UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1409

September Term, 2015

JEFFREY STEPHEN TAYLOR

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Friedman,

JJ.

Opinion by Arthur, J.

Filed: May 16, 2016

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Jeffrey Stephen Taylor, a homeless veteran, was found in a crawl space beneath a residential building in Ocean City. He was charged with burglary in the fourth degree in violation of Md. Code (2002, 2012 Repl. Vol.), § 6-205(b) of the Criminal Law Article ("CL"), which provides that "[a] person may not break and enter the storehouse of another."

At a bench trial in the Circuit Court for Worcester County, at the close of all evidence, Taylor moved for judgment of acquittal. The trial court denied the motion and convicted Taylor of fourth-degree burglary. The court sentenced him to two years of incarceration, with all but six months suspended.

Taylor presents the following question on appeal:

> Under [CL § 6-205(b)], did the State present evidence sufficient to prove beyond all reasonable doubt the breaking and storehouse elements of burglary in the fourth degree?

We hold that the evidence was legally insufficient to prove that Taylor committed a "breaking." We therefore reverse.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts are not in dispute. At about 3:00 p.m. on March 21, 2015, Private First Class ("PFC") Michael Valerio of the Ocean City Police Department observed a man, later identified as Taylor, in a crawl space beneath a residential building. The crawl space was accessible through a small opening on one side of the building's exterior foundation.

PFC Valerio asked Taylor what he was doing there, and Taylor replied that he had been looking for somewhere to take a nap. PFC Valerio spoke with a co-owner of the

building, Wendy Laws, who confirmed that she had not given Taylor permission to be in the crawl space. PFC Valerio then arrested Taylor.

The building in question is located at 210 6th Street. It is a two-story, four-unit property that the owners, Ms. Laws and her husband, rent to tenants who live and work at the ocean during the summer months (from mid-May to mid-September). Ms. Laws testified that the house is shut down and uninhabited during the offseason, but that she goes by the house two or three times a week during these months, mostly to show units to prospective summer tenants.

The front of the building faces south. The building sits on a raised cinder-block foundation – about three feet high – that surrounds all sides of the house. On the east side of the building can be found a small opening, about two feet high by three feet wide, that allows access to a crawl space underneath the building. The crawl space has a dirt floor.

PFC Valerio testified that when he arrived at the home, he noted that the crawl space was uncovered and that "lying on the ground" nearby was a "piece of plywood or particle board that was cut to fit" the opening. PFC Valerio testified that he "couldn't say" when the cover had been removed. Ms. Laws testified that the sheet of wood ordinarily was "covering the opening" that led to the crawl space. She stated that to the best of her knowledge the wood cover was in place the last time she saw it. Yet she also stated that, before the day in question, she "honestly couldn't say" the last time she had seen the cover in place.

Taylor testified in his own defense. He said that he had been evicted from his home that day. He saw the opening and decided to lie down to catch a nap. He stated that an access door was lying to the side of the opening, which he could see from the street. He denied that he had removed the cover and asserted that this was the first time that he had visited the property. He said that he was in the crawl space for about eight to twelve minutes before PFC Valerio showed up.

Taylor moved for a judgment of acquittal following the State's case-in-chief and again at the close of all evidence. He argued that the State had failed to prove either that he had broken into the crawl space or that the space fell within the statutory meaning of "storehouse." The court denied the motion and convicted Taylor of fourth-degree burglary. Taylor noted a timely appeal.

DISCUSSION

At issue is whether the evidence submitted by the State was legally sufficient to prove that Taylor had committed a "breaking" of the crawl space and that the crawl space falls within the meaning of a "storehouse," under CL § 6-205(b). We assume, for the sake of argument, that the crawl space qualified as a "storehouse" and that it was not part of the dwelling itself. *See Arnold v. State*, 7 Md. App. 1, 3 (1969) (holding that basement in multi-unit apartment building was storehouse and not dwelling, where "a portion thereof is set aside as storage space for each tenant"); *see also Bane v. State*, 327 Md. 305, 312 (1992) (stating that definition of "storehouse" includes all buildings other than dwelling houses). We hold, however, that the evidence was insufficient to prove, beyond a reasonable doubt, that Taylor committed a breaking.

I. Sufficiency of the Evidence Standards

Assessments of legal sufficiency of the evidence are not evidentiary issues but substantive ones, with respect to which appellate courts make their own independent judgment as a matter of law. *Polk v. State*, 183 Md. App. 299, 306 (2008).

Consistent with Md. Rule 8-131(c),[1] appellate courts resolve legal insufficiency claims by determining "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Benton v. State*, 224 Md. App. 612, 629 (2015) (quoting *Jackson v. Virginia,* 443 U.S. 307, 319 (1979)).

Circumstantial evidence may suffice "to support a conviction, provided that the circumstances support rational inferences from which the trier of fact could be convinced beyond a reasonable doubt of the guilt of the accused." *Benton*, 224 Md. App. at 630 (citations omitted). Such circumstantial evidence, however, "must permit the trier of fact to infer guilt beyond a reasonable doubt, and must not rest solely upon inferences amounting to 'mere speculation or conjecture.'" *State v. Manion*, 442 Md. 419, 432 (2015) (quoting *Smith v. State*, 415 Md. 174, 185 (2010)).

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[1] Rule 8-131(c) states:

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

II. <u>Breaking</u>

A. Legal Standards

CL section 6-205(b) states that "[a] person may not break and enter the storehouse of another." To sustain the conviction in this case, the State was required to prove each element of the crime beyond a reasonable doubt. *Bane v. State*, 327 Md. at 311.

The "breaking" element "is given the same meaning it had in common law burglary." *Jones v. State*, 395 Md. 97, 118 (2006) (citing *Brooks v. State,* 277 Md. 155, 159 (1976)). A breaking "'may be actual, as where physical force is applied, or constructive, as where entry is gained through fraud or trickery.'" *Wagner v. State*, 160 Md. App. 531, 563 (2005) (citation omitted); *see Oken v. State*, 327 Md. 628, 662 (1992).

There was no evidence suggesting any "constructive breaking," *Oken*, 327 Md. at 662, and the State does not rely on that theory on appeal. We thus limit our discussion to whether an "actual" breaking took place.

An "actual" breaking may require only the slightest of effort. It may consist of "'unloosing, removing or displacing any covering or fastening of the premises . . . [or] lifting a latch, drawing a bolt, raising an unfastened window, turning a key or knob, pushing open a door kept closed merely by its own weight.'" *Jones*, 395 Md. at 119 (quoting *Dorsey v. State,* 231 Md. 278, 280 (1963) (internal citations omitted)). The word "'is used in a technical rather than popular sense, and there is a breaking if the intruder, by force, removes an obstacle [that] if left untouched would prevent entrance.'" *Robinson v. State,* 67 Md. App. 445, 458 (1986) (quoting *Jones v. State*, 2 Md. App. 356,

360 (1967)). "A breaking may occur by merely opening a closed, unlocked door." *Wagner v. State*, 160 Md. App. 531, 562 (2005) (citing *Robinson*, 67 Md. App. at 458).

At minimum, however, a breaking requires "'an opening of the building by trespass. To enter through an open door or window is not a breaking.'" *Jones*, 395 Md. at 119 (citation omitted); *accord Reagan v. State*, 2 Md. App. 262, 268 (1967) ("it is not a breaking to enter through an open door or window or if the one entering had authority to do so at that particular time") (citation omitted).

B. Analysis

Here, there is no dispute that Taylor entered the crawl space: he was found there by PFC Valerio and later admitted as much. The dispute concerns whether the State adduced sufficient evidence to prove beyond a reasonable doubt that Taylor had entered the crawl space after committing an actual "breaking." We agree with Taylor that the State did not.

We look to three cases for guidance. In *Reagan v. State*, 2 Md. App. 262 (1967), this Court reviewed the trial of a defendant who had been convicted of grand larceny and breaking and entering an apartment while its occupants were away. *Id*. at 264. A witness had seen a man she believed to be Reagan walking away from the apartment building with a bundle of items of property that were alleged to have been stolen from the apartment in question. *Id.* at 266. The witness saw Reagan going back into the building, but did not see Reagan enter the occupants' apartment. No evidence, moreover, suggested the means by which Reagan might have achieved entrance into the apartment.

This Court reversed the conviction, concluding that the record was "devoid of any evidence that a breaking occurred, either actual or constructive." *Id.* at 268. Writing for the Court, Judge Orth dismissed the idea that "mere possession of recently stolen articles is sufficient to permit a rational inference that there was a *breaking* of the dwelling from which they were stolen, in the absence of any evidence that there was an actual or constructive breaking[.]" *Id.* (emphasis added). He noted that the witness had not actually seen Reagan enter the apartment. In addition, he emphasized (*id.*) that:

> Even assuming that [the occupants were] the last to leave the apartment . . . , there was no evidence that the doors and windows of the apartment were locked or even closed. Assuming that he was the first to arrive home, or that he and his wife arrived together, there is no evidence that the door or windows were then open or that there had been a breaking of any kind whatsoever.

In a second case, *Jones v. State*, 395 Md. 97 (2006), the defendant was convicted of breaking into the Academy of the Holy Cross and stealing money. At trial, one employee-witness said that she had seen Jones inside the premises and asked him how he had entered the building. *Id.* at 101-02. When Jones replied that he had entered through a back door, she "asked him who let him into the building because that door is locked and is not, it's not a door where people can come in unless someone lets them in." *Id.* The witness added, "I'm not sure at this point if he was saying he was there to see [a] Hispanic man who was on the maintenance crew or if he said that the Hispanic man on the maintenance crew had let him in that door." *Id.*

In reversing because of the insufficiency of the evidence, the Court of Appeals explained that the State had "offered no proof that appellant opened any window or door in order to enter Holy Cross." *Id.* at 119. The Court continued:

> Although the State presented some evidence that the point of entry into the building was a kitchen window, and that there were fingerprints on the refrigerator, there was no evidence presented that the window had been secured previously, or that the fingerprints found on the refrigerator belonged to appellant. The State presented no evidence connecting appellant to the window, or that there was even an actual breaking.

Id.

In an earlier case by the same name, *Jones v. State*, 2 Md. App. 356 (1967), this Court reversed a burglary conviction where a woman testified that she had awoken to find the defendant inside her apartment going through her pocketbook. *Id.* at 359. The woman chased Jones out of her third-floor apartment with a firearm. She testified that, while Jones was fleeing from her apartment, he grabbed the open front door, and "he caught the knob of the door and he closed the door between me and him." *Id.*

This Court reversed, stating that "there was no evidence of a breaking and no facts on which a breaking could be rationally inferred[.]" *Id.* at 360-61. We recognized that Jones had *left* the woman's dwelling through an open door, but stressed that there was "no evidence as to how the appellant gained entrance to the apartment, and whether or not the door was *closed before his entry*." *Id.* (emphasis added).

The facts of the present case differ in their particulars from those in the earlier cases, but they are no less inadequate at demonstrating, beyond a reasonable doubt, that Taylor committed an actual "breaking" before he entered the crawl space. While the trial

court may have had enough evidence to conclude that, at some time in the past, *a breaking* had occurred, it did not have sufficient evidence to prove that the breaking occurred because of something that Taylor did.

PFC Valerio testified that, upon his arrival at 210 6th Street, the "wood cover" was off to the side of the crawl space opening. Ms. Laws testified that this cover "ordinarily" was in place and covering the opening, suggesting that in the normal course of events the cover would need to be removed to effectuate entry. Ms. Laws also testified that she arrived at the home two or three times a week during the rental offseason, perhaps suggesting to a reasonable trier of fact that, at the least, Ms. Laws was situated to easily check on or note the position of the wood cover – that is, to note whether the cover was where it "ordinarily" was supposed to be.

Yet, accepting that at some time someone or something removed the wood cover from its "ordinary" placement, the testimony failed to establish, even circumstantially, that *Taylor* was responsible for its removal. Ms. Laws apparently knew where the cover should have been, but she testified that she "honestly couldn't say" the last time when she saw the cover. She did not, for instance, state that the wood cover was in place the last time she left the house or that she saw it there at any recent time in the past. Similarly, she did not state that she regularly, or even occasionally, checks to ensure that the cover is in place.

Had Ms. Laws testified to seeing the cover in place at some time shortly before the day in question, there might have been a stronger inference that the cover was still in place when Taylor arrived. But the evidence here was simply too incomplete to permit

such a conclusion beyond a reasonable doubt. For a reasonable factfinder to conclude that *Taylor* removed the cover, he or she would have to look past obvious questions as to just how much time had passed since the last time it was in place – and whether, during her visits, Ms. Laws was ever in position to look around to the side of the house to note the cover's placement. Additionally, the factfinder would have to ignore the very reasonable possibilities that, during this interim of unknown length, some other person (or even an animal or the force of wind) had removed the cover well before Taylor arrived.[2]

In addition, there was no eyewitness testimony that Taylor removed the cover, nor any forensic evidence suggesting that he, and not some other person, had done so. In fact, outside of Ms. Laws's ambiguous statements, the only affirmative evidence on the state of the crawl space at the time that Taylor arrived came from Taylor himself, who stated that the cover had already been removed when he arrived.

A factfinder is permitted to arrive at determinations of guilt based on circumstantial evidence alone. *See Benton*, 224 Md. App. at 630. But a conviction cannot be sustained on circumstantial evidence that requires the factfinder to speculate or to look past rational doubts or gaps in the evidence. As with the cases outlined above, the testimony here simply failed to provide enough information from which a reasonable

[2] The record contains no information about whether the cover is ordinarily attached to the building by some mechanism – e.g., whether it has hooks that fit into eyelets on the foundation, or whether it slides into grooves – or whether it simply rests against the side of the structure. Without evidence of that nature, it is impossible to rule out the possibility that the covering might have been displaced by something other than human action.

factfinder could conclude, beyond a reasonable doubt, that Taylor committed a breaking and did not, as he insists, simply enter an open crawl space without the owners' permission.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY REVERSED. COSTS TO BE PAID BY WORCESTER COUNTY.