lines 12–19). While being questioned by the State, Campbell stated there had been a break-in earlier that morning on the date of Appellant's entry and she had noticed broken glass. (Tr. 127, lines 2–25).

During cross-examination, Campbell was asked about a prior statement but testified she did not recall her mother telling the police that the home was only used for storage purposes. (Tr. 129, lines 2–25). She stated, "No sir, I don't know anything about that but it's not used for storage." (Tr. 129, lines 16–25). The defense alleged these statements were made in response to a July 2013 police report regarding a burglary to Blandin's residence. (Tr. 129, lines 2–8). Additionally, Campbell stated that her mother's residence had been broken into more than twelve times in July 2014 and that she called the police every time. (Tr. 132, lines 4–18).

Lisa Kubicso, with the North Charleston Police Department, testified that she responded to the burglary that occurred on July 30, 2014, as a crime scene technician. (Tr. 67–68).

Kubicso did not collect any evidence such as fingerprints or DNA because these procedures are only used when there is an unknown suspect. (Tr. 73, lines 4–12).

The defense made a motion for a directed verdict once the State rested. The defense argued that Blandin's residence was not considered a dwelling and that Appellant did not have any criminal intent to commit a crime in Blandin's residence and, therefore, the trial court should proceed on second-degree burglary. (Tr. 138–41). The State responded that Blandin's daughter testified her mother slept at the house, kept her medicine there, and had a refrigerator there and that she, Campbell, went there every day. (Tr. 141, line 22–Tr. 142, line 6). Additionally, the State argued that case law exists to support the notion that it is reasonable to assume larceny based on someone breaking and entering a house at night. (Tr. 143, lines 4–11). After hearing the State's reply, the trial court denied the motion for directed verdict on both grounds. (Tr. 141–46). The defense renewed its motion for directed verdict before closing arguments, and it was denied once more. (Tr. 158, lines 19–22).

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 that the property Appellant entered was a dwelling.

Appellant contends the trial court erred in denying his motion for a directed verdict on the charge of first-degree burglary, arguing the State failed to establish that the residence was a dwelling. Appellant maintains the State failed to prove that the location at issue constituted a dwelling because the homeowner frequently stayed with her daughter and had not lived in the residence for three years. In furtherance of this argument, Appellant relies on a previous police report indicating Blandin said she used the residence for storage, and he claims no evidence showed she planned to return to the home. However, the trial court committed no error in denying Appellant's directed verdict motion and submitting the case to the jury because Blandin's temporary absence from the home due to medical complications and lack of air conditioning did not remove the residence's legal status as a dwelling. Therefore, the trial court was required to deny the directed verdict motion and submit the case to the jury for its resolution. Appellant's conviction should be affirmed.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id. "If there is *any direct evidence* or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, this Court must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648 (emphasis added). The trial court should grant a directed verdict

when the evidence merely raises a suspicion that the accused is guilty. State v. Hernandez, 382 S.C. 620, 625-26, 677 S.E.2d 603, 605-06 (2009). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. Ladner, 373 S.C. 103, 120, 644 S.E.2d 684, 693 (2007).

In applying the standard of review, the appellate court should not credit the defense's evidence and make credibility determinations; in doing this the court improperly substitutes its own judgment for that of the jury. State v. Larmand, 415 S.C. 23, 31, 780 S.E.2d 892, 896 (2015). Additionally, the court should not minimize circumstantial evidence of the State by primarily citing to the appellant's testimony, including his explanations of his actions. Id. Furthermore, the Larmand Court stated that although the respondent presented plausible explanations for each of the facts, its duty is not to weigh the plausibility of the parties' competing explanations. Id. 415 S.C. at 32, 780 S.E.2d at 896. Rather, the appellate court must assess whether, in the light most favorable to the State, there was substantial circumstantial evidence from which the jury could infer the respondent's guilt. Id.

"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 . . . the entering or remaining occurs in the nighttime." State v. Evans, 376 S.C. 421, 424-25, 656 S.E.2d 782, 784 (Ct. App. 2008) (citing S.C. Code Ann. § 16-11-311(A)(3) (2003)). "Dwelling" as used in the burglary statutes is defined as "any house, outhouse, apartment, building, erection, shed or box in which there sleeps a . . . person who lodges there with a view to the protection of property." Evans, 376 S.C. at 424-25, 656 S.E.2d at 784 (citing S.C. Code Ann. § 16-11-10 (2003)).

In State v. Ferebee, 273 S.C. 403, 405, 257 S.E.2d 154, 155 (1979), our Supreme Court determined that section 16-11-10 of the South Carolina Code required that the residence have an

identifiable occupant sleeping or residing therein to qualify as a dwelling for purposes of the burglary statute. The Ferebee Court further held that while "the temporary absence of occupants will not prevent a residence from becoming the subject of a burglary, it is required that the occupant leave with the purpose of returning in order for a breaking and entering during their absence to constitute burglary." Id. As the Ferebee Court noted, "[t]he 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." Id. at 406, 257 S.E.2d at 155.

In Evans, our Supreme Court held that a remote, secondary residence primarily used for storage due to family health concerns limiting overnight stays was still a "dwelling" under the burglary statute. The Evans Court noted that "a vacation cottage would qualify as a dwelling house even though the owner had not been there in months." 376 S.C. at 426, 656 S.E.2d at 784 (internal citation omitted). "[A] person could have more than a single dwelling house, any of which might be the object of a burglary despite the occupant's absence for extended periods of time, so long as he had the intention to return." Id. at 425-26, 656 S.E.2d at 784 (internal citation omitted). Therefore, "the test of whether a building is a dwelling house turns on whether the occupant has left with the intention to return. Temporary absence from a 'dwelling' is irrelevant." Id. at 425, 656 S.E.2d at 784 (internal citations omitted). Evidence of intent to return includes readiness of the residence to be lived in, frequency of visits, and the habitability of the property such as working utilities. Id.

In the present case, Blandin was unable to reside in her permanent residence on a regular basis because of medical complications and air conditioning problems. Despite the circumstances, Blandin always had the intention of returning to her home when healthy enough.

Evidence included testimony from Officer Bunch that Blandin's daughter reported her mother had been out of her home for a week due to air conditioning issues. (Tr. 104, lines 2-10). Although Campbell testified that her mother had lived with her for three years, she also testified that where her mother stayed depended on her health. (Tr. 128, lines 22–24; Tr. 115, lines 12–14). Even when no one was staying in the home permanently, Campbell testified she visited the house daily—sometimes several times a day—and took care of things. (Tr. 116, lines 7–19; Tr. 116, line 25–Tr. 117, line 1; Tr. 122, lines 20–23; Tr. 126, line 25–Tr. 127, line 1). She testified the house was not abandoned. (Tr. 126, lines 9–10). Importantly, she testified her mother said after the burglary, "I ain't gonna let nobody run me out of my house, my home." (Tr. 125, lines 18–20).

In Evans, the Court stated that in determining intent, certain factors should be considered such as personal possessions in the residence and visits. This is of importance because testimony clearly states that Blandin had personal property at the residence, such as clothes and medicine. Blandin was unable to visit the residence daily because of her health but took the affirmative step to delegate the duty to her daughter. Campbell fulfilled this duty by maintaining upkeep of the landscape and making necessary repairs. Furthermore, Campbell's testimony showed she made quotidian visits to Blandin's residence. Additionally, the testimony about Blandin having to move out because the air conditioner was not working is evidence of the habitability of the house, except for that particular issue with the air. See Evans, 376 S.C. at 425, 656 S.E.2d at 784 (emphasizing the importance of readiness of the residence to be lived in, frequency of visits, and the habitability of the property such as working utilities in assessing intent to return). The fact that her daughter cared for the property even when her mother could not live there, including boarding up windows and doors every time it was burglarized, fits into section 16-11-10's

definition of "dwelling house" noted in Evans: "any house . . . in which there sleeps a . . . person who lodges there with a view to the protection of property. . . ." 376 S.C. at 424–25, 656 S.E.2d at 784.

The present case is analogous to Evans. In both cases, the owners made the decision to leave their residence temporarily because of medical reasons. In both cases, the owners or designated family members made frequent visits to the residence. The Court in Evans established that a person could have more than one single dwelling house, so Blandin's staying at her daughter's residence does not preclude her own residence from having status as a dwelling.

Appellant argues the alleged statement from Blandin to the police in the 2013 police report that the residence is used for storage is most credible. However, Campbell's testimony provided evidence that the house was not used for storage. (Tr. 129, lines 16–25). The evidence must be viewed in a light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). As the trial court previously pointed out, "Ms. Campbell probably was not the best witness in the world quite frankly but, and, she offered conflicting testimony particularly with regard to whether this was a dwelling or not, I mean, I heard testimony that nobody had been there i[n] three years is what I heard but then I heard they were using it so I mean that's a[n] issue for the jury to decide quite frankly whether it was a dwelling or whether it wasn't." (Tr. 145, lines 18–25). In Evans, the Court ruled that the secondary residence, primarily used for storage, still constituted a dwelling. Consequently, even if this Court concludes and relies on the statement that Blandin's residence was primarily used for storage, the residence still retains its status as a dwelling. Just as in Evans, the residence constitutes a dwelling so long as Blandin intended to return, which was demonstrated by her statement about not letting someone run her out of her home. If a vacation cottage not visited in months qualifies

as a dwelling, then surely Blandin's residence, which testimony states was visited every day, must also qualify as a dwelling.

Furthermore, it is apparent even defense counsel recognized that the factual dispute over how long Blandin had been away from the house and whether it was abandoned was an issue to be resolved by the jury rather than for the court to determine at the directed verdict stage. In his closing argument to the jury, defense counsel argued Blandin had not lived at the house for three years, had lived with her daughter for two years, and had been using the house for storage. (Tr. 170, line 22–Tr. Tr. 171, line 8). He also emphasized there was nothing to steal in the house and focused on the testimony that windows and doors were boarded up. (Tr. 170, lines 21–22; Tr. 171, lines 21–23). All of this was appropriate to argue to the jury; however, at the directed verdict stage the trial judge properly considered only the existence of evidence rather than its weight. Weston, 367 S.C. at 292, 625 S.E.2d at 648. Accordingly, because evidence was presented that showed Blandin's residence maintained its status as a dwelling, the trial court properly denied Appellant's motion for directed verdict. Appellant's conviction should be affirmed.

II.

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 Blandin's 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 Blandin's residence at the time he entered the home. To the contrary, the trial court properly denied 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 in Blandin's home 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 its resolution. Appellant's conviction should be affirmed.

"On appeal from the denial of a directed verdict, this Court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014). The Court's review is limited to considering the existence or nonexistence of evidence, not its weight. State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478–79 (2004). When the evidence submitted raises a mere suspicion that the accused is guilty, a directed verdict should be granted because suspicion implies a belief of guilt based on facts or circumstances which do not amount to proof. State v. Hepburn, 406 S.C. 416, 429, 753 S.E.2d 402, 409 (2013). Nevertheless, a court is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. State v. Ballenger, 322 S.C. 196, 199, 470 S.E.2d 851, 853 (1996).

When a trial court denies a directed verdict, the appellate court should not weigh the evidence and reverse based on its conclusion that there was a plausible alternative theory inconsistent with the appellant's guilt. State v. Bennett, 415 S.C.232, 781 S.E.2d 352 (2016); State v. Pearson, 415 S.C. 463, 783 S.E.2d 802 (2016). As the Supreme Court clarified in State v. Littlejohn, 228 S.C. 324, 89 S.E.2d 924 (1955), the lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury. Within the jury's inquiry, "it is necessary that every circumstance relied upon by the state be proven beyond a reasonable doubt; and that all of the circumstances so proven be consistent with each other and, taken together, point conclusively to the guilt of the accused to the exclusion of every other reasonable hypothesis." Id. at 328, 89 S.E.2d at 926. However, when 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." Id. at 329, 89 S.E.2d at 926. Therefore, although the jury must consider alternative hypotheses, the court must concern itself solely with the existence or non-existence of evidence from which a jury could reasonably infer guilt. Bennett, 415 S.C.232, 781 S.E.2d 352 (2016). Accordingly, in ruling on a directed verdict motion where the State relies on circumstantial evidence, the court must determine whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt. Id. at 237, 781 S.E.2d at 354.

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; and (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 intent element, "[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 and stated the question of criminal intent is ordinarily for jury determination except in some extreme cases. "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." Id. 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 established Appellant possessed the requisite criminal intent to commit a crime in Blandin's residence. Viewing the evidence in the light most

favorable to the State as required, Appellant entered Blandin's residence at night, and as stated in the testimony, without permission. As our appellate courts have stated, it is reasonable to infer one has intent to commit a crime when entering the residence of another at night without permission. See State v. Haney, 257 S.C. 89, 184 S.E.2d 344 (1971) (finding that in a housebreaking case when the building entered is a dwelling house, "the unexplained breaking and entry in the night is itself evidence of intent to commit larceny rather than some other crime"); see also McMillian v. State, 383 S.C. 480, 680 S.E.2d 905 (2009) (citing Haney for the above proposition in a PCR case involving first-degree burglary). Evidence shows Appellant made the decision to enter the residence after midnight, so it is reasonable to conclude he intended to commit a crime. Additionally, based on Pinckney, his actions and conduct after entering the home can be considered, which includes going into one of the back rooms of the home after being told to come out with his hands up. This conduct could certainly indicate he was putting things back that he had been planning to take out of the house, had the officer not responded so quickly.

Appellant told Officer Bunch he was looking for a place to sleep on the night of the burglary, yet once Appellant was inside the residence his conduct failed to reflect this statement. The courts have held intent can be determined by inferences from conduct. In assessing Appellant's conduct once he was inside Blandin's residence, he failed to close the door behind him. If Appellant was looking for a place of safety to sleep in this "hot crime area," it is logical to believe he would have closed the door behind him. However, if Appellant entered with the intent to steal, it is reasonable to conclude he may have left the door open for a quick escape. Officer Bunch saw Appellant in the back hall of Blandin's residence and then saw him go into one of the rooms before coming out with his hands up. If Appellant was only trying to find a

place to sleep, he would not have needed to explore Blandin's residence once the police announced their presence and called for him to come out.

In the trial judge's jury instructions, he charged:

> The mere entry into a dwelling without consent is not burglary. . . . [I]f a defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent was abandoned after the entry. It does not matter that the intended crime was not completed. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonabl[y] infer intent.

(Tr. 180, lines 10–19). He also charged the jury that "the unexplained breaking and entry in the night is itself evidence of intent to commit larceny rather than some other crime." (Tr. 186, lines 5–16). Additionally, the trial judge gave a separate mere presence charge. (Tr. 186, line 24–Tr. 187, line 13). It was the jury's role to weigh Appellant's explanation for being in the house to sleep against the inferred intent to commit larceny of an "unexplained" breaking and entry.

In State v. Larmand, 415 S.C. 23, 780 S.E.2d 892 (2015), the Court stated that its duty is not to weigh the plausibility of the parties' competing explanations when deciding whether to grant a direct verdict motion. In applying this principle to the present facts, the issue of whether Appellant was looking for a place to sleep or had the intent to commit a crime is definitely a matter for the jury to decide. Appellant seems to rely on evidence that only trash was found in his pockets and Campbell's statement that no items were missing from Blandin's residence; however, this could have been because of the rapid response time of Officer Bunch. It took him less than five minutes to arrive on the scene following the concerned citizen's report of hearing breaking glass and seeing someone enter the house. Lastly, Appellant continuously states that the glass Appellant used to enter was already broken based on Campbell's testimony. However, evidence exists in the form of testimony by Officer Bunch that a concerned citizen heard glass

breaking and saw someone enter the house. The fact that two different panes of glass were broken, one in the patio window and one in the interior door, could explain why Campbell testified the glass was already broken that morning, yet the concerned citizen heard glass breaking when he saw someone enter the house. The existence of this evidence was sufficient to send the case to the jury. The trial court correctly denied Appellant's directed verdict motion, and this Court should affirm its decision.

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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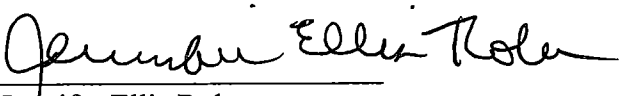
BY: 
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ATTORNEYS FOR RESPONDENT

July 21, 2016

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions
Roger E. Henderson, Circuit Court Judge

Appellate Case No. 2015-002195

THE STATE,

Respondent,

v.

JOHN HENRY HOLMES, JR.,

Appellant.

PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 21st day of July, 2016.

Angela Bennett

ANGELA BENNETT
Administrative Assistant

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ATTORNEY GENERAL

July 21, 2016

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RE: State v. John Henry Homes, Jr.
Appellate Case No. 2015-002195

Dear Ms. Durant,

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

Jennifer Ellis Roberts
Assistant Attorney General
Bar # 79818

JER/ab
Enclosures

cc: Honorable Jenny A. Kitchings
(original enclosed)
Victim Services