

COURT OF APPEALS OF VIRGINIA

Present: Chief Judge Felton, Judges Elder, Frank, Humphreys, Kelsey, McClanahan, Haley, Petty,  
Beales and Senior Judge Clements\*  
Argued at Richmond, Virginia

SHAKIL EDWARDS

v. Record No. 0894-07-2

COMMONWEALTH OF VIRGINIA

OPINION BY  
JUDGE ROBERT J. HUMPHREYS  
FEBRUARY 17, 2009

UPON REHEARING EN BANC

FROM THE CIRCUIT COURT OF CHESTERFIELD COUNTY  
Frederick G. Rockwell, III, Judge

Horace F. Hunter for appellant.

Kathleen B. Martin, Senior Assistant Attorney General (Robert F.  
McDonnell, Attorney General, on brief), for appellee.

This matter comes before the Court on a rehearing *en banc* following a divided panel opinion of this Court. Shakil Edwards (Edwards) appeals her conviction for possession of a tool, implement or outfit with the intent to commit larceny, in violation of Code § 18.2-94. Edwards contends that the evidence was insufficient as a matter of law to prove that the purse she carried at the time she committed the larceny was a tool, implement or outfit within the meaning of Code § 18.2-94. For the following reasons, we agree and reverse her conviction.

I. BACKGROUND

“Under well-settled principles of appellate review, we consider the evidence presented at trial in the light most favorable to the Commonwealth, the prevailing party in the circuit court.”

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\* Judge Clements participated in the hearing and decision of this case prior to the effective date of her retirement on December 31, 2008, and thereafter by her designation as a senior judge pursuant to Code § 17.1-401.

Porter v. Commonwealth, 276 Va. 203, 215-16, 661 S.E.2d 415, 419 (2008). However, the facts of this case are not in dispute.

On June 23, 2006, Edwards entered a department store in Chesterfield County with three other women. Each woman carried a purse that “appeared to be concave” and not “full like a typical woman’s purse looks.” A department store security guard observed the women taking clothing from the children’s and juniors’ sections of the store and carrying it into the fitting room area. When the women exited the fitting rooms, their purses appeared “larger in size.” After the women left, the security guard entered the fitting rooms, found empty hangers on the floor, and discovered that merchandise was missing from the children’s and juniors’ sections.

The security guard stopped Edwards and the other women after they left the store. The security guard found four items of children’s clothing inside Edwards’ purse. The three other women also had stolen merchandise in their purses. Other than the stolen merchandise, three of the women’s purses, including Edwards’ purse, were completely empty. The fourth woman had a pair of slippers in her purse. Edwards admitted that they entered the store to steal merchandise and that she had stolen the clothing found in her purse. She was arrested and subsequently charged with grand larceny and possession of a tool, implement or outfit with the intent to commit larceny.

At the conclusion of the Commonwealth’s case-in-chief, Edwards moved to strike the Commonwealth’s evidence, arguing that her purse was not a tool, implement or outfit. The trial court denied the motion. Edwards testified in her own defense and admitted to stealing the clothing. Edwards also explained why she carried an empty purse into the store. The trial court asked Edwards, “Why were you carrying an empty purse around?” Edwards answered, “Oh, ‘cause I wanted to go to the store and steal.” “And steal?” responded the judge. Edwards replied, “Yes.”

At the close of her case, Edwards again moved to strike the Commonwealth's evidence on the grounds that her purse was not a "tool, implement or outfit" as contemplated by Code § 18.2-94. The court denied her motion, finding that the purse "was used to steal, and . . . it fits within the definition of burglary tools." The trial court subsequently convicted Edwards of petit larceny<sup>1</sup> and possession of burglarious tools. Edwards appealed her conviction for possession of burglarious tools to this Court.

On May 27, 2008, a divided three-judge panel of this Court reversed Edwards' conviction. The majority held that Edwards' purse is not a tool, implement or outfit within the meaning of Code § 18.2-94. The dissent reasoned then, as it does today, that Edwards, by emptying the purse of all its contents, "clearly used the purse for a purpose other than its ordinary, lawful one, thereby causing it to become something other than an ordinary purse." Edwards v. Commonwealth, 52 Va. App. 70, 79, 661 S.E.2d 488, 493 (2008) (Beales, J., dissenting). The dissent concluded that Edwards' purse was an "outfit" within the meaning of the statute.

The Commonwealth petitioned the full Court for rehearing *en banc*. On July 1, 2008, we granted the Commonwealth's petition and stayed the mandate of the panel opinion.

## II. ANALYSIS

On appeal, Edwards reiterates her argument that her purse is not a tool, implement or outfit. She claims that this is so because her purse "can in no way be considered innately burglarious in character." The Commonwealth argues that tools, implements and outfits need not be "innately burglarious" to fall within the scope of Code § 18.2-94 and that Edwards' purse is an "outfit," within the meaning of the statute. We agree with the Commonwealth that Code

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<sup>1</sup> At trial, the Commonwealth failed to prove that the clothing Edwards stole was worth over \$200. Thus, the court only convicted her of petit larceny rather than grand larceny. See Code § 18.2-95.

§ 18.2-94 does not apply only to burglarious tools, implements and outfits. However, we disagree with the Commonwealth's characterization of the purse as an "outfit." Thus, for the following reasons, we hold that Edwards' possession of the purse is not punishable under Code § 18.2-94.

First, contrary to Edwards' argument, Code § 18.2-94 does not apply only to "innately burglarious" items. Code § 18.2-94 states:

If any person have in his possession any tools, implements or outfit, with intent to commit burglary, robbery or larceny, upon conviction thereof he shall be guilty of a Class 5 felony. The possession of such burglarious tools, implements or outfit by any person other than a licensed dealer, shall be prima facie evidence of an intent to commit burglary, robbery or larceny.

Under a cursory reading of the statute, there appears to be a disconnect between the first and second sentences. The first sentence criminalizes the possession of "*any* tools, implements or outfit[s]" with the intent to commit one of the listed crimes. *Id.* (emphasis added). However, the second sentence, apparently referring to the first sentence, states "*such burglarious* tools, implements or outfit[s] . . ." *Id.* (emphasis added). One might read the word "such burglarious tools . . ." in the second sentence as modifying the first or at least indicating that the General Assembly only intended to punish the possession of *burglarious* tools, implements and outfits.

However, in Burnette v. Commonwealth, 194 Va. 785, 75 S.E.2d 482 (1953), the Supreme Court explained that the use of the word "such" was simply surplusage. The Court noted that the original version of Code § 18.2-94, enacted in 1887, stated:

"If any person ha[v]e in his possession any tools, implements, or other outfit *known as burglars' tools, implements, or outfit*, with intent to commit burglary, robbery, or larceny, he shall be deemed guilty of a felony, and on conviction thereof, shall be punished by confinement in the penitentiary not less than five nor more than ten years. The possession of such burglarious tools, implements, or outfit, shall be prima facie evidence of an intent to commit burglary, robbery, or larceny."

Id. at 787-88, 75 S.E.2d at 484 (quoting Code of 1919, sec 4437) (emphasis added). In 1919, the General Assembly amended the statute, removing the phrase “known as burglars’ tools, implements, or outfit” from the first sentence.<sup>2</sup> The Supreme Court explained the effect of that amendment on the rest of the statute, particularly the word “such”: “The word ‘such,’ as originally used was descriptive and relative, and its antecedent was ‘known as burglars’ tools, implements, or outfit.’ Elimination of this antecedent *left the word meaningless*; and the Revisors’ failure to eliminate it also was obviously inadvertent.” Id. at 788, 75 S.E.2d at 484 (emphasis added).

If, as Edwards argues, the word “burglarious” still modifies the words “tools, implements or outfit” in the first sentence, “such” would then clearly not be meaningless. Essentially, Edwards contends that the statute should be read as follows:

If any person have in his possession any [burglarious] tools, implements or outfit, with intent to commit burglary, robbery or larceny, upon conviction thereof he shall be guilty of a Class 5 felony. The possession of such burglarious tools, implements or

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<sup>2</sup> As codified in 1919, the statute in its entirety read as follows:

If any person break and enter the dwelling-house of another in the night time with the intent to commit a felony or larceny therein, he shall be deemed guilty of burglary, though the thing stolen or intended to be stolen, be of less value than fifty dollars. If any person be guilty of burglary, he shall be punished with death, or in the discretion of the jury, by confinement in the penitentiary for not less than five nor more than eighteen years. If any person have in their possession any tools, implements or outfit, with the intent to commit burglary, robbery, or larceny, he shall be deemed guilty of a felony, and be punished by confinement in the penitentiary not less than five nor more than eighteen years. The possession of such burglarious tools, implements, or outfit by other than a licensed dealer shall be prima facie evidence of an intent to commit burglary, robbery or larceny.

Code of 1919, Sec. 4437. The Revisors’ note referred to in Burnette immediately follows the above paragraph and reads in full as follows: “The phraseology of this section has been changed so as to include common law burglary under the statute, and there is a transposition of sentences at the beginning of the section, but no material change has been intended.” Id.

outfit by any person other than a licensed dealer, shall be prima facie evidence of an intent to commit burglary, robbery or larceny.

Clearly, inserting “burglarious” into the first sentence gives meaning to “such” in the second sentence. Contrary to the holding in Burnette, Edwards’ interpretation makes “such” “descriptive and relative” as it would clearly refer to the burglarious tools, implements and outfits mentioned in the first sentence. “Such” is only meaningless if the tools, implements and outfit in the first sentence are something broader, or at least different, from the burglarious tools, implements and outfit in the second sentence.

Reading the first sentence as applying to all tools, implements or outfits and the second sentence as applying only to burglarious tools, implements and outfits relieves any tension between the two sentences. Burnette implied as much when it explained the basis for distinguishing between ordinary tools and burglarious tools. The Court stated:

[T]ools or implements may be, and usually are, designed and manufactured for lawful purposes. But it is unusual for a person, on a lawful mission, to have in his possession a combination of tools and implements suitable and appropriate to accomplish the destruction of any ordinary hindrance of access to any building, or to a vault or safe. All the statute does is to create a presumption of a criminal intent from proof of possession of *burglarious* tools or implements.

Id. at 790, 75 S.E.2d at 486 (emphasis added). Viewing burglarious tools as a subset of the larger categories of tools in the first sentence, the presumption of criminal intent in the second sentence makes sense. Code § 18.2-94 criminalizes the possession of *any* tool, implement or outfit with the requisite intent. The second sentence merely recognizes that the burglarious nature of certain tools makes it so unusual for a person to lawfully possess them, that mere possession of the tools is indicative of a criminal intent.

Construing the statute in this way is consistent with prior precedent. In Moss v. Commonwealth, 29 Va. App. 1, 5, 509 S.E.2d 510, 512 (1999), we explained “Code § 18.2-94

requires proof that the offending tools, implements or outfit were intrinsically ‘burglari­ous’ only when the Commonwealth relies upon the statutory presumption to establish the requisite criminal intent.” We held that the Commonwealth may convict someone of possessing non-burglari­ous tools with the requisite criminal intent. However, it must do so “without benefit of the statutory presumption.” Id. at 3, 509 S.E.2d at 511. Thus, we reject Edwards’ argument that the evidence was insufficient merely because her purse was not burglari­ous. However, that conclusion does not end our analysis.

In order to convict Edwards under Code § 18.2-94, the Commonwealth was required to prove that Edwards’ purse was either a tool, implement or outfit. “The terms ‘tools,’ ‘implements,’ and ‘outfit’ are not defined statutorily.” Williams v. Commonwealth, 50 Va. App. 337, 342, 649 S.E.2d 717, 719 (2007). However, we have defined each of these terms in previous cases.

In Williams, we recognized that “[c]learly, the terms ‘tool,’ ‘implement’ and ‘outfit’ have somewhat different but overlapping meanings.” Id. at 343, 649 S.E.2d at 720. Consistent with that principle, we explained that a “tool” is “an instrument (as a hammer or saw) used or worked by hand,” or “an implement or object used in performing an operation or carrying on work of any kind.” Id. We went on to define “implements” as “items associated with devices, instruments, equipment or machinery as they relate to an occupation or profession.” Id. at 345, 649 S.E.2d at 721. In doing so, we explained that giving a broader interpretation to “tools” and “implements”

would lead to “absurd results.” See Washington [v. Commonwealth], 272 Va. 449, 455, 634 S.E.2d 310, 313 (2006)]. For example, one obvious result . . . would be that every concealment of merchandise in violation of Code § 18.2-103, regardless of the item’s value, would also constitute a Class 5 felony under Code § 18.2-94 because any and every item used to accomplish the element of concealment from public view, such as a purse, coat or a pocket, would also constitute a “larcenous

implement.” Had the General Assembly intended such a result, they would have punished the crime of concealment accordingly.

Id. at 342, 649 S.E.2d at 719.

Clearly, an ordinary purse is neither a “tool” nor an “implement” as we defined those terms in Williams. However, it remains for us to determine whether a purse constitutes an “outfit” as contemplated by Code § 18.2-94. In doing so, we conclude that our holding that a broad definition of tools, implements and outfits would lead to absurd results is inconsistent with our earlier definition of “outfit.” In Mercer v. Commonwealth, 29 Va. App. 380, 384, 512 S.E.2d 173, 175 (1999), we referred to “commonly accepted definitions” to define “outfit.” Those definitions are “(1) the act or process of fitting out or equipping, (2) materials, tools, or implements comprising the equipment necessary for carrying out a particular project, and (3) wearing apparel designed to be worn on a special occasion or in a particular situation.” Id. Of those definitions, we focused on the third one in particular.

Under Mercer’s definition of outfit, the possession of any “wearing apparel” that a thief chose to wear for the “particular” purpose of committing burglary, robbery or larceny would be punishable under Code § 18.2-94. That broad definition of outfit would lead precisely to the “absurd results” we warned of in Williams -- the conclusion that any and every item of apparel used to accomplish the element of concealment from public view, such as a coat or a pocket, would also constitute a “larcenous outfit.” As we explained in Williams, the General Assembly could not have intended that result.

The broad definition used in Mercer is also inconsistent with the traditional rule of statutory construction known as *noscitur a sociis*. *Noscitur a sociis* is the principle that “a word is known by the company it keeps.” S. D. Warren Co. v. Maine Bd. of Env’tl. Prot., 547 U.S. 370, 378 (2006). It “provides that the meaning of a word takes color and expression from the purport of the entire phrase of which it is a part, and it must be read in harmony with its context.”



Turner v. Commonwealth, 226 Va. 456, 460, 309 S.E.2d 337, 339 (1983). To define “outfit” as wearing apparel would be to distinguish it from “the company it keeps.” S. D. Warren Co., 547 U.S. at 378. Rather than defining “outfit” broadly as “wearing apparel,”<sup>3</sup> we conclude today that the other definitions referenced in Mercer are more consistent with our previous definitions of “tools” and “implements.” Indeed, as is implicit in the first definition noted in Mercer, the etymology of the term “outfit” is from the phrase “fit out” or equip, such as to outfit a ship for a voyage. See The Century Dictionary, An Encyclopedic Lexicon of the English Language 4183 (1914). In light of the definitions of the words “tools” and “implements” immediately preceding “outfit” – terms with which “outfit” has an “overlapping meaning[,]” Williams, 50 Va. App. at 343, 649 S.E.2d at 720, – we overrule Mercer to the extent that it defines “outfit” as “wearing apparel”<sup>4</sup> and hold that, in the context of Code § 18.2-94, the appropriate definition of “outfit” is “the articles forming an equipment” or “the tools or instruments comprised in any special equipment; as a carpenter’s or a surgeon’s outfit.” Webster’s New International Dictionary of the English Language, Second Edition 1733 (1948).<sup>5</sup>

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<sup>3</sup> “Wearing apparel” is itself a broad term and in the context of clothing, “outfit,” customarily refers to a “set of garments” rather than a single item or accessory e.g. a new Easter outfit and would not, in any event, include a purse which is carried rather than worn. See Oxford’s English Dictionary 1015 (1989).

<sup>4</sup> Although we overrule Mercer’s definition of outfit, we do not pass judgment on whether the pants worn by the appellant in Mercer fall within the scope of the statute. Furthermore, contrary to the dissent’s assertion, we do not hold that clothing can never be considered a tool, implement or outfit within the meaning of the statute.

<sup>5</sup> This definition is also consistent with an aggregation of otherwise innocent items, assembled specifically for one of the criminal purposes prohibited by the statute such as those inventoried by the Supreme Court in Burnette:

a loaded 32-caliber Colt’s blue steel revolver, two new 10 inch hacksaw blades in a brown paper bag, . . . one pair of white cotton gloves; . . . one 36 inch pick, one 30 inch wrecking bar; one 3 pound sledge hammer; one 18 inch screw driver; one two-cell

Under that definition, we hold that an ordinary purse is not “special equipment” for the purpose of shoplifting. The fact that Edwards deliberately emptied the purse in order to facilitate a theft does not change that fact. Emptying the purse to conceal stolen items does not convert the purse into a shoplifter’s “outfit” anymore than slipping a hammer into one’s belt would convert the belt into a tool belt and thus make it part of a carpenter’s “outfit.” Thus, in the case before us, Edwards’ purse does not constitute a larcenous “outfit” within the meaning of Code § 18.2-94.

### III. CONCLUSION

For these reasons, we hold that the trial court erred in holding that the evidence was sufficient as a matter of law to prove that Edwards violated Code § 18.2-94. Therefore, we reverse her conviction and dismiss the indictment for that offense.

Reversed and dismissed.

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flashlight, one inch steel drill bit, and one 7/16 inch steel drill bit; . . . four inch steel drill bits; and . . . one pair of work gloves . . . .”

Burnette, 194 Va. at 791, 75 S.E.2d at 486.

Felton, C.J., with whom Elder and McClanahan, JJ., join, concurring.

I concur with that portion of the majority opinion that concludes that appellant's purse is not a "tool[], implement[] or outfit" within the meaning of Code § 18.2-94, and therefore concur in the judgment it reaches. I write separately to express my view that Burnette v. Commonwealth, 194 Va. 785, 75 S.E.2d 482 (1953), and the legislative history of Code § 18.2-94, constrains this Court to construe Code § 18.2-94 as prohibiting only the possession, with the requisite intent, of "burglarious tools," i.e., those tools, implements, or outfit that are "suitable and appropriate to accomplish the destruction of any ordinary hindrance of access to any building, or to a vault or safe." Burnette, 194 Va. at 790, 75 S.E.2d at 486.

The statute creating the crime of possessing "burglarious tools, implements or outfit" was part of legislation first adopted by the General Assembly in 1878 (Acts of 1877-78, p. 288), and as the Burnette Court noted, the statute read:

"Any person who shall be guilty of burglary, shall be punished with death, or, in the discretion of the jury, by confinement in the penitentiary for a period not less than five nor more than eighteen years. If a person break and enter the dwelling-house of another in the night time, with intent to commit larceny, he shall be deemed guilty of burglary, though the thing stolen, or intended to be stolen, be of less value than twenty dollars. If any person ha[v]e in his possession any tools, implements, or other outfit *known as burglars' tools, implements, or outfit*, with intent to commit burglary, robbery, or larceny, he shall be deemed guilty of a felony, and on conviction thereof, shall be punished by confinement in the penitentiary not less than five nor more than ten years. The possession of such burglarious tools, implements, or outfit, shall be *prima facie* evidence of an intent to commit burglary, robbery, or larceny."

Burnette, 194 Va. at 787-88, 75 S.E.2d at 484.

The 1878 statute codified burglary as it then existed and created a statutory offense to possess "burglarious tools, implements, or other outfit known as burglar's tools, implements, or

outfit, with the intent to commit burglary, robbery or larceny . . . .” The “burglarious tools, implements or outfit” in the statute were “known as burglar’s tools.” Id.

The statute continued in that form without change in the Code of 1887 as section 3704. However, in 1919 the language of the statute was altered by transposing several sentences, and included the definition of common law burglary and omitted the descriptive phrase “known as burglar’s tools, implements, or outfit.” The 1919 Code Revisors’ note to the amended code section stated: “The phraseology of this section has been changed so as to include common law burglary in the definition of burglary under the statute, and there is a transposition of sentences at the beginning of the section, *but no material change has been intended.*” Burnette, 194 Va. at 788, 75 S.E.2d at 484.

At its 1950 Session, the General Assembly recodified the earlier statute as Code § 18-159. The recodified statute included the same two criminal provisions, burglary and the possession of “burglarious tools” with the requisite intent, as was in the 1919 statute.

In 1953, in Burnette, the Supreme Court, considering a constitutional challenge to the evidentiary presumption contained in Code § 18-159, noted that:

[t]he statutory crime with which defendant is charged consists of two essential elements: (1) possession of *burglarious tools*; and (2) an intent to commit burglary, robbery, or larceny therewith. The burden was upon the Commonwealth to prove possession of such tools by defendant beyond a reasonable doubt. The statute makes possession *prima facie* evidence of the criminal intent.

Id. at 792, 75 S.E.2d at 487 (emphasis added). There the Supreme Court clearly declared that

[t]he mere possession of burglarious tools is not a crime under the statute. It is possession with intent to use them to commit a crime. The tools or implements may be, and usually are, designed and manufactured for lawful purposes. But it is unusual for a person, on a lawful mission, to have in his possession a combination of tools and implements suitable and appropriate to accomplish the

destruction of any ordinary hindrance of access to any building, or to a vault or safe.

Id. at 790, 75 S.E.2d at 486. It concluded that the combination of tools at issue there,

a loaded 32-caliber Colt's blue steel revolver, two new 10 inch hacksaw blades . . . , [] one pair of white cotton gloves[,] . . . one 36 inch pick, one 30 inch wrecking bar[,] one 3 pound sledge hammer[,] one 18 inch screw driver[,] one two-cell flashlight, one 1/2 inch steel drill bit, one 7/16 inch steel drill bit[,] . . . four 1/4 inch steel drill bits[,] . . . [and] one pair of work gloves with buck palms and cotton backs[,]

while designed for, and adaptable to, lawful uses, “were implements and tools commonly used by house breakers and safe crackers,” which “prove[d] that they were ‘burglariou tools’ within the meaning of the statute.” Id. at 791, 792, 75 S.E.2d at 486, 487.

Subsequently, at its 1960 session, the General Assembly recodified Code § 18-159, creating two separate statutes embodying the two substantive offenses formerly contained in Code § 18-159: Code § 18.1-61 (burglary) and Code § 18.1-87 (possession of “burglariou tools, implements or outfit”). At its 1975 session, the General Assembly again recodified Code § 18.1-87, this time as Code § 18.2-94, the code section under which appellant was convicted. It placed Code § 18.2-94 in Chapter 5, Article 2 of Title 18.2, entitled “Burglary and Related Offenses.”

Since its inception in 1878, the crime of possession of “burglariou tools” has been combined with and associated with the crime of burglary. That the General Assembly has since 1878 continually placed the statutory offense of possession of “burglariou tools” in that part of the Code pertaining to burglary demonstrates, in my view, that the General Assembly intended to retain the close historical connection between the offenses of the possession of “burglariou tools, implements or outfit” and burglary. Expanding the meaning of “burglariou tools, implements or outfit” beyond “a combination of tools and implements suitable and appropriate to accomplish the destruction of any ordinary hindrance of access to any building, or to a vault or

safe,” is, in my view, a departure from its historical mooring, particularly considering the legislative history of the “burglariious tools” statute and the Supreme Court’s analysis of Code § 18.2-94’s predecessor, Code § 18-159, in Burnette.

In my view, this Court, in Mercer v. Commonwealth, 29 Va. App. 380, 512 S.E.2d 173 (1999), erroneously began a journey away from the established construction of the “burglariious tools” statute, finding that an altered pair of pants, used to facilitate shoplifting, was a “larcenous outfit.” While I concur in the judgment of the majority overruling Mercer “to the extent that it defines ‘outfit’ [under Code § 18.2-94] as ‘wearing apparel,’” in my view, the majority errs in not overruling our holding in Mercer in its entirety.

Accordingly, while I concur in the judgment of the majority in concluding that appellant’s purposefully emptied purse, used to conceal merchandise which she had stolen, was not a “tool” within the meaning of Code § 18.2-94, I am unable to join in its rationale, which in my view unnecessarily expands those items made criminal by Code § 18.2-94 to include items not “suitable and appropriate to accomplish the destruction of any ordinary hindrance of access to any building, or to a vault or safe.” Burnette, 194 Va. at 790, 75 S.E.2d at 486. If the General Assembly had desired to expand the statutory definition of “any tool[], implement[] or outfit” beyond that which, in my view, is compelled by the existing statute, it clearly could have done so.

Beales, J., with whom Kelsey and Haley, JJ., join, dissenting.

Although I agree with the majority that Code § 18.2-94 does not solely criminalize possession of just “burglarious” tools, implements, and outfits, I would find here, given appellant’s preparation of her purse before she entered the store so that it better assisted her with her plan to commit larceny by inconspicuously stealing merchandise, that the trial court did not err in convicting her under Code § 18.2-94. Therefore, I must dissent from the majority opinion.

Code § 18.2-94 criminalizes the possession of “any tools, implements *or* outfit, with intent to commit burglary, robbery *or* larceny” (emphasis added), as a Class 5 felony. The legislature’s use of the term “or” twice in this statute is important, both linguistically and conceptually, because the placement of “or” in these lists creates two sets of disjunctive variables, thus creating nine combinations of words: burglary tools, larcenous outfits, robbery implements, and so on. Thus, the statute by its plain language prohibits the possession of nine categories of items, if the perpetrator possesses any of them with the requisite criminal intent. The one thing the statute clearly does not do — as its title misleadingly suggests<sup>6</sup> — is criminalize *only* possession of *just* burglary tools, that is, tools (not implements or outfits) possessed with the intention to use them in the commission of burglary (not robbery or larceny). See Moss v. Commonwealth, 29 Va. App. 1, 3-4, 509 S.E.2d 510, 511 (1999) (noting, “The gravamen of the offense arises from the possessor’s ‘intent to use’ these ‘common, ordinary’ objects [tools, implements, or outfits] for a criminal purpose specified by statute, *burglary*,

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<sup>6</sup> Although Code § 18.2-94 is titled “Possession of Burglarious Tools, Etc.,” that title does not add an additional element to the crime or dictate the actual elements of the crime proscribed by that statute. See Mason v. Commonwealth, 217 Va. 321, 323, 228 S.E.2d 683, 684 (1976) (“[T]he summary title is not part, and does not determine the meaning, of the body of a statute.”); Brown v. Commonwealth, 215 Va. 143, 146, 207 S.E.2d 833, 836 (1974) (“[U]se of the word ‘jurisdiction’ in the summary title is not controlling. The summary title is not part of the body of the statute . . .”). At most, “burglarious tools” provides a shorthand phrase for the behavior criminalized in Code § 18.2-94.

*robbery or larceny.*”). Therefore, I agree with the majority opinion that a trial court can convict a defendant under Code § 18.2-94 for possessing a larcenous outfit, even where the evidence did not prove that the outfit was also burglarious.

However, after reviewing the facts in this case and the relevant law, I must respectfully disagree with the majority opinion’s conclusion that possession of this purse was not criminal behavior as defined by Code § 18.2-94. In the case currently before us, appellant chose a particular purse, emptied it, and carried it into the store with the admitted intention to use the purse to hide items that she was stealing from the store. Thus, the issue in this case is whether a purse, purposefully emptied of everything that it would ordinarily contain so that it can be used for shoplifting, can be considered a larcenous “outfit.” As opposed to the majority opinion’s definition of “outfit,” I define “outfit” by reference to the plain meaning of the term and our previous precedent, and, therefore, I would find the trial court did not err in finding appellant violated Code § 18.2-94 when she prepared and carried the purse into the store with the intention to use the purse as an aid to her plan to steal from the store. Therefore, I must dissent.

When “a statute contains no express definition of a term, the general rule of statutory construction is to infer the legislature’s intent from the plain meaning of the language used.” See Hubbard v. Henrico Ltd. Pshp., 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998). I would hold that, looking at the plain meaning of the word, an “outfit” includes, among other things, “wearing apparel *with accessories* designed to be worn on a special occasion or in a particular situation or setting.” Webster’s Third International Dictionary 1601 (1981) (emphasis added); see American Heritage Dictionary 797 (2d ed. 1991); Mercer v. Commonwealth, 29 Va. App. 380, 384, 512 S.E.2d 173, 175 (1999). Therefore, the trial court did not err in convicting appellant under Code § 18.2-94.



When I consider the archetypal burglar's outfit, I imagine a black jumpsuit with multiple pockets for stowing tools, perhaps topped off by a black ski mask and a sack for carrying away the loot. Appellant, however, was a shoplifter, not a burglar. She had no reason to put on a conventional burglar's outfit, which would have defeated her purpose by, contrary to her intention, actually drawing attention to her presence in the store rather than, as she hoped by carrying the purse, allowing her to blend into the crowd. Appellant wanted everyone to think that she was just another shopper out spending her paycheck. Rather than hiding in the shadows, appellant, as a shoplifter, needed an inconspicuous container in which to conceal stolen merchandise that also allowed her to blend in with the crowd. For appellant, as a female shoplifter, perhaps the most obvious and best option for an outfit that would assist in her larcenous intent was a large purse that she emptied before entering the store. Therefore, looking at the evidence in the light most favorable to the Commonwealth, as we must when a defendant appeals her conviction, I would find the trial court did not err in convicting appellant of violating Code § 18.2-94. See Riner v. Commonwealth, 268 Va. 296, 330, 601 S.E.2d 555, 574 (2004).

The majority opinion, instead of deferring to the ordinary meaning of "outfit," proposes to define "outfit" as "the tools or instruments comprised in any special equipment; as a carpenter's or a surgeon's outfit." This definition ignores the plain meaning of "outfit" and instead defines the term such that it has no meaning apart from "tool" or "implement." This new definition of the term runs counter to the "elementary rule of statutory construction that every word in the statute must be given its full effect if that can be done consistent with the manifest purpose of the act." Home Beneficial Life Ins. Co. v. Unemployment Compensation Comm'n, 181 Va. 811, 819, 27 S.E.2d 159, 162 (1943). Under the analysis used in the majority opinion – despite the majority opinion's assertion in footnote 4 – clothing apparently is not actually included in the list of prohibited items under Code § 18.2-94, perhaps even if it is altered to

conceal the theft, as occurred in Mercer.<sup>7</sup> Thus, a purse or pocketbook specifically carried into a store to conceal stolen items is not included under the statute, under the definition advocated by the majority opinion. “Outfit,” under the majority opinion’s interpretation of this term, simply becomes the plural of “tool” and “implement,” effectively deleting “outfit” from Code § 18.2-94.<sup>8</sup> Therefore, I cannot agree with the majority opinion’s definition of “outfit” as it simply renders the term superfluous. As this Court stated in Williams v. Commonwealth, 50 Va. App. 337, 344 n.4, 649 S.E.2d 717, 720 n.4 (2007), “[T]o the extent that the terms [in Code § 18.2-94] may be interchangeable, we can only conclude that the General Assembly did not view the terms as such, but rather, found the differences to be of importance.” The majority opinion’s definition eviscerates the important differences between these three terms.

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<sup>7</sup> Contrary to the view expressed in the majority opinion, I believe Mercer was properly decided. The holding in Mercer is consistent with the plain language of the statute, allowing a conviction under Code § 18.2-94 if the person possesses an “outfit” intending to use it to commit “larceny,” one of the nine classes of objects proscribed under that statute. In addition, it is interesting to note that the appellate history of Mercer includes the denial of Mercer’s petition for review by the Supreme Court of Virginia. Mercer v. Commonwealth, Rec. No. 990848 (Va. Aug. 2, 1999).

<sup>8</sup> The majority opinion suggests in a footnote that “outfit” still has meaning because a collection of innocent items becomes an “outfit,” citing Burnette v. Commonwealth, 194 Va. 785, 75 S.E.2d 482 (1953), as an example. However, each of the items in the collection listed in Burnette would become a burglarious tool based on the suspect’s intended use of the item, rendering the term “outfit” unnecessary even in this context. Cf. Carter v. Commonwealth, 223 Va. 528, 290 S.E.2d 865 (1982) (affirming conviction for possession of a burglarious tool where the defendant possessed an unaltered screwdriver). And, it should be noted, the Burnette opinion did not address burglarious *outfits*; instead, it addressed “burglarious tools,” since the Commonwealth argued only that the items possessed by Burnette were tools used to commit burglary. Id. at 791-93, 75 S.E.2d at 486-87 (emphasis added). The Commonwealth did not argue that Burnette possessed a burglarious outfit or implement, so the opinion did not address the meaning of those terms. Thus, the Court in Burnette affirmed a conviction for possession of a set of tools without recourse to the term “outfit.” Thus, contrary to the majority opinion’s suggestion, Burnette actually proves, if the majority opinion’s definition of “outfit” is correct, that the term “outfit” is essentially meaningless as the term “tool” subsumes the term “outfit.” In other words, even if the statute did not include the word “outfit,” Burnette’s conviction would have been affirmed as he possessed burglarious *tools*.

In support of its definition, the majority opinion expresses concern that the every day definition of “outfit” would allow every instance of hiding stolen merchandise in a pocket to fall under Code § 18.2-94. I find this position unpersuasive and, thus, disagree with the majority opinion’s analysis on this point.

First, I believe this concern is more appropriate to an argument in the policy context involving the appropriate language to use in a statute, as opposed to a legal analysis in an appellate opinion addressing the actual language used in a statute. An appellate court examines the language of a statute to determine what behavior the General Assembly intended to criminalize; it is not the role of the courts to evaluate the wisdom of the language codified by the legislature. Watkins v. Hall, 161 Va. 924, 930, 172 S.E. 445, 447 (1934). Under the explicit language in Code § 18.2-94, only people possessing the criminal intent to commit burglary, larceny, or robbery can be convicted, since the legislature in its drafting of this statute placed that specific limitation on prosecutions under this statute. If the General Assembly had intended to restrict convictions under Code § 18.2-94, then that body could have deleted the word(s) “tool” or “implement” or “outfit.” The General Assembly also could have included only the intention to commit “burglary” and left out the intention to commit “larceny” and “robbery.” However, the General Assembly did not enact either of these versions of the statute. Thus, this Court must address the language actually used in the statute, which includes the term “outfit.”

Second, although a panel of this Court noted in Williams, 50 Va. App. at 346, 649 S.E.2d at 721, that “Had the General Assembly intended such a result, they would have punished the crime of concealment accordingly,” I do not believe that affirming this conviction here would result by any means in the punishment of every concealment. As noted in the panel dissent in this case, Edwards v. Commonwealth, 52 Va. App. 70, 78, 661 S.E.2d 488, 492-93 (2008), appellant here prepared the purse by emptying it of its contents, with the admitted purpose of

using the now-empty purse to conceal stolen property and help her take that property out of the store. She had no other purpose for carrying the purse. To her, it existed solely as a means to commit larceny. When asked at trial why she had carried the empty purse into the store, appellant plainly admitted that she had the purse because she “wanted to go to the store and steal.” The evidence did not provide any other reason for her possession of the purse nor did the evidence even hint that the purse had any other use besides assisting appellant with her attempted larceny.

To me, this fact differentiates appellant’s situation from a shoplifter who places a stolen item in a purse that is otherwise being used normally. The pocketbook in such a situation would not fall under the proscription in Code § 18.2-94 because the thief possessed it primarily for an innocent purpose. Here, in contrast, appellant went to some trouble before entering the store, planning this part of her outfit so that it served her criminal purpose rather than any innocent one. She had no innocent reason for possessing the purse when she entered that store – instead, she had it with her as “special equipment” to aid her in her larceny. Therefore, I do not believe we, as an appellate court, should second-guess both the trial court’s finding and appellant’s own characterization of the item as specifically intended, and only intended, so that she could “go to the store and steal.” Carter, 223 Va. at 532, 290 S.E.2d at 867 (“[T]he verdict of the trial court will not be disturbed unless it appears to be plainly wrong or without evidence to support it.”). Based on the foregoing analysis, I would find that the evidence was sufficient to convict Edwards under Code § 18.2-94, and I would affirm her conviction. Consequently, I must respectfully dissent from the majority opinion.