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When a Burglary is a Burglary and Not Just Another B&E

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Georgia v. Randolph decided March 22, 2006

Was There Evidence of A Burglary in This Case?

Yes! Here there was sufficient evidence of a "breaking" to support Mr. Reid's burglary conviction when the victim, Mr. Fields, opened the front door of his home in response to a knock on his door, and Mr. Reid and others grabbed Mr. Fields and forced their evil way into his home.

And the Name of the Case Is:

State v. Reid, North Carolina Court of Appeals, February 7, 2006.

The legal principle in this case regarding the "breaking" necessary for a burglary has been around since the case of *State v. Jolly*, a 1979 North Carolina Supreme Court decision. (See 297 N.C. 121) This principle is well settled law, but it needs to be repeated as this is an often used ploy by particularly nefarious low-life guys in the underworld to gain access to a person's residence.

This Ain't the Only Case On Point, Either:

There are other cases that support this interpretation as well, but we are keeping those cases secret.

Factually Speaking:

On the evening of 13 October 2002, Michael David Fields was playing video games with his friend, Michael Isreal, in his room at his home in Hope Mills, North Carolina. This is, by the way, just down the road apiece from where Ralphie Boy lives in Fayetteville (Home of the 82nd Airborne). Earlier in the afternoon, Fields had been drinking beer and smoking marijuana, and had sold marijuana from his home three or four times earlier that day. This is the perfect setup for a nighttime home invasion, isn't it?

Responding to a knock on his front door, Fields looked out the window, saw a car which he thought he recognized as belonging to his friend, but could not see who was at the door. When Fields opened the inside door, three armed men were standing at the doorway, the glass storm door having already been opened. Two of the men had

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their faces covered such that Fields did not recognize them, but he recognized the third man, whose face was not fully covered, as the defendant, whom he had known for several years. We are not making this name up; his name is - LATWANG J. REID. The men grabbed Fields and pulled him outside, demanding money and drugs.

The two men whose faces were covered then entered the house and made their way to Fields' bedroom where Isreal was waiting for Fields to return. They demanded Isreal tell them where the money and the marijuana were. Isreal replied that he didn't know. The men then forced him onto the floor and took whatever was in his pockets. While the two men were in the bedroom with him, Isreal heard two gunshots.

Fields testified that he “tussled” with the men holding him on the front porch, and then ran away toward his neighbor's house. (You know, Kevin and Greg often “tussle” while we are trying to get some work done. Either that or they are dancing.) Anyway, Fields heard a single shot and did not remember anything more from that night.

Police later discovered Fields lying face down and partially conscious next to a neighbor's bush. A bullet hole was observed in his back, and the bullet was found in the front of his shirt when he was rolled over. Fields was taken to Cape Fear Valley Medical Center, where he spent nearly a month in a coma, and over eight months in the hospital. After coming out of his coma in the hospital, Fields identified the defendant as the person he recognized from the assault.

On 6 May 2004, the jury returned guilty verdicts on Latwang for (1) attempted first degree murder, (2) assault with a deadly weapon with intent to kill inflicting serious injury, (3) attempted armed robbery, (4) first degree burglary, (5) conspiracy to commit robbery with a firearm and (6) conspiracy to commit first degree burglary. Zounds! That has to be one long prison sentence!

Say, When is a Burglary Committed?

A burglary is committed when a person “breaks or enters into the dwelling house or sleeping apartment of another in the nighttime with the intent to commit a felony therein.” *State v. Little*, North Carolina Court of Appeals, 2004. Bob Farb discusses the elements of burglary in *North Carolina Crimes*, Fifth Edition, beginning on page 243. Bob has all the bases covered, but he thinks the game is football. OK, not really.

But Was There A “Breaking” Here?

Yes. “A breaking in the law of burglary constitutes any act of force, however slight, employed to effect an entrance through any usual or unusual place of ingress, whether open, partly open, or closed.” This quote is from *State v. Jolly*, where the North Carolina Supreme Court held that a constructive breaking occurred when Jolly gained entry into the victim's motel room by pushing the victim into the room as the victim opened the door.

On the Facts in Reid, The Court of Appeals Held:

Mr. Fields' testimony indicated he was forcibly grabbed and dragged outside by one or more individuals when he opened his front door, whereupon one or two of the assailants rushed past him and into his home. This use of force is sufficient to constitute the element of breaking necessary to support a conviction of burglary.

FLASH!

WE INTERRUPT THIS BULLETIN FOR A SPECIAL REPORT!

Bob Farb, for whom we all have a great respect except Ralph who loves Bob for his wry sense of humor, has posted the following on the Institute of Government's criminal law website under the IOG Faculty Papers page:

Arrest, Search, and Investigation in North Carolina (3d ed. 2003): Summaries of Cases Since Its Publication, available at

<http://ncinfo.iog.unc.edu/programs/crimlaw/asisupplement.pdf>

If you have a copy of Bob's book in its third edition, go here and download or print out his up-to-date supplement of that book. If you do not own one you should buy one, read it and supplement it at this site. If you decide not to buy one, at least read these cases.

AND NOW, WE RETURN YOU TO YOUR PREVIOUSLY SCHEDULED BULLETIN.

PLEASE NOTE:

As previously indicated, Latwang J.'s behavior that night was sufficient to convict him of both attempted first degree murder and assault with a deadly weapon with intent to kill inflicting serious injury. Even though he took one deliberate action, he committed two crimes with different elements when he shot Mr. Fields. Keep that in mind when investigating any serious injury to a victim because of a criminal act.

Sad to say, but this a typical home invasion scenario. People who know that a person sells drugs will force their way in and steal the drugs and money, and usually hurt someone. Moral of the story: never hang with a dude too dumb to cover his whole face while committing a crime and is named Latwang J.

The secret word today is Wisconsin. Pass it on.

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