

ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Maité Murphy, Circuit Court Judge

Appellate Case No. 2014-002736

THE STATE,

Respondent,

vs.

MARTIN D. FLOYD,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

Appellant was indicted during the November 4, 2013 term of the Dorchester County Grand Jury for first-degree burglary (2013-GS-18-0364). Appellant was represented by Mary P. LeMatty, Esquire, and Michelle R. Suggs, Esquire. The State was represented by Assistant Solicitors Glenn P. Justis and Mandy W. Kimmons. On December 17, 2013, Appellant proceeded to a jury trial before the Honorable Maité Murphy, where he was convicted as indicted. Judge Murphy sentenced Appellant to life without parole pursuant to S.C. Code Ann. § 17-25-45.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On the morning of January 17, 2013, Charles Rearick (hereinafter “Rearick”) was in a fatal car accident and passed away. (R. p. 92 lns. 1-17). His only child, Jennifer Rearick Felkel, and her husband Richard Felkel left their home in Lexington, South Carolina and travelled to Rearick’s home in Knightsville, South Carolina along with her mother and a family friend. (R. pp. 93-94). Once they arrived at Rearick’s residence at 4 p.m., the group entered the home using a key and gathered sentimental items, including Rearick’s war metals, pictures, and gun collection, and important documents, such as bank records. (R. pp. 94-95; p. 102). At 9 p.m., the group secured the house, locked the front door, and left with the intent to return in the immediate future. (R. p. 95; p. 114; p. 116). No one had permission to enter the home, including Appellant and his friends. (R. p. 114).

That evening, Appellant was at the home of his then girlfriend, Angela Fleeman (hereinafter “Fleeman”) when he received a call from his mother informing him that Rearick had passed away several hours earlier. (R. pp. 14-15). Appellant had previously lived with Rearick but had moved out of the home more than six months prior. (R. p. 16; pp. 106-107; p. 129; p. 133). Although he no longer resided with Rearick, Appellant continued to renovate Rearick’s home as he had while residing there. (R. p. 133-34). According to Fleeman, Appellant was very upset by the information and expressed concern about his property located at Rearick’s residence. (R. pp. 15-16). Specifically, Appellant was concerned that his property would “end up in probate” and that he would not be able to get it “for a year and all his stuff would be missing.” (R. p. 16 lns. 8-10). Appellant did not state exactly what property was at Rearick’s house that he needed to retrieve. (R. p. 16 lns. 15-17).

Having neither a car nor a driver's license, Appellant called his friend Rusty Norris (hereinafter "Norris") to see if he could get a ride to Rearick's home at approximately 10 p.m. (R. p. 16; pp. 37-38). Norris also had no car or driver's license, so he asked his then girlfriend Candace to drive him and Appellant to Rearick's house. (R. p. 38). Norris and Candace had never met Rearick or been to his home but agreed to accompany Appellant to his residence shortly after his death to retrieve property. (R. p. 37-39). Both went to Fleeman's home, where they met Fleeman and Appellant and talked for approximately an hour before all four went to Rearick's residence in Candace's truck. (R. p. 38-39). Norris was armed with gloves, a flashlight, a screwdriver, and bolt cutters. (R. p. 52; p. 66).

When the group arrived at Rearick's residence, the lights were off and the front door was locked. (R. p. 17). The four then went to the rear of the trailer in hopes of gaining entry into Rearick's secured residence. (R. p. 17). Upon finding a chair propped against the rear of the trailer below a window, Norris pushed open the window and Candace gained entry to the residence by crawling inside. (R. p. 17; p. 40). Once inside, Candace unlocked and opened the front door and the remaining three entered Rearick's home. (R. p. 17; p. 40).

Once inside, Appellant proceeded to Rearick's master bedroom first. (R. p. 17). Norris and Fleeman were unsure what Appellant was searching for in particular, but both had been told by Appellant that Rearick was a gun collector and reported that Appellant was upset that he could not find any weapons. (R. pp. 22-23; pp. 40-41). Only after searching Rearick's master bedroom and bathroom did Appellant go to the bedroom where he had lived with his child's mother and child months prior. (R. pp. 17-18). In this room, Appellant located some of his clothing and his daughter's bottle, but left these

items. (R. p. 17; p. 23). While in the home, Norris, who had never met Rearick, took various items belonging to the deceased, including a blood pressure monitor, scissors, a belt, pills, and a Navy boatswain whistle. (R. pp. 52-53; p. 112). According to Fleeman, the group then sat in the living room and reminisced about Rearick, although Fleeman had only met him once and Norris and Candace had never met him. (R. p. 18; p. 23-24). After approximately an hour, Appellant and the group exited the trailer. (R. p. 24).

Fleeman and Candace proceeded to Candace's truck while Appellant and Norris went to a two-story shed behind the residence. (R. p. 24; p. 42; pp. 45-46). The structure was covered with plywood nailed in place and secured by a lock. (R. p. 42; p. 64). According to Norris, Appellant looked through cracks in the fortified shed and identified various tools that were his property. (R. p. 42). Norris used bolt cutters to remove the lock, which he placed in his pocket. (R. pp. 42-43; p. 51). He then entered the shed, where he took wood stain, an air compressor, and other items belonging to Rearick. (R. pp. 52-53). He was still inside the shed when Appellant came from the front of the house and warned him and Candace that law enforcement had arrived. (R. p. 43). Norris and Candace both took off running; Norris eventually crouched behind bushes on the periphery of the property while Candace kept going. (R. p. 43). Meanwhile, Appellant was at the truck speaking with Fleeman when the Dorchester County Sheriff's Deputies arrived. (R. pp. 25-26; pp. 62-63). According to Fleeman, Appellant was considering spending the night at the property when law enforcement arrived. (R. p. 25).

Corporal Shawn Angelo (hereinafter "Angelo") from the Dorchester County Sheriff's Office was the first officer to arrive at Rearick's residence. (R. pp. 61-62). He pulled up to the home with his lights on and his camera activated. (R. p. 62). He reported that Appellant and Fleeman were located in or near Candace's truck and the property was

dark. (R. pp. 62-65). Appellant and Fleeman were both handcuffed and placed in different police cruisers. (R. p. 26). Angelo and fellow Dorchester County Sheriff's Office Deputy Silas Carter (hereinafter "Carter") did a protective sweep of the property, using flashlights when entering the unlocked residence. (R. pp. 63-64; p. 69; pp. 76-77). At the shed, officers found the plywood covering to the shed with nails sticking out lying on the ground alongside bolt cutters. (R. pp. 64-65). After clearing the shed, Angelo and Carter heard rustling in the woods and found Norris hiding behind a brush pile. (R. p. 65; pp. 76-77). Norris was detained and searched, yielding several items that were taken from the residence and shed. (R. pp. 65-66; pp. 76-77). Law enforcement was able to determine that Candace was the fourth suspect based on registration of the truck and her driver's license located on the vehicle's floorboard. (R. p. 68). Appellant, Fleeman, and Norris were all arrested that evening and charged with first-degree burglary. (R. p. 26; pp. 58-59).

Rearick's family was contacted by law enforcement that evening regarding the activity at Rearick's home. (R. p. 70; pp. 97-99). Richard and Jennifer Felkel informed Dorchester County Sheriff's Deputies that no one had permission to be at Rearick's residence, including Appellant. (R. p. 98; p. 114). Felkel and his wife returned to Rearick's residence the next morning to re-secure the property. (R. p. 99; pp. 112-13). Upon entering the residence, Rearick's family noted a marked difference in the property, which appeared to have been ransacked. (R. p. 99; pp. 112-13). They reported that a large quantity of items, including military clothing of Rearick's and other various household items, were piled on the kitchen table in bags. (R. p. 99; pp. 112-13). Richard Felkel also noted that the large gun case where Rearick stored his weapons was no longer standing upright as it had been when he left the previous day but rather was lying on the floor of

the master bedroom. (R. p. 96). The Felkels also reported finding a jacket and cellular phone at the residence that were not present when they left the previous evening. (R. p. 100; p. 103). They contacted law enforcement, who collected the items. (R. pp. 88-89; pp. 99-100).

As part of their investigation, the Dorchester County Sheriff's Office obtained a search warrant to search Candace's truck, where a shop vac, pillows, a painting, and a computer program box were located. (R. pp. 79-80). Law enforcement also took photographs of the crime scene and dusted for fingerprints, although no usable prints were found. (R. pp. 87).

Appellant proceeded to trial on December 17, 2013. Both Fleeman and Norris testified for the State, along with various members of the Dorchester County Sheriff's Office involved in the investigation, an employee from the Dorchester County Clerk's Office, and Rearick's family. At the close of the State's case, Appellant moved for a directed verdict, asserting the State had failed to prove that Rearick's residence was a dwelling in light of his death and that Appellant had the intent to commit a crime when entering the property. (R. pp. 117-21). After hearing the State's reply, the trial court denied Appellant's motion as to both grounds. (R. pp. 121-125).

Appellant called his mother as his sole witness in his defense. (R. p. 127-42). She testified that Rearick was a family friend and that her husband previously lived next door to Rearick. (R. p. 128). She testified that Appellant, his former girlfriend, and their child had previously lived with Rearick, but that Appellant had moved out approximately six months prior because Rearick did not want Appellant's girlfriend and child living in the home. (R. pp. 129-30; p. 133; p. 137). She testified Appellant was renovating Rearick's house and continued to do so after moving out. (R. p. 129; pp. 133-34). She testified she

could identify various tools and other personal property as belonging to Appellant. (R. pp. 130-35). She testified she provided Appellant transportation to Rearick's house to work on renovations and that she took him there "at least two, three, four times a week." (R. p. 138). Following the testimony of his mother, Appellant renewed his motion for a directed verdict, which was again denied by the trial court. (R. pp. 144-46).

ARGUMENT

- I. The trial court properly denied Appellant's motion for a directed verdict and submitted the case to the jury where the State presented substantial evidence from which the jury could fairly and logically find that Appellant had intent to commit a crime when he entered Rearick'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 Rearick's residence at the time he entered the home. To the contrary, the trial court committed no error in denying Appellant's directed verdict motion because the State presented substantial evidence from which the jury could reasonably conclude Appellant possessed the intent to commit a crime in Rearick'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 proper resolution. Appellant's conviction should be affirmed.

When presented with a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial court should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial court's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606

S.E.2d 475, 478 (2004). The appellate court may only reverse the trial court's denial of a directed verdict motion if there is no evidence supporting the trial court's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). “[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial court's ruling upon a motion for a directed verdict must stand absent an error of law.” State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986) (emphasis added).

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

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

(emphasis added) (internal citations omitted). Thus, the issue of whether a defendant possessed the requisite intent at the time a crime was committed is typically a question for jury determination because, without a statement of intent by an actor, proof of intent

must be determined by inferences from conduct. State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971).

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

In the case at bar, the evidence presented clearly established Appellant possessed the requisite criminal intent to commit a crime in Rearick's home when he entered. Viewing the evidence in a light most favorable to the State as required, Appellant entered Rearick's home at night without any sort of prior permission from Rearick or anyone else to come inside. Although Appellant had previously resided in the home, he had not lived there in months and did not have a key or other lawful means to access the home. Furthermore, Appellant and his co-defendants entered the home by crawling through a closed window after trying to gain entry through traditional means and discovering the home was secured. Additionally, Appellant's co-defendant was armed with tools commonly used in burglaries, such as bolt cutters, gloves, and a flashlight.

After entering the home, Appellant proceeded to search Rearick's home, starting in Rearick's master bedroom, looking for items such as Rearick's valuable gun

collection. Although he claimed he entered the home to recover his own possessions, he notably did not collect items belonging to him or his infant daughter found in the bedroom where he had previously lived. Appellant's co-defendant Norris, who had never met Rearick, took various items from the home, including a Navy whistle with great sentimental value to Rearick and his family. Appellant and his co-defendants then proceeded to amass Rearick's belongings, including his military clothing and various sundries on the kitchen table in bags presumably for easy transport. Appellant and Norris then proceeded to the shed, secured with nailed-down plywood and a lock, which they forcibly removed, and took various items. When law enforcement arrived, the home was unsecured and two of Appellant's co-defendants fled. Logically, based on his conduct, Appellant's actions after entering Rearick's home supported a reasonable inference Appellant possessed the intent to commit a crime (larceny) at the time of his unlawful entry.

On appeal, Appellant seeks to negate the natural and logical inferences to be drawn from his conduct by arguing the circumstances preceding the home invasion were inconsistent with him possessing criminal intent at the time he entered the home, arguing that he only went to the residence to recover his own belongings and to protect and secure the residence. However, the fact Appellant claims to have only entered the home with benevolent intent does not foreclose further examination of his conduct when attempting to determine what Appellant's intent was at the time he entered the home. Appellant broke into the secured residence in the middle of the night without permission or prior invitation. See McMillian v. State, 383 S.C. 480, 488, 680 S.E.2d 905, 909 (2009) ("A reasonable mind recognizes that people do not usually break into and enter the building of another under the shroud of darkness with innocent intent[.]") (citing Mirich v. State,

593 P.2d 590, 593 (Wyo. 1979)). He and his co-defendants then proceeded to gather and take items belonging to Rearick for transport and ransack the home, while leaving items that belonged to Appellant in place. These actions do not solely support an inference he intended to innocently secure the residence for a dear family friend. Instead, these actions are consistent with an inference that Appellant entered Rearick's house with the intent to commit larceny and that his claims of securing Rearick's home and gathering his own belongings were merely an attempt to justify his presence in the home after law enforcement arrived.¹

Without an entirely truthful statement of intent by Appellant, Appellant's intent at the time of his entry into Rearick's home could only properly be determined by looking to his actions and conduct after entry. See State v. Johnson, 84 S.C. 45, 47, 65 S.E. 1023, 1024 (1909) ("The intent with which an act is done denotes a state of mind, and it can be proved only from expressions, or conduct, or both, considered in light of the given circumstances."). After entering Rearick's residence by crawling through a closed window, Appellant and his co-defendants proceeded to ransack Rearick's home and shed looking for valuables, which were then either placed into their own pockets or amassed on the kitchen table for transport to the waiting truck, only to be thwarted by law enforcement arrival. These actions clearly support an inference Appellant possessed

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

criminal intent at the time he entered Rearick's home. Based on the fact intent typically can only be ascertained by examining an actor's conduct, the trial court properly submitted the case to the jury for it to decide whether or not Appellant possessed the requisite criminal intent based on his conduct. See Tuckness, 257 S.C. at 299, 185 S.E.2d at 608 ("The question of criminal intent with which an act is done is one of fact and is **ordinarily for jury determination except in extreme cases[.]**")(emphasis added). Thereafter, the jury was left to properly decide whether Appellant's comments to his co-defendants that he only wanted to secure and protect Rearick's residence and gather his own property demonstrated a lack of intent at the time of entry or were merely a pretext to conceal his original intent after his unauthorized presence was discovered by law enforcement. See McMillian, 383 S.C. at 487, 680 S.E.2d at 908 ("Certainly, a jury would have been free to disbelieve McMillian's version of events and find that he had the intent to commit a crime based on his conduct at the time of this offense."). Based on the evidence presented, the trial court properly denied Appellant's directed verdict motion. Appellant's conviction should be affirmed.

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 that the property Appellant entered was a dwelling.

Appellant similarly 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. Appellant 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 hours earlier. However, the trial court committed no error in denying Appellant's directed verdict motion and submitting the case to the jury because the homeowner's death mere hours earlier 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. Appellant's conviction should be affirmed.

As noted above, the trial court is concerned only with the existence or non-existence of evidence and not its weight when presented with a directed verdict motion. 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).

“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, Rearick left his residence the morning of the invasion with the intent to return; his personal effects remained and the trailer had functioning utilities and was habitable. His return was only thwarted by his untimely and unexpected death.

Furthermore, upon learning of her father's death, Jennifer Rearick Felkel and her family immediately came to the trailer, secured it, and intended to return to the residence shortly thereafter. Rearick's personal belongings remained at the trailer and utilities were operational. Based on these facts, the trial court properly denied Appellant's directed verdict motion and submitted the case to the jury.

Furthermore, Appellant'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 Appellant's motion for a directed verdict on this ground.

Accordingly, because Rearick's trailer retained its "dwelling" status despite his death hours earlier, the trial court properly denied Appellant's motion and submitted this case to the jury for its ultimate disposition. Appellant's conviction should be affirmed.

CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

January 7, 2015

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Maité Murphy, Circuit Court Judge

Appellate Case No. 2014-002736

THE STATE,

Respondent,

vs.

MARTIN D. FLOYD,

Appellant.

CERTIFICATE OF COUNSEL

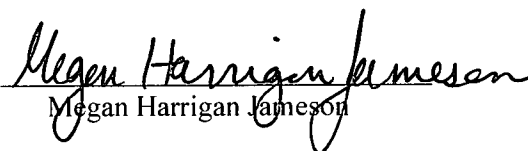
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

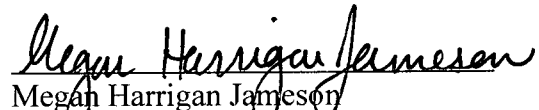
I, Megan Harrigan Jameson, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
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I further certify that all parties required by Rule to be served have been served.

This 7th day of January, 2015.


Megan Harrigan Jameson
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RE: State v. Martin D. Floyd – Appellate Case No. 2013-002736

Dear Mrs. Ganjehsani:

I am enclosing two (2) copies of the Final Brief of Respondent in the above-referenced case.

Sincerely,

Megan Harrigan Jameson
Assistant Attorney General
S.C. Bar No. 100108

MHJ/aam
Enclosures

cc: The Honorable Jenny A. Kitchings (original and nine (9) copies enclosed)
Victim Services

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