

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KAREEM BARKSDALE,)
) No. 140, 2003
 Defendant Below,)
 Appellant,) Court Below: Superior Court
 v.) of the State of Delaware in
) and for New Castle County
)
 STATE OF DELAWARE,) Cr. ID No. 0206004613
)
 Plaintiff Below,)
 Appellee.)

Submitted: July 29, 2003
Decided: September 24, 2003

Before **BERGER, STEELE**, and **JACOBS**, Justices.

ORDER

This 24th day of September 2003, upon consideration of the briefs of the parties, it appears to the Court as follows:

1. On the afternoon of June 6, 2002, the defendant-appellant Kareem Barksdale broke into the home of Laverne Barnes. Barksdale cut both arms during his entry through the bathroom window and left a trail of blood from the bathroom into a bedroom, where blood was found on and underneath a mattress. Nothing else in the bedroom was disturbed and nothing was stolen from the house. Barksdale admitted to entering the home but raised an affirmative claim-of-right

defense.¹ Barksdale claimed that he broke into the home to retrieve either \$65 or marijuana that Laverne Barnes' son, Brian, allegedly owed to him.

2. A jury found Barksdale guilty of second degree burglary, attempted theft, and criminal mischief. During deliberations the jury sent four questions to the trial judge, each dealing with the claim-of-right defense. The fourth question read as follows: "Can defendant be found not guilty of burglary if guilty of attempted theft?" Over the defendant's objection, the judge answered "No." On appeal, Barksdale contends that the trial judge impermissibly commented on the evidence contrary to Article IV, Section 19 of the Delaware Constitution and that the comment directly influenced a verdict against the defendant.

3. We hold that the trial judge answered the question correctly as a matter of law. 11 *Del. Code* § 825 defines second degree burglary:

A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully: (1) in a dwelling with the intent to commit a crime therein.

Barksdale satisfied the "unlawful" requirement of the burglary statute by concededly breaking into the home via the bathroom window. The only remaining factual issue for the jury was Barksdale's claim-of-right defense. Accordingly, if the jury rejected his claim-of-right defense and found the requisite intent to commit

¹ 11 *Del. Code* § 847 (a): "in any prosecution for theft or extortion it is an affirmative defense that the property was appropriated by the actor under a claim of right, made in good faith, to do substantially what the actor did in the manner in which it was done."

theft, then under Section 825 he would also be guilty of burglary. Conversely, if the jury accepted Barksdale's claim-of-right defense, then there would be no intent to commit theft and Barksdale could only be guilty of trespass. Thus, the trial judge correctly answered the jury's question because Barksdale could not be found *guilty* of theft but *not guilty* of burglary.

4. Further, the trial judge's answer did not violate Article IV, Section 19 of the Delaware Constitution.² In *Herring v. State*, this court held that Article IV, Section 19 prohibits a trial judge from "commenting on the weight of the evidence or the credibility of the witnesses" but permits a trial judge to "instruct the jury on the law."³

5. The trial judge neither erred as a matter of law by answering the jury's question nor did *Herring* prohibit that response. While the better practice, given these facts, may have been simply to recharge the jury on the burglary and theft charges without further comment, the trial judge here did not err, nor did he unfairly prejudice Barksdale by proceeding in that manner.

²Article IV, Section 19 states that "judges may not charge juries with respect to matters of fact, but may state the questions of fact in the issue and declare the law."

³ 805 A.2d 872, 876 (Del. 2002).

NOW, THEREFORE IT IS ORDERED that the judgment of the Superior Court
be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Justice