

I Hope I Am not Breaking Any Rules But I
 Feel this needs to be Read And Included
 Starting At pg 22 And ending where it is
 Highlighted on pg 23) (enclosed) Also AS far
 AS the exculpatory evidence that was
 withheld part of my per appeal it was
 part of my original Direct Appeal ~~and~~
~~this evidence~~ "evidence withheld".
 Think the Appeal's court Handled this
 Direct appeal. its A video of me being
 questioned by the police. The video of
 her being questioned is played, The
 corroborating witness, the son, is never
 questioned. I was released on A trespass
 notice. The police believed me over her
 AS I was telling the truth AND you could
 tell on the video I WAS telling the
 truth, AND I WAS Released on trespass's.
 It WAS only After the police took
 these statement sheets over to her
 House dropped them off AND COMES
 BACK AN hour later AND picks them
 up from A 18 yr Kid, ~~she~~
 (on Body CAM AND testified to IN court)
 Anybody could of wrote these statements
 no police witness AND they ARE different from
 her Body CAM video being questioned. these
 statements AND Body CAM video are their

RECEIVED

MAR 11 2025

SC Court of Appeals

1 jury came back without a burglary conviction but with an
2 assault and battery first degree conviction, I would move
3 for a directed verdict because based on the indictment--

4 THE COURT: I understand.

5 MR. VERNER: It might be resolvable based on the
6 jury's verdict.

7 THE COURT: You want me to recharge a person commits
8 the offense of assault and battery first degree if the
9 person unlawfully offers or attempts to injure another
10 person with the present ability to do so and the act
11 occurred during the commission of a robbery, burglary,
12 kidnapping or theft.

13 MR. VERNER: I think that is succinctly the way that
14 the element has been charged in the indictment.

15 MR. SCOTT: I do have one, to further complicate
16 things for Your Honor, are you ready to hear--

17 THE COURT: Go ahead.

18 MR. SCOTT: We are going to argue the language under
19 the first degree burglary that you must have found him
20 guilty on one or the other charges. And I understand Your
21 Honor is trying to convey the underlying crime would have
22 been the assault, that is what the State would have, the
23 intent to commit a crime, assault therein. We do think
24 there is some precedent that they could find burglary a
25 conviction. We have abolished the rule against

1 inconsistent verdicts and there is a case on point, the
 2 State v. Alexander wherein and we have had a couple of
 3 cases before there is some inconsistency in their verdict.
 4 And I don't think, I have not seen a verdict form like
 5 this where it does have where you must find guilty of this
 6 before finding guilty on that. I think there is some
 7 precedent where they could find him guilty on the burglary
 8 and not guilty on the assault, just as an inconsistent
 9 verdict.

10 *Refused Directed verdict when Hes saying the state has no evidence*
 THE COURT: Well, your case is based on an allegation
 11 that he offered to commit an assault. All the testimony,
 12 all the evidence agrees that no assault was committed.

13 MR. SCOTT: *Jury is charged must first*
 14 THE COURT: *Find guilty of Assault before considering*
 So you are basing your case on an offer. Burglary

15 And walk me through your argument here. How could the
 16 jury find that he is guilty on burglary if based on the
 17 facts they find that no offer was made. ~~See page 200~~

18 MR. SCOTT: *solicitor* They may say, well, he committed some
 19 other, he was, public disorderly conduct, he was
 20 trespassing. They may find something else that we
 21 weren't-- *Assault was the crime therein*

22 THE COURT: The only evidence in the record of
 23 trespass, trespass notice was served during the course of
 24 the investigation. *The indictment process*
after they hear

25 *solicitor* MR. SCOTT: He breeched the peace, he was ~~seen~~
when he assaulted
peace broken
There is no assault

1 belligerent. I mean, they could think of any number of
2 things that was in the record. That is not necessarily
3 the State's position. However, I think they could rightly
4 find something that would be an inconsistent verdict.
5 There is a number of cases here I am looking at. Here is
6 one the Defendant was found guilty of burglary second
7 violent and acquitted him on a possession of a weapon
8 during a violent crime even though being armed was the
9 aggravating circumstance of the burg second violent. So
10 that is kind of equate that to--

11 THE COURT: That is an aggravating circumstance, that
12 is not a burglary second.

13 MR. SCOTT: It is one of the elements of the burglary
14 second violent. So while we agree, what the State's
15 proposition is that the crime of the assault was the
16 intent. There is some precedent here of an inconsistent
17 verdict and I am going to ask that we take that
18 instruction out, that they must first find him guilty of
19 one of the assaults before moving on to the burglary.

20 THE COURT: Mr. Verner, let me hear from you.

21 *Public Defender*
MR. VERNER: Yes, sir. Judge, I think that he is
22 correct in the proposition that the Judge is not allowed
23 to second guess an inconsistent verdict. At the same time
24 the Judge has tried to prevent inconsistent verdicts or
25 harmless errors in the first place. I think what the

1 Court is saying, even if a mistake was made you shouldn't
2 second guess the jury but that doesn't mean that the Court
3 shouldn't try to prevent those mistakes, in this case that
4 the jury reaches outside of the evidence presented and the
5 indictment for things that are outside the testimony or
6 the evidence. So I, while he is right in his principle
7 that we shouldn't second guess what went through the
8 jury's mind, that doesn't mean that the Court shouldn't
9 try to get it right in the first place. It might be a
10 harmless error, it is still an error. And so the, I think
11 the proper thing to do is to get the verdict right and if
12 it does become an inconsistent verdict issue but the Court
13 did afford them the proper law, that might lie beyond the
14 Court's hands to fix. But I do think the Court has a duty
15 to present the law as it is, consistent with the evidence
16 presented and the indictment that the Grand Jury presented
17 to the Court. And I will note that the Court orally
18 instructed the same thing too and I think legally the
19 Court is right in the, the way that the Court -- the law.
20 I do not see how, based on the indictment in this case,
21 that he can be convicted, there has been no testimony of
22 any other crime, that would just invite the jury to
23 speculate of matters that were not presented in court.
24 The assault was clearly presented in court and argued. I
25 mean, really if the jury did find another crime other than

1 the assault the jury has really violated their oath to
2 consider only what they heard in court.

3 MR. SCOTT: Judge, the Defense Attorney himself is,
4 the idea of trespass a number of times. You aren't just
5 hearing that word from me for the first time in the trial
6 today. That has been tossed about a couple of times. We
7 mentioned what Chief Sinclair said on the bodycam, I think
8 he mentioned that as an underlying crime as well. So they
9 could, theoretically, say, well, we don't know that there
10 really was an assault and battery but, you know, him
11 showing up there and trespassing and I know she told him
12 to leave. That could be him breaching the peace out there
13 on the porch, threatening to kill people. That could be
14 something, an underlying crime.

15 THE COURT: You did mention public disorderly conduct
16 in the testimony, neither side requested for me to charge
17 public disorderly conduct. That is not a lesser included
18 offense.

19 MR. SCOTT: No, they have heard that though. And
20 that is what I am saying, I don't know what they are going
21 to do. They could theoretically, well, somebody talked
22 about disorderly conduct. I don't see an assault and
23 battery. He certainly was up to no good there. We think
24 he had some intention to commit some crime while he was
25 there. Maybe it wasn't assault and battery, maybe it was

1 something else. And that is with that inconsistent
2 verdict. And, again, this is kind of, that is why I spent
3 so much time on the law. I would argue they could
4 potentially find a burg first conviction without finding
5 underlying assault. It would be inconsistent with the
6 State's theory of the case but it would be allowable.

7 MR. VERNER: And just on that, Judge. These other
8 crimes-would require other elements, disorderly conduct
9 has elements in and of itself. By State law trespass
10 cannot be an element of burglary.

11 THE COURT: Well, the evidence in the case, he is not
12 under trespass notice until after this incident happened.

13 MR. VERNER: Right.

14 THE COURT: So that is not in the realm of
15 possibility anyway.

16 MR. VERNER: But the Supreme Court has also found
17 that trespass cannot be any crime to support burglary.

18 THE COURT: We don't even need to get to that
19 question. He was not on trespass notice until after this
20 incident.

21 MR. VERNER: And the only way, he is basically asking
22 the Court to say that the jury doesn't really need to find
23 one of the essential elements of the crime, still find him
24 guilty of burglary which is the assault which is indicted
25 and tried.

1 THE COURT: I am going to deny the State's request to
2 modify that. I note your objection for the record. I
3 will call them back out here and I will redo the assault
4 and battery first degree.

5 MR. VERNER: Yes, sir. And with that, Your Honor,
6 that is the only objection we have.

7 THE COURT: Okay. Madam Bailiff, will you get the
8 jury, please.

9 (Whereupon, the jury came into open court at
10 approximately 2:40 p.m.)

11 THE COURT: Ladies and gentlemen, I called you back
12 out here just to give you assault and battery first
13 degree, the law again just to avoid any confusion. A
14 person commits the offense of assault and battery first
15 degree if the person unlawfully offers or attempts to
16 injure another person with the present ability to do so
17 and the acts occurred during the commission of a robbery,
18 burglary, kidnapping or theft.. So with that clarification
19 we will send you back in the jury room. Again, do not
20 begin your deliberations until I send the verdict form and
21 the exhibits back.

22 (Whereupon, the jury was excused from open court.)

23 THE COURT: Any further exceptions?

24 MR. SCOTT: Judge, I am sorry, I don't want to
25 belabor the point but, again, I think it is, again, we

1 talk about the cyclical nature of the burglary and assault
2 and battery. Now, they can't find him guilty of the
3 assault and battery first unless they find him guilty of
4 the burglary. You follow me? One of the components of
5 the elements is during the commission of a burglary.

6 THE COURT: Well, I probably need to clarify that.

7 MR. SCOTT: And that is why they can't, once they
8 have settled on the assault and battery first, they kind
9 of have to take the burglary and the assault and battery
10 and look at them concurrent. They can't really do one and
11 then move on to the other because both of them allow the
12 element for a burglary. So they are looking at this and
13 so, okay, well, we can't find him guilty of the burglary
14 unless we find him guilty of assault and battery charges.
15 You can't find him guilty of assault and battery first
16 unless they find him guilty of burglary. They can't find
17 him guilty of burglary unless they find him guilty of one
18 of the assaults. That is why this instruction, just
19 before burglary, I would just ask that--

20 THE COURT: Well, they can find him guilty of assault
21 and battery second and third without finding him guilty of
22 burglary, if they find that he did not cross the
23 threshold.

24 MR. SCOTT: They are saying, we think he is guilty of
25 assault and battery first. And this says you can't even

1 consider burglary until you found him guilty of one of the
2 assault and battery's.

3 THE COURT: Okay.

4 MR. SCOTT: I am sorry, Judge.

5 THE COURT: This is convoluted.

6 MR. VERNER: Your Honor, just respectfully, it is
7 only convoluted because that is the way it was indicted.
8 When you have got issues where one element is depending on
9 the proof of another element it has to be decided in one
10 order or the other. The only way the jury can do that is
11 linear, so they have to choose one, decide one before the
12 other, even in a circular situation. I think the Court is
13 absolutely correct, he cannot be found guilty of assault
14 and battery without the burglary conviction only because
15 it was indicted that way. The Solicitor created the
16 indictment that way. I understand, in any other case they
17 would have other elements to get that in there but the
18 Grand Jury indicted just this one element. So we have
19 gotten into this situation only because this particular
20 case was indicted this way.

21 THE COURT: I am thinking out loud. I am trying to
22 make this where it is not overly confusing for them. That
23 they could only, based on the charges, that they can only
24 convict him of the assault and battery first degree if
25 they found him guilty of the burglary.

1 MR. SCOTT: Yes, sir. That was one of the elements
2 of the assault and battery first .

3 THE COURT: The assault second and third clearly
4 are--

5 MR. VERNER: It is absolutely clear, you must have
6 found the Defendant guilty of one of the above listed
7 charges.

8 MR. SCOTT: How can they find him of the A&B first if
9 they haven't found him guilty of burglary, they can't.

10 MR. VERNER: I think that the jury will logically
11 resolve that through commonsense.

12 THE COURT: Mr. Verner, how do you suggest we correct
13 it.

14 MR. VERNER: I think it is logically correct how the
15 Court has it. I guess the only way consistent with the
16 Solicitor's theory is under the initial first degree
17 assault and battery, in bold letters, consistent with how
18 the Court has done the other instructions. In considering
19 first degree assault and battery you may consider or you
20 must consider burglary, that the burglary is an element of
21 assault and battery. I think the logical way to do is to
22 offer the burglary first as the first part of the verdict
23 form. And the assault is second. I understand the
24 State's frustration and the difficulty of the issue.
25 Again, it is an indictment issue that the State presented.

1 MR. SCOTT: ~~It is a legal issue, we didn't indict~~
2 ~~based on the law, based on the facts.~~

3 MR. VERNER: ~~I agree with that, but it is stipulated my~~
4 ~~client is entitled to be tried on what he is indicted for.~~

5 ~~MR. SCOTT: He is.~~

6 MR. VERNER: The only element in this case that was
7 indicted would be the burglary, assault and battery,
8 burglary as the element of assault and battery. I think
9 the Court has the correct verdict form that a jury will
10 understand. It is really a simple case, did he commit the
11 burglary, did he commit the assaults. I think that the
12 State is kind of legally reading something that a
13 commonsense jury will read in a commonsense fashion. With
14 that being said the only way I can think of is that the
15 first degree assault and the burglary have to be
16 considered together or that the Court would charge the
17 first degree burglary as the first principle charge in the
18 assault.

19 THE COURT: I will instruct them that they are to
20 consider the burglary first charge in conjunction with the
21 assault and battery charge since the burglary was the
22 aggravating factor used by the State in the indictment. I
23 don't know any other way. If I change the verdict form
24 completely at this point I have a significant risk of the
25 jury being completely confused as to what to do. What is

1 MR. SCOTT: Yes, sir. That was one of the elements
2 of the assault and battery first .

3 THE COURT: The assault second and third clearly
4 are--

5 MR. VERNER: It is absolutely clear, you must have
6 found the Defendant guilty of one of the above listed
7 charges.

8 MR. SCOTT: How can they find him of the ASB first if
9 they haven't found him guilty of burglary, they can't.

10 MR. VERNER: I think that the jury will logically
11 resolve that through commonsense.

12 THE COURT: Mr. Verner, how do you suggest we correct
13 it.

14 MR. VERNER: I think it is logically correct how the
15 Court has it. I guess the only way consistent with the
16 Solicitor's theory is under the initial first degree
17 assault and battery, in bold letters, consistent with how
18 the Court has done the other instructions. In considering
19 first degree assault and battery you may consider or you
20 must consider burglary, that the burglary is an element of
21 assault and battery. I think the logical way to do is to
22 offer the burglary first as the first part of the verdict
23 form. And the assault is second. I understand the
24 State's frustration and the difficulty of the issue.
25 Again, it is an indictment issue that the State presented.

C. Verner - Direct by Ms. McMahan

36

1 I've known Brad before and he kind of gets invested in
 2 his cases. The -- I don't think there was any intention
 3 -- any doubt that Brad was going to testify in his case
 4 in his defense. The -- but he certainly would have been
 5 told that he didn't have to testify, but I think in
 6 Brad's head he was going to get his side of it out. So
 7 that wasn't a -- that was kind of a known from almost
 8 the beginning of the case.

9 Q. Did you watch the body camera video of his
 10 statement that he gave to police?

11 A. I did, but I don't remember. I don't have a
 12 clear recollection of it. I haven't watched any of the
 13 video to prepare for this. *This is exculpatory evidence*

14 Q. ~~Do you recall whether or not with Brad was on~~
 15 ~~the stand getting that body camera in through him of his~~
 16 ~~statement would have been helpful at all to his defense?~~

17 A. ~~I don't -- I would assume if I felt it would~~
 18 ~~have been non-corroborative then I would have offered~~
 19 ~~the video, but I think his story was consistent from the~~
 20 ~~very beginning that this was argument at the doorway.~~
 21 ~~So I don't know that it would have helped because it~~
 22 ~~would have been the same thing he testified. We had a~~
 23 ~~disagreement.~~

24 Q. Do you believe the solicitor would have used it
 25 had Mr. Wallen's testimony been different than what he

that I wasn't allowed to use

1 he had first degree with a deadly weapon in the home.

2 Q. Was it meant to be more attempted assault or an
3 actual assault?

4 A. She indicated he never actually assaulted her
5 in the terms of swung at her or tried to injure her. I
6 reread the transcript and she said that he pointed in my
7 face some times and then held it over his head kind of
8 in a cocked back manner but never actually -- and her
9 son also confirmed that Brad never actually swung or
10 tried to off her.

11 Q. So there was no actual physical contact between
12 that tire tool and Miss Saverence?

13 A. She said either held it up in the air or used
14 it to point towards my face.

15 Q. Was that another reason why you were kind of
16 wanting the bench trial?

17 A. I thought a judge could fairly sort through the
18 facts possibly better and this case, you know, might not
19 have needed the extra attention of a jury trial as
20 opposed to kind of a domestic dispute that had gotten
21 out of character.

22 Q. What kind of conversation did you have with him
23 about him testifying?

24 A. I don't -- remember Brad was pretty adamant
25 that he wanted his side of it out. So I think -- and

Amsel Bradley Waller 292474
Tyger River Corr, Unit 11 Room 120
200 Prison R.O.
Evoree SC. 29335

RECEIVED

MAR 11 2025

SC Court of Appeals



FOREVER / USA

MAR 03 2025

TYGER RIVER MAILROOM

SCDO
Christmas
Packet

South Carolina Court of Appeals
1220 ~~to~~ Senate Street
Columbia S.C. 29201