

OPINION SUMMARY  
MISSOURI COURT OF APPEALS EASTERN DISTRICT

STATE OF MISSOURI,	)	No. ED 94036
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	Cape Girardeau County
vs.	)	
	)	
ROGER B. ASHBY,	)	Hon. Benjamin F. Lewis
	)	
Appellant.	)	FILED: April 12, 2011

Roger Ashby (“Defendant”) appeals from the judgment of the trial court entered after a jury convicted him of second-degree burglary, a felony, and misdemeanor stealing and resisting arrest. Defendant contends that the trial court erred when it denied his motion to suppress evidence collected in a warrantless vehicle search by police officers after he gave verbal consent. He also contends that the trial court erred when it denied his motions for acquittal on the charge of second-degree burglary because the structure that Defendant entered did not constitute a “building” as required by the statute.

AFFIRMED.

DIVISION THREE HOLDS: (1) The trial court did not err in denying Defendant’s motion to suppress where Defendant voluntarily gave his consent to the search. (2) An apartment complex under construction that had four walls, a roof, some doors and some windows and was capable of providing shelter to persons or property was a “building” within the meaning of section 569.170.

Opinion by: Clifford H. Ahrens, J.                      Sherri B. Sullivan, P.J., concurs, and  
Lawrence E. Mooney, J., dissents.

Attorney for Appellant:        Alexa I. Pearson

Attorney for Respondent:    Chris Koster

<b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b>
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