

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Fletcher v. State

866 So. 2d 113 (Fla. Dist. Ct. App. 2004) · Decided February 11, 2004

SUMMARY

The Florida appellate court reversed Fletcher’s conviction for burglary of a dwelling because the jury’s verdict did not specifically find that the burglary involved a dwelling rather than merely a structure. The court remanded for resentencing for burglary of a structure, a third-degree felony, relying on the requirement that the judgment conform to the jury’s verdict and on Apprendi.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Ramirez, J.; Gersten; Goderich; Ramirez
JURISDICTION	Florida
DECIDED	February 11, 2004
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fletcher appealed his convictions for burglary of a dwelling and petit theft.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Omar Fletcher v. State

TOPICS

- jury instructions
- criminal procedure
- sentencing
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate practice

QUESTIONS PRESENTED

- Whether a defendant may be convicted and sentenced for burglary of a dwelling when the jury verdict does not specifically find that the burglary involved a dwelling.
- Whether the case should be remanded for resentencing for burglary of a structure when the verdict supports burglary but not the dwelling enhancement.

HOLDINGS

1. A burglary conviction may not be enhanced to burglary of a dwelling unless the jury makes a specific finding that the burglary was of a dwelling rather than merely a structure.
2. The burglary-of-a-dwelling conviction must be reversed, and the defendant must be resentenced for burglary of a structure, a third-degree felony.

KEY QUOTATIONS

“In order for a third degree felony conviction of burglary to be enhanced to a second degree felony of burglary of a dwelling, the jury must make a specific finding that the burglary was of a dwelling, not just a structure.” (866 So. 2d at 114)

“It is a well established rule of law that the judgment of the trial court must conform to the jury’s verdict.” (866 So. 2d at 114)

FACTUAL BACKGROUND

The information charged Fletcher with unlawfully entering or remaining in a dwelling. The trial court instructed the jury on burglary and provided definitions of both structure and dwelling, but the verdict form allowed the jury to find only generic burglary or trespass and did not require a specific finding that the burglary involved a dwelling. The jury found Fletcher guilty of burglary, and the trial court treated the conviction as burglary of a dwelling.

PROCEDURAL HISTORY

The trial court entered a burglary conviction that was enhanced from burglary of a structure to burglary of a dwelling. The Third District Court of Appeal reversed the burglary-of-a-dwelling conviction because the jury did not specifically find that the burglary involved a dwelling, and remanded for resentencing for burglary of a structure, a third-degree felony.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the conviction for burglary of a dwelling and remand for resentencing for burglary of a structure, a third-degree felony.

CASES CITED

- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- Williams v. State, 511 So. 2d 1017, 1019 (Fla. 2d DCA 1987)

OPINION

RAMIREZ, J.

RAMIREZ, J. Omar Fletcher appeals his conviction for burglary of a dwelling and petit theft. We reverse because the jury failed to affirmatively find that the burglary was of a dwelling. Count I of the Information charged that Fletcher did unlawfully enter or remain in a dwelling.

The trial court subsequently instructed the jury as follows: “Omar Fletcher, the defendant in this case, has been accused of the crime of Burglary of an Unoccupied Dwelling and Grand Theft-Third Degree (\$300 to \$5,000).” The trial court also instructed the jury that the State must prove, as one of three elements of the crime of burglary, that Fletcher entered or remained in a structure.

The jury received the definitions of “structure” and “dwelling.” As part of the instruction for Trespass in a Structure as a lesser included offense of burglary, the trial court instructed the jury that it was necessary for Fletcher to have willfully entered or remained in a dwelling.

The jury again received the definition of “structure,” but not that of “dwelling.” The verdict form read as follows: As to Count I of the Information _ Guilty of Burglary _ Guilty of Trespass as a lesser included offense _ Not guilty The jury found Fletcher guilty of burglary.

In order for a third degree felony conviction of burglary to be enhanced *114to a second degree felony of burglary of a dwelling, the jury must make a specific finding that the burglary was of a dwelling, not just a structure. See *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000). “It is a well established rule of law that the judgment of the trial court must conform to the jury’s verdict.” *Williams v. State*, 511 So.2d 1017, 1019 (Fla.

2d DCA 1987). In *Williams* the defendant’s conviction for burglary of a dwelling was reversed because “[t]he verdict did not specify burglary of a dwelling nor state that Williams was guilty ‘as charged’ in the information.” *Id.* As in *Williams*, the verdict in this case did not specify that Fletcher was guilty of burglary of a dwelling or state that he was guilty as charged.

Thus, Fletcher cannot be convicted of burglary of a dwelling. We therefore reverse Fletcher’s conviction for burglary of a dwelling, and remand for resentencing for burglary of a structure, a third degree felony. Reversed and remanded.