

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Aiken County
Doyet A. Early, III, Circuit Court Judge

—————
2015-CP-02-2458
Appellate Case No. 2016-001979

WILLIAM MCCLADDIE,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

—————
AMENDED
BRIEF OF RESPONDENT
PURSUANT TO WHITE V. STATE

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STATEMENT OF ISSUE ON APPEAL

- I. Did the trial judge properly deny Petitioner's motion for a directed verdict and submit the case to the jury where the State presented substantial evidence that the property Petitioner entered was a dwelling?

STATEMENT OF THE CASE

William McCladdie (“Petitioner”) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Petitioner was true bill indicted at the July 2015 term of the Aiken County Grand Jury for first degree burglary (2015-GS-02-01103), possession of tools capable of being used in crime (2015-GS-02-0104), and possession of a stolen vehicle (2015-GS-02-01105). Petitioner proceeded to a jury trial before the Honorable Doyet A. Early, III. Michael B. McMillian, Esquire represented Petitioner at trial. On July 8, 2015, a jury found Petitioner guilty on all charges. Judge Early sentenced Petitioner to fifteen year term of imprisonment for first degree burglary, five year term of imprisonment for possession of tools capable of being used in a crime, and ten year term of imprisonment for possession of a stolen vehicle, with all sentences to be served concurrently.

Petitioner filed a notice of appeal. On August 19, 2015, the South Carolina Court of Appeals dismissed the notice of appeal for untimely service. The remittitur was returned to the circuit court on September 28, 2015.

Petitioner filed an application for post-conviction (2015-CP-02-02458) relief on October 19, 2015, alleging the following grounds for relief:

1. Ineffective assistance of counsel
 - a. Failed to file appeal in time.
2. Subject matter jurisdiction
 - a. Sham indictments
3. Illegal sentence
 - a. Sentence exceeds and or does not coincide with charge.

Respondent made its Return on December 18, 2015. After reviewing the file and speaking with the appropriate parties, Respondent indicated to Petitioner that it would consent to Petitioner’s request for a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). On August 10, 2016, Judge Early, acting in his capacity as

Chief Administrative Judge of the Second Judicial Circuit, signed an Order dismissing the application with prejudice and granting a belated review of direct appeal issues pursuant to White. The Order was filed August 22, 2016.

Petitioner filed a timely Notice of Appeal on September 22, 2016. Petitioner's Appendix, Petition for Writ of Certiorari, and Brief of Appellant Pursuant to White v. State were filed on March 13, 2017. This Brief of Respondent Pursuant to White v. State follows.

STATEMENT OF THE FACTS

On January 11, six weeks before the crime occurred, Margaret McDaniel passed away. App. 165. In her will, Ms. McDaniel passed the title to her home to her sister, Ms. Evelyn Clark. App. 195-196. The water and electricity were transferred into Ms. Clark's name (App.170) and remained on and running at the house, and the yard continued to be cut and maintained after Ms. Clark took possession of the home. App. 165-166. Although Ms. Clark had not yet moved into the home (App. 170), on at least one occasion before the crime, Ms. Clark stayed the night at the house. App. 166-167; 196.

On February 20, 2015 at 11:55 p.m., Officer James Michael Hess of the Jackson Police Department responded to a call about a unauthorized vehicle parked at Ms. Clark's house. App. 99. Upon arrival to the residence, Officer Hess noticed a vehicle parked in the driveway of the home with a warm engine, as if it had been freshly parked. App. 100. He checked around the house for signs of forced entry and noticed a window that had been forced open. App. 101. After calling for backup, Officer Hess parked his patrol car across the driveway so that the vehicle could not leave. App 101. When backup arrived, another officer spotted Petitioner, who was found hiding in the bushes in the backyard of the home. App. 103-104. The officers handcuffed and stood Petitioner up of the ground, and beneath his body they found a crowbar. App. 104. Officer Hess testified the house had been burglarized and the crowbar or "pry bar" lined up to the markings of the door that had been pried open. App. 106.

In the pat-down and search incident to arrest of Petitioner, the officers found in his pockets a flashlight, a pocketknife, and a key to the vehicle that was parked in the driveway of the house. App. 106-107.¹ Upon an inventory search of the vehicle, officers found a wallet

¹ The evidence showed the vehicle parked in the driveway was stolen from another property. Petitioner was convicted at the conclusion of this trial to possession of a stolen vehicle.

containing Petitioner's driver's license, Social Security card, and credit card, as well as a butcher knife taken from the kitchen of the home, mail sent to the address of the burglarized home, and a checkbook that came from inside the home with the same address. App. 113.

At trial, the State presented testimony from the investigating officers, as well as Ms. Clark, the owner of the home, and her grandson who called the report into law enforcement. At the close of the State's evidence, Petitioner moved for a directed verdict, arguing that the State failed to prove all the elements of first degree burglary because Ms. Clark did not live in the house at the time of the crime, so it was not classified as a dwelling. App. 201-208. The trial court denied the motion, ruling the State presented sufficient evidence to allow a jury to determine the house was a dwelling under the statute. App. 211- The trial court ruled:

[T]he person who owned the house had died, she has left it to Ms. Clark in her will, so Ms. Clark is at least the de facto owner of the house. The testimony was uncontradicted that she had spent at least one night in the house subsequent to her sister's death, which had occurred about six months [sic] prior to the burglary. The testimony was that she is, quote, working on it, unquote, about planning to move into the house at [redacted] Foreman Street. She said it's a slow process, I know, and there's some hang-ups but I want to be there; keep thinking maybe I'll feel her presence.

She's maintained at her own expense the electricity and water since her sister's death, she pays for those bills. She maintains the yard through the help of a neighbor who continues to cut it and keeps it maintained. She maintains and continues to get mail, she or her sister, there at that house, checks on the mail daily. She's stayed there one night since the sister's death. She maintains personal items of clothes at [redacted] Foreman Street. In response to cross-examination, she admitted that she had personal belongings in that house and she is still considering moving into the house.

App. 213. At the conclusion of the trial, the jury returned a guilty verdict for first degree burglary, and Petitioner was sentenced to fifteen years' imprisonment.

ARGUMENT

I. The trial court properly denied Petitioner's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence that the property Petitioner entered was a dwelling.

Petitioner contends the trial court erred in denying his motion for a directed verdict on the charge of first-degree burglary as to whether the State established that the residence was a dwelling. Petitioner maintains the State failed to prove that the location at issue constituted a dwelling because the residence's owner was deceased at the time of entry, having perished six weeks prior to the burglary. However, the trial court committed no error in denying Petitioner's directed verdict motion and submitting the case to the jury because the homeowner's recent death and transfer of title to a new owner 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 proper resolution. Petitioner'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 the directed verdict motion and submit the case to the jury if there is any substantial evidence reasonable 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). When reviewing the denial of a directed verdict motion, 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). The appellate court must affirm the trial court's ruling if there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). Reversal of the trial court's denial of a directed verdict

motion is only warranted 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 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). “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, 257 S.E.2d 154 (1979), our Supreme Court determined that § 16-11-10 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 required that the occupant leave with the purpose of returning in order for the apartment to be considered a dwelling.” Evans, 376 S.C. at 425, 656 S.E.2d at 784. 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 retention of personal possessions in the residence, frequency of visits, and the habitability of the property. Id.

Courts in other jurisdictions have recognized that for burglary purposes, a house does not lose its legal status as a dwelling immediately on the death of its sole occupant merely because there is no conclusive evidence that any other person intended to reside there. See Cochran v. Com., 114 S.W.3d 837 (Ky. 2003) (holding trailer home of recently deceased owner was a “dwelling” for purposes of burglary statute); People v. Barney, 294 A.D.2d 811, 742 N.Y.S.2d 451 (App. Div. 2002) affd., 99 N.Y.2d 367, 786 N.E.2d 31 (2003) (holding that building which defendant broke into did not lose its character as dwelling upon death of sole occupant); State v. Edwards, 589 N.W.2d 807, 811 (Minn. Ct. App. 1999) (holding that an apartment of a recently deceased tenant was still a dwelling for burglary purposes). In its holdings, these courts have noted that the argument forwarded by Appellant would reduce the criminality of a defendant who, having knowledge of an occupant's death, would seek to exploit the situation, when the potential harm to persons such as grieving friends and relatives would still be present. Id.

In Cochran, the Supreme Court of Kentucky held that the death of the sole occupant of a trailer home one week earlier did not invalidate the trailer’s status as a “dwelling” within the meaning of the burglary statutes. In reaching this conclusion, the court noted that the “trailer was still furnished, had utility service, and had not been abandoned.” Cochran, 114 S.W.3d at 839. The Cochran court noted:

The time immediately following a person's death is often hectic and chaotic for the deceased's family, friends, and loved ones. It is a time of gathering, which often means travel for many of those coming together to remember and to share their grief and sorrow. Use of the deceased's home as a place of temporary residence in these circumstances is common and is to be expected. It should not be discounted by miscreants who would seek to take advantage of the misfortune of others. Due to the emotional stress underlying the necessity of such temporary occupancy, the need is great to offer strong protection against the “alarm and danger” inherent in unlawful entry into a dwelling. Thus, given the potential for occupancy and the sensitivities of the potential occupants, it is reasonable to construe “dwelling” to include buildings that have been occupied in the immediate past by a recently deceased resident.

114 S.W.3d at 839. The court noted its ruling is consistent with the purpose behind burglary statutes to “encompass all unlawful intrusions which are accompanied by alarm and danger to occupants.” Id. (internal citations omitted). This is similar to the purpose behind South Carolina’s burglary statute, focusing on potential harm to occupants. See Ferebee, 273 S.C. at 406, 257 S.E.2d at 155 (“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.”).

Additionally, the jurisdictions that have held that death of the sole occupant does not immediately remove the dwelling status from a residence is better aligned with burglary jurisprudence in South Carolina that focuses less on the amount of time a property has been uninhabited and more on preventing harm to possible occupants. In Evans, our Supreme Court held that a remote, secondary residence that was primarily used for storage due to family health concerns limiting overnight stays was still a “dwelling” under the burglary statutes. 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 citations omitted).

In the present case, Ms. Evelyn Clark had taken title of the home six weeks before the break in, when her sister passed away. She maintained, at her own expense, the electric and water bills, and ensured that the yard was cut and the mail was checked. She had spent the night at the house on at least one occasion since her sister's death, and she kept her own personal belongings at the home. She was considering moving in the home, and was still in the process of making that decision at the time of trial. Based on these facts, the trial court properly denied Petitioner's directed verdict motion and submitted the case to the jury.

Furthermore, Petitioner's argument that recent death removes the dwelling status of a home under the burglary statutes would lead to an absurd result, where potential burglars would need only to peruse the local obituaries section of their newspapers in order to decide which grieving family to prey upon next. See Cochran, supra. This was properly noted by the trial court when denying Petitioner's motion for a directed verdict on this ground.

Accordingly, because Margaret McDaniel's house retained its "dwelling" status despite her death six weeks earlier, the trial court properly denied Petitioner's motion and submitted this case to the jury for its ultimate disposition. Petitioner'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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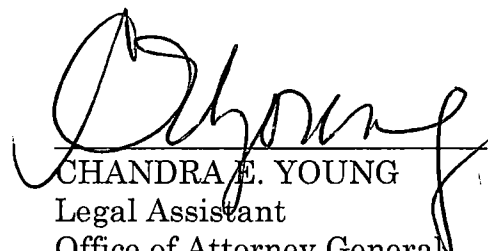
PROOF OF SERVICE

I, CHANDRA E. YOUNG, certify that I have served the Amended Brief of Respondent Pursuant to White v. State on opposing counsel by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
South Carolina Office of Indigent Defense
1330 Lady St., Suite 401
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I further certify that all parties required by Rule to be served have been served.

This 27th day of July, 2017.



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