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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN LOUIS NATION,

APPELLANT

APPELLATE CASE NO. 2024-000185

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT #1 (CD OF 911 CALL), STATE’S EXHIBITS #2-15 (PHOTOS),
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AND STATE’S EXHIBIT #20 (OFFICER DAVIS’ BODY CAM).**

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2 COUNTY OF SPARTANBURG) GENERAL SESSIONS
3) 13TH JUDICIAL CIRCUIT
4)
4 THE STATE OF SOUTH CAROLINA,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 vs.) 2023-GS-42-4138
7 BENJAMIN LOUIS NATION,)
8)
8 Defendant.)
9)

10 -----

11 January 29th, 2024 - February 1, 2024
12 Spartanburg, South Carolina

13

B E F O R E:

14

HONORABLE R. KEITH KELLY, Judge.

15

HONORABLE PATRICK C. FANT, III, Observing Judge.

16

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Julie A. Cendroski,
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Seventh Judicial Circuit

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1 THE STATE OF SOUTH CAROLINA VS BENJAMIN LOUIS NATION

2 THE COURT: Okay, ladies and gentlemen. As I
3 told you yesterday, we had more work to do than just the
4 one, so here we are with yet a different trial. We are
5 getting prepared to try the case of The State versus
6 Benjamin Louis Nation. The indictment is
7 2023-GS-42-4138. The indictment alleges that he did, in
8 Spartanburg County, South Carolina, on or about January
9 23 of 2023, commit the criminal offense known as
10 burglary in the first degree.

11 It was true billed by the grand jury, and he has
12 entered a plea of not guilty to the indictment. I'll
13 say this more than once, and I said it yesterday, and I
14 will continue to say it. He has entered a plea of not
15 guilty. That puts the burden on the State of South
16 Carolina to prove his guilt beyond a reasonable doubt.

17 Under our system of law, he is presumed innocent
18 of the allegations made in the indictment. The
19 indictment is not evidence against him. It is a piece
20 of paper that brings him before the court for trial.
21 Again, it's not evidence against him.

22 I'm gonna ask Mr. Nation, sir, if you would stand
23 for just about 15 seconds, please? Thank you, sir.

24 Anything from the defense on voir dire?

25 MR. SNYDER: No, sir.

1 Okay, Mr. Bailiff.

2 SOLICITOR SMITH: Your Honor, the State was
3 inquiring about whether the defense will stipulate to
4 his two prior burglaries. That was the one issue we
5 had.

6 THE COURT: All right.

7 MR. SNYDER: Yes, sir. Just a little bit about
8 this case. Mr. Nation has been incarcerated for a
9 little over 12 months. It's his position that he was
10 trespassing at the time. It's just not burglary first.
11 Discussions have been going back and forth about how to
12 classify it, but he's -- his position is right now that
13 he doesn't want to cooperate and help the State prove
14 any elements of the crime.

15 THE COURT: Okay.

16 SOLICITOR SMITH: Well, in light of that, I
17 guess, are they gonna object to putting in the
18 sentencing sheets or anything that's specifically on the
19 sentencing sheets?

20 MR. SNYDER: We've had that conversation, Judge.
21 He understands. He acknowledges that this is his past
22 and understands the relevance.

23 THE COURT: He understands the relevance of it?

24 MR. SNYDER: Yes, sir. He understands why it is
25 needed to prove the element of the case.

1 THE COURT: Okay. And I'm assuming that's why
2 Gail's on the list?

3 SOLICITOR SMITH: That's correct, Your Honor.

4 THE COURT: Okay. Is there anything else that we
5 need to put aside?

6 SOLICITOR SMITH: I just, you know, I -- do we
7 need to redact his addresses or Social Security or
8 anything? I just, I know that there's things about
9 filing court filings with -- or would that be done by
10 the clerk's office? I don't know. I just don't want to
11 get in trouble for putting any of his personal
12 information.

13 MR. SNYDER: I want to know who would do the
14 redaction but any of the personal information should be
15 redacted, in my opinion.

16 THE COURT: Well, it's gonna be put in as an
17 exhibit, so can you get with the Solicitor and make sure
18 the DOB and social and whatever it is that needs to be
19 redacted is redacted?

20 MR. SNYDER: Yes, sir.

21 SOLICITOR SMITH: All right. And we're okay with
22 everything else just as it is?

23 THE COURT: Yeah, but I agree his Social Security
24 or anything doesn't need to be on file or his date of
25 birth.

1 MR. SNYDER: Yes, sir.

2 SOLICITOR SMITH: Yeah. I just don't want to
3 start redacting things without ---

4 THE COURT: I know, but it's an exhibit, so...

5 SOLICITOR SMITH: It is.

6 THE COURT: Okay.

7 SOLICITOR SMITH: And in light of the fact that
8 he says he was trespassing, we've offered him
9 trespassing and time served and I don't know if he's
10 interested in that, but we're certainly ready to proceed
11 tomorrow, if not.

12 THE COURT: Okay. Does he reject the offer?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Okay. You want to go to trial?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: We'll do that first thing in the
17 morning.

18 SOLICITOR SMITH: And does he understand that
19 trespassing is not a lesser included of burglary? They
20 won't have an option to convict him of trespassing?

21 THE DEFENDANT: Understood.

22 THE COURT: He understands.

23 SOLICITOR SMITH: Okay.

24 THE COURT: Okay. Does anybody need from
25 anything from us until we recess until the morning?

1 Anything?

2 SOLICITOR SMITH: I believe that's all I can
3 think of, Your Honor.

4 THE COURT: Mr. Snyder, anything?

5 MR. SNYDER: No, sir. I think we're ready for
6 the jury.

7 THE COURT: Okay, thank you.

8 Mr. Bailiff, we'll have the jury.

9 THE BAILIFF: Yes, sir.

10 (Jury enters courtroom at 9:23 a.m.)

11 THE COURT: Good morning, ladies and gentlemen.
12 Madam Clerk, swear the jury to try this case.

13 THE CLERK: Please stand and raise your right
14 hand. (All comply.) Do you swear or affirm in the case
15 about to be tried, to truly try the issues that are
16 joined in this case and a true verdict rendered
17 according to the law and evidence so help you God?

18 (All reply in the affirmative.)

19 Thank you. You may be seated.

20 JURY INSTRUCTIONS

21 THE COURT: Thank you, ladies and gentlemen.
22 Ladies and gentlemen, you are now the jury in this case
23 and I will take a few moments to tell you something
24 about your duties as jurors and provide some
25 instructions. At the close of this trial, I will

1 provide you with detailed instructions, and those
2 instructions will control your deliberations.

3 This criminal case has been brought by the State
4 of South Carolina, and sometimes I refer to the State as
5 the government or the State. And at this point they are
6 represented by the assistant, the assistant solicitor.

7 The defendant has been charged with the criminal
8 offense known as burglary in the first degree. In
9 2023-GS-42-4138, the State says that he did in
10 Spartanburg County South Carolina, on or about January
11 23 of 2023, enter a dwelling located at [REDACTED] Lanham
12 Circle, Spartanburg, South Carolina, and committing this
13 criminal offense.

14 I told you yesterday and I tell you again today,
15 he has entered a plea of not guilty to the indictment
16 and he is presumed innocent of the obligations contained
17 in this indictment. The indictment is a piece of paper.
18 It is not evidence made against him, it is a piece of
19 paper. Again, he has entered a plea of not guilty and
20 he is presumed innocent of the offense.

21 Now, South Carolina law makes you 12 the finder
22 of facts. You 12 alone will be the finder of facts and
23 decide what the, what the facts are from the evidence
24 that will be presented. You will hear the evidence.
25 You will decide what the facts are and apply them to the

1 law that I provide at the end of this case. And that is
2 how you, the jury, will reach a verdict.

3 In doing so, you must follow the law, whether you
4 agree with it or not. Now, ladies and gentlemen,
5 evidence will consist of testimony of witnesses,
6 documents and other items received as exhibits.

7 Now, the same law that makes you 12 the finders
8 of the facts, makes me the judge of the law. Our rules
9 of evidence control what may be received into evidence.
10 And when a lawyer asks a question or are presenting an
11 exhibit and a lawyer on the other side believes it is
12 not permitted by our rules of evidence, the lawyer may
13 object.

14 Ladies and gentlemen, this is my rule book of
15 evidence, right here. It's what we're talking about.
16 The objection simply means that the lawyer is requesting
17 that I make a decision on whether a particular rule of
18 evidence allows whatever document is being entered.

19 State law forbids a trial judge from making a
20 comment to a jury about the facts. Therefore, because
21 it may be necessary for me to comment on a fact, when
22 applying our rules of evidence, it may be necessary for
23 me to talk with the lawyers outside of your hearing by
24 having what's known as a bench conference while you are
25 present in the courtroom.

1 Generally, ladies and gentlemen, you'll see me do
2 it. I will wave the lawyers up using my hand or so, and
3 they will come up. I will cancel my microphone, and
4 we'll talk briefly about whether that particular piece
5 of evidence was proffered or is it coming in.

6 In the event that it's gonna take more than just
7 a few seconds, then I may ask you to leave the room so
8 that I may speak more freely with the lawyers.

9 Now, the purpose of these conferences is to
10 decide whether or not that evidence is treated under our
11 rules. I will tell you ahead of time that certain
12 things are not evidence. Statements, arguments,
13 questions, and comments by the lawyers representing the
14 parties in this case are not evidence. Objections are
15 not evidence. Lawyers have a duty to their client to
16 object if they believe something is improper.

17 You should not be influenced by an objection. If
18 I sustain an objection, you must ignore the question or
19 the exhibit and you must not try to guess what the
20 answer might have been or what the exhibit might have
21 contained. If I overrule an objection, the evidence
22 will be admitted, but do not give special attention to
23 that particular item because it drew an objection.

24 Any testimony I order and direct stricken from
25 the record is not evidence. And anything you see or

1 hear about this case outside of this courtroom is not
2 evidence.

3 Now, some of you may have heard the term direct
4 evidence and circumstantial evidence. Direct evidence
5 is testimony by a witness about what that witness
6 personally saw, heard, or did. Circumstantial evidence
7 is indirect evidence. It is proof of one or more facts
8 from which one could find or infer another fact. You
9 may consider both direct and circumstantial evidence.
10 Our state law permits you to give equal weight to both,
11 but it is up to you to decide how much weight to give
12 any evidence.

13 In deciding what the facts are, you may have to
14 decide what testimony you believe and what testimony you
15 do not believe. Ladies and gentlemen, you can believe
16 one witness over several. You can believe several
17 witnesses over one. You can believe all of the
18 witness's testimony or you can reject all of the
19 witness's testimony. It is up to you to decide what
20 testimony is credible and to that testimony you would
21 give weight to the evidence permitted -- vetted before
22 you.

23 And to ensure fairness, you as jurors must not
24 talk among yourselves about this case or about anyone
25 involved with the case until the case has ended and you

1 retire to the jury room to consider the verdict. Do not
2 talk to anyone else about it or anyone who has something
3 to do with it, and that includes members of your family
4 or friends.

5 You may tell your family and friends that you are
6 a juror in the case, but do not discuss the case until
7 it has ended and a verdict has been reached. After that
8 you can talk about this case as much or as little as
9 you'd like. Do not let anyone talk to you about the
10 case. And if anyone should try to do so, please inform
11 the foreperson of the jury, who will then inform me.

12 During the trial, do not speak to any of the
13 parties, the lawyers, or any witnesses. If a person on
14 one side sees you talking to someone about the case,
15 they may think that that was suspicious and that your
16 fairness might be awry. If any lawyer, party, or
17 witness does not speak to you when they see you in the
18 hallway, do not talk to them and they're not gonna talk
19 to you.

20 And I'm gonna have to modify my comments a little
21 bit because in the old building you were all in the same
22 hallway out here, not so now. You should have come down
23 this hallway, the secured facility at this point.

24 Ladies and gentlemen, do not read any news
25 stories. Do not do any independent investigation. Do

1 not use a dictionary or any reference material to make
2 an investigation. And do not make up your mind about
3 what the verdict should be until you have gone to the
4 jury room to discuss it with your fellow jurors.

5 Sometimes I'm asked about taking notes. You are
6 not to take notes during the trial of this case. And
7 the reason is we will need to pay close attention to the
8 witness who was testifying and not fixated on making
9 copious notes.

10 Now, for an outline of the trial, the first step
11 in every trial is an opening statement. The State will,
12 in its opening, tell you about the evidence that it
13 intends to put before you so that you will have an idea
14 about what this case is about. Just as the indictment
15 is not evidence, neither is the opening statements by
16 the lawyer. The only purpose it is for, is for you to
17 understand what the State is trying to prove. And after
18 the State's opening, defense counsel will make, if he
19 chooses, make an opening statement as well.

20 Next, is the State will offer evidence that it
21 says supports the charge made against this defendant.
22 The State's evidence will consist of testimony and it
23 may include exhibits and documents. I remind you again
24 that he is presumed innocent and the burden of proof of
25 guilt beyond a reasonable doubt rests squarely on the

1 State.

2 Now, in the closing statements, each lawyer will
3 have a chance to summarize the testimony for you and
4 help you understand what was presented. And the final
5 part of all trials occurs when I instruct you about the
6 rules of law that you are to use in reaching your
7 verdict.

8 At this point, juror number 61, sir, if you would
9 raise your hand, sir. 61, sir, you are now part of the
10 12. We had a juror that is sick this morning and cannot
11 join us, and so you have now been chosen to move up.
12 And I'll explain real quickly how that happens. We take
13 the two alternate's numbers. We provide them in a
14 little blue box this morning. We shook them up and Mr.
15 Bailiff picked a number and you hit the lottery. So you
16 are now part of the 12. And juror number 92, sir, you
17 are now alternate with the jury this morning.

18 Juror number 56, sir, where are you?

19 (Raises hand.)

20 I'm asking -- this is not -- I'm not ordering
21 you, but would you serve as the foreman of the jury?

22 JUROR 56: Yes, sir.

23 THE COURT: Thank you. I try very hard to have a
24 forelady and a foreman and last week in a trial in
25 another county I had a forelady, so I'm trying to pick a

1 foreman this time. And thank you for serving. Sir, if
2 you -- you can sit right there if you're comfortable
3 right there. I always consider the very end chair to be
4 the foreperson's chair, but if you're comfortable there,
5 I'm fine. I just want you at the end of that row. My
6 eye falls to that spot. And, Mr. Alternate, you would
7 always sit on the end of the jury, on the end of the 12,
8 wherever that might be. I would appreciate that very
9 much.

10 Everyone else here now is now made an honorary
11 rotarion, which means you can rotate to the front, you
12 can rotate to the back. Stand if you want to stand,
13 like I do, you can sit in the back, please, so that you
14 would not block the view of a fellow juror. You can sit
15 in the same seat throughout the trial or you can move
16 around. It does not matter. But I will ask Mr. Foreman
17 and Mr. Alternate, please have assigned seats, okay?

18 Mr. Foreman, you've become the spokesperson for
19 the jury. As I indicated earlier, if someone is sick,
20 if there is a car that won't start and you've gotten a
21 message of that, you will want to inform me. We're
22 gonna do that in this courtroom on the record. You and
23 I will never have a private conversation. I would bring
24 you in and the lawyers would be here, and you'd tell me
25 what the issue is and we'd make a decision about that.

1 MR. FOREMAN: Yes, sir.

2 THE COURT: Thank you for serving.

3 Anything from the State or defense?

4 SOLICITOR SMITH: No, Your Honor.

5 MR. SNYDER: No, sir.

6 THE COURT: Okay. Please give your attention to
7 the solicitor.

8 OPENING STATEMENT

9 SOLICITOR SMITH: Thank you. Good morning. On
10 January 23rd of 2023, Gregory Wall and Randall Etters
11 were at their home at [REDACTED] Lanham Circle in Spartanburg
12 County. It's in the Calhoun Lakes area, kind of off of
13 Forest, Fernwood, Glendale.

14 Greg was still asleep. Mr. Etters had already
15 gotten up. Getting ready, taking a shower, start to get
16 his clothes on when -- they own dogs and they were
17 actually looking at some other people's -- looking after
18 some other people's dog at that time as well. And he
19 started to hear some dogs bark. Unusual activity. And
20 so he went to go explore and he found Benjamin Nation
21 inside of his house. This is about 6:40 in the morning
22 this time of year. It's still dark outside.

23 Mr. Nation had previously been trespassed from
24 their house from an incident that happened in December.
25 The evidence will show that they had surveillance

1 cameras that showed how he entered the house. He went
2 through a locked gate, kind of like in a pool and maybe
3 an apartment complex where you've got to pull the, pull
4 the thing and then you can push the gate open. He went
5 through that, walked past their pool, and then went
6 through their sliding glass door, which had been left
7 open because they left the dogs out when he woke up.

8 He was somewhat incoherent and delusional. He
9 was asked to leave repeatedly. Mr. Wall heard the
10 commotion that was going on. He woke up, and Mr.
11 Edwards started filming this. And you're gonna see the
12 film of what happened with them trying to get him to
13 leave repeatedly and he refused to leave.

14 Officer Davis, who's sitting on the second row
15 back there, is the first person to arrive. He arrives.
16 Mr. Wall is actually standing out on the front porch.
17 He goes inside, finds other victim and Mr. Nation, and
18 he looks almost identical on the video that you'll see
19 to what he looks like now. He hasn't done much to
20 change his identity or anything.

21 And, basically, Davis figures out who's the
22 person that doesn't belong. Each kind of tries to get
23 him to leave. Mr. Nation reaches back, kind of
24 aggressively for his phone. Mr. Davis then -- or Deputy
25 Davis then takes him out, puts him in handcuffs, walks

1 him, basically, to his car. They identify him. He
2 admits that he's Benjamin Nation, kind of. It's
3 interesting how that happens.

4 And then the two victims basically walk the
5 police through. And you're gonna see the pictures and
6 hopefully you'll see a body cam, if my friend can get it
7 working before. This witnesses testifies the kind of a
8 walkthrough of the house, so you'll see the distance
9 that he was travelling through a house that he's already
10 trespassed from at 6:40 in the morning.

11 And I believe that's basically what the case is
12 gonna be. It's not gonna be super long. I think
13 there's gonna be four -- five witnesses. And I think
14 that's what the evidence will show.

15 Now, he's charged with burglary in the first
16 degree. You're probably asking yourself what is a
17 burglary? A burglary, the generic crime, not any sort
18 of degree, but is an entry into a dwelling without
19 consent. And that when you enter without consent, you
20 were intending to commit a crime. That's a burglary.
21 And it becomes a burglary first degree if there's an
22 enhancing factor. In this case there's two.

23 One of those is that it was nighttime. Although
24 people would probably refer to this as the morning, the
25 judge will instruct you on what nighttime means and if

1 you got up -- when I got up this morning, you would know
2 that at 6:30 in the morning, 6:40 in the morning it's
3 still dark. You can't see people's face from the end of
4 the driveway.

5 The other enhancing factor, and it's not an and,
6 it's an or, one of the two. The other is that he has
7 two prior burglaries. And you're gonna hear from our
8 deputy clerk about the two convictions that he has in
9 the past for burglary. That's another way it can be
10 enhanced.

11 Now, I want to kind of want to try to narrow down
12 the issues. Of course, they can challenge everything.
13 It's up to me to prove every single element. But what I
14 think will come of this is, the question is, is what was
15 his intention when he entered the house. And,
16 unfortunately, that's the hardest thing to know, because
17 that involves getting in somebody's mind. And basically
18 what you're going to have, in order to do that from the
19 State's presentation is the circumstances surrounding
20 it.

21 The circumstantial evidence that he came to a
22 house that he's already been trespassed from. But he
23 does kind of know them, and may have had a phone number
24 that he could have contacted them if he wanted to, if he
25 had a legitimate reason to be there.

1 He could have gone to the front door, you'll see,
2 which would also be a normal thing to do, but he didn't.
3 He went to the back door and let himself in. He didn't
4 announce himself, calling for any of their names, like,
5 hey, I think I'm in your house. He was walking along.
6 The dogs is what alerted them.

7 He didn't leave when they asked him to leave.
8 Now, I'll give you, he did not assault them. There's no
9 evidence that he stole. There's no evidence that he
10 attacked them or anything like that. We'll admit that.
11 The victims will admit that. But the question is, at
12 that moment that he answered, did he have an intention
13 to commit a crime?

14 We already know that he's there trespassing. And
15 I asked him, once you consider all the evidence, both
16 the witness testimony, and the exhibits, the videos, and
17 the photos you see that you'll return a verdict of
18 guilty for burglary first. Thank you.

19 THE COURT: Counsel.

20 MR. SNYDER: Thank you.

21 OPENING STATEMENT

22 MR. SNYDER: Good morning. I'll be short. I
23 don't want to bore you. I think the prosecutor just did
24 a good job. However, this is going to be very important
25 because it, as the solicitor indicated, it's going to

1 require for you to determine what my client was thinking
2 at the time he went inside the house. He knew them. He
3 went inside. He shouldn't have been there. We all
4 admit that he shouldn't have been there, but he didn't
5 go in there with any intention to do anything other than
6 just see people that he knew.

7 He did not burglarize the house. I think that
8 will be very clear after you hear testimony, and I just
9 want you to consider it and return the appropriate
10 verdict. Thank you.

11 THE COURT: Solicitor.

12 SOLICITOR SMITH: The State calls Randall Etters.

13 THE COURT: Mr. Etters, come up and be sworn.

14 THE CLERK: Do you swear or affirm your testimony
15 will be the truth, whole truth, and nothing but the
16 truth so help you God?

17 THE WITNESS: I do.

18 THE COURT: Mr. Etters, if you'll adjust the
19 microphone and using your outside voice tell us who you
20 are and spell your last name for madam court reporter,
21 please.

22 THE WITNESS: Randall Etters, E-t-t-e-r-s.

23 THE COURT: Thank you. Counsel?

24 RANDALL ETTERS,
25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY SOLICITOR SMITH:

3 Q. All right. Mr. Etters, where were you living on
4 January 23rd of 2023?

5 A. I was -- I just got in the shower. I was at
6 home.

7 Q. Where were you living?

8 A. Oh, [REDACTED] Lanham Circle.

9 Q. All right. And is that in Spartanburg County?

10 A. Yes, correct.

11 Q. All right. And who lives at that address with
12 you?

13 A. Myself and Greg.

14 Q. All right. And you have dogs?

15 A. Yes.

16 Q. Were you watching out for some other people's
17 dogs?

18 A. Yes, the in-laws.

19 Q. All right. And describe to me what you were
20 doing that morning before this incident happened.

21 A. I get up roughly around 5:30, let the dogs out,
22 start the pattern and go to work. So that morning I was
23 preparing to get in the shower. I just got in the
24 shower when I heard the dogs acting different. And at
25 that time I heard an unknown voice. So I threw on some

1 clothes, went out the door.

2 And when I turned into the hallway, I was
3 standing in front of Benjamin Nation.

4 Q. All right. And is he in the courtroom today?

5 A. Yes.

6 Q. Where is he sitting?

7 A. Right there (indicating).

8 Q. All right. Now, did you know who that was at the
9 moment that you saw him?

10 A. I met him a couple times. I never had no
11 dealings with him because I would be at work when he was
12 at the house doing some work.

13 Q. Okay.

14 A. So I never had interactions with him, per se.

15 Q. All right. And what type of work have you done
16 on your house, do you know?

17 A. Yes. They, they was actually putting down
18 moisture barrier --

19 Q. Okay.

20 A. -- under the house.

21 Q. All right. Was it, was it surprising to see him
22 at your house at this hour?

23 A. Yes, definitely. Anybody.

24 Q. Okay. Had you given him permission to be there?

25 A. No, sir.

1 Q. Okay. Did you hear any knocks or ringing of door
2 bells or any attempts to alert you all that somebody was
3 there?

4 A. No, sir.

5 Q. All right. What's the first thing that alerted
6 you?

7 A. The dogs.

8 Q. All right. Describe to me what happens when you
9 see him.

10 A. Basically, you know, what you doing in my house,
11 you need to leave. And then it kind of went on from
12 there. He was kind of talking weird, like saying like
13 just crazy off-the-wall stuff. And I never felt harm,
14 like in danger or nothing. He just, like he wasn't in
15 his right mind.

16 Q. Okay. And did he leave?

17 A. No.

18 Q. All right. And, again, where was it in the house
19 that you first encountered him?

20 A. The right hallway in the back right corner of the
21 house by the master bedroom.

22 Q. Okay. So the hallway that would give you access
23 to the master bedroom?

24 A. Right. It's a u-shape hallway.

25 Q. Okay. Did he have anything in his hands? Did he

1 have anything on him that you recall?

2 A. The only thing I saw visually was a water bottle
3 and, I think, a couple cellphones.

4 Q. Okay. And so you asked him to leave. Did you do
5 that more than once?

6 A. Multiple times.

7 Q. All right. And did he ever leave --

8 A. No, sir.

9 Q. -- at your request?

10 A. No, sir.

11 Q. I'm gonna show you State's 2 through 15, and ask
12 if you can tell me what these are pictures of generally.
13 I'm about to go through each one individually. We'll do
14 that once they're admitted.

15 A. In front of the house, the foyer, the back sun
16 room door, back view to the house, back door, pool area,
17 side gate, side yard, back door, his vehicle on the
18 side of the yard, the foyer, the side gate, the den
19 looking into the front door, and the side door again.

20 Q. All right. Are those all pictures of your house
21 on Lanham --

22 A. Right.

23 Q. -- Circle?

24 A. Yes, sir.

25 Q. And are those that were taken the morning of this

1 incident?

2 A. Correct.

3 SOLICITOR SMITH: All right. Your Honor, at this
4 time we would move State's 2 through 15 into evidence.

5 MR. SNYDER: No objection.

6 THE COURT: Without objection they're in.

7 (State's Exhibit Numbers 2 through 15 were
8 entered into the record.)

9 SOLICITOR SMITH: Can I use this one? I think
10 you have to control it.

11 THE COURT: I don't know.

12 SOLICITOR SMITH: I do know how to use it a
13 little bit, but... What's it on, like who to share it
14 with? What input do you have it on, HDMI or -- it needs
15 to be dot cam.

16 THE COURT: Okay. I've got dot cam, lectern dot
17 cam and share with --

18 SOLICITOR SMITH: Everyone?

19 THE COURT: Everyone.

20 THE CLERK: Is yours on?

21 SOLICITOR SMITH: I turned it on. Well, I can
22 move on to something else, if we want to get IT.
23 Because I know the HDMI works.

24 BY SOLICITOR SMITH:

25 Q. All right. At some point did you start your

1 cellphone video recording?

2 A. I did, yes.

3 Q. All right. And did you also have a surveillance
4 video that showed the back entrance to your house, a
5 sliding glass door?

6 A. Essentially the back door going into the sun
7 room.

8 Q. Okay.

9 A. That leads to the sliding glass door.

10 Q. All right. And you have a camera that shows
11 that?

12 A. Yes.

13 Q. And did you share that with law enforcement?

14 A. Correct.

15 Q. And you also shared your cellphone video with law
16 enforcement?

17 A. I did.

18 Q. At this time I'm gonna show you State's 18 and
19 ask if you can tell me what this is.

20 A. That should be the video of the recording of the
21 back door and my cellphone video.

22 Q. All right. And you previously reviewed this?

23 A. Correct.

24 SOLICITOR SMITH: Your Honor, at this time we
25 would move State's 18 into evidence.

1 MR. SNYDER: No objection.

2 THE COURT: Without objection it's admitted.

3 (State's Exhibit Number 18 was entered into the
4 record.)

5 BY SOLICITOR SMITH:

6 Q. Okay. There we go. All right. Will you
7 describe what we're looking at here?

8 A. So that's the back of the house, the doors
9 leading into the sun room.

10 Q. All right. And to the right of this, is this a
11 pool?

12 A. A pool area is to the right. If you go around,
13 that's the side yard with the garages and the side gate
14 with a pool hatch.

15 Q. All right. I'm gonna play this for a second.
16 And do you know if your time is roughly right on your
17 surveillance?

18 A. Yes.

19 Q. All right. All right. Did you have any other
20 surveillance video that showed him other than that?

21 A. Besides my cellphone?

22 Q. No.

23 A. No. No other surveillance, no.

24 Q. Okay. At this time I'll play the ---

25 (Plays video.)

1 And just to be clear, is -- who are those two
2 people that are talking when I just paused it?

3 A. Greg Wall and Benjamin Nation.

4 Q. All right. Back to it.

5 (Plays video.)

6 Is -- do you know, is Greg on the phone with
7 911 --

8 A. Yes.

9 Q. -- at this part? Is that what, him talking in
10 the background?

11 A. Yes. Uh-huh.

12 (Plays video.)

13 Q. All right. Is that tail end part where Deputy
14 Davis showed up?

15 A. Yes.

16 Q. And took him out? All right. Can you describe
17 what's happening, since the cameras are flipping up at
18 the ceiling, what's happening during that time?

19 A. So at that point we got him to the front of the
20 house by the front door and it was kind of the part
21 setting up the barrier, you know, to kind of keep him
22 kind of in the area until the police arrive. And I was
23 just letting him talk, ramble.

24 Q. All right. And did you ever understand why he
25 was there?

1 A. No.

2 Q. Why did you film this?

3 A. Just to prove that he was in the house
4 unannounced and in case something worse happened.

5 Q. Okay. I know you just listened to that. Did you
6 get anything out of what he was saying? Did any of it
7 make sense at the time?

8 A. None whatsoever.

9 Q. All right. And so, once Mr. Nation was taken
10 away, other offers arrived; is that right?

11 A. Correct.

12 Q. All right. And do you end up kind of doing a
13 walkthrough of the house with one of them?

14 A. Correct.

15 Q. All right. And how, how is it that somebody
16 could get access to the back of your house?

17 A. Well, he was parked on the side yard by -- on the
18 pool side, so he would have to reach over a solid gate,
19 pull up the pool latch gate lock, open the gate, walk
20 all the way around the house, enter the back through the
21 glass door to the sun room.

22 (Conversation occurred off the record between
23 counsel and clerk.)

24 Q. I guess until IT gets here, we're going to do
25 this old school, which is sad. This is State's

1 Exhibit 2. Is this the front of your house?

2 A. Correct.

3 Q. All right. And the gate that you were just
4 describing is to the --

5 A. Left.

6 Q. -- left in this picture?

7 A. Right.

8 Q. Now, when you went out to the driveway, were
9 there any vehicles there that didn't belong to you or
10 Mr. Wall?

11 A. Yes.

12 Q. And what was that, if you remember?

13 A. It was some type of SUV car, four-door.

14 Q. Is this it in State's 15?

15 A. Yes.

16 Q. State's 11?

17 A. Yes.

18 Q. And where is this vehicle parked?

19 A. To the left side of the house.

20 Q. Okay. State's 8, is that the door that --

21 A. The side.

22 Q. -- you're describing?

23 A. Correct.

24 THE DEFENDANT: You've got your screen up.

25 SOLICITOR SMITH: Oh good, thank you.

1 BY SOLICITOR SMITH:

2 Q. It would be a shame for it to not work. All
3 right. Hopefully I've got my nails clean because this
4 thing is really high def. This is the gate that you're
5 describing?

6 A. Yes.

7 Q. And where is the latch on that gate?

8 A. On the backside.

9 Q. Okay. This is State's 8 and this is State's 13.
10 Is this you indicate to the officer where ---

11 A. So, in between the gate and the, the fencing on
12 the left side of the gate, there's a little gap you can
13 reach through and pull the pool style lock.

14 Q. All right. And here's State's 9. It's just a
15 more zoomed out version. All right. Can you tell me
16 what's in State's 5?

17 A. So, coming from the gate, you have the swimming
18 pool, which is on the left side of the picture around to
19 the back door of the house which leads into the sun
20 room.

21 Q. All right. This is State's 6. What is that?

22 A. The back door going into the sun room.

23 Q. All right. And that's one you don't have
24 surveillance of him going in that door?

25 A. No. We have going in that door, but not the

1 sliding door, which is another layer in.

2 Q. All right. This is State's 4. What's in this
3 picture?

4 A. So that's the sunroom, once you pass through
5 going into the den.

6 Q. All right. This is State's 10. What's in this
7 picture?

8 A. The back door of the sunroom, the one that he
9 entered.

10 Q. All right. And were you all renovating the sun
11 room at the time?

12 A. Correct.

13 Q. Or the whole house --

14 A. Right.

15 Q. -- I guess, but that was the part you were
16 working on? All right. Backing up for a second.
17 State's 7, what is view of?

18 A. I assume you're coming up -- once you enter the
19 side gate, and that's the walkway leading to the back of
20 of the house.

21 Q. All right. And this is State's 14. What is this
22 a picture of?

23 A. Looking from the den to the front door.

24 Q. All right. And whose water bottle is that?

25 A. Mr. Nations.

1 Q. All right. And so this is the front door here?

2 (Indicating.)

3 A. Yes.

4 Q. Where Deputy Davis came through?

5 A. Correct.

6 Q. And state's 12, what is this a picture of?

7 A. And that's looking in from the front door to the
8 den. So that's the little foyer hallway.

9 Q. All right. And so how many doors in total would
10 he have had to have gone through to get to where he got
11 inside your house?

12 A. Including the gate, one, two, three.

13 Q. All right. And none of those were locked, right?

14 A. No.

15 Q. Well, I guess the, the gate latch, but it ---

16 A. Well, the gate latch, you have to reach in to
17 unlock it. Then the back door, you know, I come and go.
18 I smoke out there sometimes and let the dogs in and out.

19 Q. All right. From the video it sounds like you
20 knew that he was trespassed from the house; is that ---

21 A. Correct.

22 Q. All right. Were you involved in the incident
23 where he was trespassed?

24 A. No, sir.

25 Q. You just became aware of it?

1 A. Right.

2 Q. Does anybody else, other than you and Mr. Wall,
3 have permission to invite people over to the house?

4 A. No, sir.

5 Q. All right. Do you have -- would you have had Mr.
6 Nation's phone number, if he had one?

7 A. No, sir.

8 Q. So he would not have been able to contact you?

9 A. No, sir.

10 Q. All right. Do you have on your front door -- oh,
11 it's up here. Does your front door have a bell or any
12 way to --

13 A. It does.

14 Q. -- alert? And have you ever been at the house
15 when Mr. Nation has been at the house prior to this
16 incident?

17 A. Just when -- once when they was finishing up work
18 one day when I was coming home from work.

19 Q. Okay.

20 A. So just in passing.

21 Q. But he was inside the house doing work?

22 A. Not inside, around the back underneath the house.

23 Q. Okay. To your knowledge, has he ever come into
24 the house other ---

25 A. Not to my knowledge. Maybe to use the restroom

1 or something while they were working.

2 Q. All right. One second. I believe that's all the
3 questions I have, thank you.

4 CROSS-EXAMINATION

5 BY MR. SNYDER:

6 Q. Good morning. Mr. Etters, you said you met
7 Mr. Nation a couple of times?

8 A. While he was working, just in passing. I knew
9 his name and what he was there to do and that's about
10 it.

11 Q. But he was -- but he had been working on the
12 house?

13 A. In the crawl space underneath the house.

14 Q. And he was doing that work for your roommate?

15 A. For us, me and Greg.

16 Q. You all were paying him for that?

17 A. Yes.

18 Q. And you said you never felt like you were in any
19 danger.

20 A. No.

21 Q. And I heard you say multiple times in that video
22 we just watched that he was trespassing.

23 A. Right.

24 Q. And it wasn't the first time?

25 A. No. I know one other time, yes.

1 Q. Right. Because he was actually on notice not to
2 be trespassed?

3 A. Right.

4 Q. But he had trespassed before and was trespassing
5 this time?

6 A. Correct.

7 Q. Was the sliding door opened?

8 A. It is. It's part of the house. The back door
9 that he came through is the back door of the house.

10 Q. Okay. Does the slide -- I saw a bunch of golden
11 retrievers.

12 A. Yes.

13 Q. That was -- how many ---

14 A. I have a golden retriever and a cocker spaniel.
15 Then we was sitting his in-law's dogs, which are a white
16 golden retriever type mix.

17 Q. So bigger dogs?

18 A. Yes.

19 Q. And, I'm sorry, the sliding door was opened so
20 the dogs could go in and come ---

21 A. It stays open. It's part of the house. We don't
22 close that. That's part of the house. It's a living
23 space.

24 Q. Okay. But there's actually a door you have to
25 come -- enter to get inside the house?

1 A. Right.

2 Q. Okay. So you said there were four dogs?

3 A. There was four, yes.

4 Q. Okay. One's name was Max?

5 A. That's my dog, yes.

6 Q. Okay. Because I kept hearing you yell Max.

7 A. He likes to jump.

8 Q. Okay. And you had no idea why Mr. Nation was in
9 that house?

10 A. No, sir.

11 Q. But it was never confrontational?

12 A. No. Except for he wouldn't leave and he was just
13 talking random stuff.

14 Q. Right. But it was never -- again, you never felt
15 like you were in danger.

16 A. No.

17 Q. It sounded like you all were having conversations
18 at one point.

19 A. Well, he was having conversations with himself.

20 Q. Made cordial conversation. It wasn't angry? It
21 wasn't hostile?

22 A. No, not hostile. I didn't feel threatened.

23 Q. And, again, all that yelling was directed on, I'm
24 not gonna assume it was all Max, but dogs to keep them
25 from jumping?

1 A. Towards the end.

2 Q. You said you couldn't understand a lot of what he
3 was saying and I couldn't either, but a lot of it
4 sounded like conversations about work.

5 A. I don't really know. Dogs being people and I
6 don't know. I was just letting him ramble since he was
7 at the front door.

8 Q. And you filmed to show that Mr. Nation was
9 trespassing at the time, and just in case something bad
10 happened?

11 A. Well, you just don't ever know when a situation
12 could turn sour.

13 Q. Of course, but nothing bad happened.

14 A. No, it didn't.

15 Q. And, again, Mr. Nation had trespassed there
16 before?

17 A. Correct.

18 Q. He was on notice not to trespass again.

19 A. Right.

20 Q. He was trespassing this time. He wouldn't leave,
21 so you called the police to get him out of there?

22 A. Correct.

23 MR. SNYDER: One second, Your Honor. No other
24 questions.

25 THE COURT: Anything at all, Solicitor?

1 SOLICITOR SMITH: No, I don't have anything.

2 THE COURT: Thank you. Sir, you may step down.
3 Please be careful.

4 (Witness leaves witness stand.)

5 THE COURT: We'll be in recess for about 15
6 minutes or so.

7 (Jury leaves the courtroom at 10:32 a.m.)

8 (A recess was had from 10:32 a.m. -10:47 a.m.)

9 THE COURT: Mr. Foreman, jury good?

10 MR. FOREMAN: Yes, sir.

11 THE COURT: Solicitor?

12 SOLICITOR SMITH: Your Honor, the State calls
13 First Sergeant Rick Kwasniewski.

14 (Witness comes forward.)

15 THE CLERK: Do you swear or affirm the testimony
16 you give will be the truth, whole truth, and nothing but
17 the truth so help you God?

18 THE WITNESS: I do.

19 THE COURT: Officer, if you'll tell us -- adjust
20 the microphone and tell us who you are and spell your
21 last name for madam court reporter, please.

22 THE WITNESS: Okay. I am First Sergeant Rick
23 Kwasniewski. It's R-i-c-k. Last name is
24 K-w-a-s-n-i-e-w-s-k-i.

25 THE COURT: Solicitor.

1 FIRST SERGEANT RICK KWASNIEWSKI,
2 having been sworn, testified as follows:

3 DIRECT EXAMINATION
4 BY SOLICITOR SMITH:

5 Q. First Sergeant, where are you employed currently?

6 A. The Spartanburg County Sheriff's Office.

7 Q. And how long have you been at the sheriff's
8 office?

9 A. Just over 24-and-a-half years.

10 Q. Is that you -- all of your experience in law
11 enforcement at the sheriff's office or?

12 A. For here, yes. I've got six prior years in North
13 Carolina at Rutherford County Sheriff's Department.

14 Q. All right. And what was your role with the
15 sheriff's office back in January 23rd of 2023?

16 A. I was a first sergeant on patrol.

17 Q. All right. And what does a first sergeant on
18 patrol do?

19 A. We are a supervisor over the other sergeants. We
20 make sure everything's done properly, everything runs
21 smooth. We do assist with calls. We're pretty much
22 everything that's done and approved, I've got to do it.

23 Q. All right. So, in this case would you be
24 basically in charge of the investigation since it didn't
25 get referred to the investigation division?

1 A. Yes. I was the one overseeing.

2 Q. All right. And did you respond to [REDACTED] Lan --
3 Lanham or Lanham Circle? Did you?

4 A. I did.

5 Q. All right. And what was the nature of that call
6 that you responded to?

7 A. We were to respond to a BD in progress. And we
8 were on the day shift. This happened on night shift.
9 The night shift were on scene and we responded as
10 relief.

11 Q. Okay. When does the shift change?

12 A. At 7 o'clock.

13 Q. All right.

14 A. 7 a.m. is the actual shift change.

15 Q. All right. So, it kind of happened right at the
16 -- right around the time that you all were switching?

17 A. And me being a supervisor, I do come in an hour
18 early. All supervisors at the sheriff's office would
19 come in one hour early. The regular road guys work a
20 12-hour shift, but if you're a supervisor, you come in
21 an hour early to help get things planned.

22 Q. All right.

23 A. So I was coming in at 6 o'clock that morning.

24 Q. And is your experience in law enforcement
25 generally as like a, what you'd call a patrol deputy?

1 Is that what you've generally done?

2 A. I do. My whole career, yes.

3 Q. Okay. And is that basically the people that show
4 up if you called 911?

5 A. Yes. I've got a regular police car like
6 everybody else. This is my daily uniform and so forth.

7 Q. All right.

8 A. And if I'm not doing things, I do back people up
9 on calls and do answer calls too.

10 Q. All right. And so what happened or what did you
11 observe when you arrived at this house?

12 A. We got there. As I said, night shift was already
13 there. There was a couple of officers there already.
14 Mr. Nations was already in the back of the police car.
15 And we took over. And I met Mr. Utters or Etters. I
16 don't know how you say that, but the one that was up
17 here prior. I was talking to him primarily and they
18 were telling us what happened. The call they were on
19 and so forth.

20 Q. All right. And is that who you primarily spent
21 most of your time with, Mr. Etters, as part of your
22 investigation?

23 A. Yes. Etters. Is that how you say it, Etters?

24 Q. Yes. And did you end up -- did he kind of walk
25 you through where he believed Mr. Nation had gained

1 access and gone throughout the house?

2 A. He did. Once I got informed about the call and
3 it actually being a BD in progress, I see the call is
4 validated, we walked through the whole thing and the
5 house, the backyard and everything. And I let him kind
6 of show me what happened and so forth.

7 Q. All right. And he's already testified, we don't
8 have to say what he said, but he explained to you, as
9 far as you could tell, everything that he knew about
10 what had happened that morning?

11 A. Yes, he did. We talked, yeah.

12 Q. All right. Was he hesitant to answer any
13 questions or show you anything?

14 A. No. He was very, very cooperative. Very, very
15 nice person.

16 Q. All right. And are you equipped with a body cam
17 when you're on patrol?

18 A. Yes, I am. It's right here on my uniform.

19 Q. I'm gonna hand you State's 19 and ask if you
20 could tell me what that is.

21 A. It's a CD. Is it my body camera? I mean...

22 Q. Are your initials on it? You put them in a weird
23 spot, but...

24 A. Yeah, they are. I do see it.

25 Q. All right.

1 A. The -- you can't see it, but I've got it right
2 there.

3 Q. All right. It's a portion of your body cam where
4 you all walked through the house; is that correct?

5 A. Yes. Any time we go on a call, any in progress,
6 it's our policy to have our camera on.

7 Q. All right.

8 A. And this is, what you see on this, this is my
9 camera right here is where it would be at on my uniform.
10 It never changes.

11 SOLICITOR SMITH: All right. Your Honor, at this
12 time we would move State's 19 into evidence.

13 THE COURT: Any objection?

14 MR. SNYDER: No, sir.

15 THE COURT: Without objection, it's admitted.

16 (State's Exhibit Numbr 19 was entered into the
17 record.)

18 BY SOLICITOR SMITH:

19 Q. The video we're gonna watch doesn't have audio
20 just because some of the conversations aren't relevant;
21 is that correct?

22 A. That's correct, sir.

23 Q. All right. While this is loading, are you in
24 charge, I guess, of calling for what's called an ID
25 officer to come to the scene?

1 A. We are.

2 Q. All right. And can you explain what an ID
3 officer is?

4 A. It is our crime scene person. They come in and
5 they take care of the crime scene. Take pictures and
6 they do whatever is needed.

7 Q. All right. And in this case is taking pictures
8 basically all that the crime scene person did?

9 A. Yes. We evidently had the person in custody
10 already. It eliminated a lot of other things that they
11 do, so we just needed pictures and so forth.

12 Q. So like fingerprints and DNA swabs and things
13 like that weren't done because you didn't think they
14 were important?

15 A. Right. Because we already had -- those things
16 are used to work a case and develop a suspect. You use
17 that stuff to actually to develop a suspect if you don't
18 know who one is. When you have one already on scene,
19 you can eliminate a lot of that stuff.

20 Q. All right. And I'm gonna have you, if you can,
21 kind of narrate what you're observing on this video as I
22 play it.

23 A. Okay.

24 (Plays video.)

25 Q. Is this from the left side of the house if you're

1 facing it?

2 A. Yeah. So, yeah.

3 Q. All right.

4 A. Yes, it is. We are approaching the gate. What
5 you're looking at, if you were to the right it would be
6 to the house. And this gate is, if you're facing it,
7 and we're facing the house. That is the gate he went
8 through to enter the backyard.

9 Q. So this being ---

10 A. And that's Mr. Etters showing me this.

11 Q. All right. And do you know whose vehicle that
12 was that you just looked at?

13 A. That is a vehicle I was told Mr. Benjamin Nation
14 drove up.

15 Q. All right.

16 A. And this is Mr. Etters showing me the fence.
17 This fence you were just looking at, it goes around an
18 entire backyard. And that is the actual gate he had to
19 go through. There is, there is a little gap. If you
20 look between the gate and the wall, you can put your
21 hand in there or you can reach over.

22 That's my arm reaching over. Kind of a simulate,
23 there's like a long narrow latch. And you will see this
24 in a little while, but it's a long narrow latch. You
25 can reach over and pull that latch up. And when you do,

1 the gate opens for you.

2 Now, he showed me this. Now, we're walking back
3 towards the house, the front of the house. I wanted to
4 see the front of the house too. And he's kind of
5 showing. So we're walking back so you can see walking
6 to the front of the house. You get a good shot at the
7 front of the house now.

8 And we're gonna walk up to the front door,
9 because I was wondering why he didn't go to the front
10 door. So I was asking, why didn't he go to the front
11 door. But I wanted to see where it was.

12 So we're walking up to the front door now. Now,
13 we're going in the front door. This is the water bottle
14 that I was told that Mr. Benjamin Nation brought in, and
15 we're right in the front foyer. So I shut the door to
16 make sure the dogs don't get out and so forth.

17 We walk into the living room area of the house.
18 Keep going straight in front of us, this is the back
19 porch area and you can see we walk through a door. And
20 all this right here is where they're building a back
21 porch. It is enclosed, but they're doing a lot of work
22 back here, you can see.

23 As you keep walking through, this is the first
24 door that he had to come in. And we're walking out by
25 the pool area now. And Mr. Etters is showing me

1 everything. So we're walking out.

2 This is the backyard of this house right here.
3 And he's showing me -- we're walking back to the gate
4 now where we were at a minute ago. We're actually
5 walking around the pool area of this house and I'm
6 trying to show the path that he would have took to come
7 into this house.

8 So we're walking up to the gate from the other
9 side now. This big, long, narrow piece on the gate, the
10 top of it is like a little knob. You've gotta pull this
11 knob up to get the door -- the little gate open. So
12 we're looking at it.

13 So we're kind of -- I'm just trying to give you
14 a, an overall picture of what's going on here, of the
15 structure and pathway that Mr. Nation took, where he
16 parked his car, come through the gate and walked around.

17 So now we're going reverse and we're going back
18 the way he would actually walk now. This house on the
19 left we're seeing is a little pool house. And he, Mr.
20 Etters, is point out a camera. There's a security
21 camera on this pool house right here. And this is the
22 camera that they'll show you later, but it points to
23 this house.

24 Now, we're going to the actual house again. And
25 this is the first door going on the porch. You've got

1 to walk into the house. And you've got to walk through
2 this construction, which is an enclosed area. And
3 there's a roof to it. But you go through an enclosed
4 area and you've gotta walk through the second door to
5 get to the house. So you've got to do a lot of walking
6 to get in this house. It's a big house.

7 And now we're going back into the living room
8 area. And straight forward is the foyer where we're at.
9 Mr. Etters is showing me now the bedroom area. They
10 were back in this area too. And he's showing me this
11 area. Mr. Nation had actually come back in this area
12 too. That was one of the bedrooms we was pointing at.

13 So Mr. Etters was very cooperative and he showed
14 me the whole place. So now we're back in the living
15 room and I'm trying to show movement through the house,
16 the points of entry, the entire house structure and so
17 forth.

18 And now we're going back up to where the water
19 bottle was in the front foyer. And then this little
20 part here -- we go back to the right here in a minute.
21 It kind of, there's a little hallway and it goes back to
22 the living room. We go through this door here to go
23 back in the living room.

24 He had dogs. I never seen the dogs, but the dogs
25 were barking so we didn't go in any of those rooms, and

1 they weren't used any, they weren't used by anybody,
2 they weren't in play.

3 So now we're back to where we are in the living
4 room. And all this, it turns off my camera. It always
5 stays in the same place. So you see my camera on my
6 shirt on my left side. This is what was actually on at
7 the time and this is what you're seeing.

8 (End video.)

9 Q. Were you able to, or were you informed that Mr.
10 Nation had been trespassed from this location
11 previously?

12 A. I was. The night shift officers who responded
13 told me there was a previous trespass notice given, so I
14 verified it. We have a computer system and I look it up
15 and there was a trespass notice giving the --I wrote a
16 date of December 22nd of '22 by Officer Welsh.

17 Q. So about a month before?

18 A. Yes. And Officer Welsh did work for me too. He
19 is one of my officers on my shifts.

20 Q. All right. And I guess when you give somebody a
21 trespass notice, that's then documented in you all's
22 data base that other officers can see?

23 A. It is, yes.

24 Q. All right. And, and what did it say about who
25 had requested the trespass? Who asked to request a

1 trespass?

2 A. It said he had trespassed from [REDACTED] at Lanham
3 Circle and Panther Circle on behalf of the homeowner.

4 Q. All right. But you were not involved in that
5 incident?

6 A. No.

7 Q. But you were able to see that that trespass
8 notice existed?

9 A. I just could see it, yes, in the computer where
10 it was given, but I was not part of the actual notice
11 given in the month prior.

12 Q. You did not attempt to speak with Mr. Nation, he
13 was already in the back of the police vehicle?

14 A. He was. I was told that he was read his rights.
15 He didn't want to talk, so...

16 Q. Let me stop. Did you talk with him?

17 A. No.

18 Q. That's the question?

19 A. No.

20 Q. No. All right. What did you find suspicious
21 about the circumstances of him entering this house?

22 A. Well, I had Mr. Etters show me. The first thing
23 was it was dark out. And I want to know why this person
24 was going in in the darkness. I believe it was 6:41, a
25 call come in. Why this person is coming in to the

1 backyard of this house. Why he parked in a driveway and
2 why he's going in the backyard.

3 So what I wanted to do was, I wanted to see where
4 he went into first when he parked his car, but I wanted
5 to see where the front door was, too, and why. You
6 know, was the front door locked? Was something there?
7 So I wanted to see all this. And the front door was not
8 locked, as you see in the videos, it was wide open.

9 So I did notice it was dark and he parked his car
10 and he went in this gate. I noticed the gate was, was
11 locked and he had to finagle it with your hand over the
12 fence or through that little gap. My hand wouldn't fit
13 through the gap, it's too big, so I had to reach over
14 and open the gate.

15 I noticed that was -- so it was nighttime and he
16 did not use the front door. I found that kind of odd.
17 And then I wanted to see where he actually went into, so
18 I had Mr. Etters show me. And he actually went by the
19 pool, the back of the house. And he actually showed me
20 where he went into. So I thought it was odd.

21 He had to enter actually two doors to get into
22 this house. He had to enter the enclosed back porch
23 with construction to actually go through the house. So
24 I do know those things were odd.

25 Q. All right. And Mr. Etters had a cellphone video

1 that he shared with y'all; is that correct?

2 A. He did.

3 Q. All right. And on that video were you able to
4 see that they asked him repeatedly to leave?

5 A. They did. It was more like yelling get out of my
6 house, get out of my house.

7 Q. All right. And to your understanding he didn't
8 voluntarily leave the house; is that right?

9 A. No.

10 Q. Did you find that suspicious?

11 A. I did.

12 Q. And this address is in Spartanburg County; is
13 that correct?

14 A. It's correct.

15 Q. Is that generally your involvement in the case,
16 and then just your supervision duties as well?

17 A. It was. And I made sure they -- well, an ID
18 person come out to the crime scene. A person came out
19 and so forth.

20 Q. All right. Please answer any questions the
21 defense has.

22 CROSS-EXAMINATION

23 BY MR. SNYDER:

24 Q. You never saw any interaction between Mr. Nation
25 and the residence, correct?

1 A. Correct.

2 Q. When was that trespass notice given?

3 A. December 22nd, '22.

4 Q. You didn't know that Mr. Nation had done work
5 from the house in the past, did you?

6 A. Mr. Etters told me he did some work several
7 months prior. I believe to under the house to a crawl
8 space or something like that.

9 Q. Construction work?

10 A. Right.

11 Q. And the room that was entered was under
12 construction, right?

13 A. The back door was, yes.

14 Q. And the sliding room door was open, correct?

15 A. Correct, they were open. I believe they walked
16 some dogs, I believe.

17 Q. Trespassing and burglary are not the same thing,
18 correct?

19 A. Right.

20 Q. Okay, thank you.

21 THE COURT: Anything at all as to that?

22 SOLICITOR SMITH: No, Your Honor.

23 THE COURT: First Sergeant, you may step down.
24 Please be careful.

25 THE WITNESS: All right, thank you.

1 THE COURT: Well, I say step down, we don't have
2 a step down. I'll get used to it.

3 Solicitor?

4 SOLICITOR SMITH: The State calls Gregory Wall.

5 (Witness comes forward.)

6 THE CLERK: Place your left hand on the Bible and
7 raise your hand. Do you swear or affirm the testimony
8 you give will be the truth, whole truth, and nothing but
9 the truth so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. Have a seat.

12 THE COURT: Sir, if you'll tell us who you are,
13 please, and spell your last name for my court reporter.

14 THE WITNESS: I'm Greg Wall, W-a-l-l, the
15 resident of the house.

16 GREGORY WALL,
17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR SMITH:

20 Q. Sorry. Mr. Wall, where were you living January
21 23rd of 2023?

22 A. [REDACTED] Lanham Circle, Spartanburg.

23 Q. All right. And who lives there with you?

24 A. Just me and Mr. Etters.

25 Q. All right.

1 COURT REPORTER: Could you move closer to the
2 mic, please.

3 THE WITNESS: How far up do you ---

4 THE COURT: Sir, if you'll use your outside
5 voice. She's trying to record.

6 THE WITNESS: Okay, I'm sorry.

7 THE COURT: Thank you.

8 THE WITNESS: Yes, sir.

9 BY SOLICITOR SMITH:

10 Q. Do you know Benjamin Nation?

11 A. I do.

12 Q. How do you know him?

13 A. I've just known him for a while through a
14 previous roommate of mine, through friends, and we
15 maintained a friendship after that.

16 Q. Okay. Are you saying you and Mr. Nation would be
17 considered friends?

18 A. Yeah. Yeah, I would. Yeah, I guess associates.

19 Q. It's up to you.

20 A. Yeah. Yeah, I would say friends, yes.

21 Q. Okay. And at some point he was doing some
22 construction work on your house; is that correct?

23 A. Right. Right.

24 Q. All right. Can you tell me what led up to him
25 being trespassed from your house on December 22nd of

1 2022?

2 A. He had been there that day doing some work with
3 me and it got time for him to go and he just refused to
4 leave again. And so, I was in a hurry to get somewhere,
5 so I called the police to hurry that along a little bit.

6 Q. Was he displaying any bizarre behavior?

7 A. No more bizarre than normal, but it's usually
8 kind of bizarre, yes.

9 Q. Okay. I mean, did you exhaust all efforts to get
10 him to leave before you called the police?

11 A. I did. I did. You know, demanding many times
12 and he was ---

13 Q. All right. Was Mr. Etters at the house at this
14 time?

15 A. No.

16 Q. All right. Was there -- did you understand a
17 reason why he would not leave?

18 A. No, not really.

19 Q. Okay. And when the cops got there did he leave
20 or did they have to make him leave?

21 A. They made him leave.

22 Q. Okay. And at that point he was trespassed from
23 the property?

24 A. Right.

25 Q. All right. And when this incident happened on

1 January 23rd of 2023, what initially caught your
2 attention or what were you doing when your attention
3 was ---

4 A. I was sleeping at the time, and I heard him and
5 Mr. Etters yelling, so it woke me up, and just, uh,
6 yeah.

7 Q. Okay. So, did you go to look to see what was
8 going on?

9 A. I did. I did.

10 Q. Did you have any idea what could be going on?

11 A. No. I had no idea.

12 Q. All right. But you heard -- did you hear -- how
13 many voices did you hear?

14 A. Mostly just Mr. Etters' voice woke me up and I
15 went out to see.

16 Q. And what did you see when you went out there?

17 A. I saw them two, you know, just kind of yelling
18 back and forth with each other.

19 Q. And is Benjamin Nation in the courtroom?

20 A. Yes.

21 Q. Where is he seated?

22 A. Over there. (Indicating.)

23 Q. All right. Does he have a beard?

24 A. Yes.

25 Q. All right. And you're talking about the defense

1 table?

2 A. Yes.

3 Q. All right. Did you ask him to leave?

4 A. I did.

5 Q. And did he leave?

6 A. No.

7 Q. Did you ask him multiple times to leave?

8 A. I did.

9 Q. And he never did?

10 A. No.

11 Q. All right. And did you end up calling 911?

12 A. I did.

13 Q. All right. And I'm gonna hand you State's
14 Exhibit 1 and ask if you can tell me what this is?

15 A. The 911 call.

16 Q. All right. You've reviewed it previously?

17 A. Yes.

18 SOLICITOR SMITH: All right. Your Honor, at this
19 time we would move State's Exhibit 1 into evidence.

20 MR. SNYDER: No objection.

21 THE COURT: Without objection, 911 call.

22 (State's Exhibit Number 1 was entered into the
23 record.)

24 (Plays audio of 911 call.)

25 THE WITNESS: Oh. Oh wow. Oh wow.

1 BY SOLICITOR SMITH:

2 Q. At the end of that you identified Ben Nation, but
3 it sounded like somebody helped you. Is that accurate?

4 A. I don't know. I don't think so. No. Maybe.

5 Q. All right.

6 (Plays video.)

7 What's happening there?

8 A. I'm not real sure. I feel like I'm half asleep
9 still and I'm not really sure what -- I don't think
10 anybody helped me to identify him but...

11 Q. All right. And you did tell them to please
12 hurry; is that correct?

13 A. I did, because I was eager to go back to bed,
14 yeah.

15 Q. Okay. Had you invited him over that day?

16 A. Not at that time. I mean...

17 Q. Okay. Had you invited him over at any time that
18 day?

19 A. I mean not specifically, no. But he had come
20 over previous like that week, so it wasn't unusual that
21 he was going to come by, but he wouldn't come by that,
22 that early.

23 Q. Okay. Did he have permission to just enter the
24 house --

25 A. No.

1 Q. -- without notice?

2 A. No.

3 Q. And he was trespassed from the house as well?

4 A. Right. Right.

5 Q. Did you have his phone number?

6 A. I did.

7 Q. Did you get any communication from him that he
8 was coming by?

9 A. I did not.

10 Q. All right. And you didn't hear any -- you have a
11 doorbell; is that correct?

12 A. Right.

13 Q. You didn't hear your doorbell ever?

14 A. I didn't hear it, but I was asleep and might not
15 have.

16 Q. All right. And were you also able to review your
17 surveillance video and see how he got into the house?

18 A. I did.

19 Q. And that was through the back?

20 A. Right.

21 Q. Did you find that unusual?

22 A. It did seem unusual, yes.

23 Q. Okay. I mean, you-all know each other, correct?

24 A. Right.

25 Q. Would it be normal to knock on the front door in

1 you-all's previous dealings?

2 A. Yeah. Any other time he's called before he came.
3 He never just showed up.

4 Q. Okay. Did he seem his normal self or did he seem
5 out of it?

6 A. His normal self, which is kind of out of it,
7 but...

8 Q. Okay.

9 A. Kind of basically, yeah.

10 Q. All right. And what was going on -- what were
11 you -- excuse me, where were you -- let me pull up and
12 watch this video and get you to show me where your
13 bedroom is. There's been like a U-shaped hallway
14 described.

15 A. Right. It's at the end of that hallway where
16 they stood by the door there.

17 (Plays video.)

18 It's right there, that door. I'm sorry. I'm
19 sorry.

20 Q. All right. Let me make sure the jury can see it.

21 A. Right.

22 Q. This, where the officer is standing is the living
23 room?

24 A. Right.

25 Q. And is where Mr. Etters is standing the hallway

1 that's been described?

2 A. Right. Right.

3 Q. All right. And then that's where -- is your
4 bedroom off of that hallway?

5 A. To, to his left is the door to the bedroom, yes.

6 Q. All right. The one he's pointing at now?

7 A. Yes. Yes.

8 Q. And what's down that hallway?

9 A. It goes to the, to the foyer, that way.

10 Q. All right. And where did you first encounter
11 Mr. Etters and Mr. Nation once you got up?

12 A. I think it is somewhere in that hallway or the
13 foyer. They were heading towards the, towards the front
14 door.

15 Q. Okay.

16 A. Somewhere.

17 Q. And the -- I guess you can get to the front door
18 either way --

19 A. Right.

20 Q. Through that door way?

21 A. Right.

22 Q. You can either go through the living room --

23 A. Right.

24 Q. -- or go all the way to the front of the house?

25 A. Right.

1 Q. What was going on once you got out there on the
2 cellphone video? What were you doing during that time?

3 A. Mostly just wrestling with the dogs, trying to
4 keep them a little bit detained. Scoot had pretty much,
5 you know, got him moving towards the front door, so...

6 Q. Did you ever really communicate with him much
7 other than telling him to leave?

8 A. No, not much that morning.

9 Q. And you talked with him?

10 A. No.

11 Q. Is there a reason for that?

12 A. I was still half asleep, so I don't ---.

13 SOLICITOR SMITH: I believe that's all I have,
14 Your Honor.

15 THE COURT: Counsel?

16 MR. SNYDER: Thank you, and I'll be brief.

17 CROSS-EXAMINATION

18 BY MR. SNYDER:

19 Q. Greg? Is it Greg?

20 A. Yes.

21 Q. You and Mr. Nation are friends. That's what you
22 just said?

23 A. Right. Right.

24 Q. And they had been working on the house?

25 A. Correct.

1 Q. He was doing this work for you, correct?

2 A. Right. Right.

3 Q. So he had been by to your house?

4 A. Yes.

5 Q. To do work?

6 A. Right.

7 Q. The room that he entered was under construction?

8 A. Correct.

9 Q. He had done construction in that room, correct?

10 A. I'm not a -- I don't think he had. Maybe, but he
11 was aware -- I mean.

12 Q. It's fair to say he did construction on different
13 parts of the house?

14 A. Right. Right.

15 Q. And just for clarification, you said it and
16 Mr. Etters said a couple of times that Mr. Etters broke
17 into the house. He didn't break anything, he just let
18 himself in, correct?

19 A. Correct. Correct.

20 Q. Yes. And you just said you told the police to
21 hurry so that you could go back to sleep.

22 A. Right.

23 Q. Correct? Yeah. How many times do you think
24 Mr. Nation worked on your house?

25 A. Maybe a half dozen times.

1 Q. So that's six times, about six times he went out
2 there at your request?

3 A. Right.

4 Q. Good work?

5 A. Yeah. Yeah, definitely.

6 Q. Mr. Nation is a pain in the ass, isn't he?

7 A. A little bit, but...

8 Q. I've been representing him for a year, he's being
9 a pain in the ass?

10 A. Right.

11 Q. But that doesn't make him a burglar?

12 A. No.

13 MR. SNYDER: Those are all the questions I have
14 for Greg.

15 THE COURT: Anything at all?

16 REDIRECT EXAMINATION

17 BY SOLICITOR SMITH:

18 Q. When you invite other people to your house on
19 certain ways, like Amazon drivers and trash pick up and
20 people like that to come to your house to do work,
21 right?

22 A. Right.

23 Q. But they do not have permission to enter your
24 house without your permission; is that correct?

25 A. That's correct.

1 Q. All right. Is that what happened here?

2 A. Kind of, yes.

3 Q. But at no time did you get any phone
4 communication from him or any sort of indication that he
5 was coming to the house?

6 A. Right.

7 Q. All right. And did he have any tools in his
8 hands when you encountered him? Do you remember what he
9 has?

10 A. No, I haven't. He just had his phone and a water
11 bottle.

12 Q. All right. And did he ever. Tell you that they
13 was there just for work?

14 A. I don't -- I don't think. We didn't talk that
15 morning, so I don't think so. I mean...

16 Q. Yeah. I mean, he was talking whether you were
17 talking to him --

18 A. Right.

19 Q. I mean, did you get the impression he was there
20 to do work in the state he was in?

21 A. I think that's -- in his mind he was there to
22 work, yes. I think that was his ---

23 Q. How do you know that?

24 A. Well, no, I just said I think that I don't know
25 that, but...

1 Q. Okay.

2 A. I think that's what he was thinking because he
3 had been working previously there and...

4 Q. All right. But he just didn't think to call you
5 or come to the front door?

6 A. I did think the timing was weird and the way he
7 came in, but...

8 Q. All right. And is it -- where do you all park
9 your vehicles normally and how many were there?

10 A. Scott parks his out front and I park mine right
11 in front of the garage.

12 Q. Okay. So he's over -- or his vehicle is over by
13 yours?

14 A. Right.

15 Q. All right. And does he know which vehicles y'all
16 drive?

17 A. I assume so, yeah.

18 Q. Okay. Does he know, like, your routine when you
19 are there and then not there?

20 A. I don't think so, no.

21 SOLICITOR SMITH: All right. That's all I have,
22 Judge.

23 THE COURT: Anything at all just on that little
24 bit?

25 MR. SNYDER: Yes, sir.

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RE CROSS-EXAMINATION

BY MR. SNYDER:

Q. Again, you said you and Mr. Nation are personal friends.

A. Right.

Q. Are you personal friends with the Amazon driver?

A. No.

Q. Are you personal friends with the trash man?

A. No.

Q. You also just stated that you thought that Mr. Nation thought that he was there to work that day?

A. Right.

Q. Correct?

A. Yes.

Q. Thank you.

THE COURT: Sir, you may step down, please be careful.

THE WITNESS: Thank you.

THE COURT: Anybody?

SOLICITOR SMITH: This will be quick, very quick.

THE COURT: Very quick?

SOLICITOR SMITH: Yes.

THE COURT: Okay.

SOLICITOR SMITH: Your Honor, the State calls Jimmy Davis, Deputy Jim Davis.

1 (Witness comes forward.)

2 THE CLERK: Do you swear or affirm to tell the
3 truth, the whole truth, and nothing but the truth so
4 help you God?

5 THE WITNESS: Yes.

6 THE COURT: Sir, Officer, tell us who you are and
7 spell your last name, please.

8 THE WITNESS: My name is Deputy Jimmy Davis,
9 D-a-v-i-s.

10 THE COURT: Thank you. Solicitor?

11 DEPUTY JIMMIE DAVIS,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR SMITH:

15 Q. Deputy Davis, how long have you worked for the
16 Spartanburg Sheriff's Office?

17 A. Approximately 18 months.

18 Q. All right. And you were still working for the
19 sheriff's office in January of '23?

20 A. Yes, sir.

21 Q. As a uniform patrol officer?

22 A. Yes, sir.

23 Q. All right: Did you respond to a call at [REDACTED]
24 Lanham Circle?

25 A. I did.

1 Q. All right. And what was the nature of that call?

2 A. The nature of the call was a burglary in
3 progress.

4 Q. All right. And were you the first officer that
5 arrived?

6 A. I was the first officer that arrived.

7 Q. All right. And did you have a body cam running
8 at that time?

9 A. I did.

10 Q. All right. I'm going to show you State's
11 Exhibit 20 and ask if you can tell me what that is?

12 A. It's a CD of my clip on my body cam that day.

13 SOLICITOR SMITH: All right. Your Honor, at this
14 time we'd move State's Exhibit 20 into evidence.

15 MR. SNYDER: No objection.

16 THE COURT: Without objection, it's admitted.

17 (State's Exhibit Number 20 was entered into the
18 record.)

19 (Plays video.)

20 BY SOLICITOR SMITH:

21 Q. All right. And at that point did you basically
22 put him in the back of a car?

23 A. I did.

24 Q. And was that basically your involvement in this
25 case?

1 A. That was basically my involvement. I was the
2 first person that made contact with him, the first
3 deputy to make contact with him that day.

4 Q. Did you have any -- did you observe anything
5 unusual about him at the time that you cuffed him?

6 A. He just simply resisted when I was trying to
7 escort him outside.

8 Q. All right. And did you find him to be coherent
9 or did you not talk to him much?

10 A. I didn't really talk to him that much. I was
11 just trying to mainly remove the threat from the house
12 that the homeowner said that he was trespassed.

13 Q. All right. That's all I have, Your Honor.

14 MR. SNYDER: I just have three questions.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MR. SNYDER:

18 Q. Maybe four, not three. You spoke with
19 Mr. Nation, correct?

20 A. Can you repeat that?

21 Q. You have spoken with Mr. Nation, correct?

22 A. Are you talking about that day?

23 Q. Any time.

24 A. No.

25 Q. Have you ever spoken to Mr. Nation?

1 A. No, not previous, previously to that call.

2 Q. Have you afterwards?

3 A. Not to my recollection. I was there just to
4 remove him from the scene and place him into the back of
5 my car.

6 Q. So you never spoke with him?

7 A. It was during that transition period.

8 Q. I'm not -- I'm just -- all I want to establish is
9 have you had a conversation with Mr. Nation? Have you
10 talked to him?

11 A. No, not prior to that call that we had.

12 Q. What about after the call, did you talk to him?
13 Did you talk to him in that video?

14 A. I did not.

15 Q. Okay. In the video the homeowners said that
16 Mr. Nation was trespassing, correct?

17 A. Correct.

18 Q. And trespassing is not the same thing as the
19 burglary, correct? Correct?

20 A. Not by definition.

21 Q. Okay, thank you.

22 SOLICITOR SMITH: I don't have anything further
23 on that.

24 THE COURT: Okay. Officer, you may step away
25 from the witness stand, thank you.

1 (Witness leaves witness stand.)

2 As I told you, ladies and gentlemen, we would
3 break and make sure it was about every 90 minutes. It's
4 a little bit over that. I actually have a meeting that
5 I need to attend at 12, so we're gonna break and
6 reconvene at 1:30, so that gives you about an hour and
7 40 minutes, maybe. So about 1:30. We're gonna
8 reconvene at 1:30.

9 Mr. Bailiff, where do you want them to come ho
10 when they leave here A. Bailiff plaintiff the assembly
11 room where they came from first thing this morning.
12 Everybody know where that is.

13 THE JUROR: Second floor?

14 THE BAILIFF: Yes, second floor.

15 THE COURT: They're going to take you back
16 through the secure hallway, yes?

17 THE BAILIFF: Yes, sir.

18 THE COURT: Okay, I'm learning. And they'll take
19 you back there and if you'll report back there, they'll
20 bring all of you back up here.

21 THE BAILIFF: Yes, sir.

22 THE COURT: Thank you. Have a good lunch.

23 (Jury leaves the courtroom at 11:43 a.m.)

24 THE COURT: We'll be in recess until 1:30. 1:30.

25 SOLICITOR SMITH: Your Honor, we just have one

1 left.

2 THE COURT: Okay.

3 SOLICITOR SMITH: Ms. Moffitt.

4 THE COURT: Okay, thank you.

5 (Lunch recess was held from 11:46 a.m. - 1:38
6 p.m.)

7 THE COURT: Okay. Are we ready to go?

8 SOLICITOR SMITH: Yes, Your Honor.

9 MR. SNYDER: Yes, sir.

10 THE COURT: We'll have the jury.

11 (Jury enters the courtroom at 1:38 p.m.)

12 Mr. Foreman, is the jury ready?

13 MR. FOREMAN: Yes, sir.

14 THE COURT: Thank you.

15 SOLICITOR SMITH: The State calls Gail Moffitt.

16 (Witness comes forward.)

17 THE CLERK: Do you swear or affirm the testimony
18 you give will be the truth, whole truth, and nothing but
19 the truth so help you God?

20 THE WITNESS: I do.

21 THE COURT: Ms. Moffitt, if you would tell us who
22 you are, and spell your last name, please.

23 THE WITNESS: Gail Moffitt. Last name is spelled
24 M-o-f-f-i-t-t.

25 THE COURT: Thank you.

1 Solicitor?

2 GAIL MOFFITT,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR SMITH:

6 Q. Ms. Moffitt, where are you employed?

7 A. Clerk of Court's Office Spartanburg County.

8 Q. And what's your title there?

9 A. Deputy clerk, Assistant Clerk.

10 Q. All right. And is that a supervisor role --

11 A. It is.

12 Q. -- over both civil and criminal?

13 A. It is.

14 Q. And criminal is known as General Sessions?

15 A. That's correct.

16 Q. All right. And what is the clerk's office
17 general job duties?

18 A. We have a lot of duties. Among them is custodian
19 of records for Common Pleas and General Sessions and
20 Family Court.

21 Q. All right. Does that mean when things get filed
22 they are maintained by y'all?

23 A. That is correct. And any time we get a copy, we
24 certify it --

25 Q. All right.

1 A. -- and a true copy.

2 Q. All right. And is one of the things that you get
3 as part of General Sessions are what's called certified
4 convictions?

5 A. That is correct.

6 Q. All right. And in South Carolina a sentencing
7 sheet is known as kind of the document that gives the
8 sentence and what they're charged with, what they're
9 pleading to; is that correct?

10 A. Yes, that's correct.

11 Q. All right. And what are the exhibit numbers you
12 have up there?

13 A. Indictment number ---

14 Q. No, the exhibit number.

15 A. I'm sorry.

16 Q. The red.

17 A. I see it. State's Exhibit Number 17 and State's
18 Exhibit Number 16.

19 Q. All right. And what are State's Exhibit 16 and
20 17?

21 A. State's Exhibit 17 is a certified copy of
22 indictment 2010-GS-42-3448. State's Exhibit 16 is a
23 certified copy of indictment 2018, I think, 18-GS-5258.

24 Q. Is it an eight?

25 A. It says 13. I'm sorry. Let me correct that.

1 It's 2013-GS-42-5258.

2 Q. All right. And who are those -- who's the party
3 involved in those sentencing sheets?

4 A. Benjamin Louis Nation.

5 SOLICITOR SMITH: All right. Your Honor, at this
6 time we would move State's 16 and 17 in.

7 THE COURT: Any objection?

8 MR. SNYDER: No objection.

9 THE COURT: Without objection, they are admitted.

10 (State's Exhibit Number 16 and 17 were entered
11 into evidence.)

12 BY SOLICITOR SMITH:

13 Q. This is State's 17. Do you have a screen up
14 there, Ms. Moffitt?

15 A. I do.

16 Q. Can you see what he pled to on State's Exhibit
17 17?

18 A. He pled to burglary nonviolent second degree.

19 Q. All right. And on State's 16, can you also tell
20 the jury what he pled to on this charge?

21 A. Yes. He pled to burglary third degree first
22 offense.

23 SOLICITOR SMITH: I don't have any questions.

24 THE COURT: Thank you. Anything?

25 MR. SNYDER: I don't have anything for Ms.

1 Moffitt.

2 THE COURT: Thank you. You may leave the witness
3 stand. Thank you.

4 (Witness leaves witness stand.)

5 SOLICITOR SMITH: Your Honor, can I step outside
6 for one second and call -- I was gonna try to recall a
7 witness.

8 THE COURT: Sure.

9 SOLICITOR SMITH: The State recalls First
10 Sergeant Rick Kwasniewski.

11 THE COURT: Come on up, officer. You were
12 previously sworn, so you remain under oath.

13 Solicitor?

14 (State's Exhibit Number 21, Tow Report, was
15 marked for identification.)

16 FIRST SERGEANT RICK KWASNIEWSKI,
17 having been previously sworn testified as follows:

18 RECALL DIRECT EXAMINATION

19 BY SOLICITOR SMITH:

20 Q. All right. First Sergeant, what happened with
21 that Honda Pilot that was at the [REDACTED] Lanham Circle
22 address?

23 A. After we had it photographed, it was towed.

24 Q. All right. And does the sheriff's office fill
25 out anything in the ordinary course of business as part

1 of a car getting towed?

2 A. Yes, we do.

3 Q. And what is that known as?

4 A. A tow sheet and a tow report.

5 Q. All right. And what type of information is
6 contained on that report?

7 A. All the vehicle information. We do the make,
8 model, color, VIN number, tag, and so forth. We also
9 note if there's anything in the vehicle. And it's our
10 policy that if anything is over \$10 we have to log in
11 the evidence.

12 Q. Okay. Is this basically to protect the police
13 department potentially from somebody coming later and
14 saying things were not in there?

15 A. Yes.

16 Q. All right. So at least y'all are off and maybe
17 the tow truck company took it or something --

18 A. Right.

19 Q. -- if it was gone? All right. Was one done in
20 this case?

21 A. Yes, it was.

22 Q. All right. I'm going to hand you State's
23 Exhibit 21.

24 Do you want to see this?

25 (Hands to Mr. Snyder.)

1 I'm going to hand you State's 21 and ask if you
2 you can tell me what this is.

3 A. Yeah. This is a motor vehicle tow report by the
4 Spartanburg County Sheriff's Office.

5 Q. Okay. Is it from the one at [REDACTED] Lanham Circle?

6 A. Yes, it is.

7 SOLICITOR SMITH: All right. Your Honor, at this
8 time we move State's 21 into evidence.

9 MR. SNYDER: Without objection.

10 THE COURT: Without objection.

11 (State's 21 was entered into the record.)

12 BY SOLICITOR SMITH:

13 Q. Can you read what it says on the inventory
14 section?

15 A. Yes, I can. Yes.

16 Q. All right. What does it say?

17 A. It had cigarettes, clothing rack, laundry, black
18 bags.

19 Q. All right. That is all I have, thank you.

20 THE COURT: Thank you.

21 Counsel?

22 RECALL RECROSS-EXAMINATION

23 BY MR. SNYDER:

24 Q. Officer, you've seen the video and pictures from
25 this location?

1 A. Yes.

2 Q. You've seen the, I think, right in front when you
3 enter there's a large ladder and there are tools
4 scattered all across the residence, correct?

5 A. There's a ladder on the front walkway off to the
6 side, yes, there was.

7 Q. And the room, I guess, where entry was first
8 made, was actually under construction. I mean there
9 were drapes everywhere, correct?

10 A. I don't know about drapes, but there was a lot of
11 stuff there, yes.

12 Q. Tools?

13 A. Yes, there was.

14 Q. A lot of stuff that can be used for construction
15 related activities, correct?

16 A. Yes.

17 Q. So there was no need for someone to bring stuff
18 to the location, it was there?

19 SOLICITOR SMITH: Objection.

20 THE COURT: What's the objection?

21 SOLICITOR SMITH: He's talking about a
22 hypothetical person doing an unknown job.

23 THE COURT: Do you want to rephrase Mr. Snyder?

24 BY MR. SNYDER:

25 Q. There were tools already at this residence?

1 A. On the porch, yes.

2 Q. Thank you.

3 THE COURT: Anything?

4 SOLICITOR SMITH: Nothing further, Your Honor.

5 THE COURT: Okay. You may leave the witness
6 stand Sergeant, thank you.

7 (Witness leaves witness stand.)

8 THE COURT: Yes, sir.

9 SOLICITOR SMITH: Your Honor, at this time the
10 State rests.

11 THE COURT: The State rests. Mr. Foreman, what
12 that means to you is that the State does not intend to
13 put in anymore evidence, whether that be a photograph,
14 testimony, a report or whatever it might be, the State
15 has no intention of offering anything else, which brings
16 us to what's known as a motion practice time period.

17 That's where the lawyers have certain motions
18 that they're required to make as to matters of law. And
19 remember I told you, I am the judge of the law, you are
20 the judge of the facts. So at this time we have to
21 excuse you while I do some motion practice with the
22 lawyers and then you'll be back with us. And it
23 probably shouldn't take more than about 10 or 12
24 minutes. Mr. Foreman, will you take the jury out?

25 (Jury leaves the courtroom at 1:49 p.m.)

1 Matters from the State?

2 SOLICITOR SMITH: Nothing, Your Honor.

3 THE COURT: Okay. From the defense?

4 MR. SNYDER: Yes, sir. At this time the defense
5 moves for a directed verdict. As Your Honor knows, one
6 of the material elements and distinguishes one of the
7 material elements for burglary and what distinguishes it
8 from trespassing is the actor must enter with the intent
9 to commit a crime therein. There has been no evidence
10 that there has been any -- there was any intent to
11 commit a crime therein.

12 In fact, Greg Wall, Gregory Wall, testified to
13 the solicitor that he believed that my client was there
14 because he thought he might have to work. That goes
15 straight to his intent. There was not a criminal intent
16 there. There's an intent to work. And my client has
17 been working previously at this residence. He was there
18 to work. And Mr. Wall here says that he thought that
19 that was my client's state of mind.

20 If you -- if I could mention to Your Honor a
21 statute, and it's almost right below the burglary
22 statute. It's 16-11-620. That is the trespassing
23 statute. And if I could read that to Your Honor:

24 Any person also without legal cause and good
25 excuse enters in a dwelling house, and haven't been

1 warned not to, is essentially guilty of trespassing. He
2 was on notice that he was not supposed to be there. He
3 was trespassing, Your Honor. This is not a burglary
4 case. The intent to commit a crime therein has not been
5 established and we believe this case should not go to a
6 jury and that Your Honor should issue a directed
7 verdict. Thank you.

8 THE COURT: Solicitor?

9 SOLICITOR SMITH: Your Honor, at this stage, the
10 State is entitled to all reasonable inferences that
11 could be made from the evidence. I'd like to cite
12 McMillan versus State. It is 383 SC 480. It's actually
13 a PCR against a defense attorney who had -- his client
14 was facing life without parole burglary first charge,
15 had suggested that the jury could infer an intent to
16 commit a crime by the acts of trespassing. And the
17 Court found that that was not bad advice.

18 And just to read a couple portions of it, Your
19 Honor -- and to point out, as the defense certainly has,
20 they are different crimes. It's not a lesser included
21 offense. So one could be guilty of burglary and not
22 trespassing because trespassing requires a prior notice.
23 This burglary also requires it being a dwelling and
24 actual entry into the dwelling, where trespassing could
25 just be on the property.

1 But it's because of that, that it is a separate
2 and distinct crime that it can be the basis for at least
3 an inference that they're committing a crime. But we
4 argue that he broke into the house with the intent to
5 trespass.

6 The case, Your Honor -- this Court has previously
7 held that for a charge under the old statute of house
8 breaking, breaking and entering into a dwelling with
9 intent to commit a crime or felony of a lesser grade,
10 the element of intent to commit a crime of a lesser
11 grade it could be satisfied by trespassing.

12 The defendant was convicted of breaking and
13 entering with the intent to commit a misdemeanor, to
14 wit, a trespass, after defendant, who was an agent or a
15 landlord, went into the dwelling with the specific
16 intent to take personal property. This Court cited a
17 prior decision which stated the mere breaking and
18 entering of a house was not a crime under the statute
19 prohibiting the breaking and entering into a dwelling
20 with intent to commit a crime, but found that if a
21 person were guilty of a trespass, it was for the jury to
22 say whether such breaking and entering under the
23 circumstances constituted a crime under Section 11-39.
24 And the finding of the jury on this issue will not be
25 disturbed.

1 It goes on to say: Certainly, a jury would have
2 been free to disbelieve *McMillan's* version of events and
3 find that he had intent to commit a crime based on his
4 conduct. This Court deserves that proof of intent
5 necessarily rests on inference or conduct. We noted the
6 unexplained breaking and entering of a dwelling in the
7 night is itself evidence of intent to commit larceny.

8 When the building entered is the dwelling house,
9 the weight of authority holds that the unexplained
10 breaking and entering in the night is self-evidence of
11 intent to commit larceny rather than some other crime.
12 The fundamental theory in the absence of other intent or
13 explanation is that the usual object or purpose of
14 burglarizing a dwelling house at night is theft.

15 And, Your Honor, in State v. Gilliland, 402 SC
16 389, this case talks about a person who's guilty of
17 first-degree burglary if he enters a dwelling without
18 consent, with intent to commit a crime of the dwelling
19 and either enters or remains in the dwelling during the
20 nighttime. Although, the intent to commit a crime must
21 exist at the time the accused entered the dwelling, the
22 jury may base its determination of that intent upon
23 evidence of the accused actions once inside the
24 dwelling.

25 In this case we would say the fact that he didn't

1 leave when asked, certainly the jury could infer that he
2 was up to no good.

3 As I stated previously with the prior case, it is
4 nighttime. You can see that on the surveillance video.
5 He does go to the back door, which was closed, requiring
6 him to reach over or reach through in order to get into
7 it. He does not contact Mr. Wall. Even though they
8 apparently have each other's phone numbers, he does not
9 ring on the front doorbell, which he says he has done in
10 the past.

11 And the fact that he doesn't -- the fact that he
12 does not, perhaps, commit a crime other than
13 trespassing, what's in there is not completely the spots
14 on issue. It's what was his intention when he entered?
15 Is it possible the jury certainly could infer that he
16 came in there, either thinking that they were asleep and
17 he could get something and not disturb them or thinking
18 that they were wrong, or anything like that. And once
19 he was discovered, he changed his stance.

20 And as Your Honor's jury charge says, the State
21 must prove beyond a reasonable doubt that the defendant
22 intended to commit a crime, either a felony or a
23 misdemeanor at the time of the entry. The mere entry
24 into a dwelling without consent is not burglary. If the
25 intent to commit a crime was formed after the entry it

1 is not burglary. On the other hand, if the defendant
2 intended to commit a crime at the time of entry, it is a
3 burglary, even if that intent was abandoned at the
4 entry. It does not matter that the intended crime was
5 not completed.

6 As I've stated to the jury, we can't get into Mr.
7 Nation's mind. We did not get a statement about why he
8 was there. The only thing that the jury can do is
9 inferences, and we believe that should be left to the
10 jury. As far as the potential crimes that could be
11 committed, larceny, harassment, breach of peace, and
12 trespassing, were the four that came to my mind.

13 THE COURT: Yes, sir.

14 MR. SNYDER: I have a total response to that.
15 First being the solicitor mentioned try to distinguish
16 burglary and trespassing by property and going inside.
17 I mean, it specifically says in the trespassing statute,
18 entered the dwelling. So the legislature understood
19 that trespassing can be inside or on the property there
20 multiple times, but entering does not make it burglary.

21 This argument about trespassing being the crime
22 that he intended to commit therein, that's a circular
23 argument, Judge. These are two separate crimes. And
24 the legislature has made it to where trespassing,
25 although it's this criminal, it doesn't rise to the

1 level of burglary. And that's why they have separate
2 statutes.

3 And, essentially, if someone's got burglary, a
4 burglary is trespassing inside a building with an intent
5 to commit crime. We heard from Mr. Wall how Mr. Nation
6 had been there working for about six times. He knew the
7 area. He was familiar with at least Mr. Wall very well.
8 And Mr. Etters, at least somewhat. But he worked there.
9 He -- Mr. Wall, he said he thought he was there because
10 he thought he had to work again.

11 One of the cases that the Solicitor mentioned was
12 the intent to commit larceny and he just ran off some
13 possible crimes that he intended to commit inside.
14 That, that is not enough, Judge. Guessing that a person
15 may have wanted to do something, without any evidence
16 that he actually took any actions to commit a crime, to
17 now allow our system to prosecute solely on what someone
18 may or may not have been thinking.

19 And that's why it's hard to, to read someone's
20 mind, determine their intent. And that's what makes a
21 lot of these cases difficult to prove that there's been
22 no evidence in the record whatsoever that he intended to
23 do anything other than just being in that house.

24 Both of the victims here said that they never
25 felt scared. They never felt in danger. They never

1 felt like anything inappropriate other than being in a
2 house that he shouldn't have been in was going on.
3 Again, they said he had worked in the past and he
4 thought he was there because he thought he had work
5 again. That's not a crime, Judge. There's been no,
6 other than trespass, no other criminal offense has been
7 established. And, therefore, we are asking for Your
8 Honor to issue a directed verdict.

9 THE COURT: The directed verdict is denied. The
10 Court must view the interest in favor of the non-moving
11 party and does not weigh the evidence. If there's any
12 evidence, it must go forward. And so it goes to them to
13 question of fact to the jury as to what he did, as is in
14 all of our jury charges, we cannot get inside someone's
15 mind to determine what they intended to do to a
16 mathematical certainty and that has to come from the
17 circumstances shown to exist at the time, so I'm gonna
18 send it to the jury.

19 MR. SNYDER: Yes, Your Honor.

20 THE COURT: Okay. The State has rested.
21 Anything else from the defense?

22 MR. SNYDER: Well, only if Your Honor would take
23 this opportunity to discuss Mr. Nation's rights.

24 THE COURT: I am. I'm gonna ask him about that
25 now.

1 caution, I'm just gonna keep what I ruled.

2 MR. SNYDER: Yes, sir.

3 THE COURT: Anything else?

4 SOLICITOR SMITH: No, Your Honor.

5 THE COURT: Okay. Well, are we ready ---

6 SOLICITOR SMITH: Well, subject to him

7 potentially opening the door, I assume.

8 THE COURT: Oh, no, we discussed that now.

9 MR. SNYDER: As always, yes, sir.

10 THE COURT: Yes, sir. Now, if he opens that door
11 while he's testifying, that's a different ball game.

12 MR. SNYDER: Yes, sir.

13 THE COURT: Okay. We'll have the jury.

14 THE BAILIFF: Yes, sir.

15 (Jury enters courtroom at 2:02 p.m.)

16 THE COURT: Mr. Foreman, is the jury ready?

17 MR. FOREMAN: Yes, sir.

18 THE COURT: Thank you. Okay. Solicitor has
19 rested. Counsel?

20 MR. SNYDER: Yes, sir. At this time for our
21 first and only witness we call Ben Nation to the witness
22 stand.

23 THE COURT: Sir, come up and be sworn.

24 THE CLERK: Place your right hand on the Bible.

25 Do you swear or affirm the testimony you give will be

1 the truth, whole truth, and nothing but the truth so
2 help you God?

3 THE WITNESS: Yes, ma'am.

4 THE CLERK: You may be seated.

5 THE COURT: Sir, if you will adjust the
6 microphone to suit yourself. Please tell us who you are
7 and spell your last name.

8 THE WITNESS: Benjamin Louis Nation, N-a-t-i-o-n.

9 THE COURT: Thank you. Counsel?

10 MR. SNYDER: Yes, sir. Thank you.

11 BENJAMIN LOUIS NATION,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. SNYDER:

15 Q. Ben, let's just get this out of the way. You
16 have a criminal record, correct?

17 A. That is correct.

18 Q. You've been convicted of burglary two times,
19 correct?

20 A. That is also correct.

21 Q. You've also been convicted of trespassing?

22 A. Yes, sir.

23 Q. And you know what the difference is between
24 trespassing and burglary?

25 A. Very much so.

1 Q. Why were you at the house?

2 A. So I work with Greg. I was going over there to
3 find out if I was working with him that day. My phone
4 was dead so I couldn't contact him. I was trying to get
5 to a charger, in fact. This isn't the first time that
6 I've gone over there like that. The difference in the
7 time this morning -- or that morning and before is there
8 was another occupant in the house.

9 I've gone in that back door unannounced before to
10 knock on Greg's bedroom door while he was asleep so we
11 could get up for work. It was an odd time. It was
12 early in the morning and my phone was dead, but it was
13 time ---

14 Q. Let me stop you. Why was it so early in the
15 morning?

16 A. Well, it was time, it was time sensitive for me.
17 I needed to find out if I was working with Greg that day
18 or somebody else, so, yeah, 6:45 is generally a start of
19 a work day for most, most people.

20 Q. Okay. And how many times had you worked for Greg
21 prior to this date?

22 A. A number of times. I couldn't be for sure. I
23 don't know. Me and Greg have been friends for over four
24 years now, so I couldn't tell you how many times exactly
25 I've worked for him.

1 Q. How many times had you worked on this house?

2 A. We've done several landscaping jobs there. We
3 did the moisture barrier job there. I've done several
4 things. Done some stuff on his rental properties. Do
5 you just want me to guess? Ten times, is that good? I
6 mean...

7 Q. Had you ever been inside this house?

8 A. Yeah, I've stated that.

9 Q. So let's go back to that morning. You said you
10 got there early because that's what time you start work.

11 A. Right.

12 Q. So just pick up from where you left off when you
13 got to the residence.

14 A. So, yeah. I got to the residence, my phone was
15 dead. I got out of my car. I went through the gate
16 that leads to the pool. If you notice, that latch on
17 that gate, you can't see it from the front side of the
18 gate. You have to know where that latch is to open that
19 gate. So, clearly, I'm familiar with this property. I
20 come to this property to work. I reached over the gate,
21 I unlocked the gate, went through the gate and went in
22 the back door.

23 Going in the back door, my intent was to get to
24 Greg's door to knock on the door. I noticed there was
25 another car in the driveway. Didn't want to wake up

1 anybody else in the house, so I was gonna knock on
2 Greg's bedroom door and ask him about work that morning.

3 When I went in the back door, Mr. Etters was
4 there. And he knows my face, but he's not really
5 familiar with me, so I think he was kind of just shocked
6 a little bit. I mean, it was early in the morning.
7 Greg was asleep. He was getting his clothes on, so it's
8 peculiar situation, you know, but it's not a burglary by
9 any means.

10 Q. So let's -- tell me about how you know Mr.
11 Etters.

12 A. I just know Mr. Etters as Greg's roommate. When
13 I met Greg, Mr. Etters didn't reside at that residence,
14 but I have met him in the driveway in passing. Like he
15 said, we were working one day and he got off work and I
16 met him in passing, probably waved, said hello, you
17 know, meet and greet. Nothing -- I don't know him that
18 well. You know what I mean? I couldn't vouch for his
19 character or anything. I don't ---

20 Q. So is it fair to say you know Greg a lot better
21 than you know Mr. Etters?

22 A. Yes, of course.

23 Q. Okay. So you got there early in the morning
24 ready to work and you encounter Mr. Etters?

25 A. That's correct.

1 Q. And, as I understand it, there were dogs there,
2 so there was a lot of commotion?

3 A. Yeah. They're kind of rambunctious dogs.
4 They're cool dogs. I like them.

5 Q. Did -- with all that was going on with the dogs,
6 did that add an element of chaos to the situation?

7 A. No. I mean, I think that was clearly shown on
8 the video that we watched.

9 Q. Right. So...

10 A. Yes, of course.

11 Q. Thank you. Tell us about your interaction with
12 Mr. Etters.

13 A. Okay, sir. He testified he doesn't know me that
14 well. Greg testified that I'm a bizarre guy. I am
15 different. You saw that in the videos. I tend to be a
16 goofball. I'm a little weird. You know, I think that's
17 what people like about me sometimes. Mr. Etters doesn't
18 know how weird I really am. He probably found out that
19 morning when I was rambling to myself or, you know,
20 whatever. Whatever. But I wasn't there to harm
21 anybody. I was just there to work. You know, my intent
22 was to, you know, be at work. I was there early.

23 Q. Why didn't you ring the doorbell?

24 A. I did recognize another car in the driveway. I
25 didn't want to, like I said, I didn't want to wake up

1 the house. I wasn't trying to wake the dogs. I wasn't
2 trying to wake Mr. Etters. And you know, like I said,
3 I've gone in that back door unannounced before, because
4 shortly in that back door is Greg's bedroom door.
5 Usually, you know, you can go through that back door and
6 Greg's bedroom door is right there on the left. You
7 know, you don't have to disturb the house to get to it.

8 Q. So have you -- so you just indicated that this is
9 not the first time you parked where you parked this
10 time, correct? You've parked there before?

11 A. Absolutely.

12 Q. Did you -- have you ever entered the house the
13 way you did that morning?

14 A. Yes, I've stated that.

15 Q. You were just about to say that you would go to
16 Greg's bedroom on occasion. Did you ever do that?

17 A. Yeah, to knock on his door. You know, if he was
18 still sleeping and I showed up for work and I was there
19 to work. I would knock on the door and say, hey, let's
20 work.

21 Q. Tell us about that. Tell us about the time where
22 you knocked on his door for work.

23 A. I mean, I went in a similar situation. I walked
24 in the back door unannounced, greeted the dogs, knocked
25 on his bedroom door, and he came to the bedroom door and

1 said, hey, you're here for work and we went to work.

2 Q. And what led up to you being -- when were you
3 aware that you were being trespassed from the property?

4 A. December 22nd of 2022.

5 Q. And that was about a month before this happened?

6 A. That's correct.

7 Q. And what is your understanding of being
8 trespassed from private property?

9 A. So, trespassing is a little iffy. You know, I
10 mean, I was trespassed that day. Greg did ask me to
11 leave. I didn't leave. When the police got there I did
12 leave. But I'm pretty certain that if I was to return
13 to that property again to work, I would be welcomed back
14 against whatever trespassing is listed and still on
15 there or whatever.

16 Q. In the past when you went to work, did you get
17 paid for that work?

18 A. Yeah, of course.

19 Q. And you were asked to be there to do that work?

20 A. Yeah. Like Greg stated, usually I call.

21 Q. So this was unlike -- this was the same as the
22 other times?

23 A. Except for the fact that I didn't call.

24 MR. SNYDER: Judge, could I have one second?

25 THE COURT: Sure.

1 BY MR. SNYDER:

2 Q. Did you go to the house to hurt anyone?

3 A. Could you repeat that question?

4 Q. Did you go to the house to hurt anyone?

5 A. Of course not.

6 Q. Did you go to that house to steal anything?

7 A. Of course not. Who steals from the hand that
8 feeds him?

9 Q. So to summarize your testimony, you went there in
10 the morning thinking you might have to work there?

11 A. That's correct.

12 Q. You went in, as you had gone in before?

13 A. That is also correct.

14 Q. You met Mr. Etters, who you don't know that well?

15 A. Yeah, he was there.

16 Q. That interaction, along with the dogs, made it
17 kind of tense?

18 A. I would not even call it tense. I would call it
19 loud.

20 Q. Okay. Mr. Etters asked you to leave, correct?

21 A. That is correct.

22 Q. And you didn't leave?

23 A. I did not leave on account of the fact that I
24 knew the police had been called. I guess I could have
25 stepped outside and waited for the police. But, once

1 again, I'm at a house where I work, I feel comfortable
2 here. And I really wasn't gonna run, like, oh, the
3 police are on the way, I'm not gonna run.

4 Q. Did Greg ask you to leave?

5 A. Yes.

6 Q. But you wouldn't leave?

7 A. That's correct.

8 Q. You wouldn't leave because you didn't want to run
9 from the police?

10 A. That's right. Yeah. The police were called like
11 as soon as, as soon as I got there. So I saw Greg on
12 the phone. I knew he had called the police. I wasn't
13 gonna, you know, run or try to obstruct. You know what
14 I mean? I was just gonna stand there and explain
15 myself, but I didn't get that opportunity.

16 Q. And based on your criminal history, you know the
17 difference between burglarizing a residence and
18 trespassing?

19 A. Yeah, very much.

20 Q. Thank you. Please answer any questions the
21 Solicitor asks.

22 CROSS-EXAMINATION

23 BY SOLICITOR SMITH:

24 Q. All right. You know the difference between
25 burglary and trespassing, but you don't know that

1 trespassing means you can't come back to the property?

2 A. It's a work environment, I think it's a little
3 different. Like I said ---

4 Q. And what gives you that, your extensive knowledge
5 of the law or just a hunch?

6 A. Just a hunch. I mean, I work for Greg, so even
7 if I was trespassed there and I went back to his
8 property, I'm pretty sure, you know, I'd be welcomed
9 there to work.

10 Q. So you did -- when's the last time you talked
11 with Greg before you showed up in January?

12 A. Hmmm. I guess it would have been on the 22nd of
13 December.

14 Q. Okay. And you just felt like, oh, crap ---

15 A. No. That's not -- I might have misworded that.

16 Q. Well, get it right.

17 A. You know, I don't have my phone, I can't contest
18 [sic] to that. I don't know.

19 Q. Was it within a week?

20 A. I couldn't tell you.

21 Q. No idea?

22 A. Have no clue. I haven't ---

23 Q. But something told you January 23rd, 2023, I
24 think I'm supposed to be at Greg's house at 6:40 in the
25 morning to do some work?

1 A. Like I said, I pulled up at Greg's to see if I
2 had to work, because if I wasn't gonna work with Greg, I
3 was gonna work somewhere else.

4 Q. And what made you think that you were working
5 with Greg when you can't even remember the last time
6 that you had talked to Greg?

7 A. I'm sure I had talked to him within a week. I
8 don't know, dude. I have no clue when I talked to him.

9 Q. Okay. But you thought, I'm probably supposed to
10 be at his house at 6:40 in the morning?

11 A. No. I thought that I worked for Greg. So if I
12 think I'm gonna work with Greg today, I should go ask
13 Greg if I'm working. My phone is dead, so I pulled up
14 at his house.

15 Q. All right. So what had you done the night before
16 where your phone got dead?

17 A. What's that?

18 Q. Where had you been? Did you not charge your
19 phone that night?

20 A. Irrelevant.

21 THE COURT: No, sir.

22 SOLICITOR SMITH: You need to answer my question.

23 THE COURT: You need to answer the question.

24 THE WITNESS: What's that?

25 THE COURT: Answer the question. Answer the

1 question.

2 THE WITNESS: What had I been doing the night
3 before?

4 BY SOLICITOR SMITH:

5 Q. Yeah.

6 A. I went to eat at Broncos.

7 Q. Okay. Where'd you stay?

8 A. Huh?

9 Q. Where'd you spend -- where'd you sleep?

10 A. In my car.

11 Q. Okay. Do you have a car charger?

12 A. No. I couldn't find it actually.

13 Q. Okay.

14 A. It's not on my list either.

15 Q. All right. Do you always sleep in your car?

16 MR. SNYDER: Judge, he's correct, this is all
17 irrelevant to what happened that morning.

18 THE COURT: Overruled. Go ahead.

19 THE WITNESS: Where I live, is that relevance
20 [sic] to this case?

21 THE COURT: Sir, he asks the questions, you
22 provide the answers.

23 THE WITNESS: I hear you, Judge. I understand,
24 but where's the relevancy?

25 THE COURT: I'm not arguing with you.

1 THE WITNESS: Go ahead with your question.

2 BY SOLICITOR SMITH:

3 Q. Do you always sleep in your car?

4 A. From time to time.

5 Q. All right. I just want to cover the bases that
6 we agree on. You were in their house on January 23rd,
7 2023?

8 A. That is correct.

9 Q. To your knowledge, nobody had invited you to be
10 there at that time; is that right?

11 A. That's right.

12 Q. It was dark outside when you entered, correct?

13 A. 6:45 in the morning.

14 Q. All right. And you have two prior burglaries?

15 A. That is correct.

16 Q. All right. You also were convicted of financial
17 transaction card theft in 2013; is that correct?

18 A. Yes, sir.

19 Q. All right. And your testimony is Greg likes
20 waking up at 6:40 in the morning to do work?

21 A. I was going to ask Greg if I was working with him
22 that day.

23 Q. Okay.

24 A. My phone was dead. I couldn't, I couldn't call
25 him.

1 Q. All right. So where would your charger be if it
2 wasn't in your car?

3 A. Plugged up at my parents' house and my friend,
4 Steven's, house. I don't, I don't know.

5 Q. Okay. I mean, did you think to maybe go to those
6 places, get some charge before you showed up and just
7 walked into somebody's house at 6:40 in the morning?

8 A. Greg's is a safe place. I felt like Greg would
9 give me a charger.

10 Q. All right. But you don't know when the last time
11 you had even talked with Greg was. It might have been
12 the day he had the police remove you from his property,
13 right?

14 A. I don't think that was the day.

15 Q. But you don't know?

16 A. It was, it was within four days prior, I do know
17 that.

18 Q. Now you know that?

19 A. Yeah.

20 Q. Okay. And how would you have spoken with him?

21 A. Via text phone.

22 Q. All right. But you didn't think anything of it.
23 You think you're so close, even though, at least within
24 the last month he had had the police called to remove
25 you from a house, you thought it was an okay thing to

1 just show up at his house unannounced at that time?

2 A. I'm not here to argue whether or not it was okay
3 or not. I'm here to argue the fact it was a burglary or
4 a trespassing.

5 Q. All right. Were you under the influence of
6 anything that night?

7 A. No, sir, I was not.

8 Q. Did you tell law enforcement that you had taken
9 stimulants?

10 A. I don't recall that if I did.

11 Q. All right. You say you're weird, what does that
12 mean?

13 A. I don't know by definition. I'm different. I'm
14 a different individual.

15 Q. Okay.

16 A. I'm pretty intelligent, but I might suffer minor
17 tourettes or something. I don't know.

18 Q. Okay. When you're talking about like the dogs
19 being human, what is that?

20 A. That might be my tourettes, I'm not sure.

21 Q. That's tourettes?

22 A. Well, hold on. Personification or something, I
23 don't know.

24 Q. Okay. If what you're saying is true, why didn't
25 it just end with you leaving when they told you to

1 leave?

2 A. Yeah. Well, I was waiting on the police to get
3 there. And if the police had handled their duties a
4 little differently and not jerked me out the front door
5 and put me in handcuffs and, you know, asked me some
6 normal questions like, hey, what are you doing here?
7 You know what I mean? If we could have all talked
8 together that morning at 6:45 instead of putting me in
9 handcuffs in the back of a car and then Ryan Robinson
10 and Deputy Kinard have a pow-wow in the front yard with
11 Greg and his roommate, maybe this all could have been
12 resolved on the morning of January 23rd, 2023.

13 Q. All right. And, I guess, my thing is why didn't
14 they? If you and Greg are such good friends and you're
15 doing work, why didn't he call the police immediately
16 and not just tell you to come back later?

17 A. Yeah. I'd have to assume it had to do with
18 another occupant in the house and the time of day.

19 Q. All right. So, is -- and I don't know if you
20 know this, but did Greg call 911 like the second he saw
21 you?

22 A. I'm not sure. I can't be for sure when Greg
23 called 911. I did sit in the driveway kind of thinking
24 before I went in the house about -- I was kind of
25 thinking because my phone was dead. I really didn't

1 want to walk in his back door, you know, but my phone
2 was dead so I bit the bullet and was like I'm going --
3 you know what I mean? I'm going to find this charger.

4 And, yeah, so when I walk in the back door, it
5 was shortly after I walked in the back door, Greg was on
6 the phone with police. But it all happened so fast.
7 Like I walked in the back door, the dogs went crazy. Me
8 and Mr. Etters kind of -- he was like, what the heck?
9 You know what I mean?

10 Q. I do. I guess, did you and Greg have any
11 conversation?

12 A. Very minimal. Very minimal. Like ---

13 Q. Did he ask you what you were doing there?

14 A. Yeah. That's exactly what he said. He's like,
15 oh, what are you doing here?

16 Q. Okay. And what did you tell him?

17 A. What's that?

18 Q. What did you tell him?

19 A. I didn't even get a chance to respond. There
20 were dogs. It was -- it just -- it was all, it just
21 happened so fast.

22 Q. Okay. You couldn't tell him you were there to do
23 work because of the chaotic nature or loud, not chaotic?

24 A. Yeah, we'll go with that. I like it.

25 Q. Okay. So because of that you couldn't explain

1 that you were there to do work?

2 A. Well, I didn't get an opportunity to talk to Greg
3 after me and Mr. Etters walked to the front of the
4 house. I didn't get a chance to speak to Greg.

5 Actually, you saw on the video when Greg came -- I guess
6 Greg went around the house, met with the police and
7 showed the police into the front door where I was at.

8 So I didn't get another chance to speak with Greg.

9 Actually, you saw on the video where Greg came through
10 the front door, when he let the police in the front
11 door. You know, I didn't get no chance to speak with
12 him. I was standing there with Mr. Etters.

13 Q. All right. And you're sure you weren't on
14 anything with this type of decision making? This is
15 just like Benjamin Nation at 100 percent?

16 A. At a 100 percent.

17 Q. That comes up with these type of decisions to
18 show up at somebody's house unannounced and just walk in
19 through the door?

20 A. Well, like I said, I had done that in the past.

21 Q. All right.

22 A. Not under the influence of any drugs at that time
23 either.

24 Q. All right. So, but you know that there's dogs in
25 there, right?

1 A. Yeah. Max is my favorite.

2 Q. All right. And you said they're rambunctious.

3 A. Very.

4 Q. Does that mean when they see you they make noise?

5 A. No. They jump and hump.

6 Q. Jump and hump. Do they make noise?

7 A. Yeah. I mean, yeah, probably.

8 Q. Okay. The reason you didn't knock or do the
9 doorbell is because you didn't want to wake anybody up.

10 A. That's correct.

11 Q. But then you just walk in where there's four dogs
12 that -- maybe you only knew two. Did you know the other
13 dogs were staying there?

14 A. No. Usually, usually the dogs are in the living
15 room area. They're not right there in the construction
16 zone. It's a dangerous place for dogs to be. So
17 usually they're off in another part of the house.

18 Q. At 6:40 in the morning or other times?

19 A. I can't testify to that.

20 Q. I thought you've been there at that time.

21 A. Other times.

22 Q. Well, you've been there, so are they normally
23 there or they're not there or you've never been there at
24 6:40?

25 A. I've never been there at 6:45 in the morning.

1 Q. Okay.

2 A. Other than January 23rd.

3 Q. Okay. So you lied to your -- when the defense
4 attorney asked you that?

5 A. Lied about what?

6 Q. That you've come in there multiple times at this
7 time and you all just do work.

8 A. That was never stated on the record.

9 Q. Okay. So this was a first, so there's no
10 precedent for you showing up at this time?

11 A. Excuse me. I have never been at this residence
12 at 6:45 in the morning before.

13 Q. I'm fine with that. Do you know that they're
14 married?

15 A. I did not know that. That probably has happened
16 between the time I met Greg and -- have they been
17 married longer than four years?

18 Q. I don't know.

19 A. Anyway, it's none of my business. It's
20 irrelevant to this case.

21 Q. I'm just saying you know him very well. You've
22 known him for four years, but you didn't know that
23 they're married?

24 A. I don't think their marriage status is relevant
25 to this case.

1 Q. Where were your tools and supplies and things?

2 A. What tools are you speaking of?

3 Q. I don't know. What job were you supposed to be
4 doing?

5 A. Moisture bearing doesn't require too much.

6 Q. Okay. Where was all the materials? I'm not a
7 moisture barrier ---

8 A. Did you not see the tools on the video that you
9 have in evidence?

10 Q. I don't know what moisture barrier requires.
11 Where were they? Is that where they were?

12 A. Well, let's not even talk about the moisture
13 barrier. That requires a dam Exacto knife and a roll of
14 fucking cotton. Let's talk about the tools that you saw
15 on the video that you have in evidence. Let's talk
16 about the Ryobi drill and the saws and all that stuff in
17 the construction zone you saw. What's up with all those
18 tools? Dude, you're asking me about tools that you have
19 the evidence of in your computer.

20 Q. I'm asking you where your tools were. Your
21 answer can be that they were at the house.

22 A. The tools are there. Everything's there.

23 Q. Okay. That's all you've got to say.

24 A. All right. Excuse me for my language.

25 Q. So you're saying that you did not testify that

1 you needed to find out if he was working at 6:45, is the
2 start of the work day when you testified earlier?

3 A. Excuse me, do you do manual labor or do you
4 practice law?

5 THE COURT: Sir, he asks the questions --

6 THE WITNESS: I apologize.

7 THE COURT: You provide the answers.

8 THE WITNESS: I apologize, Your Honor. Restate
9 your question.

10 BY SOLICITOR SMITH:

11 Q. I just want to get very clear. I felt like when
12 you testified with him you said that this is kind of a
13 routine thing. You come in at 6:45, you wake Greg up
14 and you all go to work. And then now you're saying that
15 it's never happened before. Which is it?

16 A. Oh, the times which you have misconstrued. Me
17 coming to Greg's and working is a regular thing. Me
18 coming to Greg's at 6:45 in the morning is not, but it
19 was a time sensitive matter for me that particular day
20 that I needed to know if I was working with Greg that
21 day, I needed to know right then, because if I wasn't, I
22 needed to get on the road and go do some cellphone tower
23 work.

24 Q. Where was that?

25 A. Irrelevant.

1 THE COURT: Sir, answer the question.

2 THE WITNESS: Your Honor, are they relevant to
3 the case?

4 THE COURT: You don't decide what's relevant. I
5 decide what's relevant.

6 THE WITNESS: Yes, Your Honor.

7 Where was what?

8 BY SOLICITOR SMITH:

9 Q. Where was your cellphone job?

10 A. It could be at any tower anywhere.

11 Q. And what do you do on cellphone towers?

12 A. Install 5G technology.

13 Q. All right. Do you have any equipment for that,
14 or is that all just sitting below the cellphone tower?

15 A. Well, you know, that's tools. Yeah, you've got a
16 whole trailer of tools for that.

17 Q. And where is that trailer?

18 A. My buddy Steven.

19 Q. Okay. So you could have gone to Steven's because
20 you had to go there anyway and maybe charge your phone?

21 A. No. No. You're not hearing what I'm saying. I
22 preferred working with Greg that day, but if Greg didn't
23 need me, I was going to Steven's. But if Greg said,
24 hey, I do need you today, but you've got to come back at
25 9 o'clock, I was gonna get in my car and come back at 9

1 o'clock.

2 Q. Okay. So you, you have no idea if Greg wanted
3 you to be there or not?

4 A. No, I do not. In fact, that was where I was --
5 that was my whole intent on going over there.

6 Q. I guess then, why didn't it just end with you
7 then saying I'll come back at nine?

8 A. I don't know why it turned out the way it did. I
9 mean, ask Spartanburg County. Ask Brian Robinson. Ask
10 Deputy Kinard. Ask, ask all these deputies that aren't
11 here right now that were there on the morning of the
12 23rd. Where are they at? Mr. Kwasniewski, he was not
13 there when I was there. He showed up far after I had
14 been detained and taken to jail. Now, I don't know
15 where Brian -- Deputy Brian Robinson is. I don't know
16 where Deputy Kinard is. The one that said Nation,
17 Nation, Nation. We remember you from the county jail.
18 I don't know where these individuals are.

19 Q. You know you could bring them to court.

20 A. That's your job, solicitor. They're in the
21 motion. I'm not representing myself, I'm testifying.

22 Q. So you didn't think it would be a good idea to at
23 least wait outside when they're telling you to get the
24 fuck out of the house?

25 A. Like I said, that was probably a dumb decision

1 standing there, but I didn't want it to appear like I
2 was running.

3 Q. You wouldn't be running. You'd be standing on
4 the front porch waiting to explain to law enforcement
5 the confusion.

6 A. Why wasn't I given that same chance to explain to
7 law enforcement the confusion when they got there?

8 Q. Do you remember ---

9 A. We're running in circles here.

10 Q. Do you know you were trespassed from ---

11 A. Make it make sense.

12 Q. You were trespassed from there.

13 A. Okay.

14 Q. Right?

15 A. Correct.

16 Q. And they're asking you to leave.

17 A. Okay.

18 Q. And you know the cops are coming.

19 A. Yeah.

20 Q. And you think that it's crazy that they detained
21 you and got you out of the house?

22 A. I think that it's crazy that I've been in jail
23 for a year on burglary in the first degree for a dam
24 trespassing. That's what I think is crazy. A year.

25 Q. And a week.

1 A. You're correct.

2 Q. I'm gonna play the video and maybe you can
3 explain to me what you were talking about on it.

4 A. Have you already played the video once? No sense
5 in playing it again.

6 Q. Well, I'll do what I want.

7 A. You can do what you want. You've already played
8 it once. It doesn't get any better the second time, I
9 promise. You're just trying to refresh the jury's mind.

10 Q. Just want to know what you were talking about.

11 A. Who cares at this point. Has it been played yet
12 or not?

13 THE COURT: Sir, do not ask the questions.

14 THE WITNESS: I apologize, Your Honor. Is this
15 audio or visual?

16 BY SOLICITOR SMITH:

17 Q. It's visual. You're gonna have it on the monitor
18 up there. And the sound comes from up here, I think.

19 A. Has this been hooked up yet?

20 Q. They gotta, they gotta send it to it.

21 A. Can I stand and watch it?

22 THE DEPUTY: No, sit down.

23 SOLICITOR SMITH: Your Honor, we're gonna play a
24 portion of State's 18.

25 THE COURT: Okay. Wait.

1 THE CLERK: He has to plug it in.

2 THE COURT: Oh, he has to plug it in.

3 BY SOLICITOR SMITH:

4 Q. Oh, yeah, I've got to plug in my HDMI. That
5 probably would help.

6 (Plays video.)

7 What do you mean by that's one of my fellow
8 officers, I need to speak to them?

9 A. I was just probably bullshitting. That's me
10 playing my game. Listen, I've got a Zillow App. When I
11 say my radio's dead, did you hear that comment too? I
12 carry, I carry a Motorola phone and I have a Zillow push
13 to talk app, so I call my Motorola phone my radio. The
14 officer thing, I was just probably -- I was probably
15 just -- I don't know. I was just probably bullshitting.

16 Q. Okay.

17 A. I'm a weird guy, do you know what I mean?

18 Q. I do.

19 (Plays video.)

20 All right. Is this where you're saying it's too
21 loud, I'm just here to work?

22 A. What's that? I think, I think Greg was panic
23 stricken because I had just -- listen, right here we
24 were right outside of Greg's bedroom. Let me see where
25 -- where is this exactly? Can you flip that for me and

1 make it horizontal?

2 Q. No.

3 A. Hold on. Can I stand up real quick?

4 THE COURT: No, sir.

5 THE WITNESS: Okay. Where exactly is this at at
6 this moment?

7 BY SOLICITOR SMITH:

8 Q. I don't know. I thought you were familiar with
9 the house. You would have been in there more times than
10 me.

11 A. Can you -- I mean -- I don't know, it's distorted
12 and I've got to look at it sideways.

13 Q. All right. My question isn't really which room
14 you're in. Are you saying that there's no opportunity
15 for you to tell him I'm just here to work, but you have
16 time to joke about being an officer?

17 A. He's half asleep. He's half asleep. I just ran
18 into what I just found out is his husband in a hallway.
19 His husband doesn't know who I am. So he's panic
20 stricken. Greg's panic stricken because I just ran into
21 his husband and I don't know that it's his husband in
22 that hallway. You know what I mean?

23 Q. And you didn't think you could alleviate the
24 panic by saying I'm here to work?

25 A. Is this a trespassing or a burglary? I think

1 that's what we're here to decide today.

2 Q. Did you think that you could have told them that
3 you were there to work? In this opportunity ---

4 A. To answer your question, yes, I probably could
5 have, but I'm not sure it would have changed the
6 situation at this point or not.

7 Q. All right.

8 (Plays video.)

9 You still don't think you have an opportunity --
10 have you told him at this point you're there to work
11 before this video started?

12 A. I probably told it to the dogs before I told it
13 to them.

14 Q. Did you think they would relay the message to
15 them or...

16 A. Probably telepathically.

17 Q. Okay.

18 (Plays video.)

19 What are you talking about there?

20 A. I had just stopped at the "Li'l Cricket" and
21 bought two Propels. I had bought one for me and one for
22 Greg. And so, I'm sure there's a receipt in my wallet
23 in the jail, just stating that I had just stopped at the
24 "Li'l Cricket" and got these Propels. That's all I was
25 saying.

1 Q. All right. So you're telling them about the
2 Propels, but you haven't told them that you're there to
3 work?

4 A. I mean, honestly, I don't know who that is in the
5 background talking. I'm looking at a pair of jeans
6 right now.

7 Q. Okay. That might not ---

8 A. Unless its ---

9 Q. That might not be you?

10 A. No. It might be the Honorable Thomas Wall. I'm
11 not sure.

12 Q. Okay.

13 A. Yeah.

14 (Plays video.)

15 At this point I'm not sure. We're looking at a
16 desk and hearing a bunch of voices in the background.

17 Q. Did you see any other people other than Mr.
18 Etters and Mr. Wall and yourself inside the house?

19 A. I'm not sure how I could have seen myself unless
20 I had a mirror.

21 Q. You can't look at your arms and know that you're
22 there?

23 A. Maybe.

24 Q. Okay. Well, did you see any other people, is the
25 question, other than yourself, Mr. Etters, and Mr. Wall?

1 A. Oh, no. As far as I know it's just me, Mr.
2 Etters, Mr. Wall, the in-laws dog, Max, and Lady Man.

3 Q. All right. So, who's saying cigarette butt
4 enforces time?

5 A. I'm not sure. You'd have to, You'd have to --
6 you'd have to use some kind of voice analysis for that.
7 I'm not sure.

8 Q. All right.

9 (Plays video.)

10 A. That to me sounds like a female voice, voices in
11 the background, and I'm not sure who all those people
12 are.

13 Q. All right. I'm gonna try to skip ahead to, do
14 you remember asking what time it was in this video?

15 A. What time it was?

16 Q. Yeah. It was later on. I'll have to play a
17 little bit.

18 A. I don't know. Fast forward.

19 (Plays video.)

20 My phone was dead, so I had no connection of the
21 time.

22 Q. Well, that's what I'm about to get at. Let's let
23 it play.

24 (Plays video.)

25 A. Once again, I don't know who these voices are.

1 I'm staring at the corner of a ceiling, crown molding,
2 maybe.

3 (Plays video.)

4 It really sounds like a bunch of dogs doing crazy
5 stuff.

6 Q. I haven't asked you a question.

7 A. We're playing a video, we're fucking playing, so
8 let's get on with the question.

9 (Video keeps playing.)

10 Q. All right. Do you hear that?

11 A. Run it back up.

12 Q. All right. Whose voice is that, saying it's 6:55
13 a.m.?

14 A. If I have two phones, one that was activated that
15 I couldn't call on was dead. That's my Motorola. My
16 Motorola computer was dead and my Motorola play was
17 active with an alarm. I use that phone for a work alarm
18 and date and time. I can testify to that. If you pull
19 the video footage from Brian Robinson's deputy patrol
20 unit. You will see all that. He was pow wowing in the
21 front yard with the homeowners. My alarm was blaring in
22 the front seat of his car because I set a 7:30 alarm for
23 work. When he came back from his unit I was like, dude,
24 please grab my phone and cut that alarm off. He did,
25 so...

1 Q. All right. And what was the 7:30 alarm for work
2 set for, today? Was the alarm set for January 23rd,
3 2023, the 7:30 alarm that you said was going off?

4 A. Oh, yeah, I was already up. But I'm saying 7:30
5 was like -- that would be my normal time to like --
6 uh-huh. Yeah.

7 Q. Not six?

8 A. Right. But, like I said, that morning was time
9 sensitive because I was gonna go work with somebody else
10 if I wasn't working with Greg. Why, why are we running
11 in circles? You're trying to get me to step over my own
12 self and I'm telling the truth, so it's gonna come out
13 the same way every time you ask.

14 Q. So the phone that does have power has no way to
15 contact Greg?

16 A. That is correct.

17 Q. All right.

18 A. Yeah. One is a Motorola G Play and one is a
19 Motorola Pure. The Motorola Pure is my active Verizon
20 line and the G Play is my old line that's no longer in
21 service.

22 Q. All right. And going back to the cellphone work
23 that you do, do you contract with somebody like that or
24 do you just like --

25 A. Yes, sir.

1 Q. -- run an ---

2 A. No, sir. No. I used to work for PCRG, Personal
3 Cellular Resource Group. They're no longer in business,
4 but I was working for NMS Construction and we were doing
5 update towers in Charleston, West Virginia, Georgia.
6 Yeah, we were installing 5G technology.

7 Q. All right. And they just take you when they can
8 get you when you're not doing some random job at a
9 house?

10 A. So, a lot of cellphone tower work, that's a huge
11 -- that's a huge network. A lot of the work is
12 subcontracted down. It comes down the line. You know,
13 it might go through three or four subcontractors before
14 it gets to the actual laborers. There's a lot of money
15 in that field, and it's like some contractors just peel
16 money off the top and pass it down. And finally it gets
17 to somebody that wants to go climb up 350 in the air and
18 install an antenna. And do the ground work is what I
19 took.

20 Q. Does Greg pay better than the cellphone job?

21 A. No, he doesn't. But the thing about the
22 cellphone market is you've got to be ready to pack your
23 bags and get on the road and be out of town away from
24 family for 3, 4, 5, 6 weeks at a time. It just depends.
25 But if you had kids or a family or you were tied in in

1 town, you know, it's rough.

2 Q. So if you live in your car it's pretty easy?

3 A. I guess you could say that. Once again, I don't
4 think my living situation is relevant to this case, but
5 continue on.

6 Q. So, if you weren't gonna go with Greg, you were
7 gonna go out of State for three or four weeks? And that
8 was all gonna be determined at between six and nine in
9 the morning?

10 A. I mean, I -- who's telling the story, me or you?
11 I mean, I feel like you're trying to lead my own story.

12 THE COURT: Sir, I need for you to answer the
13 question.

14 THE WITNESS: Well, can you just make the
15 questions more direct, cut and dry, because this -- go
16 ahead.

17 BY SOLICITOR SMITH:

18 Q. I got lost for a second.

19 A. No shit.

20 THE COURT: Sir, refrain from comments.

21 THE WITNESS: Excuse me again.

22 BY SOLICITOR SMITH:

23 Q. This trespassing that's on your record from 2021,
24 you said you don't bite the hand that feeds; is that
25 right?

1 A. 2021, are you referring to my parents' residence?

2 Q. Yeah.

3 A. Yeah. We get into that all the time. I don't
4 think trespassing is biting the hand that feeds you, but
5 it ---

6 Q. What did you do to trespass?

7 A. What's that?

8 Q. What did you do to trespass?

9 A. I'm not sure this is relevant. Is this relevant,
10 Your Honor?

11 THE COURT: Sir, answer the question.

12 THE WITNESS: What did I do to trespass? I
13 probably went on their property after they told me to
14 leave.

15 Q. Did you break anything?

16 A. I can't recall. Maybe. Yeah.

17 Q. You don't remember the circumstances of -- what
18 did -- what did you get charged with?

19 A. Trespassing, I reckon.

20 Q. Is that what you pled guilty to or what you were
21 charged with?

22 A. Oh, maybe I was charged with burglary. Probably
23 a similar situation just like this. It ended up in a
24 trespassing. Yeah.

25 Q. But you did that to your parents that still let

1 you stay there occasionally and charge your phone?

2 A. Yeah. We get into it. Me and my dad don't
3 always see eye-to-eye.

4 Q. So you do bite the hand that feeds you?

5 A. Not bite.

6 Q. Nibble?

7 A. Nibble.

8 SOLICITOR SMITH: All right. I don't have
9 anything further.

10 THE COURT: Anything?

11 MR. SNYDER: No, sir.

12 THE COURT: Sir, you may be excused from the
13 witness stand. Thank you.

14 (Witness leaves witness stand.)

15 Mr. Snyder, anything else?

16 MR. SNYDER: Not from the defense.

17 THE COURT: The defense rests?

18 MR. SNYDER: Yes, sir.

19 THE COURT: Let me see the lawyers at the side
20 bar, please.

21 (Sidebar conference was held off the record.)

22 We're talking time up here. They need a few
23 minutes, or the solicitor has just a few minutes to
24 decide whether he has any reply testimony. So we're
25 gonna excuse you to take a little break. It should not

1 be more than -- I'm looking at the clock up there. It
2 should not be more than 10 past the hour because I want
3 to continue if we're gonna continue. We'll go to ten
4 past the hour. Do not talk about the case, it's not
5 over. Have a quick break, refresh yourselves, we'll be
6 back in here momentarily.

7 (Jury leaves courtroom at 3:55 p.m.)

8 Okay, I'm gonna get off the bench for ten
9 minutes, but if we're gonna continue I want to ---

10 SOLICITOR SMITH: Yes, sir. It wouldn't be
11 anything close to five, I wouldn't think.

12 THE COURT: Okay, let's go.

13 (Recess was had from 3:55 p.m. - 4:10 p.m.)

14 All right. Let me do this, let me get the jury
15 gone. You've already rested on the record?

16 SOLICITOR SMITH: I believe he did.

17 MR. SNYDER: I've already rested. I was just --
18 any motions, can we do them in the morning?

19 THE COURT: No, we'll do that now.

20 MR. SNYDER: Oh, okay.

21 THE COURT: Yeah, because in the morning I want
22 to be ready to go. I've got veterans court.

23 MR. SNYDER: Yes, I understand. I understand.

24 THE COURT: We're gonna get straight to the
25 arguing and charges.

1 MR. SNYDER: I understand.

2 THE COURT: And working on the next jury coming
3 in. And we've already got the information on that,
4 right, we're doing that at 10:30.

5 THE CLERK: Yes, sir, Your Honor. Coming in at
6 10:30, calling back after six to get the message to come
7 in at 10:30.

8 THE COURT: Calling back after six tonight?

9 THE CLERK: Yes.

10 THE COURT: To get directions for the morning?

11 THE CLERK: They're calling back after six
12 tonight to be told to come in at 10:30 ---

13 THE COURT: 10:30?

14 THE CLERK: Yes, 10:30.

15 MR. SNYDER: Bring my client out.

16 THE COURT: Yes. Let's get him, because I want
17 to get the jury out.

18 (Defendant enters courtroom.)

19 Okay. We're ready for the jury.

20 (Jury enters the courtroom at 4:17 p.m.)

21 Mr. Foreman, ladies and gentlemen of the jury,
22 the State has elected not to offer any further evidence.
23 Nothing in reply or rebuttal. So this case, as far as
24 the evidence goes, there's not any, okay? Nothing else.
25 No other picture, no other testimony to take place.

1 So, where that puts us, it's too late in the
2 afternoon. It's after 4, it's 4:15. It takes about 60,
3 between 60 and 80 minutes to argue, closing arguments,
4 and I need to charge the law, that would put us into the
5 5:30 hour. I'm not doing that to you. There's no
6 reason to do that. Be here in the morning and be fresh.

7 So, I'm gonna ask you to be here in the morning
8 at 9 o'clock. I have veterans court at 8:45. I only
9 have two or three folks and it's a diversionary program.
10 And anybody that wants to see that, the bailiffs will
11 make sure that you're here. If you're here, then you
12 can come into the courtroom and see that. It's a
13 wonderful program and I'm proud to be a part of it.
14 But only two or three folks and they're coming to give a
15 good report and their mentors speak and it's just a --
16 I'm really glad to be a part of it.

17 Having said that -- as soon as after I do that,
18 which only takes about 15, 18 minutes at the most, we'll
19 move directly into this case, which is closing arguments
20 from the lawyers and I will charge you on the law. And
21 your brothers and sisters are reporting at 10:30 in the
22 morning, so don't feel that you don't know the people
23 here, because we're gonna pick at 10:30 the second case
24 -- the third, might even be the fourth. But Judge Fant
25 is gonna preside tomorrow.

1 So, having said that, I'm gonna release you for
2 the night. Yes, sir?

3 THE JUROR: Do we come to the sixth floor or back
4 to the second floor.

5 THE COURT: You come back to the second floor
6 because your brothers and sisters won't be there until
7 10:30. So it'll just be the 13 of you tomorrow morning
8 when you get here. And once again they'll bring you
9 down a secure hallway. By the time you get in there and
10 get some coffee or get water or get whatever -- I think
11 the coffee machines are not here yet.

12 THE BAILIFF: I've checked, Judge, and keep
13 asking.

14 THE COURT: Keep asking. Coffee machines are not
15 here yet. That's our new courthouse. Anyway, sorry
16 about that. But anyway, if you want to bring a cup with
17 you, you're more than welcome to do that. I certainly
18 would accommodate you on that. But you'll get this case
19 in the morning, and as soon as we hand it off to you,
20 Judge Fant and I are going downstairs and he's gonna
21 pick a jury for the next case.

22 Judge Fant is a new judge and this is kind of
23 OTJT, on the job training. He's kind of watching me and
24 he's gonna take over tomorrow and try the next case,
25 so...

1 Having said that, have a good evening. Don't do
2 any investigation. Don't try to learn anything about
3 the case. We can do all of that right here, and I'll
4 see you in the morning.

5 (Jury leaves courtroom at 4:23 p.m.)

6 Okay. Everybody's rested. Matters from the
7 State?

8 THE SOLICITOR: Nothing from the State, Your
9 Honor.

10 THE COURT: Okay. From the defense?

11 MR. SNYDER: Yes, sir. I'd just like to renew
12 that Motion for Directed Verdict. His wonderful
13 testimony, didn't really change anything and I believe
14 that the element of entering with the intent to commit a
15 crime has not been proven and we're asking for a
16 directed verdict regarding that issue.

17 SOLICITOR SMITH: We would just stand on the
18 arguments previously made, Your Honor.

19 THE COURT: Yes, sir. And after hearing all of
20 the testimony, including his testimony, the motion is
21 denied. Of course, it looks to any evidence whatsoever,
22 and there is as to what his intent truly was on that
23 day. And that is a question for the jury to determine.
24 So, anything else?

25 MR. SNYDER: Not at this time.

1 THE COURT: Okay. We can get off the record now.
2 (Court concluded at 4:27 p.m.)
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5 --- THIS ENDS DAY TWO OF TRIAL ---
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1 THE STATE OF SOUTH CAROLINA VS BENJAMIN NATION

2 DAY THREE OF TRIAL

3 THE COURT: Okay. Everybody's ready? Let's get
4 him.

5 (Defendant brought into the courtroom.)

6 We'll have the jury.

7 MR. SNYDER: May I approach, Your Honor?

8 THE COURT: Sure.

9 (Bench conference was held off the record.)

10 Thank you. We'll have the jury.

11 (Jury enters courtroom at 9:17 a.m.)

12 THE COURT: Mr. Foreman, everything good with the
13 jury?

14 MR. FOREMAN: Yes, sir.

15 THE COURT: Ready to work?

16 MR. FOREMAN: Yes, sir.

17 THE COURT: Give your attention to the lawyers,
18 please.

19 CLOSING ARGUMENT

20 BY SOLICITOR SMITH:

21 SOLICITOR SMITH: As I said in my opening, and I
22 think the evidence came in this way, there really is
23 only one potential issue in the case. And after Mr.
24 Nation testified, that was confirmed. We know that he
25 entered the house. We know that he didn't talk to

1 anybody to get consent ahead of time. We know that he's
2 trespassed from his own admission, on the police
3 records. We know that it's night time, he admitted
4 that. We know he has two prior burglaries. That's
5 every element you need of a burglary first other than
6 that when he entered he had an intent to commit a crime.
7 So that's what I'm gonna spend all my closing about is
8 why the State believes the evidence shows that he did.

9 I want to start by the idea that the trespassing
10 itself could be the crime that he intended to commit
11 inside. Trespassing is either you've been warned
12 previously to not come to a place and then you come, or
13 you've never been warned, you come, you're told to
14 leave ---

15 MR. SNYDER: Objection, Your Honor. That's not
16 the law.

17 SOLICITOR SMITH: I've got the law. I'll put it
18 up.

19 THE COURT: It's not the law?

20 MR. SNYDER: Can we approach?

21 THE COURT: Sure.

22 (Bench conference was held off the record.)

23 THE COURT: Solicitor.

24 SOLICITOR SMITH: Can I get the doc cam?

25 All right. This is the trespassing statute

1 that's been referred to. Any person without legal cause
2 or good excuse enters the dwelling house, place of
3 business, or on the premises of another person -- that
4 would be their yard and the entire property -- after
5 having been warned not to do so, or any person, who
6 having entered into the dwelling, place of business or
7 premises who is then warned and fails or refuses without
8 good cause or excuse to leave immediately upon being
9 ordered is guilty of a trespass.

10 So, the point is, you can be guilty of a trespass
11 and not a burglary. That would be that you walk into
12 somebody's house. You don't have any bad intentions.
13 Maybe you're lost or something. They say, hey, what are
14 you doing in here, you need to leave. If you don't,
15 that's a trespass and not a burglary because you didn't
16 come in with an intent to commit a crime.

17 You can commit a burglary and not a trespass. If
18 you've never met the person who's the burglar, you're
19 not even home. They break into your house while you're
20 at work or something like that. You have not been
21 warned to not be there, and they're not confronted and
22 told to leave, so it's not a trespass, but it's a
23 burglary because they came in to steal or something like
24 that.

25 And then you can do both, and that's what

1 happened in this case. He has been noticed by the
2 police. His own words. He knows he's not supposed to
3 be there. It's trespassing when he's on the property.
4 When he then goes into the house, he's furthering his
5 trespass and he's intending to commit the trespass when
6 he comes into the house. So, from his own words I
7 believe he can be convicted as trespass being the crime
8 that he was intending to commit.

9 And, like I said, we did get a view into his head
10 with his testimony, but we still can't get into his head
11 on that night of what he was doing. We can either take
12 his word for it or we can analyze it and see if what
13 he's saying makes sense.

14 But, there are some factors that I think, as
15 Deputy Kwas [sic] went over. It's nighttime. It's a
16 weird time of night. 6:40 in the morning is an early
17 time to show up unannounced at somebody's house and just
18 let yourself in.

19 He comes in through the back door. I know he
20 says, oh, well, I've been there before, that's how I
21 know about the latch. That's okay. You can burglarize
22 somebody's house that you've been to before. There's no
23 rule against that. That's how he knows to get there.
24 Probably know what he was looking for.

25 He does not contact Greg, who apparently has his

1 phone number. He has a reason for why he doesn't, but
2 we'll get into that later. These are the facts just
3 from the get go that we think cut that way. And very
4 importantly, Judge Kelly is going to charge you that the
5 critical point is what is going on in his mind when he
6 enters. And I think in this case he entered, I believe,
7 to steal something. And he got caught and then he
8 played dumb.

9 And what Judge Kelly is gonna read to you is the
10 State must prove beyond a reasonable doubt that the
11 defendant intended to commit a crime, either a felony or
12 a misdemeanor as the time of the entry. The mere entry
13 into a dwelling without consent is not burglary, if the
14 intent to commit a crime is formed after the entry.

15 That would be like you went to somebody's house
16 as a guest and then for a party and then you saw a
17 diamond ring sitting there and you stole it. You didn't
18 come in intending for the crime, but you committed a
19 crime inside. That's not a burglary, that's a larceny.

20 On the other hand, if the defendant intended to
21 commit a crime at the time of entry, it is a burglary
22 even if that intent is abandoned after the entry. It
23 does not matter that the intended crime was not
24 completed. So if he came in intending to commit a crime
25 and then got caught, maybe like he didn't realize it was

1 6:50 and people not be awake, he thought it was 2
2 o'clock in the morning or something and he could sneak
3 in and get something and then he gets caught. He acts,
4 oh, you know, and starts talking nonsense, plays dumb,
5 like he did on the stand yesterday.

6 It's just about that he entered. The fact that
7 he didn't come in there and beat them or they didn't
8 feel like he was there to hurt them, doesn't mean that
9 he didn't come in with an intention to commit either
10 larceny or breach of peace. A harassment or a trespass.

11 You'll notice -- and y'all will have the videos
12 back with you -- the video is very short of when he
13 enters. But he does not just enter and start walking
14 back to a room, like he does. He actually looks over to
15 the right in the sun room area, which is under
16 construction. I don't know who he would think is over
17 there. I don't know exactly what he's looking for, but
18 he doesn't just come in like he's going to Greg's.

19 I want to go on, you know, the best source for
20 what was going on in his mind is him and his testimony
21 and start working through, as we did on cross
22 examination. Like I said, you can seize every element.
23 He disputes that he had an intent to commit a crime, but
24 every other element from his own mouth, he did it.

25 The first point I think is curious is he

1 testified on direct that he has come to this house at
2 that hour and he has gone in through the back door in
3 the past to go wake up Greg and do work. When I started
4 asking him questions it became, he's never come at that
5 time. He's never entered in that way.

6 I don't understand how his story changed just
7 from one person asking him questions to the next. It
8 calls into question his credibility and whether he's
9 lying to you about what his intention was.

10 He had multiple chances to diffuse the situation.
11 You've got to think about the 911 call. Greg says
12 please hurry. He's been trespassed from my house. He
13 broke into my house. You can hear -- I know he says he
14 wasn't that alarmed, but he sounds alarmed to me on the
15 911 call. Doesn't sound like this is friends. He's
16 been trespassed from this location back in December.

17 Maybe they were friends. Don't know exactly
18 what's going on there, but it was a situation that made
19 them uncomfortable. And maybe the fact that once he saw
20 him and then he realized he wasn't gonna hurt him, they
21 thought he entered into the dwelling place, the best
22 thing to do was just leave them alone, but that doesn't
23 change the fact that he could have diffused the
24 situation, if his story is true, any number of ways.

25 I don't think Greg saw him and immediately called

1 911. I mean, why did this situation not end with, hey,
2 Greg, I was here to work on the moisture liner? You
3 know, Ben, it's a little early, can you come back? And
4 he comes back. Why did it not go like that? Because
5 that's not what was supposed to happen. It's not what
6 was happening. It wasn't a misunderstanding of
7 schedules.

8 He claims he doesn't want to wake anybody up by
9 ringing the doorbell, to explain why he walks in through
10 their back door. Well through their back gate, through
11 their back door, through the sun room, the living room,
12 to the bedroom, where he's confronted. But he knows
13 there's rambunctious dogs who like to jump and hump,
14 apparently, which he does and gets discovered as a
15 result of that. And he apparently knew about those
16 dogs.

17 So, his story about why he didn't use the front
18 door is implausible. If you've known somebody for four
19 years and you've been doing work for them and you can't
20 call them for whatever reason, it's completely
21 reasonable, probably not at that hour completely
22 reasonable, but the logical thing to do would be to
23 knock on the front door, not to go into the back door
24 and sneak into the house.

25 He's either sober, as he claims he was, and

1 exhibiting the worst decision making ever, or lying to
2 you about what his decision making was, or he's lying to
3 you and was not sober. And I think if you watch the
4 cellphone video and listen to what he's saying and
5 listen to Greg and Mr. Etters, how they refer to him as
6 being high, it's pretty clear that he was not sober that
7 night. So he's lying to you on the stand about what he
8 had been doing that night. And why is he lying about
9 that?

10 Another important point, when I first asked him,
11 one of the first questions in cross-examination, was
12 what is the last conversation you had with Greg before
13 showing up at the house on January 23rd, 2023, at 6:40
14 in the morning? His first answer was he didn't think he
15 had talked to him since the December incident, December
16 22nd when he got trespassed from the house.

17 So a month before, his last interaction with Greg
18 is the cops forcibly removing him off of the property.
19 A month later he's showing up at the house without any
20 communication between that time, apparently to do some
21 work without any communication. He realizes in the
22 middle of his testimony that that's a really bad answer.
23 And then suddenly it's, I'm sure it's within the last
24 four days before the January incident. If that's true
25 and he talked with him within four days, why is there

1 confusion about whether he's supposed to be there? It
2 would probably say, like, Greg, this was a Monday
3 morning. I think, Ben, let's do some work Monday at
4 nine or some sort of time. Like, why would there be
5 confusion if the conversation happened? The
6 conversation didn't happen. His first answer was
7 probably true, he hadn't talked with him since the cops
8 were forced to remove him. And then he showed up and
9 got removed again.

10 His two job story is completely implausible.
11 He's either going to help Greg do some moisture liner
12 for less money than what sounds like a one-day job or
13 he's going to go repair 5G cellphone towers on a five to
14 six-week job out of state, which pays more. And he
15 chooses to go to Greg's house, where he knows that he's
16 been trespassed from. And, perhaps, the last
17 interaction he had with Greg was getting kicked out of
18 the house by the police. But he chooses that job, not
19 the 5G.

20 And I don't want to pile on him, but it sounds
21 like he's homeless, okay? It doesn't sound like this
22 guy has a lot of money. He's got two phones, one works.
23 He's got car chargers. He charges his phones at Steve's
24 and charges his phone at his parents, sometimes his car,
25 sleeps in his car.

1 So this is a guy that would want money, needs
2 money, and so he's gonna take a lower paying job, rather
3 than a five to six-week job that carries more. It
4 doesn't make any sense.

5 He even said that for somebody like him, no kids,
6 no house or whatever, it's easy to detach and go do
7 these type of jobs, so why doesn't he do it, because I
8 don't think it's true. I don't even think that job
9 exists. I think he's lying about it.

10 There's another big inconsistency. It's, the
11 reason he didn't contact Greg is because his phone was
12 dead. That was his story, his phone -- I don't remember
13 if he said phone or phones, but it wasn't as if he
14 didn't have a phone. Didn't know what time it was.
15 Well, when I point out in the cellphone video that he
16 asks what time it is and Mr. Etters says, why don't you
17 check one of your two phones or whatever he said back to
18 him, you hear him say it's 6:55.

19 So suddenly he does have a working phone. Well,
20 now he's gotta explain why he's got a working phone when
21 previously he said he didn't. So now it's I've got one
22 Motorola that works and another one that I put alarms
23 with and play games or something. I don't know. It's
24 not functional.

25 There's a couple notes on that. He's supposed to

1 be a 5G cellphone repair person. He has two phones that
2 are the same brand. He's sober and he didn't think he
3 could change the SIM card out of the one with battery to
4 the one without battery and call Greg?

5 Also, he claims that he's Greg's friend. He
6 could have had his wifi. A lot of people that have been
7 over to people's house not have their wifi [sic], so
8 even if he couldn't change the SIM card, because there's
9 no reason that he couldn't have, he should have been
10 able to use wifi to contact Greg, or knock on the door,
11 or do anything other than what he did.

12 He also, as he was complaining about the police
13 putting him in the back of the car, talks about his
14 alarm going off at 7:30 for work. Well, why does he got
15 an alarm set for 7:30 at work, when he doesn't even know
16 where he's supposed to be working?

17 He claims that he will never bite the hand that
18 feeds, but then we start talking about the trespassing
19 with his parents. And then he does sometimes not agree
20 with his dad and that he has done things to bite the
21 hand that feeds. So, again, he lied. He says he
22 nibbles at the hand that feeds, but that's not something
23 to stop him from committing a crime.

24 Every single thing about his testimony lacks
25 credibility. Every single thing. When the judge talks

1 to you and gives his closing instructions, he'll talk
2 about the demeanor of witnesses and how you're to assess
3 who to believe and who to disbelieve, try to help you
4 get to your ultimate decision. His demeanor was night
5 and day.

6 He seems like a, maybe normal, if a little odd on
7 direct examination, and then turned into a completely
8 different person when I started asking him questions.
9 He refused to answer simple questions, like where you
10 slept last night and other things that don't incriminate
11 him in any way, but would say that they are irrelevant
12 and he didn't have to answer them. Think of his
13 demeanor. Nothing about it is credible, not a single
14 thing.

15 He didn't talk to the police much, but if you
16 watch Deputy Davis's body cam, again, he says that the
17 reason he stayed there was because he didn't want to
18 look like he was running, which is kind of weird.

19 But when Deputy Davis gets there, he doesn't say
20 hey to the deputy, he doesn't say, hey, I'm just here to
21 do some work, this is a big misunderstanding. He says
22 nothing and then makes like a violent attempt to get his
23 phone. Gets taken out of the, taken out of the house.
24 And then asks, are you sure they're the homeowners,
25 although he apparently has known Greg for four years.

1 But he tells Deputy Davis, are you sure that they're the
2 homeowners? And then he's playing stupid about what his
3 name is and talking about one nation and all this.

4 I mean, what he said that night, what he did that
5 night doesn't add up with what he said to you on the
6 stand. It doesn't make any sense.

7 I believe that Mr. Nation, and the evidence
8 I think supports, that he was on something that night.
9 It's possible that he had not slept for a long time and
10 did not have a good concept of exactly what time of day
11 it was. I believe that. And I think that he went to
12 the house because he knows that they have things. And
13 he's hard off, living from place to place, and that he
14 went in there with intent, with the thought of stealing
15 something, because he knows that they've got something,
16 then he would be able to get out of the house and
17 nothing would happen to him. Maybe he thought they were
18 asleep. Maybe he thought they were gone. He's clearly
19 not acting straight.

20 But if he can't come up with that with certainty,
21 he absolutely admitted to you he knew he was not
22 supposed to be there. He came not only to their
23 property, but went through their back gate, through
24 their back door, all the way to the bedroom where he's
25 finally confronted and then still doesn't leave.

1 Every single fact points to him having a bad
2 intent from going there. There's nothing about what he
3 did that supports this being anything other than
4 something bad, from what he did, how he got in there,
5 his lack of communication, what he did afterwards, all
6 of it.

7 Mr. Wall and Mr. Etters, had Benjamin Nation
8 removed from their home in December with police. Had to
9 involve the police. That's not a normal thing. Do they
10 have to allow Benjamin Nation to walk into their house
11 forever over and over and then he can just say, oh, I
12 was here to do work, even though he's trespassing, even
13 though they're telling him to leave. Is he allowed to
14 do that? Y'all get to decide.

15 I don't decide what the burglary is. The judge
16 will tell you what the law is. I don't decide what a
17 trespass is. Mr. Nation doesn't, Mr. Wall doesn't, Mr.
18 Etters doesn't. Y'all get to decide that. But when you
19 consider all the factors and all the evidence that you
20 have, there is no other conclusion that when he made
21 that entry, which he admitted to, that he was intending
22 to commit a crime, and that makes him guilty of burglary
23 first. Thank you.

24 CLOSING ARGUMENT

25 BY MR. SNYDER:

1 Good morning. Y'all are gonna have to bear with
2 me. I had some thoughts I put together, but listening
3 to the Solicitor, I have some things in response, and
4 with my ADD I might be all over the place, so if you'll
5 bear with me.

6 I want to start by apologizing for Ben's behavior
7 yesterday. I mean, he is who he is and he told you he's
8 been in jail and he's mad. He's upset with the system.
9 I'd be upset too. Probably be a little better spoken
10 about it, but I would be upset too. He's mad at the
11 system.

12 The Solicitor just said a lot of things. I'll
13 try to go into some kind of order, but he was talking
14 about the difference between trespassing and burglary.
15 Those are obviously very different. You heard police
16 officers say they're different. The legislature has
17 determined what the law is, and they made it different,
18 so I'll walk through them.

19 So, for the trespassing, it's on the -- the law
20 is on the screen. It's basically being somewhere that
21 you're not supposed to be, whether it's on the property
22 or whether it's inside, it's being there after you know
23 not to -- or you've been told not to be there. That's
24 trespassing. That's what we have here. That's what
25 happened.

1 And then it could rise to the level of burglary,
2 which is essentially dumped out version's trespassing
3 with the intent to commit a crime therein. They're two
4 different things. You can trespass where you have the
5 intent to commit a -- go in there and commit a crime
6 then turns to burglary, so you have to get inside Ben's
7 head.

8 Then you have three degrees of burglary. You
9 have burglary in the third degree, which is the lowest
10 level. Then you have the second degree, then you have
11 the first degree, which is the highest level.

12 SOLICITOR SMITH: Your Honor, I object to that.
13 It's not relevant. He's not charged with any of those.

14 MR. SNYDER: He's charged with burglary in the
15 first degree.

16 SOLICITOR SMITH: I understand.

17 MR. SNYDER: That's a very serious criminal
18 offense. He knows the difference. His history
19 indicates that he has some knowledge of both offenses.
20 The Solicitor talks about his credibility a lot. His
21 story was the exact same as Mr. Wall's story. Mr. Wall
22 -- the Solicitor asked Mr. Wall, why did you think he
23 was there? I think he thought he had to work. That's
24 what Ben told you. 6:45 in the morning, what time do
25 construction workers start work?

1 The Solicitor mentioned that he went there with
2 bad intentions. No one has said anything about bad
3 intentions. Mr. Etters, I was not scared. I was not
4 worried. I never felt in danger. He even -- it was
5 6:45 in the morning, the dogs were barking, he was
6 concerned. He never felt threatened. He was friends
7 with the other gentleman, Greg Wall.

8 Mr. Wall said that they had been friends for a
9 while, considered himself close friends, and they had
10 worked together. Ben had worked at the house at least
11 six times before. He would, you heard that story,
12 that's where he would park. That's where he would have
13 entered. He never said that he never entered that way.
14 He just said he never entered that way at that time. So
15 the Solicitor is just kind of inserting his own facts
16 into what he thinks happened. Again, Ben had been asked
17 to come to that house at least six times before to work
18 on that house.

19 The Solicitor kept saying that Ben was playing
20 dumb. I've known him for a year now, he was not playing
21 dumb. He's just a weird dude. I mean, that's, that's
22 who he is. The Solicitor made reference to him being of
23 a low income. I work for the Public Defender's office.
24 That's who I represent, people who can't afford a lawyer
25 to help them. These are the -- he is a typical person I

1 see on an everyday basis. People of different walks of
2 life act differently, sorry. And that was evident with
3 his testimony yesterday. He's just a different person.

4 The Solicitor mentioned about the SIM card,
5 switching the SIM cards. I don't even know how to do
6 that. I can't imagine that Ben would either.

7 The Solicitor also mentioned about being high or
8 intoxicated. I didn't hear that at all from the witness
9 stand. You may have. I didn't hear it. No one's
10 alleged that he was high, drunk, anything. The
11 Solicitor just made that fact up. He was not lying
12 about that. He was not lying about a lot of these
13 issues.

14 Greg said they were friends and he considered
15 them friends. He worked on the house. The same thing
16 Ben said. Again, to go from just a simple trespass to a
17 burglary, you have to enter that residence with the
18 intent to commit a crime therein. He was showing up for
19 work. Just by trespassing alone does not turn a
20 trespass into a burglary. Trespass is trespass.
21 Trespass with the intent to commit a crime is burglary.
22 Trespass with the intent to commit a trespass is not
23 burglary. He was not entering with the intent to commit
24 a crime. He is not guilty of burglarizing that house.
25 Thank you.

1 THE COURT: Solicitor?

2 REBUTTAL ARGUMENT

3 BY SOLICITOR SMITH:

4 I want to start by talking about Mr. Wall. The
5 judge is gonna talk to you about bias and that y'all --
6 and I know he did it in his opening instructions that
7 you can believe part of what a witness says or all of it
8 or none of it. Many over one, one over many.

9 I can't get inside Mr. Wall's head. I don't know
10 exactly what's going on. He has told you that he views
11 Mr. Nation as a friend, so maybe he feels bad about the
12 situation that he's in now or something. But if you
13 listen to the 911 call, you listen to the cellphone
14 video, it's very obvious that when this was going on, he
15 was not a friend.

16 He can't even barely remember his name on the 911
17 call. He describes him as a white male, is 20-something
18 says Ben and then somebody, maybe Judge Wall [sic] or
19 somebody else yells Nation and he says Ben Nation. But
20 when you see Officer Davis, it just doesn't add up that
21 they're friends. The last interaction they may have had
22 was him being forcibly removed. So, like, I don't know
23 exactly why Mr. Wall's saying that, but when you
24 actually look at the facts on the 911 call and the fact
25 that he was trespassed, this was not just some

1 scheduling misunderstanding as far as when to show up
2 for work.

3 Now, he's saying I'm misstating the facts. You
4 can listen to the cellphone video. Both Mr. Etters and
5 Mr. Wall say, you are high, get out of here, within the
6 first minute of that video. You also don't need
7 somebody to tell you he's high. Y'all are smart.
8 You've seen and heard, seen videos.

9 Might not have been around them in person or
10 something, but people are strung out on something. He's
11 talking about cigarette butts and forced time and dogs
12 animating and becoming human and stuff. I mean, you can
13 use your common sense. He's lying. He was high. He
14 was looking to steal something. He got caught. He
15 acted a fool.

16 He says I'm misstating things, but he is
17 misstating the law. Burglary is not just a trespass
18 with an intent to commit a crime. You can do a burglary
19 and not commit a trespass. If no one's home and you've
20 never been told to not come in and you come in with
21 intent to commit a crime, that's a burglary, that's not
22 a trespass. So it can be both, though.

23 And in this case he has been removed from the
24 property by law enforcement a month before. He
25 acknowledges that. His mere presence in their driveway

1 would be an arrestable offense for trespassing. It
2 elevates when he goes through their back gate, through
3 their back door, into their sliding glass. He's
4 furthering the crime of trespass, and that time he's
5 entering with an intent to further the crime of
6 trespassing. So he's guilty of both, but he's only
7 charged with burglary in this case.

8 He could also be guilty of trespass and not
9 burglary. And that would be a situation where you walk
10 in without an intent to commit a crime, you encounter a
11 homeowner and they say, please leave and you don't
12 leave. That's a trespass, not a burglary. In this case
13 the prior notice is key because it's an element of
14 trespassing that is not an element of burglary. You
15 don't have to tell people not to burglarize your house.
16 You do have to tell them that they can't come to your
17 property anymore and that had happened in this case by
18 everyone's admission.

19 He says he wouldn't want -- he wouldn't know how
20 to switch SIM cards and Ben probably wouldn't either,
21 but Ben is a 5G cellphone tower repair man. He works in
22 the cellphone tower business apparently, maybe. But if
23 he does, and he doesn't know that he can switch a SIM
24 card, really? He gets paid to go out of state and work
25 on cellphone towers, but he doesn't know one of the more

1 basic things about how cellphones work? It's not
2 plausible. Nothing he said is plausible, other than
3 he's done work from the past. Everybody agrees on that.

4 But his first answer of the last time that he had
5 seen these people until he talked to his friend, Greg,
6 was when he was trespassed. And he shows up a month
7 later unannounced at night, goes into the back door,
8 doesn't leave when they ask, struggles with the cops,
9 plays dumb with the cops about what his name is, asks if
10 they're the homeowners.

11 If what he's saying is true and this was a
12 scheduling conflict, it would have never gotten this
13 far. Greg is apparently his friend, but he's calling
14 911. It's not because of a scheduling issue, it's
15 because he's guilty of burglary in the first degree.
16 Thank you.

17 JURY CHARGE

18 By THE COURT:

19 Mr. Foreman and ladies and gentlemen of the jury,
20 you have seen and heard the evidence presented, as well
21 as the arguments of the lawyers, and it is now my duty
22 and my obligation to instruct you on the law in this
23 case. It will then be your duty and your obligation to
24 begin your deliberations and decide what the facts are,
25 apply the law as I instruct it, and render a fair and

1 impartial verdict.

2 It is your exclusive duty to determine what the
3 facts are, and you will do that based on your common
4 sense evaluation and examination of the testimony and
5 the other evidence received. You 12 alone will decide
6 what effect, value, and weight should be given to any
7 testimony or evidence. Quite simply, your obligation is
8 to give both the State and this defendant a fair and
9 impartial trial based on the evidence.

10 In indictment number 2023-GS-42-4138, charges the
11 defendant with the criminal offense of burglary in the
12 first degree. The State alleges that he did, in
13 Spartanburg County, South Carolina, on or about January
14 23 of 2023, enter the dwelling located at [REDACTED] Lanham
15 Circle, Spartanburg without consent and entered with the
16 intent to commit a crime therein, and that he did, while
17 entering the dwelling, or while inside, or while in
18 immediate flight from the dwelling, entered in the
19 nighttime, or has two or more convictions for burglary
20 in violation of state law.

21 I remind you that the fact that he was arrested,
22 charged, and indicted is not evidence and cannot be
23 considered as evidence of guilt in this case. Ladies
24 and gentlemen, it does not create any presumption or
25 inference of guilt. Once again, I tell you the

1 indictment is simply a written instrument which contains
2 the charge made against him. It is the formal document
3 which brings him before this court for a trial.

4 This defendant has pled not guilty and that puts
5 the burden on the State of South Carolina to prove his
6 guilt beyond a reasonable doubt. A person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove himself innocent.

9 I charge you it is a cardinal, important, and
10 vital rule of law that in a criminal trial, no matter
11 what the seriousness of the charge may be for which he
12 stands charged, the defendant is always presumed to be
13 innocent of the crime for which the indictment was
14 issued unless guilt has been proven by evidence
15 satisfying you of his guilt beyond a reasonable doubt.

16 The presumption of innocence does not end when
17 you begin your deliberations. Ladies and gentlemen, the
18 presumption of innocence accompanies this defendant
19 throughout the trial until you reach a verdict of guilt
20 based on evidence satisfying you of his guilt beyond a
21 reasonable doubt.

22 The presumption of innocence has been described
23 as being like a robe of innocence placed about the
24 shoulders of the defendant, which remains with him from
25 the moment of his arrest and continues with him until it

1 has been stripped from his shoulders by evidence
2 satisfying you of his guilt beyond a reasonable doubt.

3 The presumption of innocence is not a legal
4 theory, it is not a legal phrase. It is a substantial
5 way to which every defendant is entitled unless and
6 until you are satisfied from the evidence of his
7 guilt beyond a reasonable doubt.

8 I remind you that during this trial you and I
9 have certain duties to perform. As the trial judge, it
10 is my responsibility to preside over this case. And
11 additionally, I have a duty to rule on admissibility of
12 evidence offered through the trial.

13 You are to consider only the evidence before you.
14 If any testimony were ordered stricken from the record,
15 you must disregard it. You are to consider only the
16 testimony presented from the witness stand, any exhibits
17 which were introduced by stipulations by the lawyers.

18 Additionally, it is my duty to charge the law to
19 you. As presiding judge, I am the sole judge of the law
20 and it is your duty to accept and apply the law as I now
21 state it to you. If you have an idea about what the law
22 is or what the law ought to be, or what the law should
23 be and does not agree with what I now tell you the law
24 is, you must abandon your ideas because you have sworn
25 to accept the law as I now give it to you.

1 In every case tried in this courtroom before a
2 jury, you 12 become the sole and exclusive judge of the
3 facts in this case. A trial judge cannot comment on,
4 make a statement to a jury, or any other indication to
5 the jury about an opinion in this case. South Carolina
6 law does not allow a trial judge to have an opinion
7 about a fact in a case. That is solely in your
8 consideration, your discretion.

9 The State of South Carolina has the burden of
10 proving him guilty beyond a reasonable doubt. Proof
11 beyond a reasonable doubt is proof that leads you firmly
12 convinced of his guilt. There are very few things in
13 this world that we know with absolute certainty. In
14 criminal cases our law does not require proof that
15 overcomes every possible doubt.

16 A reasonable doubt may be described as the kind
17 of doubt that would cause a reasonable person to
18 hesitate to act. If you have such a doubt as to the
19 guilt of this defendant, then say so and return a
20 verdict of not guilty. Reasonable doubt may arise from
21 evidence in a case or from absence or lack of evidence
22 in a case.

23 Based on your consideration of the evidence, if
24 you are firmly convinced that he was guilty of this
25 crime, then say so and find him guilty. But if you

1 think there is a real possibility he is not guilty, you
2 must give the benefit of the doubt to him and find him
3 not guilty. You 12 alone must make this determination
4 of whether or not reasonable doubt exists as to the
5 guilt of this defendant.

6 There are two types of evidence, which are
7 generally presented during a trial, and they are known
8 as direct evidence and circumstantial evidence. Direct
9 evidence directly proves the existence of a fact and it
10 does not require deduction. Circumstantial evidence is
11 proof of a chain of facts and circumstances indicating
12 the existence of a fact.

13 Crimes may be proven by circumstantial evidence.
14 Our law makes no distinction between the weight or value
15 to be given to either direct or circumstantial evidence.
16 However, to the extent that the State relies on
17 circumstantial evidence, all of the circumstances must
18 be consistent with each other and when taken together
19 point conclusively to the guilt of the accused beyond a
20 reasonable doubt.

21 If these circumstances merely portray the
22 defendant's behavior as suspicious, the proof has
23 failed. The State has the burden of proving his guilt
24 beyond a reasonable doubt and this burden rests with the
25 State regardless of whether the State relies on direct

1 evidence, circumstantial evidence, or a combination of
2 the two.

3 In determining what the facts are, you must
4 necessarily pass upon the credibility of the witnesses
5 who have testified. You 12 are the sole judges of the
6 credibility of the witnesses who took the stand.
7 Credibility means believability. Can I believe this
8 witness? Is this witness credible? The value of the
9 weight to be given to their testimony is your sound
10 discretion. You alone must decide the fore and effect
11 of the testimony.

12 In making a determination as to the credibility
13 of a witness, there are many factors that you should
14 take into consideration, such as the appearance or
15 manner of a witness as she or he gave testimony known in
16 our law as the demeanor of a witness. Did the witness
17 have an interest in the outcome of a trial? Was the
18 witness forthright or hesitant? Was the witness's
19 testimony consistent or did it contain discrepancies?
20 What was the ability of the witness to know about the
21 fact that he or she gave the testimony to?

22 As jurors, you have the right to believe a small
23 portion of a witness's testimony and disregard the
24 larger portion. You may believe the larger portion of a
25 witness's testimony and regard the smaller portion. You

1 may believe a witness's testimony in its entirety or you
2 may reject it in its entirety.

3 You may believe the testimony of a single witness
4 against many or many against one. You do not determine
5 the matter of credibility or believability merely by
6 counting the number of witnesses.

7 Now criminal intent is a necessary element on
8 each crime that must be proven by the State beyond a
9 reasonable doubt. Criminal intent is a matter that must
10 be determined by the jury from the circumstances
11 surrounding the situation. There's no way to prove
12 intent to a mathematical certainty.

13 Criminal intent, ladies and gentlemen, is a state
14 of mind, which when operated jointly with an act, is the
15 commission of the crime. It is a mental state. It is a
16 conscious wrongdoing. So you, the jury, must determine
17 what this defendant intended to do based on the
18 circumstances shown to have existed.

19 I tell you that the State must prove criminal
20 intent beyond a reasonable doubt, as it must prove every
21 other element beyond a reasonable doubt, but the State
22 is not required to prove motive. Now, this defendant is
23 charged with burglary in the first degree. The State
24 must prove, must first prove beyond a reasonable doubt
25 that the defendant entered a dwelling without consent.

1 A dwelling is described as any building or a
2 portion of a building in which a person ordinarily
3 sleeps. A building constructed as a dwelling that has
4 never been occupied cannot be considered a dwelling for
5 the purposes of a burglary, but a building is a
6 dwelling, even if the residents are temporarily absent
7 of the building.

8 In order to prove that the defendant entered the
9 dwelling, the State does not have to show that the
10 defendant's entire body entered the dwelling. The
11 smallest entry is sufficient. And it may be that any
12 part of the body, such as a hand or a foot, or an
13 instrument, such as a hook or other instrument.

14 Additionally, the State does not have to prove
15 that force was used to gain entry. If a person enters a
16 building by using deception, a trick, artifice, or a
17 misrepresentation to get consent, this is an entry
18 without a consent.

19 The State next must prove beyond a reasonable
20 doubt that this defendant intended to commit a crime,
21 either a felony or a misdemeanor at the time of entry.
22 The mere entry into a dwelling without consent is not
23 burglary. If the intent to commit a crime is formed
24 after the entry, it is not burglary. But if the
25 defendant intended to commit a crime at the time of

1 entry, it is a burglary even if the intent was abandoned
2 after entry. It does not matter that the intended crime
3 was not completed.

4 Intent may be shown by acts and conduct by the
5 defendant and circumstances from which you may naturally
6 and reasonably infer intent. The State must prove
7 beyond a reasonable doubt that this defendant has a
8 prior record of two or more convictions for burglary
9 and/or housebreaking or that he entered or remained in
10 the dwelling in the nighttime.

11 Now, evidence on prior offenses committed by this
12 defendant was not offered to prove that this defendant
13 has a bad character or to prove that he committed the
14 burglary on this occasion. The prior convictions may be
15 considered by you only for the purpose of determining
16 whether or not it satisfies that intent -- I'm sorry,
17 that element of the offense that makes it a first-degree
18 burglary if you enter a dwelling without consent to
19 commit a crime and you have two prior convictions for
20 burglary and/or housebreaking.

21 Before you can consider the evidence of his prior
22 burglary and/or housebreaking conviction, you must first
23 find that the State has proven beyond a reasonable doubt
24 that a burglary was committed by this defendant. If you
25 find beyond a reasonable doubt that the burglary was

1 committed, then you may consider the evidence of prior
2 convictions as evidence of one of the circumstances
3 which would make the burglary a first-degree burglary.

4 If you do not find beyond a reasonable doubt that
5 the defendant committed these alleged prior offenses,
6 then you cannot return a verdict of burglary in the
7 first degree.

8 The defendant -- nighttime. The defendant
9 entered or remained in the dwelling in the nighttime.
10 Nighttime is the period between sunset and sunrise
11 during which there is not enough daylight to recognize a
12 person's face, except by artificial light or moon light.

13 Now, you 12 have been selected as fair and
14 impartial jurors sworn to impartially try to determine
15 the facts and you are to decide this case according to
16 the testimony you have heard from the witnesses, along
17 with the evidence entered into the record.

18 Ladies and gentlemen, your verdict must be
19 unanimous. Mr. Foreman, when the jury agrees on a
20 verdict, you will indicate the verdict on the space
21 provided on a verdict form, sign your name as the
22 foreperson, knock on the jury room door, advise the
23 bailiff you have reached a verdict and we will return
24 the jury back to the courtroom to receive the verdict.

25 Mr. Foreman, during deliberations, the jury may

1 only discuss this case in the jury room with all of the
2 jurors present, because they have seen and heard the
3 same evidence that you have seen. Mr. Foreman, if
4 someone needs to refresh themselves, the deliberations
5 must cease until all 12 are together. Only deliberate
6 while all 12 are together.

7 You can be standing. You can be moving about in
8 the jury room. That's quite all right. But if someone
9 needs to leave the room to refresh themself, it's my
10 understanding -- I've been in there, I think, once or
11 twice, but the restrooms are just outside the door. So
12 if somebody needs to refresh themselves, the
13 deliberations must cease until they rejoin the group.

14 This is the verdict form of which I speak. Our
15 two law clerks are seated over here and law clerks are
16 to do these charges for us and prepare this verdict
17 form. And this verdict form has the caption of the case
18 and the number. That's nothing more than it identifies
19 it for this case.

20 It says: We, the jury, unanimously find this
21 defendant on the charge of burglary in the first degree
22 not guilty or guilty. I tell you and I charge you,
23 there is no significance to not guilty being listed
24 first and guilty second. They are simply put, they have
25 to be in some order, and my clerk puts them in that

1 order in every case that we try.

2 The next sentence is: I certify this decision
3 was a unanimous decision of the jury. It has a place
4 for you to sign, Mr. Foreman, and put it there.

5 Whatever -- however the verdict is, one or the
6 other, Mr. Foreman, I ask that you put an additional,
7 you put a check mark, an X mark, it matters not to me or
8 to the clerk's office which way it is, but it has to be
9 ambiguous. It has to be clear to us what the verdict of
10 all 12 -- what the verdict on all 12 represent.

11 Okay. I'm getting ready to send all 13 of you to
12 the jury room. Do not begin your deliberations. I've
13 practiced law in courthouses across this state for 25
14 years before I came up here trying cases, and it is so
15 very easy to be one of the lawyers, pick up a piece of
16 evidence, walk around and talk to the jury or lay it
17 down next to your equipment you have for the jury to see
18 on these monitors and now it's missing.

19 There's not a lot of evidence. It won't take but
20 a few minutes, but when you leave the courtroom with all
21 13, I'm gonna ask the lawyers to come forward to madam
22 court reporter. She's numbered everything. Make sure
23 everything is there. Once they tell us that everything
24 is there, and it won't take but just a few minutes, then
25 the bailiff will bring the evidence to you, Mr. Foreman,

1 and this form.

2 Mr. Alternate, when the bailiff comes and brings
3 Mr. Foreman the evidence and this form, you will return
4 to my courtroom here and I will release you because your
5 service will be ended for this case. And then I'll ask
6 you to go downstairs to join your brothers and sisters
7 because they're gonna be here at 10:30 for the next one.

8 Mr. Foreman, if you'll take all 13 out. You'll
9 have to unlock the door.

10 (Jury leaves the courtroom at 10:09 a.m.)

11 THE COURT: Anything from the State or the
12 defense?

13 SOLICITOR SMITH: No, Your Honor.

14 MR. SNYDER: No, sir.

15 THE COURT: Okay. Gentlemen, if you'll come up
16 and make sure the evidence is here.

17 SOLICITOR SMITH: Yes, sir. I've got somebody
18 supposed to be bringing a laptop up. I don't know if
19 you want to make them ask for it.

20 THE COURT: I was just going to ask you, how are
21 we doing that? He have a clean laptop?

22 SOLICITOR SMITH: We do. It should be in
23 transit, from what my e-mail said, but...

24 THE COURT: We can go ahead and give it ---

25 SOLICITOR SMITH: Yeah, if they don't ask.

1 Sometimes we don't try to encourage them, but...

2 MR. SNYDER: I would have already had it up here,
3 but...

4 THE COURT: And if you will bring Mr. Alternate
5 back.

6 THE BAILIFF: Yes, sir.

7 (Alternate enters courtroom at 10:12 a.m.)

8 THE COURT: Mr. Alternate, if you would, come on
9 down here, sir. Thank you for your services on this
10 case. This will conclude your service in this case, but
11 your brothers and sisters -- please step back. Thank
12 you.

13 If you'll report downstairs. If you go out that
14 door, you can find the public hallway, the public
15 elevator. You just report back to the jury assembly
16 room. We'll try to pick another one here very shortly.

17 ALTERNATE JUROR: All right.

18 THE COURT: Thank you, sir.

19 HONORABLE JUDGE FANT: Thank you.

20 THE ALTERNATE: All right.

21 MR. BAILIFF: Sir, you know how to get there,
22 don't you?

23 THE ALTERNATE: Yeah.

24 MR. BAILIFF: Thank you, sir.

25 THE COURT: Thank you.

1 Alternate leaves the courtroom at 10:13 a.m.)

2 (Case in recess from 10:13 a.m. - 11:35 a.m.)

3 (Court's Exhibit Number 2, Jury Note, was marked
4 for identification.)

5 (Court's Exhibit Number 2 was entered into the
6 record.)

7 THE COURT: We're told we have a verdict.
8 Everybody ready?

9 SOLICITOR SMITH: The State's ready, Your Honor.

10 (Jury enters the courtroom at 11:37 a.m.)

11 VERDICT

12 THE COURT: Mr. Foreman, has the jury reached
13 it's verdict?

14 MR. FOREMAN: Yes, sir.

15 THE COURT: If you'll give that to the bailiff,
16 please. Madame clerk will publish.

17 THE CLERK: In the state of South Carolina, in
18 the court of general sessions indictment number 2023-GS-
19 42-4138 we, the jury, unanimously find the defendant,
20 Benjamin Louis Nations, on the charge of burglary in the
21 first degree guilty. Signed by the foreperson this
22 first day of February 2024 in Spartanburg County, South
23 Carolina.

24 Ladies and gentlemen of the jury, is this your
25 verdict and still your verdict? If so, please raise

1 your right hand. So say you all.

2 THE COURT: Polling of the jury by the State?

3 SOLICITOR SMITH: No, Your Honor.

4 THE COURT: By the defense?

5 MR. SNYDER: No, sir.

6 THE COURT: Polling is waived. Mr. Foreman, if
7 you'll come over through this way and meet Madam Clerk,
8 you have to sign on the document, please.

9 MR. FOREMAN: Sure.

10 THE COURT: Mr. Foreman, ladies and gentlemen of
11 the jury, this is going to conclude your jury service
12 for the week. It concludes your service for the week.
13 You do not need to call that magic number. We'll invite
14 you to stay here in your courthouse and invite you to
15 come tomorrow if you'd like and look around, do whatever
16 you choose. It's your courthouse and my courthouse, but
17 you're certainly not gonna be required to do that.

18 We are now going to go to sentencing in just a
19 few moments, but before we do that, Mr. Bailiff will
20 take you back to the jury room and collect your badges,
21 as I understand it.

22 Sometimes jurors want to see the sentencing
23 phase. Once you turn your badges in, my understanding
24 is they're gonna take you down, Mr. Bailiff, down to
25 where you go out to the public?

1 THE BAILIFF: Yes, sir.

2 THE COURT: Yes. There's a way for you to go
3 into the public area again. And if you want to join us
4 for that, then you would walk back down the hallway,
5 just come in and you will be seated out here. So
6 they're gonna take you. And if you don't want to come
7 back in here, you don't have to. Everybody understand?

8 (Jurors nod heads up and down.)

9 Okay. Thank you so much for your service. Mr.
10 Foreman, if you will take the jury out and be excused.

11 (Jury leaves courtroom at 11:41 a.m.)

12 (Off the record while jury leaves courtroom and
13 prepare sentencing sheets.)

14 SENTENCING

15 THE COURT: All right. We're back on the record
16 in this matter. Any matters from the State?

17 SOLICITOR SMITH: No, Your Honor.

18 THE COURT: Okay. Matters from the defense?

19 MR. SNYDER: Yes, sir. And I probably won't get
20 into this again during the sentencing phase. However,
21 Mr. Nation has been in jail for a little over a year.
22 As Your Honor knows, he was charged with burglary in the
23 first degree. When I met with him the first time and
24 throughout he always maintained he was just trespassing.
25 About six months into this process, Spenser had him in,

1 had him in with Mr. Cheek to plead guilty to time served
2 burglary third degree.

3 At that time he indicated that he was just
4 trespassing, his plea did not go forward. He was in
5 front of Judge Cole on the trial docket. He was offered
6 trespassing time served. At that point he had said that
7 it was too late.

8 We -- I'm here asking for a new trial on his
9 behalf, Judge. I'm not sure exactly what took place
10 during deliberations, but we feel that the system may
11 have failed Mr. Nation. I'm gonna get back into this
12 during my sentencing phase, part of it, but we're gonna
13 ask for a new trial, based on what has transpired in
14 this case.

15 THE COURT: Will you be more specific about what
16 transpired?

17 MR. SNYDER: That he was -- when it was
18 determined that he was actually probably on trespassing,
19 he felt that he had been in jail too long and that, that
20 he shouldn't have to plead guilty to something that only
21 carries 30 days and he's spent about 365 days in the
22 court -- or in jail, I'm sorry. We'd just ask for a new
23 trial, because he just feels like it was an improper
24 verdict.

25 THE COURT: Solicitor?

1 SOLICITOR SMITH: I don't have anything to add on
2 that, Your Honor. We would -- as far as, you know,
3 whether the directed verdict motion should have been
4 granted or not, we would stand on previous arguments
5 made at that phase. And the jury reached its verdict.
6 Don't think there's anything improper.

7 THE COURT: The Court finds there was nothing
8 improper. There was a question of fact, that goes to
9 the trier of fact, it goes to the jury, and the jury has
10 reached its determination and has done so unanimously.
11 And there is sufficient evidence to convict him.

12 Anything else from the defense?

13 MR. SNYDER: Nothing else, Judge.

14 SOLICITOR SMITH: No. Can I give you his prior
15 record?

16 THE COURT: Please.

17 SOLICITOR SMITH: I thought we were talking about
18 motions when you first ---

19 THE COURT: I am talking about motions.

20 SOLICITOR SMITH: Okay.

21 THE COURT: But if nothing else, let's go to his
22 prior record.

23 SOLICITOR SMITH: He has a 2010 grand larceny and
24 burglary second that he got a YOA on. 2011, a parole
25 revocation. 2013, FTC card theft, burglary third first

1 offense, and petit larceny. 2016, possession of meth,
2 violation of probation. 2018, possession of meth second
3 offense, possession of marijuana. 2021, some of the
4 things that he was on probation for now is another
5 possession of meth. I think we did it as a third.
6 Resisting arrest and trespassing.

7 The trespassing was at his parents' house, and he
8 did break into the house. I know it was kind of alluded
9 to. And his parents asked me to not send him to prison
10 for what would be what's happening today, 15 to life.

11 And we did it, and we tried to work with him
12 throughout this, but he does have a long history of
13 violating people. He was trespassed from like eight
14 properties in Calhoun Lakes. Every single deputy on
15 this shift knows Mr. Nation well, to do exactly what he
16 did here, wander inside people's houses high on drugs.

17 We would leave the sentencing up to Your Honor,
18 but he does have a pretty significant record.

19 THE COURT: Anything, Mr. Snyder?

20 MR. SNYDER: Again, Judge, he spent a little over
21 a year in jail. He had an opportunity to plead guilty
22 twice to a time-served sentence. He opted not to at the
23 time.

24 As Your Honor knows, we can't make anyone do
25 anything. He should have pled guilty rather than taking

1 it to this trial, but he did have an issue of a fact
2 that he wanted to be considered by a jury of his peers.
3 And the fact that he had the opportunity twice to plead
4 guilty to time served, we'd just ask Your Honor to
5 sentence him to the very minimum that this carries, 15
6 years. That's a lot of time, but that's the amount of
7 time we can get, so that's what we're asking for.

8 THE COURT: Do you know the number of days he has
9 credit?

10 SOLICITOR SMITH: I was trying to look. He's
11 been in since January 23rd of 2023. I don't have my
12 laptop, but I'll look up the -- I think that's 365 plus
13 nine, 374, would that be?

14 MR. SNYDER: Yes, sir.

15 THE COURT: Mr. Nation, congratulations to you.
16 You have finally graduated. You have tried to go to
17 prison and you're going today. 2023-GS-42-4138, you're
18 confined to the Department of Corrections for 25 years.
19 Give him credit for 374 days. Very best of luck to you.

20 SOLICITOR SMITH: Thank you, Your Honor.

21 THE COURT: I want to take this time, Mr.
22 Solicitor and Mr. Snyder, great working with you.
23 Always working with you gentlemen.

24 MR. SNYDER: Thank you, Judge.

25 SOLICITOR SMITH: Thank you, Judge Fant, good

1 luck to you.

2 HONORABLE JUDGE FANT: Thank you.

3 MR. SNYDER: Good luck and way to christen in
4 this new courthouse.

5 THE COURT: Yeah. I got to try the first case in
6 the courthouse.

7 MR. SNYDER: Yes, sir.

8 HONORABLE JUDGE FANT: He wouldn't let me.

9 THE COURT: Okay. We'll be in recess until 2
10 o'clock, at which time we'll start taking guilty pleas,
11 motions, anything we have. 2 o'clock.

12 (Trial concluded at 11:51 a.m.)

13

14 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability from the Digital Court Reporter Program, the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the General Sessions Court for Spartanburg County Carolina, on the 29th-30th day of January, 2024 and February 1st, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto. This was transcribed from the Digital Court Reporter Program.

s/Julie A Cendroski
Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

ARREST WARRANT

2023A4210200479

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE
against

23011059

Benjamin Louis Nation

Address

Spartanburg, SC 29302-3246

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5 11 Weight: 160

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Bryan R Robinson - S01789

Offense: Burglary / Burglary (After June 20, 1985) - First degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant Benjamin Louis Nation on 1/23/2023

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

AFFIDAVIT

ORIGINAL

Form Approved by
U.S. Attorney General
Apr. 21, 2000
SCCA 518

Personally appeared before me the affiant Bryan R Robinson who being duly sworn deposes and says that defendant Benjamin Louis Nation did within this county and state on or about 1/23/2023 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on January 23, 2023, in the county of Spartanburg, one Benjamin Louis Nation did enter a dwelling located at 326 Lanham Circle, without consent and with intent to commit a crime therein. Benjamin Louis Nation entered the dwelling at night. This warrant is based upon police investigation. SDL

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303

Affiant's Telephone

2023 JAN 24 AM 09:31
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

FILED

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/23/2023 defendant Benjamin Louis Nation did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Spartanburg) as set forth below

DESCRIPTION OF OFFENSE: Burglary / Burglary (After June 20, 1985) - First degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 1/23/2023

Signature of Issuing Judge (L.S.)

Daniel Ray Burns

Judge Code 7067

Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone (864) 596-3424

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

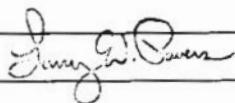
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WITNESSES

Spartanburg Sheriff's Office

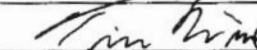


ARREST WARRANT NUMBER

2023A4210200479

ACTION OF GRAND JURY

True Bill



Foreperson of Grand Jury

AUG 25 2023

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

2-1-2024

DOCKET NO.

23-06-42-4138

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 28 2023

TERM

THE STATE

vs.

Benjamin Louis Nation

Indictment for

BURGLARY FIRST DEGREE

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 25 2023, the Grand Jurors of
 Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE

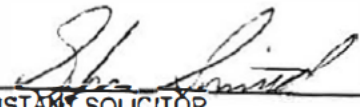
(DWELLING)

That the Defendant, Benjamin Louis Nation, did in Spartanburg County, on or about January 23, 2023 enter the dwelling located at [REDACTED] Lanham Circle Spartanburg, SC, without consent and entered with the intent to commit a crime therein, and that the defendant did while entering the dwelling, and/or while inside, and/or while in immediate flight from the dwelling either:

- (1) Entered in the nighttime
- (2) Have two or more convictions for burglary

in violation of Section 16-11-311, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE

VS.

INDICTMENT/CASE#: 2023-GS- 42 - 4138

Benjamin Louis Nation

A/W#: 2023A4210200479

AKA:

Date of Offense: 1/23/2023Race: White Sex: Male Age: 30S.C. Code §: 16-11-311DOB: 1993 SS#: CDR Code #: 0079Address: City, State, Zip:

DL#:

SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Burglary 1st Degree (15-Life)In violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

 The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

101370

SC Bar #

Defendant

Attorney for Defendant

77961
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 25 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.3740 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after months/years

And Other Terms Listed Below:

STATE

Benjamin Louis NationINDICTMENT/CASE#: 2023 -GS- 42 - 4138

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	Beginning	\$
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)		\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)		\$100	\$
§56-5-2995 (DUI Assessment)		\$12	\$
§56-1-286 (DUI Breath Test)		\$25	\$
§14-1-212 (Law Enforce. Funding)		\$25	\$
§14-1-213 (Drug Court Surcharge)		\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)		\$41	\$
§50-21-114 (BUI Breath Test Fee)		\$50	\$
§56-5-2942(J) (Vehicle Assessment)		\$40/ea	\$
3% to County (if paid in installments)		TBD	\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees		\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund		TBD	\$
TOTAL			\$ 128.75

Clerk of Court/Deputy Clerk: T. Camp
Court Reporter: Julie Cendraski

Presiding Judge: R. Keith Kelly
Judge Code: 765
Sentence Date: 1 February 2024

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Apr 28 2025

SC Court of Appeals



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 28th day of April, 2025.

RECEIVED

Apr 28 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN LOUIS NATION,

APPELLANT

APPELLATE CASE NO. 2024-000185

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 28th day of April, 2025.



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Appellate Defender

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