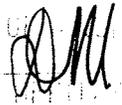


COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY 

NO. 35509-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

MICHAEL SCOTT RUNYON, Appellant.

APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR

1. The trial court erred by denying the defense's motion to dismiss for lack of evidence.
2. The trial court erred by entering a conviction for second degree burglary where there is insufficient evidence that Runyon entered or remained in a "building."

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was there sufficient evidence to support a conviction of burglary in the second degree where the location in question is a partially enclosed demolition site that does not meet the statutory definition of "building"?

III. STATEMENT OF THE CASE

This case involves charges of second degree burglary for a homeless man arrested inside a partially fenced demolition site where nothing of value was taken or damaged.

Michael Runyon was arrested on July 18, 2006, at the site of a strip mall in the process of being demolished. RP 22, 36. The site was fenced

on three sides with a “greenbelt” behind the construction site on the fourth side. RP 51. Runyon was inside one of the partially demolished structures. RP 38-39.

Following his arrest, Runyon initially told police he was at the site looking for work. RP 42. Later, Runyon said that he was at the demolition site to salvage copper wiring and plumbing material. RP 43. Runyon had no tools on or near him.¹ RP 55, 59. Nor did Runyon have any wiring or plumbing salvage on or near him. RP 59. At trial, Runyon said that he was homeless and was merely looking for a place to rest and use the bathroom. RP 136, 139.

The buildings located at the demolition site were in the process of being demolished and everything left at the site at that stage was going to be thrown away. RP 88, 120. The buildings at the site are not locked and there are several keys to the perimeter fence. RP 121.

Runyon was charged with burglary in the second degree and tried before a jury. CP 1. At the close of the State’s evidence, the defense moved for dismissal, arguing that the State had not proved that Runyon had not received permission to be at the site and that the demolition site

¹ Runyon’s bicycle was found at the site, as was a toolbox. RP 73. However, the toolbox was found in a separate building from the bicycle. RP 73.

did not meet the statutory definition of a “building” for purposes of the burglary statute. RP 125-26. The court denied the motion. RP 131.

Runyon was convicted of second degree burglary and sentenced to 12 months in jail. RP 196, 208.

IV. ARGUMENT

ISSUE 1: THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A CONVICTION OF BURGLARY IN THE SECOND DEGREE BECAUSE A PARTIALLY ENCLOSED DEMOLITION SITE DOES NOT MEET THE STATUTORY DEFINITION OF “BUILDING.”

The court reviews the meaning of a statutory definition *de novo*, as a question of law. *State v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003). Once the court determines the proper construction or meaning of the statute, whether the evidence produced at trial matches or meets that definition is a question of fact for the jury, which the court reviews for sufficiency of the evidence. *See Wentz*, 149 at 347, 352.

Evidence is sufficient to support a conviction if, when viewing the evidence in the light most favorable to the State, it allows a rational trier of fact to find all of the elements of the crime charged beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Runyon was charged with burglary in the second degree under RCW 9A.52.030, which provides that “[a] person is guilty of burglary in the second degree if, with intent to commit a crime against a person or

property therein, he enters or remains unlawfully in a building other than a vehicle or a dwelling.” “Building” is defined in relevant part:

“Building”, in addition to its ordinary meaning, includes any dwelling, fenced area, vehicle, railway car, cargo container, or any other structure used for lodging of persons or for carrying on business therein, or for the use, sale or deposit of goods . . .

RCW 9A.04.110(5). The ordinary meaning of “building” is:

A constructed edifice designed to stand more or less permanently, covering a space of land, usu. 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.

State v. Johnson, 132 Wn. App. 400, 408, 132 P.3d 737 (2006).

In this case, Runyon was found at a construction site where the only purpose for the partially fenced site was the demolition of all it contained. The strip mall under demolition here would clearly have met the definition of “building” prior to becoming a demolition site. However, nothing within this site was intended to be there for much longer and was already partially-demolished. Furthermore, the site held nothing of value (despite Runyon’s stated hope that he would find salvageable material), since everything salvageable had already been removed. See RP 88, 120. The fence erected around three sides was likely meant to protect the public

from injury, rather than to preserve anything within. In that state, the site was not a “useful structure” that was “designed to stand permanently” and therefore does not meet the ordinary meaning of “building.” Nor is “construction site” specifically listed in the statute. Furthermore, because the fence around the construction site was not a fully enclosed area, it did not fall within the “fenced area” portion of the definition. RCW 9A.04.110(5). Under these circumstances, the State did not produce sufficient evidence that Runyon had entered or remained inside a “building,” a necessary element of second degree burglary.

Because a partially fenced demolition site is not a “building” within the meaning of RCW 9A.52.030, there was insufficient evidence to support Runyon’s conviction for second degree burglary. Therefore, the trial court erred by denying the defense’s motion to dismiss and by convicting Runyon of second degree burglary.

V. CONCLUSION

For the reasons stated above, the court should reverse Runyon’s conviction for second-degree burglary.

DATED: April 16, 2007

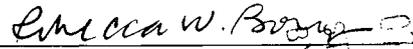
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CERTIFICATE OF SERVICE

I certify that on April 16, 2007, I caused a true and correct copy of this Appellant's Brief to be served on the following via prepaid first class mail:

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