

RENDERED: DECEMBER 11, 2009; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2008-CA-002014-MR

JUDITH K. CLUBB

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE TOM MCDONALD, JUDGE  
ACTION NO. 07-CR-00096

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE AND STUMBO, JUDGES.

DIXON, JUDGE: Appellant, Judith Clubb, was convicted in the Shelby Circuit Court of two counts of third-degree complicity to burglary, possession of burglary tools, and possession of marijuana. She was sentenced to two years, probated for a period of five years, and was fined \$250. She appeals to this Court as a matter of right. Finding no error, we affirm.

On the evening of March 14, 2007, Gilbert Kirby, who was attending a church service in Shelby County, observed two individuals cut the fence at the neighboring Ferrell Gas property, enter onto the property, and begin loading items into a pickup truck. Police, responding to Kirby's 911 call, found Appellant and another individual, Wallace Shouse, loading a lawnmower into Shouse's truck. Police also found bolts of copper wire and other items belonging to Ferrell Gas. Upon further investigation, police discovered that some of the items in Shouse's truck had been stolen from another nearby business, Kentucky Utilities.

Appellant and Shouse were both arrested at the scene. Shouse subsequently pled guilty to two counts of third-degree burglary, possession of burglary tools, operating a vehicle on a suspended license, and failure to surrender a suspended license. Appellant proceeded to trial and was convicted on all charges. This appeal ensued. Additional facts are set forth as necessary.

On appeal, Appellant argues that she was entitled to a directed verdict on both counts of complicity to burglary because the Commonwealth failed to prove that the warehouse on the Kentucky Utilities property from which the items were stolen was a "building" within the coverage of Kentucky's burglary statutes. Appellant further contends that the Commonwealth failed to prove that she did not have permission to enter the premises. We find both of these contentions wholly without merit.

When a trial court considers a motion for a directed verdict of acquittal, it must draw all fair and reasonable inferences from the evidence in favor

of the Commonwealth. *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). “If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given.” *Id.* In reviewing the trial court's decision, an appellate court should not disturb the trial court's denial of a motion for a directed verdict of acquittal, unless it would be clearly unreasonable for a jury to find guilt. *Id.*; *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky. 1983).

KRS 511.010(1) defines “building” for the purposes of the burglary statutes as follows:

Building, in addition to its ordinary meaning, means any structure, vehicle, watercraft or aircraft:

- (a) Where any person lives; or
- (b) Where people assemble for purposes of business, government, education, religion, entertainment or public transportation.

Appellant claims that Kentucky Utilities’ warehouse does not fall within any of the above-language. We disagree.

Webster's Dictionary defines a “building” as:

[A] constructed edifice designed to stand more or less permanently, covering a space of land, usually covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals or other useful structure-distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy.

*Webster's Third New International Dictionary of the English Language*

*Unabridged* 292 (Merriam-Webster 1993). In *Soto v. Commonwealth*, 139 S.W.3d 827, 870 (Ky. 2004), *cert. denied*, 534 U.S. 931 (2005), our Supreme Court relied upon the above definition in holding that a tool shed fell within the ordinary meaning of “building” for the purposes of the burglary statutes.

Similarly, in *Spears v. Commonwealth*, 78 S.W.3d 755 (Ky. App. 2002), a panel of this Court addressed whether a trailer, located behind a business and used as a storage facility, satisfied the statutory definition of “building” set forth in KRS 511.010. The panel concluded that not only did it fall within the ordinary meaning of a building, but also within the statutory definition of such:

Since the trailer and the shed were being used by the Handi-Mart for storage of its merchandise or supplies, it is clear to this Court that employees, customers and suppliers of the Handi-Mart would come together in the trailer and shed “for purposes of business.” We believe common sense dictates that a trailer or shed that is being used by a business as a storage facility in lieu of a storage building meets the definition of building under the statute.

*Id.* at 760.

Herein, evidence at trial established that Kentucky Utilities used the warehouse in question for storing its large trucks overnight as well as other supplies and equipment that were used on a daily basis. We believe that, given the daily activity in the warehouse, it is not only a building in the ordinary sense of the word, but it also falls squarely within the definition set forth in KRS 511.011.

Furthermore, we clearly find no merit in Appellant's contention that Kentucky Utilities' warehouse is analogous to a vending machine or silo, which the Official Legislative Commentary specifically excludes from the definition of a building. KRS 511.020 (Commentary to first-degree burglary, explicitly adopted by KRS 511.040 for third-degree burglary). While similar to a storage building in that they house objects of value to their owners, no one can reasonably expect people to occupy a vending machine or silo. There is simply no comparison in the structures.

Finally, Appellant claims that the Commonwealth failed to prove that she did not have permission to enter the Kentucky Utilities and Ferrell Gas properties. Appellant argues that since the Commonwealth did not prove that she was on the properties unlawfully, she cannot be convicted under the burglary statute. Again, we disagree.

The Commonwealth presented evidence that the padlock securing the fence around the Kentucky Utilities property had been cut with a bolt cutter and that a hole had been cut into the side of its warehouse. In addition, Kirby stated that he witnessed Appellant and Shouse either bend or cut the fence at the Ferrell Gas property to enter onto the premises. We are of the opinion that the evidence was more than sufficient to demonstrate that Appellant did not have permission to enter either property. Further, in light of the fact that Appellant and Shouse were caught illegally loading property into the truck, it was certainly reasonable for the

jury to conclude that Appellant was complicit in the third-degree burglary. The trial court did not err in denying her motion for a directed verdict.

The judgment and sentence of the Shelby Circuit Court are affirmed.

ALL CONCUR.

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