

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-2902

MICAH JON LUSTER,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Francis Allman, Judge.

December 7, 2022

LONG, J.

Mr. Luster appeals his conviction for attempted burglary of a dwelling. He makes three arguments. We address one here and reject the others without further comment. Mr. Luster argues the trial court erred in answering a jury question asking whether all dwellings are structures.

Burglary is defined as “[e]ntering a dwelling, a structure, or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is

licensed or invited to enter.” § 810.02(1)(b)1., Fla. Stat.* The penalty differs for burglaries of dwellings, structures, and conveyances. Burglary of a dwelling carries the most severe penalty.

Section 810.011(1) defines structure as “a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.” Section 810.011(2) defines dwelling as “a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof.” The statutory definition of dwelling encompasses the statutory definition of structure. If it is a dwelling, it is also a structure.

The jury was instructed on these definitions but submitted a question to the trial court asking if all dwellings were structures. The trial court answered yes. This was correct as a matter of law. *Jackson v. State*, 273 So. 3d 1103, 1106 (Fla. 1st DCA 2019) (“If a jury poses a question during its deliberations, the trial court has the discretion to directly answer the question or reread or refer to prior instructions on the subject matter.”). Because there was no error, we affirm.

AFFIRMED.

ROWE, C.J., and B.L. THOMAS, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

* There is also another version of burglary for unlawfully remaining in a dwelling, structure, or conveyance. § 810.02(1)(b)2., Fla. Stat.

Jessica J. Yeary, Public Defender, and Jessica Keeler, Assistant Public Defender, and Megan Lynne Long, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.