

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CACR12-718

ARTHUR T. PIPER

APPELLANT

Opinion Delivered April 17, 2013

V.

APPEAL FROM THE DREW  
COUNTY CIRCUIT COURT  
[NO. CR-2011-123-1]

STATE OF ARKANSAS

APPELLEE

HONORABLE SAM POPE, JUDGE

AFFIRMED

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## JOHN MAUZY PITTMAN, Judge

After a jury trial, appellant was convicted of breaking or entering and sentenced to a term of imprisonment. Appellant does not dispute that police recovered from his person a bottle of Malibu pina colada rum and a bottle of Smirnoff malt liquor that came from a refrigerator in a cabinet of the victim's carport. Instead, he argues that entry into either the carport or the refrigerator did not satisfy the statutory definition of breaking or entering. We do not agree, and we affirm.

Arkansas Code Annotated section 5-39-202(a) (Supp. 2011) provides that a person commits the offense of breaking or entering if, for the purpose of committing a theft or felony, he breaks or enters into any:

- (1) Building, structure, or vehicle;
- (2) Vault, safe, cash register, safety deposit box, or money depository;
- (3) Money vending machine, coin-operated amusement machine, vending machine, or product dispenser;
- (4) Coin telephone or coin box;



- (5) Fare box on a bus; or
- (6) Other similar container, apparatus, or equipment.

In *Townsend v. State*, 308 Ark. 266, 824 S.W.2d 821 (1992), the Arkansas Supreme Court adopted a very broad definition of the term “structure” as employed in the breaking or entering statute. In affirming the breaking-or-entering conviction of a man who entered fenced property to steal all-terrain vehicles located on the grounds of a wholesale store, the court said:

Our criminal code does not define the term “structure”; it only provides the specifics of the term “occupiable structure,” which is included in the greater offense of burglary. See Ark. Code Ann. § 5-39-201 (1987). *Black’s Law Dictionary* (5th Ed. 1979) defines “structure” as “any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner.” That same authority defines “fence” as “a hedge, *structure*, or partition, erected for the purpose of inclosing a piece of land . . . .” (Emphasis added [by the court in *Townsend*].) In light of these definitions and our statutory definition of breaking or entering, which broadly includes anything from buildings to coin boxes, we have no hesitancy in holding that a fence comes within the meaning of the word “structure,” as that term is used in the statute.

*Townsend*, 308 Ark. at 268, 824 S.W.2d at 822.

The fence in *Townsend* completely surrounded the property and was locked. The carport in the present case was neither locked nor fully enclosed. However, photographs introduced at trial show that the carport was an integral part of the victim’s residence and was enclosed on two sides by exterior walls of the residence and on the other two sides by lattice-work walls extending from floor to ceiling, with an area approximately the size of a small garage door left open as an entranceway. The photographs also show that the entire area was roofed, that it was carpeted, that it contained several cabinets in addition to the cabinet in which the refrigerator was located, and that it was furnished with a couch and a few chairs



underneath a ceiling fan. We hold that the carport in the present case clearly comes within the broad definition of “structure” adopted by our supreme court in *Townsend, supra*.<sup>1</sup>

Appellant also argues that the refrigerator was not the type of container, apparatus, or equipment contemplated by the statute. Given our holding that the carport in this case constituted a structure for purposes of the breaking or entering statute, we need not address appellant’s argument regarding the refrigerator.

Affirmed.

GLADWIN, C.J., and VAUGHT, J., agree.

*Joseph P. Mazzanti, III*, for appellant.

*Dustin McDaniel*, Att’y Gen., by: *Karen Virginia Wallace*, Ass’t Att’y Gen., for appellee.

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<sup>1</sup>Entry into such an area for the purpose of committing a theft would constitute the equivalent of residential burglary in some jurisdictions. *See, e.g., People v. Thorn*, 97 Cal. Rptr. 3d 605 (Cal. Ct. App. 2009).