ADVANCE SHEET HEADNOTE
June 17, 2024

2024 CO 42

No. 23SA227, *People v. Howell*—Criminal Law—Force-Against-Intruders Statute—Immunity from Criminal Prosecution—Affirmative Defenses—Dwelling.

The supreme court holds that an uncovered, unenclosed, and unsecured doorstep is not part of a "dwelling" for the purposes of the force-against-intruders statute, section 18-1-704.5, C.R.S. (2023). Thus, a person that merely stands on the defendant's doorstep is a non-entrant, and the defendant's use of force against that person is not shielded by immunity under the force-against-intruders statute. Accordingly, the court discharges the rule to show cause.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 42

Supreme Court Case No. 23SA227
Original Proceeding Pursuant to C.A.R. 21
District Court, City and County of Denver, Case No. 23CR1001
Honorable Adam J. Espinosa, Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Joseph M. Howell.

Rule Discharged
en banc
June 17, 2024

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CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR, and JUSTICE BERKENKOTTER** joined.

CHIEF JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 The General Assembly recognizes that Colorado citizens "have a right to expect absolute safety *within* their own homes." § 18-1-704.5(1), C.R.S. (2023) (emphasis added). This right immunizes "dwelling" occupants from criminal prosecution for using force in defending against an intruder when certain conditions are satisfied. § 18-1-704.5(1)–(4). A "[d]welling" is "a building which is used, intended to be used, or usually used by a person for habitation." § 18-1-901(3)(g), C.R.S. (2023). This case requires us to consider whether an uncovered, unenclosed, and unsecured doorstep is part of a "dwelling." Considering the plain language of the statutes and case law, we hold that an uncovered, unenclosed, and unsecured doorstep is not part of a "dwelling" for the purposes of section 18-1-704.5. Thus, we discharge the rule to show cause.

I. Facts and Procedural History

¶2 Joseph Howell lived with his mother in her ground-floor apartment in Denver. The apartment shares a front yard with other units. The yard is open to the street and unsecured by any fence or gate. A concrete walk connects the street to the front doorstep of the apartment. The doorstep is a concrete slab with no roof, walls, or gate, and is one step up from the concrete walk. The apartment unit has a metal, barred security door that opens outward, followed by a solid interior door that opens inward.

Image 1: The doorstep.

¶3 One night, at around 10 p.m., Howell got into a physical altercation with J.M. outside the apartment. At some point, Howell went inside the apartment, closing only the outer security door. J.M. remained outside on the doorstep, engaging verbally with Howell through the security door. Howell eventually fired a shot from inside the apartment; the bullet traveled between the metal bars of the security door and hit J.M. in the face as he stood on the doorstep. J.M. fled to the side of the apartment building. Howell exited the apartment and chased after J.M.,

firing one additional shot at J.M., missing him. The entire interaction was caught on video by a doorbell camera. J.M. survived his injuries.

¶4 The People charged Howell with two counts of attempted first-degree murder, among other crimes. Howell moved to dismiss, arguing that section 18-1-704.5 immunized him from prosecution. Following a hearing, the district court denied the motion, finding that because J.M. never entered inside the threshold of the doorway, there was never an "unlawful entry into a dwelling," and thus, the statute does not apply. *See* § 18-1-704.5(2). Howell filed a petition under C.A.R. 21, and we issued a rule to show cause.

II. Original Jurisdiction Under C.A.R. 21

¶5 We exercise original jurisdiction and grant relief under C.A.R. 21 only when "no other adequate remedy is available." C.A.R. 21(a)(2). Specifically, jurisdiction is proper when "an appellate remedy would be inadequate, a party may suffer irreparable harm, or a petition raises an issue of first impression that has significant public importance." *People v. Seymour*, 2023 CO 53, ¶ 16, 536 P.3d 1260, 1269 (quoting *People v. A.S.M.*, 2022 CO 47, ¶ 9, 517 P.3d 675, 677). Indeed, C.A.R. 21 provides relief that is "extraordinary in nature" and "wholly within [this court's] discretion." C.A.R. 21(a)(2).

¶6 Howell contends that it is appropriate for this court to exercise jurisdiction under C.A.R. 21 because without our review, he has no other avenue to appeal the

district court's pretrial order denying immunity. We have held that although "a trial court's pretrial denial of immunity under [section 18-1-704.5] cannot be reviewed post-trial . . ., a defendant may properly seek review prior to trial under C.A.R. 21." *Wood v. People*, 255 P.3d 1136, 1141 (Colo. 2011). Thus, we exercise our discretion and accept original jurisdiction pursuant to C.A.R. 21 to hear Howell's appeal of the pretrial order denying him immunity under section 18-1-704.5.

III. Standard of Review

¶7 In this case, immunity turns on whether the area directly outside of the front door of Howell's mother's apartment is part of a "dwelling" under section 18-1-704.5. We review questions of statutory interpretation de novo. *People v. Rau*, 2022 CO 3, ¶ 14, 501 P.3d 803, 809. In interpreting statutes, our primary goal is to effectuate the legislature's intent. *Edwards v. New Century Hospice, Inc.*, 2023 CO 49, ¶ 15, 535 P.3d 969, 973.

¶8 To do so, first and foremost, we apply plain, unambiguous language as it is written. *Rau*, ¶ 15, 501 P.3d at 809. We cannot add or subtract words from a statute, and we must read words and phrases in context, in accordance with grammar rules and common usage. *Id.* at ¶¶ 15, 16, 501 P.3d at 809. We consider the entire statutory scheme to give "consistent, harmonious, and sensible effect to all of its parts," and avoid interpretations that result in superfluous words or phrases or "illogical or absurd results." *Id.* at ¶ 16, 501 P.3d at 809 (first quoting

Nieto v. Clark's Mkt., Inc., 2021 CO 48, ¶ 12, 488 P.3d 1140, 1143; and then quoting *McCoy v. People*, 2019 CO 44, ¶ 38, 442 P.3d 379, 389). Finally, we must use statutory definitions with fidelity—when the legislature defines a term, "that definition . . . reigns supreme." *Id.* at ¶ 17, 501 P.3d at 809.

IV. Analysis

¶9 We begin by reviewing section 18-1-704.5 and the legislature's definitions related to that statute. Next, applying the rules of statutory interpretation and pertinent case law, we determine that Howell's mother's doorstep is not part of a "dwelling" protected under section 18-1-704.5. Accordingly, we conclude that Howell is not entitled to immunity for his actions.

A. Section 18-1-704.5 and the Definition of "Dwelling"

¶10 Section 18-1-704.5, which we have referred to as the "force-against-intruders" statute, *Rau*, ¶ 2, 501 P.3d at 804, recognizes that Colorado citizens "have a right to expect absolute safety within their own homes," § 18-1-704.5(1). The statute grants immunity from criminal prosecution to "any occupant of a dwelling" who uses force against an intruder so long as: (1) the intruder made a knowingly unlawful entry into the occupant's dwelling; (2) the occupant had a reasonable belief that beyond the uninvited entrance, the intruder had committed, was committing, or planned to commit a crime against an occupant or property in the dwelling; and (3) the occupant reasonably believed

that the intruder might use any physical force (no matter how slight) against any occupant in the dwelling. § 18-1-704.5(2), (3); *see Rau*, ¶ 21, 501 P.3d at 810. To be immune, the occupant must prove these conditions by a preponderance of the evidence. *Rau*, ¶ 21, 501 P.3d at 810.

¶11 The issue here is what constitutes a "dwelling." The definitions applicable to title 18 are set forth in section 18-1-901. There, the General Assembly instructs that the "[d]efinitions set forth in any section of this title [18] apply wherever the same term is used in the same sense in another section of this title unless the definition is specifically limited or the context indicates that it is inapplicable." § 18-1-901(1). Section 18-1-901(3)(g) defines "[d]welling" as "a building which is used, intended to be used, or usually used by a person for habitation." And a "[b]uilding" is "a structure which has the capacity to contain, and is designed for the shelter of, man, animals, or property, and includes . . . a place adapted for overnight accommodations of persons or animals, or for carrying on of business therein, whether or not a person or animal is actually present." § 18-4-101(1), C.R.S. (2023). With these statutes in mind, we now turn to the facts of this case.

B. An Uncovered, Unenclosed, and Unsecured Doorstep Is Not Part of a Dwelling

¶12 The force-against-intruders statute authorizes the use of force by any occupant of a dwelling, but only against intruders who have made "entry into the dwelling." § 18-1-704.5(2), (3). Certainly, Howell's mother's *apartment* is a

"dwelling," but J.M. never entered the apartment; instead, he lingered just outside on the doorstep. Thus, the question here is whether Howell's mother's *doorstep* is part of the dwelling, implicating the immunity protections of the force-against-intruders statute.

¶13 By statutory definition, a "dwelling" must be a "building," § 18-1-901(3)(g), and a "building" is "a structure which has the capacity to contain," § 18-4-101(1). Howell's mother's doorstep is outside of her apartment. The doorstep is an ungated concrete slab with no roof and no walls. Thus, a person standing on the doorstep is outdoors, fully exposed to the courtyard and the street. Because the doorstep has no roof, walls, or gate, it does not have the capacity to contain. Without the capacity to contain, the doorstep is not a "building." *See id*.

¶14 In addition to the plain language of the statute, we also look to our precedent. We have interpreted and applied the meaning of "dwelling" as defined in section 18-1-901(3)(g) on several occasions. *See, e.g.*, *People v. Jiminez*, 651 P.2d 395, 396 (Colo. 1982) (holding that attached garage is part of a dwelling); *Rau*, ¶ 36, 501 P.3d at 813 (holding that shared basement of apartment building is part of a dwelling). The common thread running through those cases is that the area in question constituted part of a building. *Rau*, ¶ 25, 501 P.3d at 811. But, as we've described, that thread is not present here. Rather, it is undisputed that the area in

question—Howell's mother's doorstep—is an uncovered, unenclosed, and unsecured concrete slab that is not part of a building.

¶15 By the plain language of the statute, and consistent with our prior holdings, Howell's mother's uncovered, unenclosed, and unsecured doorstep is not part of a "building," and thus is not part of a "dwelling" for the purposes of section 18-1-704.5. Section 18-1-704.5 provides a "home occupant with immunity from prosecution only for force used against one who has made an unlawful *entry into the dwelling*, and . . . this immunity does not extend to force used against non-entrants." *People v. Guenther*, 740 P.2d 971, 979 (Colo. 1987) (emphasis added). Standing on the doorstep, J.M. was decidedly a "non-entrant," and Howell's use of force against him was not shielded by immunity under the force-against-intruders statute.

V. Conclusion

¶16 For the foregoing reasons, we discharge the rule to show cause.