ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2019-000842

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S.C. SUPREME COURT

THE STATE,

Petitioner,

vs.

JOHN KENNETH MASSEY, JR.,

Respondent.

# BRIEF OF PETITIONER

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Did the Court of Appeals err by affirming the trial judge's ruling quashing the facially-valid first-degree burglary indictment after finding the State's argument the trial judge did not have the authority to quash that indictment on sufficiency-of-the-evidence grounds was not properly preserved for appellate review where the State's argument regarding the trial judge's lack of authority to quash the indictment based on the purported insufficiency of the evidence was fundamentally correct as a matter of law, was raised to the trial judge prior to the swearing of the jury, and was ruled upon and incorrectly rejected by the trial judge on the merits? ........ 9

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## STATEMENT OF ISSUE ON CERTIORARI

Notwithstanding the fact the trial judge did not have the authority to quash the facially-valid indictment on sufficiency-of-the-evidence grounds, did the Court of Appeals err by affirming the trial judge's fact-based ruling quashing the first-degree burglary indictment where, when viewed in a light most favorable to the State as necessarily required, the evidence and testimony presented during the pre-trial hearing supported a conclusion the burglarized building, which was situated just a few yards from the victim's residence and was appurtenant to it, fell within the statutory definition of a "dwelling" such that a first-degree burglary charge was legally and factually appropriate in Massey's case?

## STATEMENT OF THE CASE

In January of 2014, Respondent John Kenneth Massey, Jr. was arrested following an investigation into a burglary and theft he committed in Rock Hill, South Carolina. In March of 2014, the York County Grand Jury indicted Massey for first-degree burglary, criminal conspiracy, and grand larceny. In April of 2014, the York County Grand Jury issued an amended indictment that again charged Massey with first-degree burglary. On January 26, 2015, a jury trial was commenced in the York County Court of General Sessions with the Honorable Eugene C. Griffith, Jr., circuit court judge, presiding. Towards the outset of the trial, defense counsel moved to quash the first-degree burglary indictment, and the trial judge conducted a hearing on the matter. At the conclusion of the hearing on the following day, the trial judge granted defense counsel's motion to quash while further indicating he believed the trial could proceed forward on a charge of second-degree burglary. Ultimately though, the solicitor objected to the trial judge's ruling, and the trial was aborted before the jury was sworn. Thereafter, on February 6, 2015, the solicitor filed a timely post-trial motion seeking reconsideration of the trial judge's ruling on the motion to quash. Approximately nine months after that, the trial judge issued an order denying the solicitor's post-trial motion. The State then timely filed and perfected an appeal.

On appeal, the Court of Appeals unanimously affirmed the trial judge's ruling in a published opinion issued without oral argument. State v. Massey, 426 S.C. 90, 825 S.E.2d 717 (Ct. App. 2019). Thereafter, the State timely filed a petition for rehearing along with a motion to depublish, Massey's appellate counsel filed a return opposing both the State's filings, and the Court of Appeals denied the State's petition and motion. The State then filed a petition for a writ of certiorari in the Supreme Court, and the petition was granted in part on September 18, 2019.

## STATEMENT OF FACTS

One night, Massey—by his own candid admission—burglarized a garage situated just a few yards away from a residence and stole a four-wheeler from inside it. (App'x pp. 18-20; p. 41). After the burglary and theft were discovered the next day, the four-wheeler's owner, Kristopher Callahan, reviewed surveillance footage that depicted the incident along with one of his employees, and they quickly recognized Massey as the perpetrator of the crimes. (App'x pp. 20-21; pp. 29-30). Based on that discovery, law enforcement officers swiftly apprehended and arrested Massey, and he was transported to the York County Detention Center. (App'x pp. 15-17; p. 22). Once there, he met with Detective Brian Schettler of the York County Sheriff's Office, and, during their conversation, Massey admitted to stealing Callahan's four-wheeler from the garage. (App'x p. 14; pp. 16-20). Furthermore, Massey claimed he was involved in a larger criminal enterprise along with other individuals and offered to help the detective in an effort to obtain assistance for himself. (App'x pp. 18-19). However, the detective was unable to make any deals with Massey at that time, and the interview was concluded. (App'x pp. 18-19).

Subsequently, the York County Grand Jury indicted Massey for first-degree burglary along with other charges, and he proceeded forward to trial.[1] (App'x p. 9; pp. 62-69). Towards the outset of the trial, defense counsel moved for the trial judge to quash the first-degree burglary indictment. (App'x p. 35). In doing so, defense counsel conceded the challenged indictment

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[1] Notably, the first-degree burglary indictment clearly identified the specific offense for which Massey was charged, included the express statutory provision Massey was alleged to have violated, and detailed the allegations as follows: "The Defendant, John Kenneth Massey Jr., did in York County, South Carolina, on or about January 12, 2014, while acting in concert with another person, willfully and unlawfully enter the dwelling of Kristopher Callahan, when he entered without consent the outbuilding appurtenant to and within 200 yards of the dwelling house establishment of Kristopher Callahan, all located at [a specific address] in Rock Hill, South Carolina, without consent and with the intent to commit the crime of larceny therein and said entering and remaining did occur during the nighttime hours, all in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended)." (App'x pp. 64-65).

was "correctly in line with" the relevant statutory provision but asserted it was nonetheless "faulty with regards to the facts of [the] case." (App'x p. 37). Specifically, defense counsel maintained the burglarized building had a business sign affixed to it, was on a different parcel of property from the residence, and was purportedly not appurtenant to the residence.[2] (App'x pp. 36-37). Based on those facts, defense counsel argued the first-degree burglary charge was not proper and the indictment charging that offense should be quashed. (App'x p. 38).

In response to defense counsel's motion, the solicitor proffered testimony from Callahan regarding the details of the burglarized building and property. (App'x pp. 38-39). During his testimony, Callahan indicated the building was a personal garage he used for storage purposes, and he confirmed it contained numerous items, including four-wheelers, boats, tools, beds, refrigerators, and freezers. (App'x pp. 39-40). He further indicated the garage, which was used by both him and his father, was located just fifteen to sixteen yards away from his residence, which he lived in along with his mother, his father, and a family friend. (App'x pp. 41-42). Additionally, he confirmed no business was conducted in the garage, it was not a part of his business, any business conducted at the property was actually conducted out of the residence, and the extent of the garage's involvement with the business was his employees met outside of it some mornings before going to different jobsites. (App'x pp. 43-44). Likewise, as to why a business sign was affixed to the garage, Callahan stated the sign was used during a rodeo for sponsorship purposes, and he hung it on the building after the rodeo concluded. (App'x p. 40).

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[2] As support for those factual contentions, defense counsel introduced photographs of the building and the sign affixed to it, an aerial photograph depicting the residence and nearby garage, and two different York County property reports reflecting the property lines and the owners of the parcels of property on which the residence and building were situated. (App'x pp. 36-37; pp. 71-75). Notably, as would be expected of buildings sharing a connection to one another, the residence and garage appear to share a driveway based on the evidence introduced by defense counsel. (App'x p. 73).

Furthermore, Callahan indicated the land the residence and garage were located on belonged to his mother after his grandfather's death. (App'x pp. 41-42). However, he noted the parcel of property on which the garage was located was titled in the name of his uncle as his family had found it to be unnecessary to formally transfer the property into his mother's name, and he asserted he did not know who paid the property's taxes. (App'x. p. 42; p. 45).

Following the presentation of that testimony, the solicitor asserted it established the burglarized building was used to store personal property, which supported a conclusion the building qualified as a dwelling for burglary purposes. (App'x p. 47). The solicitor further noted the offense of burglary was a crime of possession and cohabitation as opposed to ownership. (App'x p. 48). In rebuttal, defense counsel argued the building would have qualified as a dwelling had Callahan been sleeping in it before again asserting it could not support a charge of first-degree burglary since it was purportedly neither connected to nor appurtenant to the nearby house. (App'x pp. 48-49). After hearing those contentions, the trial judge indicated he believed the issue was one of whether to proceed forward for first-degree burglary or second-degree burglary, and he took the matter under advisement overnight. (App'x pp. 49-50).

On the following morning, the trial judge gave the solicitor an opportunity to further discuss the matter, and the solicitor reasserted the charge of first-degree burglary was factually and legally appropriate since the garage was within two-hundred yards of and appurtenant to the victim's residence. (App'x pp. 52-53). Upon hearing the solicitor's arguments, the trial judge indicated he disagreed. (App'x p. 53). The trial judge then explained Callahan had no formal interest in either parcel of property involved in the case, the burglarized building was on a different parcel of property from the residence, that parcel was titled in someone else's name, and no testimony had been presented to establish anyone slept in the burglarized building.

(App'x p. 53). Based on those facts, the trial judge indicated he believed the proper charge in Massey's case was second-degree burglary, and, despite the fact his ruling was predicated on his view of the facts, he asserted he believed the matter was purely a legal one. (App'x p. 53). The trial judge then further found the burglarized building was "an outbuilding" and "factually" it was not appurtenant to the residence, which he noted was owned by Callahan's parents. (App'x p. 54). At that point, the solicitor indicated he did not believe the State could proceed forward with the trial based on the trial judge's ruling, and the trial judge responded by noting the facts presented supported a second-degree burglary charge. (App'x p. 56). The trial judge then indicated he believed—based on all the facts presented "thus far"—something was taken from a building at nighttime by an individual without permission to be there, which he asserted meant there was "plenty" of factual support for a second-degree burglary charge. (App'x pp. 56-57). Following that ruling, the solicitor requested for the trial to be recessed, and the trial was ultimately aborted before the jury was sworn. (App'x p. 3; pp. 57-58).

A few days after that, the solicitor submitted a timely post-trial motion seeking for the trial judge to reconsider his ruling quashing the first-degree burglary indictment. (App'x p. 3). As support for the motion, the solicitor argued—correctly—a motion challenging the sufficiency of an indictment cannot properly be used to challenge the sufficiency of the State's evidence. (App'x p. 3). Beyond that, the solicitor reiterated the State's position the burglarized garage was statutorily a dwelling for burglary purposes as it was within two-hundred yards of and appurtenant to the victim's residence. (App'x pp. 3-4).

Approximately nine months later, the trial judge issued an order denying the State's post-trial motion. (App'x p. 5). Through the order, the trial judge specifically noted the solicitor argued a motion to quash could not be used to raise a sufficiency-of-the-evidence challenge

while also reasserting the arguments that had been raised during trial, and he expressly found those arguments "to be without merit." (App'x p. 5). The trial judge then reaffirmed he believed Massey was alleged to have entered an outbuilding used as a business on a separate piece of property from the victim's mother's home. (App'x p. 5).

Subsequent to that ruling, the State appealed. (App'x pp. 59-61). On appeal, the Court of Appeals affirmed. (App'x pp. 115-120). In affirming, the Court of Appeals initially rejected the State's argument the trial judge did not have authority to quash the indictment based on a challenge to the sufficiency of the evidence solely on the basis the issue was purportedly raised for the first time on appeal and, thus, was not properly preserved for appellate review. (App'x p. 119). Thereafter, the Court of Appeals found the trial judge correctly quashed the first-degree burglary indictment after reviewing the evidence and determining there was no evidence establishing the burglarized building was either used as a dwelling or "in any way 'annexed to' or 'attached to' the home[.]" (App'x pp. 116-119).

## STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "In appeals of pretrial rulings, [the appellate court] is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). Importantly, a trial judge's ruling on a matter "will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the trial judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

Meanwhile, in an appeal of a ruling involving a challenge to the sufficiency of the evidence in a criminal case, the appellate court must necessarily apply the same standard that should have been applied by the trial judge and view the evidence and all reasonable inferences in the light most favorable to the State. See State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012) ("When reviewing the denial of a motion for directed verdict, this Court employs the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the non-moving party."). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, a sufficiency-of-the-evidence challenge must be rejected and the case should be submitted to the jury. State v. Weston, 367 S.C. 279, 292-293, 625 S.E.2d 641, 648 (2006); see also State v. Larmand, 415 S.C. 23, 29, 780 S.E.2d 892, 895 (2015) (recognizing a defendant is entitled to a directed verdict only when the State fails to produce evidence of the offense charged).

## ARGUMENT

**Notwithstanding the fact the trial judge did not have the authority to quash the facially-valid indictment on sufficiency-of-the-evidence grounds, did the Court of Appeals err by affirming the trial judge's fact-based ruling quashing the first-degree burglary indictment where, when viewed in a light most favorable to the State as necessarily required, the evidence and testimony presented during the pre-trial hearing supported a conclusion the burglarized building, which was situated just a few yards from the victim's residence and was appurtenant to it, fell within the statutory definition of a "dwelling" such that a first-degree burglary charge was legally and factually appropriate in Massey's case?**

In the published opinion it issued in Massey's case, the Court of Appeals concluded the State's contention the trial judge lacked the legal authority to quash a facially-valid indictment issued by a grand jury was raised for the first time on appeal and, thus, was not properly preserved for appellate review.[3] After rejecting that particular contention on issue preservation grounds, the Court of Appeals went on to affirm the trial judge's fact-based ruling quashing the first-degree burglary indictment.[4] In doing so, the Court of Appeals determined the burglarized

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[3] Looking to the first-degree burglary indictment issued by the grand jury in Massey's case, it indisputably contained the necessary elements of the charged offense and sufficiently apprised Massey of the nature of the allegations he was facing. See State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62 (1980) (explaining an indictment is sufficient if "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent conviction"); see also Costello v. United States, 350 U.S. 359, 363 (1956) ("An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits." (footnote omitted)). Based on that, the indictment was facially valid and sufficient as a matter of law, and the trial judge had no authority to quash it prior to trial. See State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007) ("[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.").

[4] Since the State first challenged the trial judge's authority to quash the indictment on fact-based grounds through a post-trial motion, the State's argument may have been untimely and insufficient to preserve any issue regarding the trial judge's lack of authority to quash the indictment for appellate review. See Bank of New York v. Sumter County, 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010) ("It is axiomatic that an issue cannot be raised for the first time in a post-trial motion."). However, while the State's argument may not have been timely raised,

building was factually not appurtenant to the victim's residence and, thus, did not qualify as a dwelling for burglary purposes since it was unattached, on a separate parcel of land, and purportedly used for purposes distinct from the residence. To the contrary, when viewed in a light most favorable to the State as necessarily required, the evidence and testimony presented in support of the first-degree burglary charge established the burglarized building was within two-hundred yards of and appurtenant to the victim's residence, which meant it constituted a dwelling for burglary purposes. As a result, both the trial judge and Court of Appeals erred as a matter of law in concluding otherwise. The decision of the Court of Appeals should be vacated, the trial judge's ruling on the motion to quash should be reversed, and Massey's case should be remanded for trial on the facially-valid first-degree burglary indictment.

In order to establish the statutory offense of first-degree burglary in South Carolina, 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.

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there can be no legitimate question the trial judge did *not* have authority under South Carolina law to quash a facially-valid indictment based upon his view of whether the State's evidence would ultimately be sufficient to establish the charged offense during trial. See State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998) ("[A] trial court generally has *no power* to dismiss a properly drawn indictment issued by a properly constituted grand jury before trial unless a statute grants that power to the court." (emphasis added)); State v. Garrett, 305 S.C. 203, 206, 406 S.E.2d 910, 911 (Ct. App. 1991) ("A motion to quash an indictment addresses the sufficiency of the indictment, not the sufficiency of the State's evidence."), overruled on other grounds by State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993); see also United States v. Guerrier, 669 F.3d 1, 3-4 (1st Cir. 2011) ("[C]ourts routinely rebuff efforts to use a motion to dismiss as a way to test the sufficiency of the evidence behind an indictment's allegations[.] . . . [I]n the ordinary course of events, a technically sufficient indictment handed down by a duly empaneled grand jury 'is enough to call for trial of the charge on the merits.' " (citations omitted)); United States v. Redcorn, 528 F.3d 727, 733 (10th Cir. 2008) ("[A] challenge to the indictment is not a vehicle for testing the government's evidence."); United States v. Wills, 346 F.3d 476, 488 (4th Cir. 2003) ("[C]ourts lack authority to review the sufficiency of evidence supporting an indictment, even when a mistake was mistakenly made."); Gibson v. United States, 244 F.2d 32, 34 (4th Cir. 1957) (holding a pre-trial challenge to an indictment can only be made in respect to the validity of the indictment itself and not in respect to whether the facts of the case support the allegations in the indictment, which is an issue to be raised during trial).

S.C. Code Ann. § 16-11-311(A). Significantly, pursuant to South Carolina law, a "dwelling" for burglary purposes includes "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" along with "all houses, outhouses, buildings, sheds and erections" that are within two-hundred yards of and appurtenant to a dwelling house. S.C. Code Ann. § 16-11-10; see S.C. Code Ann. § 16-11-310(2) (" 'Dwelling' means its definition found in Section 16-11-10 and also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person."). Based on that inclusive definition, courts in South Carolina have found various outbuildings such as chicken coops, storage buildings, and dog houses to qualify as dwellings in criminal prosecutions for burglary. See State v. Langford, 55 S.C. 322, __, 33 S.E. 370, 371-372 (1899) (reversing a trial judge's ruling quashing an indictment that charged Langford with burglary for burglarizing a dog house that was within two-hundred yards of and appurtenant to a dwelling house); State v. Johnson, 45 S.C. 483, __, 23 S.E. 619, 621-622 (1896) (finding a "fowl house" could qualify as appurtenant to a nearby residence for burglary purposes); State v. Evans, 18 S.C. 137, 138 (1882) (finding a gin house that was used both to store cotton and to shelter stock "was an appurtenance of the dwelling-house" that was located eighty yards away for burglary purposes).

In the case sub judice, defense counsel's challenge to the sufficiency of the first-degree burglary indictment was a fact-based one raised before the evidentiary phase of trial had even begun, and, therefore, the issue of whether the evidence the State intended to introduce during trial would ultimately prove to be sufficient to support a conviction for the indicted offense—or even sufficient to survive a directed verdict motion—was and is not yet ripe for review. See State v. Sweat, 221 S.C. 270, 272, 70 S.E.2d 234, 235 (1952) (holding a motion to quash based

on sufficiency-of-the-evidence grounds was out of order and premature). Accordingly, the trial judge and the Court of Appeals plainly erred by prematurely addressing what functionally amounted to a pre-trial directed verdict motion and proceeding to analyze the sufficiency of the State's evidence supporting the first-degree burglary charge. See United States v. Mills, 995 F.2d 480, 487 (4th Cir. 1993) ("[C]ourts lack authority to review either the competency or sufficiency of evidence which forms the basis of an indictment.").

Importantly though, even if such a sufficiency-of-the-evidence analysis could have somehow properly been conducted prior to the beginning of the evidentiary phase of the trial, the limited evidence and testimony preliminarily presented in Massey's case supported a conclusion he was guilty of first-degree burglary when that evidence and testimony is viewed in a light most favorable to the State, which is the manner in which it would necessarily have to be viewed when conducting the functional equivalent of a directed verdict motion analysis. See, e.g., State v. Littlejohn, 228 S.C. 324, 329, 89 S.E.2d 924, 926 (1955) ("[O]n a motion for direction of verdict, the trial judge is concerned with the existence or non-existence of evidence, not with its weight; and, although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there be any substantial evidence which reasonably tends to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced."). Specifically, Callahan's testimony established the burglarized building was positioned well within two-hundred yards of his residence, and, although it was not situated on property formally owned by Callahan, it was personally and actively used by him and his father, who were both residents of the nearby home. See State v. Singley, 392 S.C. 270, 274, 709 S.E.2d 603, 605 (2011) ("We have maintained consistently for well over one-hundred years that burglary is a crime against possession and habitation, not a

crime against ownership. . . . [T]he victim listed in the indictment need not be the owner of the dwelling burglarized; it is sufficient that the alleged victim was the occupant and possessor of that dwelling."); see also Johnson, 45 S.C. at __, 23 S.E. at 621 ("The undisputed fact that the fowl house was separated from the dwelling house by a public highway does not necessarily show that it was not appurtenant."). Likewise, the testimony established Callahan used the building for storage of his *personal* property, which included recreational vehicles and other sundries commonly associated with the use and enjoyment of a home, as opposed to non-personal items not typically associated with a residence. Compare Evans, 18 S.C. at 138 (finding a gin house that was used both to store cotton and to shelter stock to be appurtenant to a nearby residence for burglary purposes); with State v. Anderson, 24 S.C. 109, 115-116 (1886) (finding an outbuilding used for the purpose of storing goods associated with a store *as opposed to household goods* was not appurtenant to a nearby residence for burglary purposes). Under such circumstances, a reasonable factfinder could rationally conclude the burglarized garage was within two-hundred yards of and appurtenant to the victim's residence, and, as a result, the garage could legally constitute a dwelling for burglary purposes. See Evans, 18 S.C. at 138 (finding an outbuilding used solely for storing cotton and sheltering stock was appurtenant for burglary purposes); see also People v. Smith, 26 Cal. Rptr. 2d 580, 585 (Cal. Ct. App. 1994) (identifying a detached storage shed used in connection with a main building as a type of outbuilding that would typically be considered to be appurtenant to the main building); Jones v. State, 690 S.W.2d 318, 319 (Tex. App. 1985) (holding an unattached garage was a structure appurtenant to a residence such that it qualified as a "habitation" for burglary purposes); United States v. Fagan, 577 F.3d 10, 13-14 (1st Cir. 2009) (recognizing storage closets, storage rooms and bins, lockers, mailboxes, and *birdhouses* have been found to be appurtenant to residences);

cf. State v. Stone, 350 S.C. 442, 446, 567 S.E.2d 244, 246 (2002) ("We find the screened porch is appurtenant, and is used for the protection of Griffith's property (paint and wood) so as to come within the definition of a dwelling."). Accordingly, since the burglary was also committed during the nighttime, sufficient evidence existed from which the jurors could have found Massey guilty of each and every element of the indicted offense of first-degree burglary.

Because the jury could have logically and rationally found Massey guilty of first-degree burglary based on the evidence the State desired to introduce during trial, the trial judge had a duty to permit the case to go forward on the facially-valid first-degree burglary indictment to allow the jurors as the triers of fact to carry out their roles to weigh and evaluate the evidence presented. See State v. Al-Amin, 353 S.C. 405, 411, 578 S.E.2d 32, 35 (Ct. App. 2003) (recognizing the trial judge is "required" to submit a case to the jury when substantial evidence is presented reasonably tending to prove the guilt of the accused or from which the accused's guilt may be fairly and logically deduced), overruled on other grounds by State v. Broadnax, 414 S.C. 468, 779 S.E.2d 789 (2015); see also Jackson v. Virginia, 443 U.S. 307, 319 (1979) ("[The directed verdict] standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."); Watson v. Ford Motor Co., 389 S.C. 434, 445, 699 S.E.2d 169, 174-175 (2010) ("The jury serves as the fact finder and is charged with the duty of weighing the evidence admitted at trial and reaching a verdict. . . . [I]t is exclusively within the jury's province to decide how much weight the evidence deserves."). However, the trial judge erroneously declined to do so by quashing the first-degree burglary indictment based on his own non-light-most-favorable-to-the-State conclusions as to what the evidence would and could prove, and, accordingly, both that ruling and the decision of the Court of Appeals affirming it were legally

erroneous and should be reversed. See Harvey v. Strickland, 350 S.C. 303, 308, 566 S.E.2d 529, 532 (2002) (explaining neither a trial judge nor an appellate court has authority to weigh the evidence, decide credibility issues, or resolve conflicts in the testimony or evidence presented when confronted with a sufficiency-of-the-evidence challenge); see also State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016) (recognizing the question before the trial judge when faced with a sufficiency-of-the-evidence challenge is simply whether *any* rational juror could find the essential elements of the crime beyond a reasonable doubt from the evidence viewed *in a light most favorable to the State*); State v. Brown, 205 S.C. 514, 520, 32 S.E.2d 825, 827 (1945) ("Where there is any evidence, however slight, on which the jury may justifiably find the existence or the non-existence of material facts in issue, or if the evidence is of such character that different conclusions as to such facts reasonably may be drawn therefrom, the issues should be submitted to the jury."); cf. Singley, 392 S.C. at 277, 709 S.E.2d at 607 (viewing the evidence in the light most favorable to the State when determining whether the evidence was sufficient to warrant the submission of a burglary charge to the jury). The decision of the Court of Appeals should be vacated, the trial judge's ruling on the motion to quash should be reversed, and Massey's case should be remanded for trial on the facially-valid first-degree burglary indictment.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted the decision of the Court of Appeals should be vacated, the trial judge's ruling granting the motion to quash the first-degree burglary indictment should be reversed, and the matter should be remanded for trial on the facially-valid first-degree burglary indictment.

Respectfully submitted,

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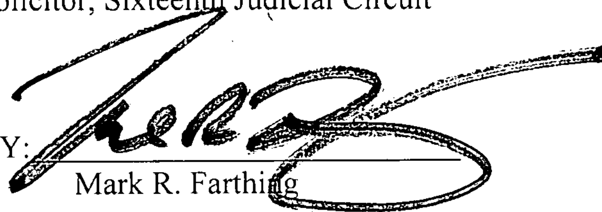

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October 1, 2019

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from York County
Honorable Eugene C. Griffith, Jr., Circuit Court Judge
Appellate Case No. 2019-000842

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THE STATE,

Petitioner,

vs.

JOHN KENNETH MASSEY, JR.,

Respondent.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies this Brief of Petitioner 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**

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I, Shana Montgomery, certify I have served the within Brief of Petitioner on Respondent by sending two copies of the same to:

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I further certify that all parties required by Rule to be served have been served.
This 1st day of October, 2019.

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