

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Donald B. Hocker, Circuit Court Judge

RECEIVED

Dec 18 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STERLING MAYBIN,

APPELLANT

APPELLATE CASE NO. 2019-001543

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred by denying appellant's motion for directed verdict as to second-degree burglary where video evidence at trial showed a detached, open-air carport, which did not meet the statutory definition of a "building" for purposes of the burglary statute?

STATEMENT OF THE CASE

Appellant was indicted by a Newberry County Grand Jury on two counts burglary, second degree and three counts petit larceny. R. 176. Appellant's case was called to trial on August 26, 2019, before the Honorable Donald B. Hocker, and a jury. Charles Verner represented appellant. Assistant solicitor Taylor Daniel and deputy solicitor Dale Scott represented the state. R. 1.

On August 28, 2019, the jury found appellant guilty as indicted. R. 167-68. Judge Hocker gave appellant an aggregate sentence of twenty years' imprisonment. R. 172.

This appeal follows.

STANDARD OF REVIEW

In reviewing the denial of a directed verdict motion, the evidence is viewed in the light most favorable to the state to determine if any direct or substantial circumstantial evidence exists that reasonably tends to prove the defendant's guilt or from which guilt may be fairly and logically deduced. *State v. Pinckney*, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). The Court is concerned with the existence or nonexistence of evidence, not its weight. *Id.*

ARGUMENT

The trial court erred by denying appellant's motion for directed verdict as to second-degree burglary because a detached, open air carport does not meet the statutory definition of a "building" for purposes of the burglary statute.

Introduction

On April 23-24, 2019, appellant was recorded on both complainant Mathis' and complainant Hazel's home surveillance systems going into their respective detached, open-air carports and taking various items including: a weed eater, chainsaws, and other miscellaneous tools. R. 23-24.

Subsequently, appellant was arrested and charged with two counts burglary second degree, violent and three counts of petty larceny.

Relevant Facts

At trial, the state presented three video surveillance recordings, state's exhibits 1-3, which clearly show the carports. R. 40; 65; 69. In state's exhibits 1 and 2, there were clips that showed complainant Hazel's property, including the detached, open-air carport. The carport was made up of a metal roof and four poles on a concrete slab. The carport in the video was open on all sides. State's exhibit 3 depicted complainant Mathis' property, including a similar detached, open-air carport. Likewise, Mathis' carport did not have walls but had a metal roof and four poles on a concrete slab. Surrounding Mathis' property there was a short fence with a gate in front of the carport. State's exhibits 1-3 are on file with this Court for viewing.

After the state's case, defense counsel made a motion for directed verdict arguing the state had not presented any evidence of burglary, second degree because the carports were not "buildings" for purposes of the burglary statute. First, defense counsel argued the carports in this

case were not “buildings” under the common meaning of the word because they were not enclosed and did not have doors. Second, defense counsel asserted, even if the court accepted these buildings should be included in the statutory definition of a “building” under S.C. Code Ann. §16-11-310, the carports still did not qualify as a “building” because there was no testimony at trial that “goods” were stored there. The tools stored in the carports were personal items, and defense counsel averred that “goods” have a statutorily defined meaning which is “items that are held for sale.” R. 121-25.

Ultimately, the court denied defense counsel’s motion for directed verdict and found that the two carports did qualify as a “building” under the statute, and the court disagreed with defense counsel that “goods” are confined to items held for sale. The court stated Black’s Law definition of goods was “tangible and moveable [] personal property.” R. 128, ll. 5-21.

During its deliberations the jury sent a note to the court asking for the definition of a “building.” Court’s exhibit #2; R. 166, ll. 4-6. The court directed the jury to page twelve of the jury charge which read, “[a] building is any structure where goods are stored.” R. 163, ll. 12-13; 166, l. 6.

Discussion

The trial court erred in denying appellant’s motion for a directed verdict as to both second degree burglary charges. Complainants’ detached, open-air carports do not meet the statutory definition of building for two reasons, (1) the carports did not have walls, a door, or anything securing the area or the contents, (2) the personal property stored under the carport was not “goods” for purposes of the burglary statute.

In South Carolina,

a person is guilty of burglary in the second degree if the person enters a building without consent and with intent to commit a crime therein, and the burglary is

committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both.

S.C. Code Ann. § 16-11-312(B)(2) (2003).

For purposes of sections 16-11-311 through 16-11-313:

Building means any structure, vehicle, watercraft, or aircraft: (a) where any person lodges or lives; or (b) where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is deemed both a separate building in itself and a part of the main building.

S.C. Code Ann. § 16-11-310 (2015).

It is clear from its note the jury was confused regarding whether the carports were “buildings” for purposes of the burglary statute and many people would not consider a detached carport a building. The carports were not enclosed and therefore should not be defined as a building for purposes of the burglary statute. The statute does not directly say buildings must be enclosed, however, the examples listed in the definition of building allude to the common understanding of building as an enclosed structure, “where people assemble for purposes of business, government, education, religion.” Additionally, in *State v. Middleton*, the Court seemed to rely on the fact that the crawl space was enclosed in determining that the area did meet the statutory definition of a “building” for purposes of the burglary statute. 367 S.C. 527, 530-31, 626 S.E.2d 74, 76 (2006).

The term “goods” is not defined for purposes of the burglary statute. Criminal statutes must be strictly construed against the State and in favor of the defendant. See *State v. Cutler*, 274 S.C. 376, 264 S.E.2d 420 (1980); *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991); *State v. Myers*, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993). However, words in a statute must be given their plain and ordinary meaning. *Myers*, at 393, 438 S.E.2d at 237. Our courts take a

commonsense approach in defining the terms associated with the burglary statutes. *Id.* Many South Carolina cases use the phrase “goods and chattels” when referring to items taken in a burglary. *See State v. Langford*, 55 S.C. 322, 33 S.E. 370 (1899); *State v. Mitchell*, 98 S.C. 474, 82 S.E. 676 (1914); *State v. Miller*, 225 S.C. 21, 80 S.E.2d 356 (1954); *State v. Haney*, 257 S.C. 89, 184 S.E.2d 344 (1971). The term “goods” was generally understood to mean “merchandise” or items for sale, and chattel was understood to mean personal property. Thus, “goods” and “personal property” are not synonymous. Moreover, had the legislature intended goods to mean anything other than merchandise it would have said “where property is kept.”

In this case, appellant was justifiably indicted on multiple counts of petit larceny. The state unnecessarily chose to indict appellant for two counts of burglary second. The carports in this case were detached from the complainants’ homes and without walls or doors, and the tools stored there were only covered by a roof. These carports were not buildings as defined in the burglary statute.

CONCLUSION

Based on the foregoing, an order of acquittal should be issued on the burglary in the second-degree indictments.



Sarah E. Shipe
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

December 18, 2020.



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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon Ambree Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 18th day of December, 2020.



Sarah E. Shipe

Appellate Defender

ATTORNEY FOR APPELLANT