IN THE COURT OF APPEALS OF MISSISSIPPI

No. 2006-KA-01543-COA

DENNIS JEFFERSON

Appellant

vs.

STATE OF MISSISSIPPI

Appellee

In Re Appeal from the Circuit Court of Yazoo County, Mississippi

Honorable Mike Smith, Special Appointed Circuit Judge

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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Certificate of Interested Parties

Dennis Jefferson, Appellant v. State of Mississippi, Appellee
No. 2006-TS-01543-COA

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Appellant Dennis Jefferson;

2. Brent Hazzard, Hazzard Law, LLC, 162 East Amite, P.O. Box 24382 Jackson, MS 39225, Counsel for Appellant Dennis Jefferson;

3. Appellee State of Mississippi, Mississippi Attorney General, 450 High Street P.O. Box 220 Jackson, MS 39205;

4. James H. Powell, District Attorney, P.O. Box 311 Durant, MS 39063, Counsel for Appellee State of Mississippi.

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STATEMENT OF THE ISSUES

I. Whether the State satisfied each element of burglary – specifically the breaking and entering elements.

II. Whether the State established Appellant's requisite intent to steal.

STATEMENT OF THE CASE

A. Nature of the case

This is an appeal following a guilty verdict against the Appellant, Dennis Jefferson, on a burglary charge in the Circuit Court of Yazoo County, Mississippi.

Appellant contends that the court erred in denying a Motion for Judgment Notwithstanding the Verdict or in the alternative a New Trial. Appellant will argue that the State failed to meet its burden in proving each element of a burglary charge – specifically, the elements of "breaking" and "entering." Appellant will also argue that the State failed to establish Appellant's requisite intent to steal.

Appellee, the State, will argue that the court was correct in denying the Motion for Judgment Notwithstanding the Verdict. Appellee will argue that the evidence satisfied each element of burglary and established the requisite intent to steal.

B. Course of Proceedings and Disposition in the Court Below

On October 6, 2005, an Indictment was returned against Robert "Bobby" Huffman, Lenoria McGee, and Dennis E. Jefferson in the Circuit Court of Yazoo County, Mississippi. (C.P. 3) On August 8, 2006, trial was held for Dennis E. Jefferson. Upon the State's announcement that it rested, Defendant requested that the trial court grant him a directed verdict. (R. at 105-24.) This was denied by the trial court. (R. at 109-7.) The trial concluded with a jury verdict and the return of a guilty verdict as to the Indictment. (C.P. 21)

On August 11, 2006, Defendant filed a Motion for New Trial. (C.P. 47) Defendant filed a Memorandum in Support of Judgment Notwithstanding the Verdict or in the Alternative a New

Trial on August 17, 2006. (C.P. 30) Notice of Appeal was filed on September 12, 2006. (C.P. 38)

C. Statement of the Facts

On May 28, 2005, Appellant, Dennis Jefferson, was driving to his wife's cousin's house when he saw Ms. Lenoria McGee and Mr. Robert Huffman walking on the side of the street. (R. at 114-2.) Both Ms. McGee and Mr. Huffman asked Appellant for a ride to the end of the street. (R. at 59-7.) Before they reached the end of the street, Mr. Huffman offered Appellant money to give him a ride to pick up a loan. (R. at 114-9.) Appellant then followed Mr. Huffman's directions to the desired location. (R. at 114-13.)

While driving, Appellant's car began to run hot. (R. at 114-15.) Appellant then stopped his car on the street in front of a house at 4460 White's Lane, Yazoo, Mississippi. (R. at 114-21.) Appellant and Mr. Huffman got out of the car to lift the hood on Appellant's car. (R. at 114-22.) Mr. Huffman walked up to the house while Appellant and Ms. McGee stayed with the car. (R. at 114-25.) Mr. Huffman then walked to the back of the house. (R. at 115-1.)

The house at 4460 White's Lane, Yazoo, Mississippi belonged to Mr. and Mrs. Wayne and Barbara Allen. (R. at 70-1.) The house had a three-sided open carport attached to the house. (R. at 74-13.) There was also a unattached storage shed beside the carport and behind the house. (R. at 74-6.)

A few minutes later, Mr. Huffman walked back to Appellant's car carrying a leaf blower, a fishing pole, and a bucket. (R. at 115-3.) Appellant told Mr. Huffman that he could not place the leaf blower and fishing pole in his car because his trunk was full. (R. at 115-7.) Mr. Huffman then placed the leaf blower and fishing pole next to a bush in the yard at 4460 White's

Lane, Yazoo, Mississippi. (R. at 115-11.) Mr. Huffman brought the bucket to Appellant's car. (R. at 115-12.) While Mr. Huffman was walking to Appellant's car with the bucket, Mr. Thomas Coleman pulled up next to Appellant's car and asked if they needed any assistance. (R. at 115-13.) Appellant declined any assistance. (R. at 115-19.)

When Appellant, Mr. Huffman, and Ms. McGee reached Mr. Huffman's destination, the man who Mr. Huffman was attempting to visit was not at home. (R. at 115-21.) Appellant had Mr. Huffman fill the bucket with water to put in Appellant's car since it was still running hot. (R. at 116-11.) They then threw the bucket into a ditch. (R. at 116-16.) Appellant then proceeded to head back to town driving the path he had followed to Mr. Huffman's destination. (R. at 26.)

Appellant passed 4460 White's Lane, Yazoo, Mississippi on his way back to town. (R. 115-28.) When they passed the house at 4460 White's Lane, Mr. Coleman's truck started following Appellant's car. (R. at 115-28.) Mr. Coleman failed to keep up with Appellant's car. (R. at 54-12.) Mr. Coleman then called 911. (R. at 54-29.) Mr. Coleman gave the police a description of Appellant's car along with the car's tag number. (R. at 55-5.)

When Appellant's car reached town, Mr. Huffman informed Appellant that he had an extension cord. (R. at 116-8.) Appellant told Mr. Huffman to get the extension cord out of his car. (R. at 116-18.) Mr. Huffman left the extension cord at an apartment that Appellant drove him. (R. at 117-1.) Mr. Huffman then asked Appellant for a ride to a BP station. Once they arrived at the BP station, two city police officers pulled up next to the car. (R. at 116-22)

Appellant took the two officers to the apartment where the extension cord was taken out of his car. (R. at 117-1.) Appellant then took the officers to the house at 4460 White's Lane,

Yazoo, Mississippi, where the leaf blower and the fishing pole were still in the yard. (R. at 117-8.) Afterwards, Appellant took the officers up the street where the bucket had been thrown out. (R. at 117-11.)

The leaf blower, extension cord, and fishing pole had been in the three-sided open carport. (R. at 76-11.) There were no known missing items in the unattached storage shed. (R. at 73-16.)

During the trial, the State called Thomas R. Coleman, Lenoria McGee, and Barbara Allen as witnesses. Thomas R. Coleman testified that he saw two black males coming out of the three-sided open carport at 4460 Whites Lane Road, Yazoo City, Mississippi, carrying something. (R. at 48-25.) Mr. Coleman drove over to 4460 Whites Lane Road and spoke with Appellant and Mr. Huffman. (R. at 49-24 and 50-8.) Mr. Coleman testified that he saw a weedeater in the bushes on the property at 4460 Whites Lane Road.

Ms. Lenoria McGee testified that she had asked Appellant to give her a ride on May 28, 2005. (R. at 59-7.) She also testified that Mr. Huffman asked Appellant for a ride to Whites Lane Road. (R. at 59-8.) Ms. McGee stated that Appellant stayed in the car while Mr. Huffman went to the back of the house at 4460 Whites Lane Road. (R. at 59-15.) When Mr. Huffman started back toward Appellant's car, he was carrying a leaf blower, a fishing rod, and a white bucket. (R. at 59-18.) Ms. McGee testified Appellant never entered the yard. (R. at 65-24.) She also testified that Appellant got out of the car to pretend that his car was running hot when Mr. Coleman's truck approached his car. (R. at 65-22.) She thought Appellant drove back by 4460 Whites Lane Road to get the leaf blower and the fishing rod from the bushes. (R. at 61-2.) They

did not retrieve the leaf blower and the fishing rod. (R. at 61-9.) Mr. Coleman began chasing Appellant's car in his truck. (R. at 61-9.)

Mrs. Barbara Allen, the homeowner at 4460 Whites Lane Road, testified that her carport is three-sided with one side completely open. (R. at 74-13.) Mrs. Allen stated that the leaf blower, the extension cord, and the fishing rods were in the three-sided open carport. (R. at 71-24.) She also stated that there was a storage shed on the property. (R. at 71-26.) While Mrs. Allen testified that there were hope chests in the storage shed with their lids off, she was not certain that the Appellant and Mr. Huffman had removed the lids. (R. at 71-27.) There were no items missing from the storage shed. (R. at 72-7.)

SUMMARY OF THE ARGUMENT

The district court erred in denying a Motion for Judgment Notwithstanding the Verdict and in the alternative for a New Trial. The evidence against the Appellant was not legally sufficient to sustain a conviction for burglary. The evidence did not support a finding of breaking and entering so as to constitute burglary. The State also failed to establish that Appellant had the requisite intent to steal.

STANDARD OF REVIEW

"In reviewing a trial court's decision to grant a directed verdict, the appellate court reviews such decisions under the de novo standard of review." *Skrmetta v. Bayview Yacht Club, Inc.*, 806 So.2d 1120, 1124 (Miss.2002). "The standard of review for a denial of directed verdict...and a motion for judgment notwithstanding the verdict is the same." *Jernigan v. Humphrey*, 815 So.2d 1149, 1152 (Miss.2002).

"Requests for a directed verdict and motions for judgment notwithstanding the verdict challenge the sufficiency of the evidence. In reviewing a sufficiency of the evidence claim, the court considers the evidence in the light most favorable to the verdict." *Bush v. State*, 895 So.2d 836, 844 (Miss.2005). The appellate court "must, with respect to each element of the offense, consider all of the evidence – not just the evidence which supports the case for the prosecution – in the light most favorable to the verdict." *Fleming v. State*, 732 So.2d 172, 182 (Miss.1999).

"The standards of review, however, are predicated on the fact that the trial judge applied the correct law." *Jernigan v. Humphrey*, 815 So.2d 1149, 1152 (Miss.2002). "If the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence of the crime charged, then a reasonable jury

must necessarily entertain a reasonable doubt." *Shields v. State*, 702 So.2d 380, 382 (Miss.1997)(cite to, *Clark v. Procunier*, 755 F.2d 394, 396 (5th Cir.1985)). "It is fundamental that convictions of crime cannot be sustained by proof which amounts to no more than a possibility or even when it amounts to a probability, but it must rise to that height which will exclude every reasonable doubt." *Kolberg v. State*, 829 So.2d 29, 29 (Miss.2002). "Courts cannot permit a conviction to stand based merely upon suspicion." *Murphy v. State*, 566 So.2d 1201, 1205 (Miss.1990). "Mere probability of guilt will never warrant convicting a defendant." *Jones v. State*, 797 So.2d 922,927 (Miss.2001).

"The decision to grant or deny a motion for new trial is discretionary with the trial court." *Venton v. Beckham*, 845 So.2d 676, 684 (Miss.2003). "A verdict should only be set aside where it is manifest, from the evidence and surroundings, that it is not a fair and true verdict." *Wal-Mart Stores, Inc. v. Frierson*, 818 So.2d 1135, 1143 (Miss.2002). "The [appellate] court is authorized to reverse only where, with respect to one or more of the elements of the offense charged, the evidence so considered is such that reasonable and fair-minded jurors could only find the accused not guilty." *Shipp v. State*, 847 So.2d 806, 811 (Miss.2003). The appellate court will not order a new trial unless convicted the verdict is so contrary to the overwhelming weight of the evidence that, to allow it to stand, would sanction an unconscionable injustice. *Illinois Cent. R. Co. v. Hawkins*, 830 So.2d 1162, 1169 (Miss.2002).

ARGUMENT

I. THE EVIDENCE AGAINST APPELLANT DENNIS JEFFERSON IS NOT LEGALLY SUFFICIENT TO SUSTAIN A CONVICTION FOR BURGLARY

The State failed to prove beyond a reasonable doubt that Appellant, Dennis Jefferson, committed a burglary as defined by Miss. Code Ann. § 97-17-33. The Mississippi Code § 97-17-33 states: "every person who shall be convicted of breaking and entering, with intent to steal therein, or to commit any felony." A person must break and enter a building with intent to steal therein. Miss. Code Ann. § 97-17-33 (2000). The State did not prove these elements beyond a reasonable doubt. First, the State failed to show a breaking and entering as defined by the statute. Second, the State failed to prove beyond a reasonable doubt that the Appellant went to the home on Whites Lane Road with the "intent to commit some crime therein."

A. THE EVIDENCE DOES NOT SUPPORT A FINDING OF BREAKING AND ENTERING AS TO CONSTITUTE BURGLARY.

There was insufficient evidence to convict the Appellant of burglary because there was no evidence of a "breaking" or "entering" of any building located at 4460 Whites Lane Road on the date of the alleged burglary. "Breaking is an essential element to the crime of burglary" and must be proven beyond a reasonable doubt. Miss. Code Ann. § 97-17-33 (2000). "Breaking is an act of force, however slight, used to gain entrance." *Winston v. State*, 479 So.2d 1093, 1095 (Miss.1985). In fact, the State presented evidence which established that all of the items taken from the premises on the date in question were items located in an "open" garage. The taking of items from an open garage does not meet the statutory requirement of "breaking." An "act of force, used to gain entrance" must be established to prove burglary. The State clearly did not meet this burden. The evidence offered by the State showed that no "act of force" was used to

gain access to the bucket, the extension cord, the leaf blower, and the fishing pole that were allegedly taken from the premises. (R. at 76-8.)

The State failed to prove a "breaking" because the structure from which the items were taken from was an "open" garage. (R. at 74-13.) For a burglary to occur, "the structure generally must be closed. Otherwise the entry is only a trespass, not a 'breaking' and a burglary." *Goldman v. State*, 741 So.2d 949, 952 (Miss. Ct. App. 1999). In *Hill v. State*, 929 So.2d 338 (Miss. Ct. App. Dec. 6, 2005), the appellate court reversed defendant's conviction for burglary in violation of Miss. Code Ann. § 97-17-33 as the building that defendant entered was an open, three-sided shed such that there was no actual breaking which is an essential element of burglary.

The State contends that the burglary indictment was correct because an "enclosed" shed in close proximity to the home was broken into on the alleged date of the burglary. They presented evidence that lids were removed from several hope chests that were stored in the shed. (R. at 71-27.) The State's contention is unsupported by evidence which could lead a reasonable jury to find beyond a reasonable doubt that a "breaking and entering" of the shed occurred on the day of the alleged burglary.

In *Gross v. State*, 2 So.2d 818 (Miss. 1941), the appellant claimed that his conviction of burglary was erroneous due to his contention that the State had failed to prove the crime of burglary without the confession of the accused. However, the State had established that heavy materials had been removed, that these materials could not be removed except through the doors, that the doors were fastened, and that no one who had a key entered the building; therefore, the appellate court found that a jury could have reasonably determined that a burglary was committed without relying solely on the appellant's confession. *Id.*

In the present case, the State's witness, the homeowner, Mrs. Allen, testified that the lids to the hope chests in her shed were removed but that the lids could have been removed and mistakenly left off the chests prior to the burglary. (R. at 72-1.) She also testified that no items were taken from the shed and that the only items taken from her premises were from the "open" garage. (R. at 72-7 and 76-8.) Unlike the appellant in *Gross*, the Appellant has not confessed to a "breaking" and "entering"of the shed. The State's evidence that the shed was broken into is clearly insufficient to establish a "breaking" and "entering" of the shed occurred in conjunction with the removal of items from an "open" garage.

The State also failed to establish the defendant or any other person "entered" a secure enclosure located on the premises on the date of the alleged burglary. "The slightest physical entry into a previously secure enclosure is sufficient to satisfy the 'entering' component of a burglary." *Henderson v. State*, 756 So.2d 811, 814 (Court of Appeals 2000). However, no evidence other than the testimony of the homeowner was introduced into evidence to establish that the "enclosed" shed was "entered." (R. at 71-29.) The homeowner's testimony is inadequate to prove an "entry" into the shed beyond a reasonable doubt because her testimony revealed that she was unaware of the condition of the shed or its contents prior to the burglary. Furthermore, the State introduced no evidence that any item in the shed had been stolen, removed or rummaged through. From the evidence presented, a reasonable jury could not determine that an individual entered the shed.

In *Moore v. State of Mississippi*, 933 So.2d 910, 921 (2006), the appellant contended that the jury verdict on the burglary charge was against the overwhelming weight of the evidence since the State had not proven there was a forced entry into the home and had not provided any

evidence of Moore's fingerprints or footprints in the home. The appellate court found that his argument had no merit since the State had provided evidence of the victim's blood on appellant's belt which coupled with the victim's testimony adequately demonstrate that the appellant was in the home when the crime occurred. In the present case, there were no witnesses to testify they had seen Appellant enter the shed and there was no physical evidence that the Appellant had in fact entered the shed. As noted previously, the homeowner's testimony did not establish beyond a reasonable doubt that the shed had been entered into since she was unaware of the condition of the shed prior to the burglary.

The State clearly did not satisfy the "breaking" and "entering" element of Miss. Code Ann. § 97-17-33. At most, they established the "taking and carrying away, feloniously, the personal property of another." *Pool v. State*, 764 So.2d 440, 443 (2000). If the actual homeowner and victim could not be sure if the shed was entered into by the Defendant, a reasonable man could not either. Thus, the judgment should be entered not withstanding the verdict.

B. THE EVIDENCE FAILS TO ESTABLISH APPELLANT HAD THE REQUISITE INTENT TO STEAL

The State failed to establish the Defendant had the requisite intent to steal so as to convict him of burglary under the statute. The "omission of an allegation of intent to steal constitutes a fatal defect in the indictment." *Taylor v. State*, 58 So.2d 664, 665 (1952). "Intent is an emotional operation of the mind, and is usually shown by acts and declaration of the defendant coupled with facts and circumstances surrounding him at the time; a defendant's intention is manifested largely by the things he does." *Brown v. State*, 799 So.2d 870, 872

(Miss.2001)(citing *Newburn v. State*, 205 So.2d 260, 265 (Miss.1967)). The State maintains that the Defendant acted in concert to accomplish the burglary by aiding and abetting Robert Huffman in the commission of the burglary. This argument is unpersuasive. There is no evidence that prior to or upon arrival at the home on Whites Lane Road the Appellant and Robert Huffman had an agreement to steal.

In *Alford v. State of Mississippi*, 656 So.2d 1186 (1995), the defendant appealed his burglary conviction claiming that the verdict was against the weight of the evidence. The appellate court agreed with the defendant and reversed the burglary conviction stating that the State had failed to establish that the defendant had the requisite intent to commit a crime within the dwelling. In reversing the burglary conviction, the court noted that the defendant was prone to wandering about the neighborhood late at night and going to the homes of people he knew. It was also established that the defendant knew the inhabitants of the dwelling and that the inhabitants did not fear for their safety.

In the case at hand, the Appellant concedes taking Robert Huffman to the home on Whites Lane Road but stated he was unaware of Mr. Huffman's intent to steal. (R. at 114-8 and 125-6.) His testimony was corroborated by the testimony of Lenoria McGee, a passenger in Defendant's car. She testified that she didn't know they were taking Robert Huffman to White's Lane Road to commit a burglary. (R. at 67-25.) In fact, Robert Huffman, is the only individual who testified that Appellant knew of the plans to steal from the premises when they stopped at 4460 Whites Lane Road, Yazoo City, Mississippi, and he testified that the agreement was for the items in the garage. (R. at 127-8.) Robert Huffman's testimony alone clearly is not sufficient

evidence to conclude that the Defendant had intent to steal or commit any felony upon stopping his automobile.

The State further contends that Defendant's intent was clearly established because he aided Robert Huffman during and after the alleged burglary. The State claims the Defendant aided and abetted Robert Huffman by providing transportation and by acting as a lookout for him while he accomplished the burglary. This claim does not establish the Defendant's intent to commit a felony. The Defendant's actions merely show his intent to enable a felon to escape or avoid arrest. Therefore, evidence is only sufficient to support guilty verdict of accessory after the fact of larceny but not of burglary. See *Buckley v. State*, 511 So.2d 1354 (Miss.1987).

In *Smith v. State*, 523 So.2d 1028 (Miss.1988), the court held a jury would have been warranted in finding the defendant guilty as an accessory after the fact to burglary or larceny but not as a principal to burglary where the defendant as present at the time of the burglary of a store but neither assisted nor encouraged the perpetrator of the burglary by any word or act to commit the crime. The defendant in *Smith v. State* drove a woman to Hudson's Salvage Center shortly after midnight. She got out of the car, looked in the store window, and then returned to the car to retrieve a tire tool or some kind of iron bar. The defendant told her "don't." They sped away leading an officer in a high-speed chase until the car crashed.

An accessory after the fact is one who has "concealed, received, or relieved any felon, or having aided or assisted any felon, knowing that such person had committed a felon, with intent to enable such felon to escape or to avoid arrest, trial, conviction or punishment." Miss. Code Ann. § 97-1-5 (Rev. 2000). It is clear that the Appellant might have been convicted of accessory

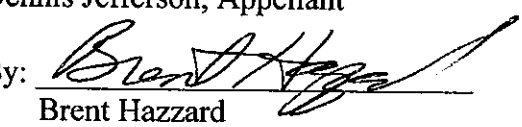
after the fact but could not have been convicted of burglary because the Appellant did not have the required intent to commit a felony prior to or during the commission of the crime.

CONCLUSION

The District Court erred in denying a Motion for Judgment Notwithstanding the Verdict or in the alternative a New Trial since the evidence presented in this trial was insufficient to sustain a guilty verdict against the Appellant for burglary. The State proved items were taken from a three-sided open carport, but this fails to prove a breaking since the carport is an open structure. The State tried to show that the shed located on the premises was burglarized but it clearly failed to prove a breaking and entering of the shed with the intent to commit a felony. The State also failed to establish that Appellant had the requisite intent to steal. Therefore, conviction of the Appellant for burglary was clearly erroneous and a judgment notwithstanding the verdict or, in the alternative, a new trial should have been granted by the trial court.

Respectfully Submitted,

Dennis Jefferson, Appellant

By: 

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CERTIFICATE OF SERVICE

I, the undersigned counsel of record, do hereby certify that I have this day served, by hand delivery, a true and correct copy of the attached and foregoing document to the following persons:

James H. Powell
District Attorney
P.O. Box 311
Durant, MS 39063

Mississippi Attorney General,
P.O. Box 220
Jackson, MS 39205

Judge Jannie M. Lewis
P.O. Box 149
Lexington, MS 39095

This the 27th day of March, 2007.

Brent Hazzard

§ 97-1-5. Accessories after the fact.

Every person who shall be convicted of having concealed, received, or relieved any felon, or having aided or assisted any felon, knowing that such person had committed a felony, with intent to enable such felon to escape or to avoid arrest, trial, conviction or punishment, after the commission of such felony, on conviction thereof shall be imprisoned in the penitentiary not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both; and in prosecution for such offenses it shall not be necessary to aver in the indictment or to prove on the trial that the principal has been convicted or tried.

Sources: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 8 (7); 1857, ch. 64, art. 3; 1871, § 2485; 1880, § 2699; 1892, § 951; Laws, 1906, § 1027; Hemingway's 1917, § 752; Laws, 1930, § 770; Laws, 1942, § 1996.

§ 97-17-33. Burglary; breaking and entering building other than dwelling; railroad car; vessels; automobiles.

(1) Every person who shall be convicted of breaking and entering, in the day or night, any shop, store, booth, tent, warehouse, or other building or private room or office therein, water vessel, commercial or pleasure craft, ship, steamboat, flatboat, railroad car, automobile, truck or trailer in which any goods, merchandise, equipment or valuable thing shall be kept for use, sale, deposit, or transportation, with intent to steal therein, or to commit any felony, or who shall be convicted of breaking and entering in the day or night time, any building within the curtilage of a dwelling house, not joined to, immediately connected with or forming a part thereof, shall be guilty of burglary, and imprisoned in the penitentiary not more than seven (7) years.

(2) Any person who shall be convicted of breaking and entering a church, synagogue, temple or other established place of worship with intent to commit some crime therein shall be punished by imprisonment in the penitentiary not more than fourteen (14) years.

Sources: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 4(17); 1857, ch. 64, art. 50; 1871, § 2527; 1880, § 2743; 1892, § 996; Laws, 1906, § 1073; Hemingway's 1917, § 801; Laws, 1930, § 817; Laws, 1942, § 2043; Laws, 1940, ch. 243; Laws, 1960, ch. 241; Laws, 1989, ch. 347, § 1; Laws, 1997, ch. 473, § 4, eff from and after passage (approved March 27, 1997).