STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court Of General Sessions

The Honorable Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2019-001543

THE STATE, Respondent,

v.

STERLING MAYBIN, Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial judge correctly denied Appellant's directed verdict motion because an open air carport is sufficient for defining a building for purposes of the burglary second degree violent statute.

STATEMENT OF THE CASE

Appellant was indicted by a Newberry County Grand Jury for two counts of burglary and three counts of petit larceny. Appellant proceeded to a jury trial on August 26, 2019, in the Newberry County Court of General Sessions before the Honorable Donald B. Hocker. The State was represented by Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel. Charles Verner represented the Appellant. The jury found Appellant guilty and he was sentenced to an aggregate sentence of twenty years` imprisonment. This appeal follows.

STATEMENT OF FACTS

Larry Hazel, a member of the Newberry community, installed surveillance cameras around his property after noticing that items from the shop in his yard had disappeared. (R. 59). On April 24, 2019, Hazel decided to review his camera footage (R. 60). He called the police after seeing an individual in the video walking from the shop with his chainsaw. (R. 60).

Officer Janson Bell arrived on scene, watched the surveillance footage and took a report. (R. 67). The individual in the video was a black male wearing a red colored skull cap, a burgundy hoodie, white t-shirt, and dark navy pants with cargo pockets. (R. 83-84). Bell took still shots from the footage and sent them to his superior officers who later identified the individual as the defendant Sterling Maybin. (R. 84).

Later that same day, after Bell left the scene, Hazel went through more of his surveillance footage and noticed an individual taking property from his shop on April 23, 2019. (R. 68). Bell returned to watch that footage. (R. 87). He testified at trial that the same individual was in both videos. (R. 89).

Bessie Mathis, who also lived in Newberry, installed a camera after realizing she was missing weed eaters and some other tools from her property. (R. 37). On April 24, 2019, Mathis reviewed the footage on her camera and saw a man, later identified as defendant, taking a weed eater out of her shed. (R. 41-42). She reported the incident to the police and Justin Weaver, an officer with the Newberry Police Department, arrived on scene. (R. 55). He reviewed the videos and passed them on to the investigators in his department in an attempt to identify the individual. (R. 57).

Kevin Goodman, Captain of the Newberry Police Department, reviewed the surveillance videos taken from Mathis and Hazel. (R. 111). He identified the individual in the footage as Appellant Sterling Maybin. (R. 111). After Appellant was identified, Officer Bell encountered

him on a bicycle. (R. 90). Appellant was wearing the same attire he had on in the videos collected from Mathis and Hazel. (R. 93-94). Appellant was ultimately arrested and charged with two counts of burglary second degree [1] and three counts of petit larceny.

Subsequently, a Newberry County Grand Jury indicted Appellant for two counts burglary, second degree violent and three counts petit larceny. (R.7-9). During the trial, after the State rested its case, defense counsel moved for a directed verdict on the two counts of burglary second violent. (R. 121). Defense counsel argued that the burglarized buildings were not buildings but carports. (R. 121-22). Specifically, defense counsel stated, "I characterize them as carports, they are pole buildings. One more than the other, but they both, essentially, have four poles and a roof type situation with no doors, they are outdoor. I submit they don't qualify as a building." (R. 121-122). The trial court denied defense counsel's motion for a directed verdict stating that the carports do qualify as a building for the purpose of the burglary statute. (R. 128). This appeal follows.

[1] Appellant's two burglary charges were enhanced to burglary second degree due to his prior burglary convictions in 1992 and 2015. (R. 116-117)

STANDARD OF REVIEW

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. State v. Gracely, 399 S.C. 363, 371-372, 731 S.E.2d 880, 884 (2012). "In reviewing a refusal to grant a directed verdict, we must view the evidence in the light most favorable to the State and determine whether there is any direct or substantial circumstantial evidence that reasonably tends to prove the defendant's guilt or from which his guilt may be logically deduced." State v. Pinckney, 339 S.C. 346, 348, 529 S.E.2d 526, 527 (2000). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Id. The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008).

ARGUMENT

The trial judge correctly denied Appellant's directed verdict motion because an open air carport is sufficient for defining a building for purposes of the burglary second degree violent statute.

Appellant argues that the trial court erred when it denied Appellant's motion for a directed verdict. Specifically, Appellant argues that the directed verdict should have been granted as to a second-degree burglary violent because a detached, open air carport does not meet the statutory definition of a "building" for purposes of the burglary statute. However, the trial judge correctly denied Appellant's directed verdict motion because a carport is sufficient for defining building for the purposes of the burglary second degree violent statute.

"On appeal from the denial of a directed verdict, this court views the evidence and all reasonable inferences in the light most favorable to the State." State v. Bennett, 415 S.C. 232, 235, 781 S.E.2d 352, 353 (2016). (citing State v. Butler, 407 S.C. 376, 381, 755 S.E.2d 457, 460 (2014)). On a motion for a directed verdict in a criminal case, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004). See also Rule 19(a) SCRCrimP. If the State presents any evidence which reasonably tends to prove the defendant's guilt, or from which the defendant's guilt could be fairly and logically deduced, the case must go to a jury. Id.

The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016).

Section 16-11-312 provides:

> (B)(2) 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:
>
> (1) "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) (emphasis added).

The term "goods" is not defined in the burglary statute, however Appellant attempts to argue that goods were understood to mean merchandise, and chattel was understood to mean personal property. (Intitial Brief of Appellant, p. 7) Black's Law Dictionary defines goods as "[a] term of variable content. It may include every species of personal property or it may be given a very restricted meaning. In contracts, the term 'goods' is not so wide as 'chattels' for it applies to inanimate objects and does not include animals or chattels real, as a lease for years of house or land, which 'chattels' does include." Black's Law Dictionary 823 (6th ed. 1990).

In State v. Middleton, in determining whether a crawl space constituted a building, this court used Black's Law Dictionary to define what a building was. See State v. Middleton, 367 S.C. 527, 530, 626 S.E.2d 74, 76 (Ct. App. 2006). "A 'building is a '[s]tructure designed for habitation, shelter, storage... and the like.'" Id. (citing Black's Law Dictionary 194 (6th ed. 1990). Although the case involved arson, the South Carolina Supreme Court in State v. Myers also cited to the Black's Law Dictionary definition of building in ruling that by including Black's Law definition

of "building," the definition of "dwelling house" is broad enough to include a boat in which a person lodges. State v. Myers, 313 S.C. 391, 393, 438 S.E.2d 236, 237 (1993).

Appellant argues that the burglarized buildings he identifies as carports do not constitute buildings for the purpose of the burglary statute because they were not "enclosed." (Initial Brief of Appellant p. 6). Appellant admits that the statute does not directly say that a building must be enclosed. (Id.) The State presented ample evidence that the burglarized buildings were structures that Mathis and Hazel used for storage. Mathis used the building as a garage and a shed where she stored her truck, lawnmowers, gardening tools and other yard equipment. (R. 35). Hazel testified that he stored tools, landscaping equipment and other yard equipment in his storage building that was burglarized. (R. 63-64). In viewing the evidence presented in the light most favorable to the nonmoving party, which in this case is the State, the judge did not err in denying the motion for directed verdict when he found sufficient evidence to present the case to a jury.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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December 21, 2020

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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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