

21658

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DENNIS M. PENNY, II,

APPELLANT

APPELLATE CASE NO. 2013-001554

RECORD ON APPEAL

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	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	CASE NO. 2013-GS-13-182
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
DENNIS M. PENNY II,	)	
	)	
Defendant.	)	
	)	

June 3, 2013
Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, Judge; and a jury

A P P E A R A N C E S:

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KRYSTAL J. SMITH
Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 JUNE 3, 2013

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial began at 2:20 p.m.)

5 THE COURT: Solicitor, you may call your first case.

6 MR. FOARD: Thank you, Your Honor. May it please the
7 Court. The State calls the case of Dennis Matthew Penny,
8 Docket Number 2013-GS-13-0182. Originally indicted for
9 burglary, we are calling this as a burglary second degree.

10 THE COURT: Ladies and gentlemen of the petit jury panel,
11 as you just heard, the State has called the case of the State
12 versus Dennis Matthew Penny II, charged in the bill of
13 indictment with the offense of burglary second degree. Mr.
14 Penny is present in court and at this time I'm going to ask
15 him, if he would, to stand and face the jury to see if anybody
16 might be related.

17 (Whereupon, the defendant complies.)

18 THE COURT: Thank you, sir. You may be seated. Mr.
19 Penny has entered a plea of not guilty and is represented by
20 Mr. Brian Leteer of the Chesterfield County Bar. I have some
21 additional questions at this time and I will go through the
22 routine ones and then I will inquire from both sides of any
23 additional. Do I have anybody on the panel who is related by
24 blood, connected by marriage, or has any business, social,
25 religious, fraternal relationship with the defendant, Dennis

1 I would also note for the Court that Judge Baxley
2 originally ordered a competency evaluation in this matter.
3 The competency -- the report from DMH has come back. It found
4 no issues. We've been in front of Judge Baxley once since it
5 came back, but the issue wasn't really addressed. So since it
6 was originally the State's motion, we would waive any further
7 Blair hearing and let the -- unless the State wants to
8 proceed.

9 MR. FOARD: We -- we ask for no further hearing on the
10 issue.

11 THE COURT: All right. If either one of you -- if you
12 don't have an issue about it or any questions, then we can
13 clock the report and make it a Court exhibit and I can go
14 ahead and find him competent to stand trial unless there's
15 something y'all know that I need to address.

16 MR. LETEER: I don't believe there's been anything raised
17 that was not addressed in the report.

18 THE COURT: All right. So be it.

19 MR. LETEER: Okay. Thank you, Your Honor. I would like
20 to renew my previously filed Rule 5 and Brady motion. I have
21 several motions to suppress. I'll start with I guess to us
22 the most obvious one. We'd move to suppress any evidence of
23 flight in this trial.

24 Just briefly for background, after Mr. Penny collected
25 his children and drove toward Lancaster, an Amber Alert was

1 issued. Lancaster Police Department initiated a traffic stop
2 pursuant to that Amber Alert. At that time, Mr. Penny did
3 stop and then subsequent to that drove off when he thought he
4 was in some sort of peril. They chased him into Lancaster and
5 I believe the State does -- by the fact that they had
6 Lancaster police officers are on their witness list, I assume
7 they intend on introducing evidence of flight trying to show
8 guilt, Your Honor.

9 THE COURT: All right.

10 MR. LETEER: I'd like to hand up -- Your Honor, I'm about
11 to hand up State v. Martin. It's a very recent May 1st, 2013,
12 decision from our Court of Appeals that talks about evidence
13 of flight and, Your Honor, the key thing in this case is that
14 there's no nexus between the crime charged and the charge for
15 what we're here for today in the burglary, and the Amber Alert
16 that was originally called in was a kidnapping.

17 And, Your Honor, State v. Martin plainly says that
18 evidence of flight should be excluded where a defendant flees
19 while being investigated for another crime, which was clearly
20 the case here. That it also is citing and adopting federal
21 court decisions. United States v. Obi says an inference of
22 guilty knowledge would be completely unfounded where a
23 defendant after commencing of an investigation unrelated to
24 the crime charged or of which the defendant was unaware.

25 Your Honor, again, there's -- there's no custody order.

1 There is no order precedent that had started. Mr. and Mrs.
2 Penny had not started a one year legal separation. He had
3 full custody to his children. He had absolutely no way of
4 knowing that when he took them from the residence of Ms.
5 Penny's parents that an Amber Alert would be called in and
6 that he would be under investigation for kidnapping. As the
7 Court knows, you obviously can't kidnap your own children.

8 As such, Your Honor, we believe that any evidence of
9 flight would be completely inappropriate in this case.

10 THE COURT: Yes, sir.

11 MR. FOARD: Thank you, Your Honor. I would just start by
12 responding to the flight issue by stating somewhat of the
13 obvious. Your Honor, this is a brand new decision only handed
14 down by the Court of Appeals. We do not have any information
15 whether cert has been granted or even applied for in this
16 case, Your Honor. I would instead draw the Court's attention
17 to State v. Beckham and State v. Pagan, which is well-settled
18 law in the State of South Carolina, those going back to 1999
19 and 2006, which do establish that there must be a nexus
20 between the flight and the current offense.

21 THE COURT: Explain that for me.

22 MR. FOARD: Well, Your Honor ---

23 THE COURT: I mean how it applies. I mean I understand
24 it.

25 MR. FOARD: Well, Your Honor, in this instance, there's

1 no separation in time between the taking of the children -- or
2 -- excuse me. No significant separation in time between the
3 sep -- between the taking of the children and the apprehension
4 of Mr. Penny very, very soon thereafter, Your Honor. Whereas,
5 in my cursory review of State v. Martin, it appears that there
6 is a significant separation in time in the case that Mr.
7 Leteer is speaking about.

8 Furthermore, Your Honor, the -- this call that came to
9 law enforcement in the instance of Mr. Penny was about the
10 fact that he had entered a residence wrongfully and had taken
11 these children, and the people with who the residence he went
12 into obviously had some concern about the taking of those
13 children. Your Honor, I believe there's a clear nexus between
14 the two of them, the fact that there's an Amber Alert and the
15 fact that he is fleeing from entering the residence and taking
16 these children. The connection or nexus between the two of
17 those is plainly obvious, Your Honor.

18 MR. LETEER: If I may just briefly respond, Your Honor?
19 While the solicitor is right that this is a very new opinion,
20 it cites well-founded cases from the Fourth Circuit -- U.S.
21 Fourth Circuit Court of Appeals and Supreme Court precedent
22 that goes back farther than 1976. And, Your Honor, I would
23 contend if you looked at the arrest warrants that came from
24 failure to stop for a blue light in Lancaster, it said they
25 initiated the stop because of the Amber Alert. I think if Mr.

1 Penny had been accused of going in the house and picking up a
2 TV, the Lancaster Police Department would never have been
3 called into this but for the Amber Alert. But for the
4 allegations that he somehow kidnapped his own children, the
5 stop would have never been initiated.

6 Again, Your Honor, I don't see how there could possibly
7 be a nexus between the burglary charge, which was served as an
8 arrest warrant on Mr. Penny some two weeks after this, and
9 what the investigation was seeking to uncover, i.e. returning
10 the children pursuant to the Amber Alert.

11 MR. FOARD: Your Honor, as the State would be showing at
12 trial through testimony, Mr. Penny's actions in going into the
13 house that night, among other things that -- or that day,
14 among other things that occurred was the taking of the
15 children, and the missing status of those children was the
16 primary concern of law enforcement.

17 The fact that the State subsequently made the decision
18 that a kidnapping charge was inappropriate does not negate the
19 fact that at the time of the issuance of the Amber Alert and
20 at the time of the apprehension of Mr. Penny, that that was
21 the best known information to law enforcement, Your Honor, and
22 that was the best known information to Mr. Penny himself,
23 which I believe directly comes into play because part of the
24 evidentiary admissibility of flight pertains around why the
25 defendant knew he was being sought. Your Honor, he fled that

1 day because he knew his actions in entering that house and the
2 actions of forcibly removing his children could be at odds
3 with the law and that is why we believe there's a clear nexus
4 between the flight and the underlying breaking and entering --
5 excuse me, burglary.

6 THE COURT: Okay. Since I've been on the bench, I've
7 seen some abrogation of the old law about flight. It's
8 certainly not as strong as it used to be. I don't remember
9 the names of the cases, but you can't give as much weight to
10 it as you used to back years ago. And I agree with you that
11 the timing of the taking of the children that you can show a
12 nexus there so I'm going to have to overrule the motion in
13 regards to that with this warning, however, though. We'll be
14 trying Mr. Penny on the burglary here. We're not going to be
15 trying and emphasizing things that -- that may have regards
16 other offenses committed in another county or another state.
17 We're concerned about the burglary here so don't think you're
18 going to get away with trying him through the back door on the
19 other matters.

20 And this particular case here, if I'm reading this
21 holding correctly, the summary of it, the evidence that
22 defendant gave arresting officer false identifying information
23 was admissible in absence of a nexus between the false
24 information and the bank robbery. So you're going to have to
25 be careful about what he may have said in regards to whatever

1 so you don't get tangled up in this case, which I noticed they
2 ruled it harmless error, but we don't need to error again
3 because this is sort of a warning here. You better be
4 careful.

5 MR. FOARD: And just for clarification, Your Honor, I
6 know of nothing that we're intending to present regarding what
7 Mr. Penny may have said at the time. The extent of our
8 evidence is going to be the physical actions that he took.

9 THE COURT: If I'm -- I don't have have it right here in
10 front of me, but I'm allowing that. But, Mr. Leteer, on your
11 side of it, it seems like there may be some limitation
12 instructions that I will need to give the jury in regards to
13 this that we'll need to check on. I don't have it fresh in my
14 mind, but I do know that there was a case several years ago
15 that -- that weakened the argument for flight like it used to
16 be. Okay?

17 MR. FOARD: Thank you, Your Honor.

18 MR. LETEER: Your Honor, I've also been provided a copy
19 of a temporary ex parte restraining order that was filed in
20 Family Court. I don't know if the State intends on
21 introducing anything having to do with that order, but if they
22 do, I would just simply out of an abundance of caution before
23 we start up move to suppress that for not being relevant. Mr.
24 Penny had no notice of it. It just -- I can't think of
25 anything that would go to show that it would be relevant to

1 want this record clouded for future appellate reasons by
2 trying him on something that he is not supposed to be tried on
3 in this county. So just be careful.

4 MR. FOARD: Yes, Your Honor.

5 MR. LETEER: Thank you, Your Honor.

6 MR. FOARD: I have one motion, Your Honor, and I believe
7 Your Honor heard it at the call of the case. However, the
8 State would like to go ahead and formally move to amend
9 Indictment Number 2013-GS-13-0182. He is originally indicted
10 for burglary in the first degree. We would move to amend this
11 to burglary in the second degree, which I believe is well-
12 settled is a -- is lesser included offense of burglary in the
13 first degree, and I believe under the case of State v. Means,
14 the State should be allowed to proceed with that amendment.

15 MR. LETEER: Your Honor, I certainly understand the
16 State's wanting to get discretion to amend the indictment to a
17 lesser offense at trial. However, I do feel like I need to
18 say that Mr. Penny was arrested on December 20th. He was
19 extradited from North Carolina on a kidnapping warrant. About
20 January 5th I believe, he was handed a warrant for burglary
21 first and he was indicted on a burglary first. It just -- it
22 just seems somewhat unfair to -- this whole thing seems like
23 it has just been kind of willy-nilly to figure out what they
24 want to charge him with whenever he gets to the point we need
25 to actually have him charged correctly.

1 THE COURT: I know the position you're in, but I mean --
2 you know, to drop the possible life sentence down to ten
3 years, it's hard to say much, but on the other hand I
4 understand where you're coming from. I don't have any problem
5 with that amendment.

6 MR. FOARD: Thank you, Your Honor.

7 MR. LETEER: Thank you, Your Honor.

8 MR. FOARD: The State doesn't have any further motions.

9 MR. LETEER: And I don't have anything further at this
10 time.

11 THE COURT: Do you have any matters lined up, Solicitor?

12 SOLICITOR REDMOND: Yes, sir, Your Honor. We've got a
13 couple of jail matters that I need to attend to.

14 THE COURT: All right. Well, I need to devote your
15 attention to that. Mr. Leteer?

16 MR. LETEER: Yes, sir, Your Honor.

17 THE COURT: Mr. Penny. Solicitor. I don't live in
18 blindness. I know what all went on from the press releases
19 and the news about this case, even though that's happened a
20 while back. I would encourage y'all to take a few more
21 minutes. Now is the time to do some soul searching to see if
22 you can possibly resolve this matter. I understand the
23 various pressures that are on both sides in this, but there's
24 always room to get serious about this thing and see if there's
25 some common ground y'all can reach. Mr. Penny, are you

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2013-GS-13-00182

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
)
DENNIS M. PENNY, II)
) DEFENDANT

June 4, 2013
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE; and a jury.

A P P E A R A N C E S:

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 Attorney for the State

KERNARD REDMOND, DEPUTY ASSISTANT SOLICITOR
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JOEY OLIVER, Victim
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 RYAN MACLAMORE, Lancaster County Sheriff's Office
 ERIC JAILLETTE, Lancaster County Sheriff's Office

HATTIE O. GORDON
 Circuit Court Reporter

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COURT'S EXHIBITS

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1 think they will. And you could sprain your back so be
2 careful how you lean back in those chairs because they're
3 a little bit dangerous the way they're placed in there the
4 leverage they have.

5 Final thing I need to talk to you about. When you do
6 deliberate your verdict is going to have to be a unanimous
7 verdict. All 12 deliberating jurors are going to have to
8 be in agreement on whatever the verdict may be. Okay. If
9 I think of anything I left out that I should have told you
10 I will cover it when I think about it. But I believe that
11 in my explanation to you that I've covered all phases of
12 the trial and what is expected of you and what's expected
13 of me.

14 And we will turn it over to trial counsel now, and we
15 will take it from there. As I said the State has the
16 burden of proof, so therefore, the Solicitor gets to go
17 first. Mr. Foard.

18 OPENING STATEMENT BY MR. FOARD

19 MR. FOARD: Thank you, Your Honor. May it please the
20 Court.

21 THE COURT: Yes, sir.

22 MR. FOARD: Ladies and gentlemen, December 20 of 2012
23 started just like any other normal day in the household of
24 Mr. and Mrs. Joey Oliver. They live in Ruby near
25 Chesterfield County on [REDACTED]. But the normalcy

1 of that day was shattered very, very early when at around
2 7:30 or so in the morning an unexpected visitor arrived at
3 their house. Now, let's stop right there and let me give
4 you a little bit of fact story.

5 Residing with Mr. and Mrs. Oliver was their
6 daughter, Chasity Penny, and her four children.
7 Miss Penny resided with them because she was estranged
8 from her husband, Dennis Penny, who is the defendant
9 seated at the table in your view. As I said on the
10 morning in question the normalcy of the day was
11 interrupted when Mr. Penny arrived at the house.

12 He arrived without invitation. He arrived without
13 permission. He arrived with no warning. And as you can
14 likely see already that is of concern because of the
15 estranged nature of their marriage. Mr. Penny approached
16 the house. Did not announce himself. Did not knock on
17 the door. Did not do anything other than kicking the door
18 in and entering the residence where upon he immediately
19 went to the two oldest children shared by him and Chasity
20 Penny; that would be Dennis Penny the Third and Grace
21 Penny.

22 And he took them. He put them in his vehicle and he
23 fled the residence. That act, ladies and gentlemen,
24 constitutes burglary in the State of South Carolina. And
25 I know you're probably going to say, 'well, he didn't take

1 anything'. Well, I would ask you to pay close attention
2 and listen to the color of the law in the case and I think
3 you will see that in South Carolina burglary does not
4 actually involve or it doesn't have to involve the taking
5 of anything. It is the mere entry into a place where one
6 does not have permission to do so and committing a crime
7 therein. A crime, not necessarily theft.

8 Mr. Penny left the residence with his children in
9 tow. Law enforcement was notified and they began
10 searching for Mr. Penny and his children. And as you will
11 hear from testimony from officers in Lancaster County
12 later on they were able to apprehend Mr. Penny. And you
13 will hear them testify about his actions at that time
14 which I think will be most important and very telling as
15 to the state of mind of the defendant.

16 Ladies and gentlemen, this is one of the more
17 interesting cases of my career because I will be candid
18 and honest with you. The victims in this case do have a
19 certain amount of feeling for this defendant. And I will
20 say that they have a very high degree of forgiveness for
21 the defendant which may lead you to ask, 'well, why are we
22 here? Why is the State pushing this case?

23 I am here as a representative of the State because it
24 is my duty not only to speak for victims of crime but to
25 speak for the interest of justice at large and to speak

1 for the interest of society. And it is against society's
2 interest to allow people to willy nilly enter other
3 people's homes. Because in South Carolina our laws
4 recognize the sanctity of the home. The fact that a
5 person should have comfort in their home, should have
6 safety in their home; that they should be able to believe
7 that when their in their home they are free from invasion.
8 And they are free from any crime that could be committed
9 in their home.

10 Malicious injury to property, malicious mischief,
11 trespass. A person should be able to be confident that a
12 person cannot just walk into their home and do as they
13 please. And at its core that is what this case is about.
14 It is about Dennis Penny going into the home of Joey
15 Oliver and his wife unrightfully, doing as he pleases,
16 causing damage along the way, and leaving and fleeing as
17 show it's all okay.

18 And I believe that at the close of this case, after
19 you have reviewed all of the evidence, after you have
20 heard the witnesses testify from the witness stand you
21 will agree that Dennis Penny is guilty of the crime of
22 burglary in the second-degree. I ask you to please use
23 your common sense, use your good judgment and find the
24 Defendant, Dennis Penny, guilty. Thank you.

25 OPENING STATEMENT BY MR. LETTEER

1 MR. LETTEER: May it please the Court, Mr. Foard,
2 ladies and gentlemen. You just heard a little about what
3 the State intends to prove in this case, and before I
4 start I want to touch on one thing. He said that the
5 victims, Ms. Chasity Penny, Dennis' wife, his in-laws have
6 a certain amount of forgiveness for Mr. Penny. I don't
7 necessarily think that's the way to think about it.

8 On the day this happened Mr. Penny was served with an
9 arrest warrant for kidnapping. And I don't think any of
10 you are ---

11 MR. FOARD: Objection, Your Honor. There is nothing
12 that's going to be presented related to any charge of
13 kidnapping here.

14 THE COURT: I'm giving him some leeway though.
15 You're not going to harp on it, but go ahead.

16 MR. LETTEER: Yes, Your Honor. He was detained in
17 another county for a week or so. And he was transported
18 back to Chesterfield on that warrant. That was on the
19 20th, the day of this incident. Between the 20th and the
20 time that Mr. Penny was served this warrant for which he's
21 on trial for law enforcement didn't go and talk to Ms.
22 Penny. They didn't talk to her parents. They never got a
23 statement from him as to whether or not Mr. Penny
24 committed a burglary.

25 And yet, on the 2nd of January, two weeks after he

1 was originally charged and some five days after he was
2 brought back to Chesterfield they served this warrant on
3 him. Haven't talked to Chasity and her parents. They
4 never believed he committed kidnapping. This is an -- I
5 mean a burglary. This isn't an instance where they think
6 that Dennis committed a burglary, but out of the goodness
7 of their heart they're going to forgive him and they, you
8 know, want this to go away.

9 They never believed he committed this crime, and
10 they're going to tell you that. They're going to tell you
11 that the date this happened the door was opened. Prior to
12 this incident they had never told him that he wasn't to be
13 at that house. They day this happened they never told him
14 to leave.

15 They are going to tell you that he used to live in a
16 box trailer behind their house. A box trailer that had
17 electricity run to it, but no indoor plumbing. So every
18 time he needed to -- him and his family needed to use the
19 rest room, kitchen, anything with water, they came and
20 used their house. No big deal.

21 That while Dennis Penny was serving his country over
22 in Kuwait he continues to get mail at their house. And to
23 this day receives mail at their residence. And they take
24 that mail and sit it someplace in the front door. He had
25 keys to the house.

1 Whenever he needed to pick up his mail he would come
2 over the door. They might be there to say hi, and they
3 might not be. Reach in and grab his mail and go on about
4 his business. He also at some point helped him with some
5 renovations at the house. During that time in-laws were
6 there. Sometimes they weren't. Again, came and went as
7 he pleased.

8 Right before this incident happened they actually
9 plowed a little plot of land behind the house because he'd
10 been helping tend to another garden. Mr. Joey had planted
11 a garden. He helped him till it up and stuff. So Mr.
12 Joey tilled about an acre or so around the house for him
13 to plant his garden. He came over there and do it
14 whenever he wanted to.

15 Ladies and gentlemen, the only people that think what
16 happened on December 20th is a crime is the State. The
17 alleged victims, Chasity and per parents, never, every met
18 with law enforcement before this warrant was served to
19 tell them, "Hey, this is what happened" so law enforcement
20 could make a determination of whether or not burglary did
21 occur or not.

22 So this is not an issue of forgiveness. It's an
23 issue the charge never existed. It doesn't exist today.
24 Ultimately, this case is really more about people than it
25 is anything. It's about Dennis. Loving father, loving

1 husband, a veteran who served his country, a business
2 owner providing for his family. And his wife, Chasity,
3 again, loving mother and wife. It's about their marriage.
4 Some of you are married, have relationships know go
5 through bumpy spells, and they're working on it. They're
6 both committed to working on it. They're not separated,
7 divorce or anything. Right now they are married and no
8 intention to separate.

9 So I don't think it would also be fair to
10 characterize them as estranged. They're going through a
11 rough spot. It's about Dennis' inlaws who want to see
12 their family put back together. Want to see Dennis with
13 his kids, their grandchildren. And want to see Dennis and
14 Chasity work out problems in their marriage, pick up the
15 pieces and move on.

16 Ladies and gentlemen, I do want to thank you all of
17 you sincerely for your service. Being on a jury during
18 voir dire is not necessarily what you wake up Monday
19 morning and say, "Gosh, I can't wait to go to the court
20 house and do jury service." But you perform an important
21 constitutional function, but I also want to apologize for
22 the fact that y'all have to sit here in the first place.
23 Like I said this is not burglary. It was never a
24 burglary. The victims don't think it's a burglary. They
25 want to dismiss the charges. There is no reason for any

1 of y'all to be sittings here today. Thank you.

2 THE COURT: You may call your witness.

3 MR. FOARD: Thank you, Your Honor. The State calls
4 Joey Oliver.

5 JOEY OLIVER, after being duly sworn, testified
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. FOARD:

9 Q. Good morning, sir?

10 A. Good morning.

11 Q. Can you please, again, state your name for the
12 record?

13 A. Joey Oliver.

14 Q. All right. And where do you live, sir?

15 A. 375 Stevenson Road, Ruby.

16 Q. And that is here in Chesterfield County?

17 A. Right.

18 Q. And how long have you lived there?

19 A. Since '95.

20 Q. Okay. And what do you do for a living, sir?

21 A. I own and operate an environmental consulting
22 business.

23 Q. Okay. And you're a proprietor or family company?

24 A. Yes, sir.

25 Q. All right. Do you own your home, sir?

1 A. Yes, I do.

2 Q. Okay. And you take great pride in it, I'm sure?

3 A. Yes.

4 Q. And drawing your attention to December 20th of 2012
5 who were you residing with?

6 A. Me and my wife and our children and Chasity and her
7 four children were there.

8 Q. And I notice that Mr. Penny was not on that list; is
9 that correct?

10 A. That is correct.

11 Q. Okay. So he was not a resident of your home?

12 A. No, sir.

13 Q. Okay. And how long has Chasity Penny been staying
14 with you?

15 A. She spent the night that night, but she had been
16 staying at her house prior to that.

17 Q. Okay. So she has a residence as well?

18 A. Um hum.

19 Q. Okay. And what was the reasoning that she was
20 staying at your home?

21 A. She just wanted to spend the night, her and the
22 children.

23 Q. All right, sir. And had she been in the Ruby area
24 long or for?

25 A. She's been out of state. She'd been back probably or

1 maybe three weeks, four weeks. Something like that.

2 Q. All right. And where had she been when she was out
3 of state?

4 A. They had moved to Pennsylvania. Dennis had took a
5 job in Pennsylvania.

6 Q. Okay. And when she returned home did she indict to
7 you why she had returned home?

8 A. They were having some issues, and she called us and
9 wanted to come home. And so we arranged for her to get
10 transportation home.

11 Q. Okay. So you assisted her in leaving Mr. Penny then?

12 A. Well, it was more my other daughter, yeah.

13 Q. Okay. All right. But on the day in question she
14 was -- that morning she was staying at your house?

15 A. That's right.

16 Q. When was the last time Mr. Penny had entered your
17 house before that?

18 A. That would be the last time I saw Mr. Penny was I was
19 in the hospital in August having gall bladder surgery. He
20 came to the hospital to see me. And then I saw him at his
21 house on the day that they were leaving. We went up to
22 see the grandchildren before they left.

23 Q. When was the last time -- you recall was the last
24 time he visited your home was?

25 A. That was Father's Day.

1 Q. Okay. And at that time would you characterize the
2 state of their marriage as being different than it was on
3 December the 20th?

4 A. Yes.

5 Q. Okay. Can you elaborate on that? Explain what you
6 mean by that?

7 A. On Father's Day we were all together. Their
8 relationship didn't appear to be strained at all.

9 Q. Okay.

10 A. On December 20th their relationship was strained.

11 Q. Okay. And can you elaborate more on the strained;
12 what you mean by that?

13 A. That's probably something you probably need to ask
14 her.

15 Q. Okay. But it was obvious to you as a father that
16 something had changed; that something was different?

17 A. You could tell there was some difficulty.

18 Q. All right. Now, on December the 20th did Mr. Penny
19 come to your house?

20 A. Yeah.

21 Q. Okay. And had you called and asked him to come
22 there?

23 A. No.

24 Q. Did you know he was coming there?

25 A. No.

1 Q. Did he have an invitation to come there that day?

2 A. No.

3 Q. And I understand he had been there previously, but
4 that was under different circumstances, correct?

5 A. That is correct.

6 Q. Okay. And so given the strained nature of your
7 daughter's and Mr. Penny's relationship did that affect
8 your viewpoint of their marriage at all?

9 A. You know, marriage is between them. You know, their
10 relationship is between them. You know, I can't really
11 elaborate on what their relationship was at the time.

12 Q. I'm not so much asking about their relationship. I'm
13 asked did you view Mr. Penny the same way on December the
14 20th that you had on Father's Day the last time he had
15 been to your house?

16 A. I've always loved him as my son. Still do today.
17 But there are some other issues going on with him that's
18 not normal for him.

19 Q. Okay. So that changed your viewpoint of Mr. Penny?

20 A. No. I love him today just like I did 19 years ago
21 whenever they got married. Don't have any hard feelings.

22 Q. Right. But things are different now?

23 A. They are now because he's sitting behind that desk.

24 Q. All right. No permission. No invitation to be there
25 that day. When he came to your house what happened?

1 A. He -- like I said he was in a different state of mind
2 than normal. He snatched the storm door open and kicked
3 the metal door in.

4 Q. Okay. So you say snatched the storm door. It opens
5 out I take it?

6 A. Yes.

7 Q. And then you said kicked your other door in?

8 A. That's correct.

9 Q. And after he kicked the door in what happened?

10 A. He came in. I asked him what was he doing. His
11 statement to me was, "You're harboring my children." He
12 picked up his two oldest children, turned and went back
13 out the door.

14 Q. Okay. Now, let's talk about the doors in question
15 here. Were the doors functioning at the time that he
16 arrived?

17 A. Yeah.

18 Q. Okay. And did his action of kicking in the door
19 cause the doors to no longer function properly?

20 A. That is right.

21 Q. Okay. Was it such that the doors had to be replaced?

22 A. They were replaced that day.

23 Q. All right. So it had to be replaced that same day.
24 So you would not have been able to secure your door had
25 you not made repairs that same day that Mr. Penny kicked

1 the door in?

2 A. That is correct.

3 Q. All right. Would you as the owner of that residence
4 say that the actions of him kicking in your door in the
5 manner he did and entering was that with your permission?

6 A. Not kicking in my door. If he would have knocked on
7 my door I would have opened it.

8 Q. But not the manner in which he entered?

9 A. No.

10 Q. That was without permission?

11 A. That's right.

12 Q. Okay. Mr. Oliver, it's obvious that you do care
13 about Mr. Penny, but solely with his actions on
14 December 20th 2012 you did not view that as something that
15 was okay?

16 MR. LETTEER: Objection, Your Honor. Leading.

17 THE COURT: Rephrase the question.

18 MR. FOARD: I'll rephrase, Your Honor.

19 BY MR. FOARD:

20 Q. How would you feel if another person had entered your
21 door the same way that Mr. Penny had?

22 MR. LETTEER: Objection to relevant. Speculation.

23 THE COURT: Right. Sustained.

24 MR. FOARD: I have no further questions for Mr.
25 Oliver at this time.

CROSS-EXAMINATION

BY MR. LETTEER:

Q. Mr. Oliver, are you under subpoena today?

A. Yes, I am.

Q. Who sent you that subpoena?

A. The prosecution.

Q. Would you be sitting here if they had not subpoenaed you and told you you had to be here?

A. Probably not.

Q. I want to talk about a little bit of history. Isn't it true that Chasity and Dennis used to live behind your residence in a box trailer?

A. Chasity did while Dennis was overseas. They set up -- they had a trailer made into a camper. They set it up and Chasity stayed there while Penny was overseas. Then when he would come home they would stay there.

Q. Very good. And would you allow them pretty much free reign to come and go through your residence?

A. They could have stayed in the house during that time. They chose to live in the camper.

Q. Very good. And both of them received mail at your house?

A. They do. Still do.

Q. So as of today Dennis is still receiving mail at your house?

1 A. Sure is.

2 Q. Now, you were asked about when the last time Dennis
3 was at your house, and it's been a long time ago. But
4 that's not because he wasn't welcomed at your house?

5 A. No. That was his decision.

6 Q. Now, I think the Solicitor characterized the way he
7 came in as that he didn't have permission. But you would
8 have opened the unlocked door if he had knocked?

9 A. Absolutely.

10 Q. Now, Mr. Oliver, when was it that you plowed the spot
11 of land for Dennis to kind of have a garden?

12 A. I didn't plow it. I had somebody, my neighbor, who
13 does some disking, he plowed it for him. And Dennis went
14 up there and laid his rows off, but that was last year.

15 Q. And during that same time did he help you plow some
16 land of your own?

17 A. I'm quite sure he did help me plow my garden, too.

18 Q. Very good. And had Dennis performed some renovations
19 to your house?

20 A. He's helped me work on my house.

21 Q. Were you always there when he worked on the house?

22 A. Um hum.

23 Q. Now, I don't mean to back track, but the mail.
24 Dennis and Chasity had a key to your house?

25 A. Chasity had a key.

1 Q. And when Dennis needed to get his mail he came over
2 and went in and grabbed it?

3 A. Chasity picked it up. She always come and pick it
4 up.

5 Q. All right. Very good. Now, after the 20th when all
6 this happened did law enforcement ever come and take a
7 statement from you?

8 A. Took a statement that day.

9 Q. That day. But not again after that?

10 A. Not that I can recall.

11 Q. Did they take any pictures of the door that was
12 damaged?

13 A. They did.

14 Q. But they never came and took a statement from you
15 asking whether or not he entered your house without
16 consent?

17 A. They did that that day.

18 Q. And you told them what you testified to today that
19 had he not he would have been allowed in?

20 A. I don't remember. I don't recall.

21 Q. Okay. Cause it wasn't written down?

22 A. I don't remember.

23 Q. Okay.

24 A. They came and investigated the door being kicked in?
25 That's what they came for.

1 Q. Okay. And, again, don't mean to belabor the point,
2 but just so the record is clear, you have never told
3 Dennis that he was not welcomed at your house?

4 A. No.

5 Q. The day of December 20th you did not ask or demand
6 that he leave?

7 A. Everything happened so quick. He didn't ask
8 permission. He wasn't denied permission. He kicked the
9 door in. It all happened in a matter of probably less
10 than 10 seconds.

11 Q. And he would still be welcomed at your house today?

12 A. He wouldn't be welcomed to kick my door in, but if he
13 would have had knocked on my door I would have let him.

14 Q. Fair enough.

15 A. Can't say it any plainer than that.

16 Q. Thank you, Mr. Oliver.

17 MR. FOARD: Briefly, Your Honor.

18 BY MR. FOARD:

19 Q. He would be welcomed had he not kicked your door?

20 A. Absolutely.

21 Q. And just to be clear there was no knock on December
22 the 20th?

23 A. No.

24 Q. There was no request to enter?

25 A. No.

1 Q. He used a forceful action to go into the house?

2 A. Yes.

3 Q. And damaged the door in doing so?

4 A. Yes.

5 Q. Thank you. Okay. And due to the speed of the events
6 you were unable to protest his being there?

7 A. That is correct.

8 MR. FOARD: Your Honor, one last thing.

9 BY MR. FOARD:

10 Q. With regard to the damage to the door was the damage
11 confined to the door itself or was the door to the jam or
12 the door hinges or any other part of the door?

13 A. It was the latch broken on the storm door. The storm
14 door was whooped up. The door jam was ripped out: The
15 door was bent in.

16 Q. All right. Thank you, sir.

17 MR. FOARD: No further questions. Your Honor.

18 THE COURT: Anything further?

19 MR. LETTEER: No, sir, Your Honor.

20 THE COURT: Thank you, sir. You may step down.

21 MR. FOARD: Your Honor, we ask this witness be
22 released from his subpoena.

23 MR. LETTEER: No objection, Your Honor.

24 THE COURT: All right.

25 MR. FOARD: Your Honor, the State calls Deputy

1 Randall Carnes.

2 RANDALL CARNES, after being duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FOARD:

6 Q. Good morning, sir.

7 A. Morning.

8 Q. Would you please state your full name for the record?

9 A. Deputy First Class Randall Carnes.

10 Q. And by whom are you employed?

11 A. Chesterfield County Sheriff's Office.

12 Q. And how long have you been employed there?

13 A. More than six years.

14 Q. And on the date of December the 20th of 2012 were you
15 employed there?

16 A. Yes.

17 Q. Were your working there that day?

18 A. Yes, sir.

19 Q. And did you have the occasion to respond to a call on
20 [REDACTED] here in Ruby?

21 A. Yes, sir.

22 Q. And can you tell us what the nature of that call was?

23 A. I was sent there for a burglary and a possible
24 kidnapping.

25 Q. Okay.

1 A. Or children were involved and children were taken.

2 Q. All right. And when you got there who was that the
3 scene?

4 A. The owner, his wife, his two daughters and two small
5 children that belonged to a daughter that were not
6 involved in the case, and the defendant's wife and two
7 twins that were infants in a baby crib or something of
8 that nature.

9 Q. All right. And when you say, 'the owner' you're
10 talking about Mr. Joey Oliver?

11 A. Yes, sir.

12 Q. Okay. And whom did you speak to in that group of
13 people?

14 A. I spoke to Joey Oliver, his wife, the defendant's
15 wife, and the defendant's sister in law would occasionally
16 come in and speak while she was tending to the children.

17 Q. Okay. And so as part of your investigation what did
18 you determine?

19 A. I determined that the door was forcefully kicked in
20 and a subject that at the time who was identified as a
21 defendant by his -- which is going to be his father in
22 law, mother in law. His estranged wife at the time. So
23 that's how we identified him as the subject.

24 Q. Okay. And did you personally have a chance to true
25 the scene in this instance?

1 A. Yes, sir. The screen door was damaged. The front
2 door was kicked in where the deadbolt and the actual
3 handle lock, where the head comes out into the door, both
4 of those broke the door jam. So the door would open and
5 close, but anybody could have just reached up and pushed
6 the door in until something was done to secure the door
7 again until the damage was fixed.

8 Q. Okay. So there was actually -- was there actually
9 damage in the wall adjacent to the door?

10 A. When you say adjacent?

11 Q. Where the jam?

12 A. The door jam was damaged. Pieces of the door jam
13 laying on the inside the living room?

14 Q. Laying on the floor inside the living room?

15 A. Yes, sir.

16 Q. Okay. And at this time -- at that time after viewing
17 that what action did law enforcement take?

18 A. We continued interviewing and called an investigator
19 and, you know, got more people to come help us work this
20 case.

21 Q. Okay. And subsequent to that what did your
22 involvement continue or would that have been passed off to
23 someone else?

24 A. We continued there. Stayed there. Listened to
25 interviews. Getting as much information about the

1 defendant as we can at the time to help identify him or
2 find out where he would be going.

3 Q. Thank you, Deputy Carnes. Please answer any
4 questions the Defense has.

5 CROSS-EXAMINATION

6 BY MR. LETTEER:

7 Q. Deputy Carnes, isn't it true that none of these
8 interviews were written down?

9 A. That would be incorrect, sir. I actually issued a
10 statement form, a voluntary statement form, issued to the
11 defendant's mother in law and his estranged wife.

12 Q. And was that turned over to the State?

13 A. That was turned over to an investigator while we were
14 there, and then I left. And I was on patrol so I had to
15 leave to answer other calls.

16 Q. To your knowledge that investigator turned that over
17 to the State?

18 A. I have no working knowledge of that.

19 MR. LETTEER: Beg the Court's indulgence, Your Honor.
20 No further questions, Your Honor.

21 MR. FOARD: No redirect, Your Honor.

22 THE COURT: Thank you, sir. You may step down.

23 MR. FOARD: We would ask that he be released from his
24 subpoena as well.

25 THE COURT: Need him to stay?

1 MR. LETTEER: No, sir, Your Honor.

2 THE COURT: You're released.

3 THE WITNESS: Thank you.

4 MR. FOARD: Your Honor, may we approach.

5 (WHEREUPON, a bench conference was held off the
6 record in the presence of the jury, but out of the
7 hearing of the jury.)

8 COLLOQUY

9 THE COURT: Ladies and gentlemen, if you will step
10 back to your room.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 11:28 a.m.)

13 THE COURT: All right. The problem we have before
14 the Court is going to be a Rule Five situation as counsel
15 and defense pointed out to me up here that he's concerned
16 about.

17 The State didn't attempt to use it. Discovered on
18 your cross, obviously, surprising you. So that puts me in
19 the dilemma to ask you to take a little bit of time to see
20 if in those statements if anything is exculpatory. If
21 there is nothing exculpatory then no harm done. But if
22 there is and it's pretty bright line test, then could have
23 a serious problem here.

24 We're right back to the problem that we've been
25 dealing with the last, gosh knows how long, about law

1 enforcement turning over to the Solicitor's Office things
2 that should be included in Rule Five. What else can I
3 say.

4 MR. FOARD: And, Your Honor, if I can get on the
5 record. As I told Mr. Letteer during Mr. Oliver's cross
6 examination by Mr. Letteer Mr. Carnes lean over to me and
7 said, "Don't you have these statements of Chasity Penny
8 and Mrs. Oliver?" And I said, "No." And he said, "Well,
9 we did them that day." That was literally the first
10 moment I ever heard of the statement, Judge. And I mean I
11 have no other explanation beyond that.

12 And I know that my Rule Five duties are imputed on
13 the law enforcement, but at the same time it is a one way
14 street. If I don't know it's know, I can't give something
15 that I don't know exists. So it -- I certainly respect
16 the Court's position and I respect the Court's dilemma,
17 but I want it to be made blatantly clear that the State's
18 position is this was not provided to us.

19 I did not know it existed. And we have an open file
20 policy in the Fourth Judicial Circuit, and I think that
21 Mr. Letteer knows me well enough as a member of the bar to
22 know that I would not hide evidence from evidence. That
23 that is not what is happening here.

24 MR. LETTEER: Your Honor, that is 100 percent
25 correct. Not at all alleging that there is any misconduct

1 on the part of Mr. Foard or even that of law enforcement.
2 But I don't need to. The case law is clear. Under Brady,
3 "Any inadvertent has the same impact on the various
4 proceedings as deliberate concealing it." It doesn't
5 matter whether it was deliberate or not. It still renders
6 this proceeding unfair.

7 There is potentially exculpatory evidence that law
8 enforcement has that was not turned over. I'm certainly
9 not trying to say that anybody purposely did anybody
10 wrong, but they don't have to. I'm sorry, Your Honor. A
11 quote from United States v. Augurs, A-U-G-U-R-S. The cite
12 is 427 U.S. 97. That's at Page 96.

13 THE COURT: You're right about the problem. So we've
14 got to get ahold of those statements and see what they
15 say.

16 MR. FOARD: Your Honor, if we can have a few minutes
17 to recess I will make phone calls to law enforcement and
18 get them here with that file A.S.A.P.

19 THE COURT: All right. I'll send the jury on to
20 lunch. Give us time to do that. Bring them back.

21 (WHEREUPON, the jury panel enters the courtroom at
22 11:34 a.m.)

23 THE COURT: Got an objection before the Court. I've
24 got to have some time to work on that. And the other
25 situation is a logistical in that we've got some witnesses

1 that were going to come on in this afternoon. We've got
2 to call them on in. So what we're going to do is we're
3 going to break for lunch rather than one o'clock. And
4 we're going to have them here and one o'clock. So we're
5 just moving everything back to keep from losing the time
6 on it.

7 So y'all go ahead to lunch. We need you back here at
8 one o'clock and we will get started right back, okay.
9 That gives you an hour and 23 minutes or so. See you at
10 one o'clock.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom at 11:35 a.m.)

13 THE COURT: All right. We're in recess for lunch.
14 Let me talk to counsel back here.

15 (WHEREUPON, Court was in recess 11:37 a.m. and
16 reconvenes at 1:31 p.m.)

17 MR. FOARD: Are we going to do anything for the
18 record dealing with Defense's motion?

19 THE COURT: I don't think you ever made a formal --
20 anything further about that? I don't think you made a
21 formal motion.

22 MR. LETTEER: Oh, well, Your Honor at this time I
23 would move that the charge be dismissed for failure of law
24 enforcement to fulfill Rule Five obligations. Obviously
25 reviewed everything. What was turned over to me isn't

1 necessarily the issue. The fact is that it wasn't turned
2 over. This stuff wasn't hidden in a basement somewhere.
3 They came up with it within ten minutes of Your Honor
4 telling them to do it.

5 Mr. Foard tells me he called and asked them the same
6 question, and they didn't turn it over. So I don't think
7 that the actual materials so much are at issue as the fact
8 that they weren't turned over.

9 In the alternative I would ask for a mistrial. At
10 this point I stood in front of the jury and I -- the
11 reality is that lawyers are as much above used car
12 salesmen as far as, you know, reputation. You know, it is
13 what it is.

14 And so I stood up and told them that there is no
15 report. They didn't do any investigation, and now my
16 credibility with them I feel like has been irreparably
17 damaged because in the officer's statement, 'yeah, we took
18 reports, pictures and everything'.

19 THE COURT: I think you're being a little over
20 sensitive about that. Bottom line, is there anything in
21 there that is exculpatory? Yes or no?

22 MR. LETTEER: No, sir.

23 THE COURT: Okay. Well, obviously, from the
24 discussion between counsel back there that it was a
25 scanning situation where some of it was not scanned at the

1 Solicitor's Office, got left out.

2 MR. LETTEER: Well, there was no evidence of a
3 burglary in the file as far as exculpatory. There is
4 nothing, I guess, tending to contradict the statement
5 given so far. There is also no evidence of a burglary
6 from the statement.

7 THE COURT: All right. We're going to go forward.

8 MR. LETTEER: Can that material, and I don't know if
9 the State intends to introduce it. Can that material be
10 suppressed?

11 THE COURT: Yes.

12 SPEAKER 2:

13 MR. LETTEER: Thank you, Your Honor.

14 THE COURT: Yeah, obviously, I'll grant you that
15 relief.

16 MR. LETTEER: Thank you.

17 THE COURT: So I think the record speaks for -- the
18 motion is denied, however, further request by counsel
19 would be suppressed if they attempt to do it. I'm telling
20 you ahead of time.

21 MR. LETTEER: Thank you, Your Honor.

22 MR. FOARD: Yes, Your Honor.

23 (WHEREUPON, the jury panel enters the courtroom at
24 1:36 p.m.)

25 THE COURT: Ladies and gentlemen, thank you for your

1 patience. We've got the matters of law taken care of and
2 we've got the out of town witness here so we're ready to
3 go. Solicitor.

4 MR. FOARD: Yes, Your Honor. I call Major Matt Shaw
5 to the stand.

6 MATT SHAW, after being duly sworn, testified as
7 follows:

8 MR. LETTEER: Your Honor, I just renew my pretrial
9 objection.

10 THE COURT: Noted.

11 DIRECT EXAMINATION

12 BY MR. FOARD:

13 Q. Good afternoon, sir?

14 A. Good afternoon.

15 Q. You are Major Matt Shaw?

16 A. That is correct.

17 Q. And by whom are you employed?

18 A. Lancaster County Sheriff's Office.

19 Q. And how long have you been there?

20 A. Fourteen years.

21 Q. And is that the extent of your career in law
22 enforcement?

23 A. No, sir. I was prior -- previously employed at the
24 City of Laurens on the other side of South Carolina.

25 Q. All right. And I addressed you as major. Is that

1 your current rank?

2 A. Yes, it is.

3 Q. Okay. And what are your duties as major in
4 Lancaster?

5 A. Assigned as the chief deputy of the Sheriff's Office.
6 I'm responsible for the basic day to day operations. I
7 guess in layman terms if the Sheriff goes out of town I'm
8 number two.

9 Q. You're second in command?

10 A. Yes, sir.

11 Q. All right. On the date of December 20th of 2012 did
12 you have the occasion to be involved with the Defendant,
13 Mr. Dennis Penny?

14 A. Yes, sir, I did.

15 Q. Can you please tell the jury how you became involved
16 with him and what the extent of that was?

17 A. Sure. Myself along with several other officers were
18 in a training class, and our cell phones, radios, pretty
19 much every electronic device that we had all went off at
20 the same time in regards to an Amber Alert.

21 Of course, we paid special attention to it because it
22 came from Chesterfield County which was close by. Within
23 five minutes the City Police Department, the Lancaster
24 City Police Department, advised that they had located the
25 vehicle somewhere near Main Street. Actually in town, and

1 they were currently chasing it out of town. Of course,
2 training emptied and everybody fled to their vehicles and
3 went towards 501, towards Charlotte to assist in the
4 pursuit.

5 Q. Okay. And ultimately did that chase -- did it
6 continue into the North Carolina lines? Was there a stop
7 involved? What happened?

8 A. Correct. Several miles outside of the City of
9 Lancaster the suspect vehicle had pulled over on the side
10 of 521. When I arrived on the scene there was probably
11 ten other units or so already there mostly from the City
12 of Lancaster. They were -- they had started the pursuit
13 and pursued the vehicle into the County where I'm assuming
14 it pulled over.

15 There were several investigators from the City Police
16 Department talking to Mr. Penny trying to get him to come
17 out of the vehicle. I couldn't hear what Mr. Penny was
18 trying to say, but the investigators were trying to get
19 him to come out. Obviously, he wasn't doing that.

20 Q. Okay. So he was still inside the vehicle and they
21 were trying to coax him out?

22 A. That's correct. Yes, sir.

23 Q. And that continued? What happened from there?

24 A. Briefly. I'm not quite sure how long it had been
25 taking place when I arrived, but less than five minutes

1 when I had gotten there one of the investigators from the
2 City Police Department had apparently gotten close enough
3 to the vehicle. He reached in and tried to grab Mr. Penny
4 and pull him from the vehicle. That did not work, and Mr.
5 Penny threw it in drive and drove off on Northbound 521.

6 Q. All right. So we're not in phase two of this chase?

7 A. That's correct. Yes, sir.

8 Q. So from the initial stop on 521 -- where on 521 did
9 that happen?

10 A. Near Burns Ford. If you're familiar with Lancaster
11 at all it's maybe two or 3 miles outside of town.

12 Q. North or south?

13 A. North heading towards Charlotte.

14 Q. Heading towards Charlotte, okay. So stop was at
15 Burns Ford, and you said that Mr. Penny then fled that
16 scene. What happened from there?

17 A. That is correct. He fled that scene and continued
18 north on 521. Myself along with other sheriff's deputies
19 and officers from the City Police Department pursued him
20 northbound on 521. We continued north to Racetrack
21 Crossroads which is the intersection of Shiloh Unity Road.

22 If you've ever in Lancaster at the dirt track race
23 that's the road that the racetrack is on. We turned right
24 on Shiloh Union Road and traveled about a mile and a half
25 or so and turned left on to what I would consider a back

1 road. Just barely paved road that takes us straight to
2 North Carolina. As we continued on that road approaching
3 the North Carolina line, of course, I requested assistance
4 from the Union County Sheriff's Department.

5 And at that point, based on the information that I
6 had of the incident, I authorized what we call a rolling
7 roadblock. In other words try to get in front of the
8 vehicle, slow down so that the vehicle doesn't have
9 anywhere to go. Basically, as we slow down he's either
10 going to slow down or run into us. So I authorized that.

11 And we continued into North Carolina.

12 Q. Now, let me stop you right there. So from the City
13 of Lancaster Main Street area where you testified that
14 things started to the North Carolina line what kind of
15 distance are we talking about here?

16 A. Maybe seven or eight miles.

17 Q. So it's more than heading down the block, obviously?

18 A. Yes.

19 Q. It's an extended distance?

20 A. Yes, sir.

21 Q. All right. So once you initiated the rolling
22 roadblock how did things transpire from there?

23 A. Investigators left, who I assume you will hear from
24 shortly, was one of the vehicles that was close enough to
25 initially pass Mr. Penny and get in front of him. He was

1 driving an unmark Ford Explorer with blue lights and
2 sirens, the whole nine yards. He was able to get in front
3 of Mr. Penny and start trying to slow down. And,
4 basically, force him to stop.

5 That continued briefly as we went into North
6 Carolina. Mr. Penny was left side of the road, right side
7 of the road, ditch to ditch. Doing everything he could do
8 to get back around Investigator Jaillette. We may have
9 been in North Carolina a half a mile, and it got to a
10 point where I think Investigator Jaillette had put -- had
11 done fairly successful, and Mr. Penny was forced to go off
12 the side of the road.

13 And he turned down into a dirt drive that actually
14 led into some turkey barns or chicken barn. One or the
15 other.

16 Q. All right. And you mentioned blue lights and sirens.
17 Were those going on all of the vehicles or most of the
18 vehicles involved in the chase?

19 A. Absolutely, and probably 20 vehicles at this point.

20 Q. So it is unquestionable in your opinion as a law
21 enforcement officer that Mr. Penny knew y'all were trying
22 to stop him?

23 A. Oh, absolutely.

24 Q. Throughout the entire chase?

25 A. Absolutely.

1 Q. All right. And as far as Mr. Penny actions you said
2 ditch to ditch, one side of the road to the other. What
3 kind of speed was involved?

4 A. Not very high speed. We never really probably broke
5 50 miles per hour, but the actions were like I said pretty
6 reckless from one side of road to the other to get back
7 around is what we allege.

8 Q. All right. And once he pulls off to this dirt path
9 which leads to your turkey barns or chicken barns were you
10 able to apprehend him at that point?

11 A. Yes, sir. Once we went into the dirt path and
12 entered the turkey barns we kind of played around the
13 roses with the turkey barns. Went up and down a couple of
14 rows. And then finally go to the back of the barns where
15 he proceed off through the field where we ran into a tree
16 line, barbed wired fence. And there was just no place for
17 him to go at that point.

18 When he stopped we were able to bring our cars around
19 him so that if he were going to more somewhere else he
20 would have to be basically through our vehicles. At that
21 point, once the vehicles were stopped, everybody exits the
22 vehicle. Some of our officers and City police officers.
23 At that point it was just a bunch of different folks
24 there. Some went to the passenger side of the vehicle
25 were able to remove the kids from the truck. Others were

1 able to go to the driver's side of the vehicle, open the
2 driver's door, try to get him out of the truck so he was,
3 of course, unable to drive away.

4 Q. And as far as the children go can you describe what
5 your observations were of their demeanor at that time?

6 A. I really don't remember much about the children.
7 During the initial pursuit or the initial stop I wasn't
8 close enough to the truck to see the kids. Once we got
9 the vehicle stopped after that I was more concerned with
10 are our people okay, is the suspect okay, is the E.M.S. on
11 the way, is Union County here yet.

12 By this point I had new media choppers flying over my
13 head. So once they told me the kids were fine, he was
14 fine, our guys were fine, minimal damage to some of the
15 vehicles, that's the kinds of things that I was worried
16 about.

17 Q. Thank you very much. If you would answer any Mr
18 questions. Letteer has.

19 A. Sure.

20 CROSS-EXAMINATION

21 BY MR. LETTEER:

22 Q. Afternoon, Major.

23 A. Yes, sir.

24 Q. Now, on direct you did say that y'all received an
25 Amber Alert?

1 A. Yes, sir.

2 Q. So this entire chase was based off of the Amber
3 Alert? No other crime?

4 A. Well, included in the Amber Alert was that that was
5 wanted for burglary.

6 Q. Is an Amber Alert typically issued for a burglary?

7 A. No. They said it has in regards to a child
8 abduction.

9 Q. Okay. So Amber Alerts are issued solely when
10 children are involved?

11 A. It has to be an abduction, yes.

12 Q. Okay?

13 A. Around it's certain criteria as well. It has to be
14 in danger and, you know, different things of that nature.
15 It can't be just a -- strictly a custody matter.

16 Q. Okay. It cannot be strictly a custody matter?

17 A. That is correct, it cannot be strictly a custody
18 matter. So when an Amber Alert comes out it's something
19 to pay attention to.

20 Q. Being number two in charge, so to speak, do you know
21 if there was an after alert, kind of review of the
22 issuance of the Amber Alert? Would y'all be involved in
23 that?

24 A. No, sir.

25 Q. Do you know if they regularly occur?

1 A. I do not. No, sir. To my knowledge and since I've
2 been in the position I'm in we have not issued an Amber
3 Alert.

4 MR. LETTEER: Beg the Court's indulgence. No further
5 questions, Your Honor. Thank you.

6 THE COURT: Thank you.

7 MR. FOARD: Thank you, Your Honor. I call
8 Investigator Ryan MacLamore.

9 THE COURT: Thank you, Major. You may step down.

10 MR. LETTEER: Your Honor, I would renew my previous
11 objection as it is unduly at least repetitive.

12 THE COURT: Feel free to renew it if something gets
13 to concerning you. I'll note it, and I still deny it with
14 the warnings I've already given.

15 MR. FOARD: Yes, Your Honor.

16 MR. LETTEER: Thank you, Your Honor.

17 RYAN MACLAMORE, after being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FOARD:

21 Q. Good afternoon, Investigator?

22 A. Good afternoon.

23 Q. You are Ryan MacLamore?

24 A. Correct.

25 Q. By whom are you employed?

1 A. Lancaster County Sheriff's Office.

2 Q. For how long?

3 A. Sixteen years.

4 Q. What do you do with the Lancaster County Sheriff's
5 Office?

6 A. I'm a lieutenant. I'm a supervisor. Commander over
7 the Drug Task Force.

8 Q. All right. And I'm just going to cut to the chase.
9 Were you involved on December the 20th of 2012 in the
10 incident regarding Dennis Penny?

11 A. Yes, I was.

12 Q. And in what capacity were you involved in that?

13 A. The same as Major Shaw said. I wasn't actual in the
14 training. I was working that day. We received an Amber
15 Alert. Shortly after the Amber Alert was issued we heard
16 the radio traffic that the City of Lancaster was in
17 pursuit of the suspected vehicle. Myself and a couple of
18 my guys in the Drug Unit we proceeded that way.

19 Once we got out to 521 the City of Lancaster had
20 already had a truck stopped. It was a white Buick.
21 Several of the City officers were out there talking to Mr.
22 Penny at that time trying to get him to get out of the
23 truck. He would not. We positioned ourselves in front,
24 and basically what we did at that point was try to stop
25 some of the oncoming southbound traffic and keep the lanes

1 clear while the dealt with Mr. Penny in the vehicle.

2 Q. Let me ask you about that real quick. Was Mr. Penny
3 located on the side of the road or was this going on in
4 the road?

5 A. He had pulled over to the side of the road, but it's
6 a four lane undivided highway.

7 Q. All right. Go ahead.

8 A. And once the City Police Department were speaking
9 with him trying to get him to come out of the vehicle.
10 Those actions didn't work. A couple of the officers, as
11 Major Shaw testified, they attempted to pull him from the
12 vehicle. At that point he sped off and I was able to --
13 was kind of located a little bit ahead of him at the time.

14 Once he sped off I was able to get to my vehicle, and
15 at that point I was the lead pursuit officer as we were
16 pursuing him up by 521 North.

17 Q. All right. So when you say, 'lead' and 'pursuit' did
18 you stay behind him the entire time?

19 A. I did not. As we were going up 521 North at this
20 point we also tried to do rolling roadblock as Major Shaw
21 explained to y'all what that was.

22 Again, this was an undivided four lane highway so it
23 was paved all the way across. I would attempt several
24 times to pass him and get in front of him to try and slow
25 him down some, to push his vehicle and stop him. Several

1 times I tried to do this. He swerved at me and tried to
2 hit me. At one point I was able to get ahead of him, pass
3 him and get in front of him.

4 Q. All right. So you were making maneuvers, but he was
5 making evasive maneuvers?

6 A. Exactly. Yeah.

7 Q. All right. Then and so you continued with the rest
8 of the trailing party headed into North Carolina?

9 A. Once we got to the location there at Shiloh Unity and
10 Racetrack Crossroads, of course, I was in front of
11 Mr. Penny. I tried to slow him down some. Speeds weren't
12 that high, but I was trying to get him to stop and trying
13 to block him in. Once we got to that intersection and I
14 was able to get him slowed down that's when he made the
15 right hand turn and he turned on Shiloh Unity.

16 At that point I had to drive through the intersection
17 and the rest of the vehicles continued the pursuit.

18 Q. All right. And that would be -- subsequent to that
19 would be the time period when, as Major Shaw testified,
20 that there was an attempted rolling roadblock?

21 A. That is correct. During that time Jaillette was
22 behind me.

23 THE COURT: Sir?

24 MR. LETTEER: Solicitor is testifying and leading.

25 MR. FOARD: I think I'm reiterating what somebody has

1 already stated.

2 THE COURT: Watch the leading.

3 MR. LETTEER: And would be repetitive, Your Honor.

4 BY MR. FOARD:

5 Q. Ultimately, you were involved with the apprehension
6 of him at the turkey barns?

7 A. Yes, sir, I was.

8 Q. And at that time did he -- what was his actions
9 involved in that?

10 A. He was actually fighting with us. He was actually
11 punching and fighting ---

12 MR. LETTEER: Objection, Your Honor.

13 THE WITNESS: --- us as we were pulling him from the
14 vehicle.

15 MR. LETTEER: Objection.

16 THE COURT: I overrule it. It goes to flight.

17 BY MR. FOARD:

18 Q. Punching and fighting is what you were saying?

19 A. Yes, sir.

20 Q. Okay. But then you were ultimately able to get him
21 into handcuffs?

22 A. In cuffs, yes, we did.

23 Q. All right then. I have no further questions. If you
24 will please answer any questions Mr. Letteer has.

25 CROSS-EXAMINATION

1 BY MR. LETTEER:

2 Q. Investigator. MacLamore, do you know if there was a
3 post review of the Amber Alert?

4 A. If there was ---

5 Q. After it was issued if there was any kind of review
6 after the fact of the issuance of the Amber Alert?

7 A. No. I don't know. I don't know anything about that.

8 Q. Do you know anything about whether or not it was
9 validly issued or not?

10 A. We didn't have any part in the issuing of the Amber
11 Alert so, therefore, I have no idea.

12 Q. Y'all just responded?

13 A. No.

14 Q. No further questions. Thank you.

15 THE COURT: Ladies and gentlemen of the jury, this
16 has nothing to do with this case. Not relevant, but while
17 I've got him on the stand I want to ask him a question.
18 Don't add anything to it.

19 Would you care to tell the Court how many deer you
20 shot at and missed in the last five years?

21 THE WITNESS: Only two.

22 THE COURT: Thank you.

23 THE WITNESS: It was in your pool.

24 THE COURT: You may step down.

25 MR. FOARD: Your Honor, the State calls Investigator

1 Jaillette.

2 THE COURT: Come around and be sworn, please.

3 ERIC JAILLETTE, after being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. FOARD:

7 Q. Good afternoon, sir?

8 A. How you doing?

9 Q. You're Eric Jaillette?

10 A. Yes, sir.

11 Q. You are employed by the Sheriff's Office in Lancaster
12 County?

13 A. Yes, sir.

14 Q. For how long?

15 A. Nine years.

16 Q. And what is your role?

17 A. Narcotics investigator. I work under Lieutenant
18 MacLamore.

19 Q. All right. And you know why we're here. Were you
20 involved in the incident involving Dennis Penny?

21 A. Yes, sir, I was.

22 Q. And in order to avoid repetitiveness, unless there is
23 something different that you have to add, is there
24 anything that you've got different than what you heard
25 from the two previous witnesses?

1 A. Leading up to the actual event.

2 Q. Yes, leading up to the actual ending?

3 A. After Lieutenant MacLamore wasn't able to follow him,
4 Mr. Penny, down Shiloh Unity Road that's when I became the
5 lead vehicle, and we turned down Craig Farm Road. Like
6 Major Shaw said do the rolling roadblock. When he gave us
7 permission to do that I attempted to pass Mr. Penny
8 several times when he tried to run me in the ditch.

9 Mr. Penny made a turn, a right turn. That's when I
10 let him get in front of him. After trying to run me in
11 the ditch a couple of times I slowed down. He was either
12 going to hit me or hit a fence or go in a driveway.
13 That's the one with the turkey barns.

14 As far as apprehension, I was -- pinned him in the
15 corner like a cul de sac. Had a barbed wire fence around
16 it. I pulled in behind him. I was the first car to pull
17 in behind him. Couldn't see Mr. Penny's hands.

18 Q. Could you see the children?

19 A. I could see the children.

20 Q. And could you tell they were alright?

21 A. They were alright. They were standing up the whole
22 time I was behind him. When he would go towards the ditch
23 they were all over. They didn't have any seat restraints
24 or anything like that.

25 Q. Okay.

1 A. And that's why I was trying to be careful how I
2 passed him. And what I did after I passed him -- I didn't
3 want to get them hurt. When we stopped some other
4 officers, I'm not sure who they were, went around to the
5 passenger side and grabbed the kids and that's about the
6 same time that I opened the door.

7 Q. The driver door?

8 A. The driver door. Told Mr. Penny to get out. He
9 wasn't complying. I grabbed him, and when I grabbed him
10 that's when he started punching me.

11 Q. Where did he hit you?

12 A. He punched me in the head.

13 MR. LETTEER: Objection, Your Honor.

14 THE COURT: State your objection. I didn't hear it.

15 MR. LETTEER: Cumulative and really goes back to my
16 limine motion.

17 THE COURT: I think we heard enough.

18 MR. FOARD: Thank you, Your Honor.

19 BY MR. FOARD:

20 Q. But you ultimately did apprehend him?

21 A. Yes.

22 Q. All right. No further questions.

23 CROSS-EXAMINATION

24 BY MR. LETTEER:

25 Q. Again, just briefly. You don't have any idea about

1 the validity of the Amber Alert?

2 A. No.

3 Q. Thank you.

4 THE COURT: Anything else?

5 MR. FOARD: No redirect, Your Honor.

6 THE COURT: You may step down.

7 MR. FOARD: Your Honor, the three officers from
8 Lancaster ask if you would release them from their
9 subpoena.

10 MR. LETTEER: No objection, Your Honor.

11 THE COURT: Thank you.

12 MR. REDMOND: Your Honor, right now from a procedural
13 standpoint if we could take a brief break and address some
14 issues with the Court and then we will be ready to go
15 forward with the case.

16 THE COURT: Y'all step back a few minutes. Let me
17 handle this.

18 (WHEREUPON, the jury panel was excused from the
19 courtroom at 1:58 p.m.)

20 COLLOQUY

21 MR. REDMOND: Your Honor, we were actually just
22 discussing -- I think we're in a position where we're
23 close to being able to rest, but out of an abundance of
24 precaution we just want to make sure that everything was
25 covered briefly. And I don't think that the Court wants

1 to go ahead at this point and address issues with the
2 Defense. But I think we're at the point where we're ready
3 to rest. Again, I just want to make sure that we've
4 covered everything before we formally rest our case.

5 THE COURT: All right.

6 MR. LETTEER: You're talking about any motions?

7 MR. REDMOND: Any motions or issues or thing like
8 that we'll just go ahead and address.

9 MR. LETTEER: Well, are y'all done? Are y'all
10 resting?

11 MR. REDMOND: Pretty much.

12 MR. LETTEER: You mind just giving me a few seconds,
13 Your Honor?

14 THE COURT: Stand at ease a few minutes.

15 (WHEREUPON, a short break was taken.)

16 MR. LETTEER: At this point I would move for a
17 directed verdict in the case. There has been no evidence
18 introduced as to the element of consent which is obviously
19 needed to sustain a burglary conviction. And in fact the
20 only testimony in the record is that he did have consent.

21 So not only is there no evidence that consent was
22 lacking. But there is evidence to the contrary to show
23 that consent did exist.

24 In addition to that, Your Honor, there is no evidence
25 to sustain a crime therein. The only evidence is that a

1 door was kicked open going into the house. Arguably, that
2 being malicious injury to personal property. That was
3 merely the means by which Mr. Penny effectually entered
4 into the house. It was not a crime attempted to be
5 committed therein, inside the house.

6 The same is true with trespass Your Honor. Again,
7 consent issue. They said that if he had opened the door
8 he would have been welcomed to come on in. I kept asking
9 him. Again, he would be welcomed to come in today. Only
10 thing he said was he didn't have to kick his door in.

11 On top of that, Your Honor, I have a case that talks
12 about -- I'd like to hand up. It's a little bit odd as
13 far as something to rely on. It's a P.C.R. case, and it's
14 just briefly, a guy said he was strung out on drugs. He
15 goes up and knocks on his buddy's door. Somebody else
16 answer and he says, hey, is his friend home. Yeah, let me
17 go get him. So the guy is strung out on drugs.

18 Runs in the house. Says at the time he thought he
19 was being chased by someone or some drug induced illusion.
20 The friend grabs him, takes him out of the house, and
21 almost immediately after he goes. The Court of Appeal
22 said that you could infer from the fact that he was
23 trespassing that he intended to commit a crime.

24 Obviously, they're not relying on the fact that
25 trespass could be the default crime and the Legislature

1 put that additional requirement on purpose; that a crime
2 must be committed therein. So I would submit that it
3 cannot be malicious injury. It cannot be trespassing.
4 And, again, that's assuming that Your Honor finds that
5 there is any evidence in the record that would support
6 that he did not have permission to be in the house. The
7 consent is lacking.

8 So, Your Honor, I wouldn't think it comes anywhere
9 close to these two essential elements of burglary, and we
10 simply ask that you render in favor of the Defendant.

11 THE COURT: Well, I anticipated that motion coming,
12 and I have given some careful thought to it. I don't mean
13 to cut the Solicitor's off and whatever he's got to say.
14 I'll get to him in a minute. But this boils down, on the
15 trespass, you've got some major points there, but that's
16 not the key issue that keeps the State in this case.

17 As I analyze it once he -- you don't have to have a
18 breaking any more. Of course, it's not like the old house
19 breaking. So it's entry. Once he opened the outside door
20 to entry was complete. Then he had broken the plain by
21 kicking the inner door in doing the damage.

22 Therefore, he committed a crime therein. I believe
23 that the State has got enough to take it to the jury on
24 that.

25 MR. LETTEER: And just respectfully, Your Honor, I

1 would point out that the Courts have said that the
2 threshold, the breaking the door jam of the door, is not a
3 crime therein.

4 THE COURT: But he did more than just the door. He
5 did damage to the outside of the door.

6 MR. LETTEER: Again, just respectfully, Your Honor,
7 the residence.

8 THE COURT: And the key word there is threshold. The
9 plain of entry was the first door. The next door was
10 inside of the plain which would be called the threshold in
11 my opinion. Solicitor, what do you want to add to this?

12 MR. FOARD: Your Honor, I agree. I believe that the
13 directed verdict motion should be denied. I believe in
14 looking at the existence or non-existence of evidence
15 versus the State having met it's burden of proof, and we
16 think it should go to the jury.

17 THE COURT: Anything else?

18 MR. LETTEER: Just so I'll make sure the record is
19 clear I'm also contending that the issue of -- that he was
20 welcomed to come in so you don't necessarily need to get
21 to a crime because of the consent element.

22 MR. FOARD: And, Your Honor, there was testimony that
23 while he may have be welcomed there today we're not
24 talking the hypothetical if he would have knocked on the
25 door. The testimony was clearly the method and means of

1 which he entered on that morning was not permissive
2 consent in the house, Your Honor.

3 THE COURT: There is also a point here that hadn't
4 even been brought up. Laying aside the argument about the
5 burglary; that being force by malicious damage, just the
6 mere way all of this transpired if you take the State's
7 evidence as I've heard it. It gets into almost the crime
8 of endangering those children which more of that occurred
9 in Lancaster County than it did here. But just the
10 actions that he took I think the State could easily argue
11 that manner of that entry and everything certainly
12 endangered those children. But that's neither here nor
13 there.

14 MR. LETTEER: Yeah. And the only thing I would say,
15 Your Honor, in less than 60 seconds is that this was a
16 completed act so it's inferring that he would have somehow
17 endangered them inside.

18 THE COURT: He kicked in a door. What if one of
19 those children would have been right behind the door? All
20 right. Anybody else? Okay.

21 MR. FOARD: Thank you, Your Honor.

22 MR. LETTEER: Thank you, Your Honor.

23 THE COURT: Hold up just a second, Madam Bailiff.

24 MR. LETTEER: We don't intend on presenting any case.
25 I extensively discussed with Mr. Penny his Fifth Amendment

1 rights to testify and to remain silent. If the Court
2 wishes to address that with him to make sure I adequately
3 covered everything.

4 THE COURT: He does not intend to testify?

5 MR. LETTEER: He does not intend to testify, Your
6 Honor.

7 THE COURT: That takes a little bit of concern off,
8 but I'll still talk to him about it. Obviously, Mr.
9 Penny, if you have already told your attorney that you
10 don't want to testify you are aware of your right to
11 remain silent. Under the Fifth Amendment of the
12 Constitution of the United States and a similar
13 counterpart provision of our State Constitution you have a
14 right to remain silent. You can elect not to testify.
15 And in doing so I even instruct the jury that you have
16 that right and it can't even be discussed back there.

17 But it is a personal decision either way you go. If
18 you decide to testify or you decide not to testify has got
19 to be your decision on your own after conferring with
20 counsel when you have counsel. So do you have any
21 questions about that Fifth Amendment right to remain
22 silent?

23 MR. PENNY: No, sir.

24 THE COURT: You have discussed that with counsel?

25 MR. PENNY: Yes, sir.

1 THE COURT: And you understand your right to go
2 either way?

3 MR. PENNY: Yes, sir.

4 THE COURT: And it's your decision and yours alone
5 that you do not wish to testify?

6 MR. PENNY: Yes, sir.

7 THE COURT: All right. Any questions come to mind
8 that you would like to discuss with counsel before you
9 make a final decision?

10 MR. PENNY: No, sir.

11 THE COURT: Okay. All right.

12 MR. FOARD: Thank you, Your Honor.

13 MR. LETTEER: Thank you, Your Honor.

14 THE COURT: Now. Bring them in.

15 (WHEREUPON, the jury panel enters the courtroom at
16 2:24 p.m.)

17 THE COURT: All right.

18 MR. FOARD: Your Honor, may it please the Court.
19 Your Honor, at this time the State rests.

20 THE COURT: All right. And we've covered everything
21 before?

22 MR. LETTEER: Yes, sir.

23 THE COURT: All right. You may proceed.

24 MR. LETTEER: The Defendant rests also.

25 THE COURT: Okay. You may proceed with your

1 argument.

2 MR. FOARD: Thank you, Your Honor.

3 CLOSING STATEMENT BY MR. FOARD

4 MR. FOARD: Ladies and gentlemen, I know that things
5 have gone pretty fast today. I want to start off by
6 thanking you for your attention to detail. I've observed
7 you all throughout the trial, and I've seen each and every
8 one of you pay close attention to the witnesses as well as
9 both me and Mr. Letteer. And I can tell you just from the
10 beginning that there is nothing better than having
11 attentive jurors who really pay attention to the matter at
12 hand.

13 As you heard previously the true issue of why we're
14 here today is regarding Mr. Penny and his actions on
15 December the 20th 2012. But his actions on that day
16 aren't just confined to when he entered that house at 7:30
17 that morning. We've got to look at what he did going
18 through the day and what he did after he fled Ruby, South
19 Carolina. And I think I told you in my opening statement
20 at the very beginning that I wanted you to pay close
21 attention to his actions once he left with the children.

22 You had three officers here who testified extensively
23 as to what he did in Lancaster. The fact that he was
24 stopped once and attempted to get out of his vehicle
25 because they were actively looking for the children. He

1 evaded police then, took them on another chase, although
2 it wasn't a high speed chase, and then resisted them a
3 second time ---

4 MR. LETTEER: Objection, Your Honor. The Solicitor
5 is testify -- arguing. There is no evidence of flight.

6 THE COURT: Be careful.

7 MR. FOARD: Yes, Your Honor. It took an extended
8 amount of time to get him stopped even after the first
9 stop. And that flight, ladies and gentlemen, is important
10 because it's indicative of guilt. Dennis Penny with a
11 guilty conscious saw those law enforcement officers behind
12 him, and what did he do? He ran. He ran as fast as he
13 could trying to get away from them because he knew the
14 actions he took on Stevenson Street here in Ruby -- here
15 in Chesterfield County were wrong.

16 He knew that by kicking in the door as Joey Oliver
17 said he had committed wrong doing. He knew that by
18 entering into their home uninvited he had committed a
19 wrong doing. And I pick those words very carefully,
20 ladies and gentlemen, because we are here trying Mr. Penny
21 on the crime of second degree burglary.

22 And the elements of burglary are very simple. They
23 are entering a dwelling without consent with the intent to
24 commit a crime therein. And in my opening I discussed
25 that third element; with intent to commit a crime therein.

1 Not the intent to steal, but with the intent to commit.
2 It says a crime. I'm going to say any crime because it
3 doesn't limit you.

4 And in this instance Mr. Penny committed the crime of
5 trespass when he went into a place in a manner in which he
6 was not welcomed. He committed the crime of malicious
7 injury to personal property when he kicked that door in
8 breaking the jam of the door. Breaking the door itself to
9 the point that Mr. Oliver said that it had to be repaired
10 that very day because it could not be closed otherwise.

11 I believe the third element, with intent to commit a
12 crime therein, is clearly present in this, and the Defense
13 is going to dispute that. They're going to tell you that
14 he had permission to be there. Well, yes, he did have
15 permission to be there previously. And they said that
16 were it not for this he may still have permission to be
17 there. But what Joey Oliver clearly stated was, "He did
18 not have permission to kick in my door and come in my
19 house."

20 Had he knocked on the door that would have been a
21 different story. But guess what? It's not a different
22 story. He didn't knock. He kicked. He entered the house
23 forcefully, of his own free will, and in a manner that was
24 inconsistent with the method that normal people who are
25 invited to come to your home enter. That's without

1 consent, ladies and gentlemen. That's the second element.
2 So we've got the crime, the damage to the door, and the
3 unrightful being there. We've got without consent from
4 the homeowner's own mouth. Didn't have permission to kick
5 in my door and come in my house in that manner.

6 And the only other element of burglary is entering a
7 dwelling. Well, it's undisputed, ladies and gentlemen.
8 The home of Joey Oliver and his wife is a dwelling. It is
9 the place where they reside. It is the place where they
10 were residing with their children. Or, excuse me, with
11 Chasity Penny and Chasity Penny's children.

12 I'm not going to belabor the point and go on and on.
13 This has been a very fast trial. But I think the elements
14 are clearly here to sustain a conviction for second-degree
15 burglary. And as I stated in my opening statement that is
16 a different case. In fact it's one of the most unique
17 cases I've tried in my career as a prosecutor because I
18 used the word, 'forgiveness'. I said the victims were
19 very forgiving, and while Defense counsel disputed that I
20 think that is the perfect word. I think it's entirely
21 appropriate because these people are saying, "But for the
22 actions that this man took he would still be welcomed in
23 our home today."

24 The fact that they are willing to forgive him does
25 not absolve him of his guilt. The fact that they love him

1 and accept him for who he is does not change what he did,
2 and as the representative of the State it is my duty to
3 ensure that justice is carried out. And that it is known
4 to all that kicking in someone's door is not acceptable.
5 Doesn't matter if you're family. It doesn't matter
6 because that type of entry in and of itself is wrongful.
7 And it is not permissive.

8 I don't know of anyone that would give consent to
9 their family member to kick in their door for no reason.
10 So, ladies and gentlemen, with that I'm going ask
11 respectfully that you find Mr. Dennis Penny guilty of the
12 crime of second degree burglary. I appreciate your time,
13 your attention, and I appreciate the service that you have
14 provided to the county and to the citizens of it. Thank
15 you.

16 CLOSING STATEMENT BY MR. LETTEER

17 MR. LETTEER: I 100 percent agree with Assistant
18 Solicitor Foard. It's not right to kick somebody's door
19 in, but that is not the same as burglary. It's not. You
20 can try and gussy it up however you want. Say it's
21 without consent, malicious injury, trespassing. It's just
22 not a burglary. The Judge is going to talk to you and
23 lots of judges use this same type of verbiage, 'you don't
24 leave your common sense at the court house steps', and
25 that's exactly what's being asked of you right now. Do

1 you look at what happened on December 20th, do you take
2 the testimony of Mr. Penny's in-laws and say, well, even
3 though he sat there and said he was welcomed in our house.
4 He's always been welcomed in our house. Never told he
5 wasn't welcomed in there. Take him back today. Still
6 welcomed. I just didn't like him kicking my door open.
7 Then you take that and equate that into the serious charge
8 of burglary. It's just strains common sense.

9 I've been dating the girl I met in law school about
10 five years. She also an attorney, and she's a Solicitor
11 in Columbia. She does what the State does. And when we
12 come home at night lawyers love to talk anyway and lawyers
13 love to talk shop. And we sit around arguing with each
14 other about this and that and legal theories, and a lot of
15 times when we get to the end of it, and I end up playing
16 devil's adequate. She was right the entire time, but by
17 this point in time so much time has passed and I'm so
18 invested in my argument and I'm so bull headed that I
19 can't just say, "You those what? Yeah, you were right."

20 And she cares about me too much to allow me to have
21 that bad character trait of being bull headed and continue
22 to argue all night long. That reminds me exactly of what
23 we have in this case. We get a call to law enforcement
24 about a kidnapping. An Amber Alert is issued. y'all heard
25 Captain from Lancaster say that an Amber Alert is not

1 issued based solely on custody. Amber Alert improperly
2 issued, and that's when we get into all the stuff in
3 Lancaster.

4 The Solicitor is right. Technically speaking the law
5 of flight infers guilt. But in this case there is no link
6 between what he was fleeing from and what they're saying
7 he did. He stopped pursuant to them getting the Amber
8 Alert stopping him. He went up and talked to them and
9 then he ran from them. Was that a bad mistake? Yeah,
10 undoubtedly.

11 But it doesn't mean that he ran because he knew he
12 had committed a burglary. They didn't even think that he
13 had committed a burglary. They thought he had taken kids
14 that he didn't have custody of which was not the case.
15 Just like Assistant Solicitor Foard said, I don't want to
16 sit here and beat y'all over the head. I know y'all
17 listened to the testimony.

18 Again, I would just simply request that you use your
19 common sense. Don't let them turn what amounts to a
20 family squabble especially when you have one family
21 member, his wife, saying they wouldn't even be up here
22 unless they were forced to be here. For those reasons,
23 ladies and gentlemen, I would just respectfully request
24 that you find Mr. Penny not guilty on the crime of
25 burglary second. Thank you.

CHARGE OF THE COURT

1
2 THE COURT: Thank you, gentlemen. All right, ladies
3 and gentlemen, we now move on to the charge of the law
4 that I previously mentioned to you. And I ask that you
5 bear with me and listen carefully. And I'll ask the
6 Sheriff to make sure that you don't allow anyone in or out
7 cause I don't want to be interrupted.

8 The State of South Carolina by the indictment charges
9 that the defendant committed the offense of burglary in
10 the second degree. That occurred in Chesterfield County,
11 South Carolina. To the charge and to the indictment the
12 defendant has entered a plea of not guilty. A plea of not
13 guilty by the defendant places the burden of proof on the
14 State to prove the guilt of the defendant beyond a
15 reasonable doubt before you the jury could convict the
16 defendant and find him guilty.

17 When I use the word 'defendant', of course, I'm
18 referring to Mr. Dennis Penny the Second. The defendant
19 is presumed in law innocent of the charges contained in
20 the indictment. The presumption of innocence accompanies
21 a defendant from the time of his appearance in Court
22 through every stage of the trial until you the jury have
23 reached a verdict of guilty based upon evidence which
24 satisfies you of the guilt of the defendant beyond a
25 reasonable doubt.

1 A presumption of innocence is a substantial right for
2 which every defendant including this defendant is
3 entitled: As I said the State has the burden of proving
4 the guilt of the defendant beyond a reasonable doubt. And
5 some of you may have served as a juror in a civil case
6 sometime in your lifetime, and you were told it is only
7 necessary to prove the fact is more likely true than not
8 true.

9 In criminal cases the government's proof or the
10 State's proof must be more powerful than that. It must be
11 beyond a reasonable doubt. Proof beyond a reasonable
12 doubt is proof that leaves you firmly convinced of the
13 defendant's guilt. There are few things or very few
14 things in this world that we know with absolute certainty,
15 and in criminal cases the law does not require proof that
16 overcomes every possible doubt.

17 If based on your consideration of the evidence you
18 are firmly convinced that the defendant is guilty of the
19 crime charged you must find him guilty. If on the other
20 hand you think that there is a real possibility that he is
21 not guilty you must give him the benefit of the doubt and
22 find him not guilty. Once against, the State is not
23 required to prove the guilt of a defendant beyond a
24 reasonable doubt or beyond every doubt but beyond a
25 reasonable doubt.

1 During the trial you the jury have certain duties to
2 perform. These duties are fixed by the laws of the State
3 of South Carolina. You the jury are the sole judges of
4 the facts in this case, and the Court is the sole judge of
5 the law in this case. Your decision on the facts must be
6 based upon the competent evidence before you; that is the
7 sworn testimony from the witness stand along with any
8 exhibits if there be any and any stipulations if there be
9 any.

10 And you must accept and apply the law as I state it
11 to you. In every case tried in this Court before a jury
12 the jury as I've stated is the sole and exclusive judge of
13 the facts. The Constitution of our State has declared
14 that a trial judge shall not intimate, comment upon or
15 make any statement to the jury about the facts of a case.
16 It is your exclusive duty as jurors to determine the
17 affect, the value, the right and the truth of the evidence
18 in this case. And then to those true facts as determined
19 by the jury you then take and apply the law which I state
20 to you and thus arrive at a verdict which does speak the
21 truth of the case.

22 Necessarily, then you must evaluate the credibility
23 of the witnesses who have testified. Credibility is
24 simply a legalistic word which simply means believability.
25 I instruct you that in determining the believability of

1 witnesses you may believe several witnesses as against one
2 witness or one witness as against several witnesses. You
3 may believe the testimony of a witness in its entirety or
4 reject the testimony of a witness in its entirety. You
5 may believe a part of a witness' testimony and reject the
6 other part of the witness' testimony.

7 You may consider whether a witness has exhibited any
8 interest, any bias or any prejudice and you may consider
9 the demeanor of a witness and the appearance of a witness
10 upon the witness stand. And you may consider the
11 opportunity for knowledge concerning those things about
12 which a witness testified.

13 These considerations you do not exercise arbitrarily,
14 but if in your good judgment there is sound reason in the
15 record for so doing then that's okay because your
16 objective is to find the truth whether it comes from
17 witnesses or a single witness or multiple witnesses or the
18 evidence.

19 The election of a defendant not to testify I instruct
20 you now and emphasize to you that the election of a
21 defendant in the trial of a criminal case not to testify
22 at his on behalf is not a factor to be considered by you
23 in any way in your deliberations and in your consideration
24 on the question of the guilt or innocence of the accused.
25 It must not been considered by you in any manner

1 whatsoever against the defendant or mitigate against him
2 in any respect whatsoever.

3 A defendant has a constitutional right to remain
4 silent in the assertion of such constitutional right
5 cannot and must not be considered by you in your
6 deliberations. Under your oath then you are to reach no
7 inference and draw no conclusion whatsoever from the fact
8 that a defendant did not himself testify. I instruct you
9 that this is not even to be discussed in the jury room.
10 The burden of proof as I have stated to you is upon the
11 State. It is not incumbent upon the accused to prove his
12 innocence.

13 The burden of proof remains upon the State to prove
14 guilt beyond a reasonable doubt, and the failure or
15 election of a defendant in electing not to testify is not
16 a factor to be considered by you in determining the guilt
17 or innocence of a defendant. So once again election of
18 the defendant not to testify is not to be considered or
19 even discussed in the jury room.

20 Now, let me speak with you about the specific case
21 the law of the alleged offense, and the indictment. As I
22 told you it's burglary second-degree. I charge you from
23 16-11-312, burglary second degree. A person is guilty of
24 burglary in the second degree if the person enters a
25 dwelling without consent and with intent to commit a crime

1 therein.

2 Let me speak with you a minute about flight
3 testimony. Evidence of flight may be an inference of
4 guilt, however, there has to be a nexus between the flight
5 and the crime charged. If the State has failed to prove
6 the guilt of the defendant beyond a reasonable doubt your
7 verdict would be two words, 'not guilty'. If the State
8 has proved the guilt of the defendant beyond a reasonable
9 doubt your verdict will be one word, 'guilty'. The
10 verdict that you render in this case must be the verdict
11 of each and every juror.

12 It must be your unanimous verdict. All 12 jurors
13 must agree on the verdict which you authorize the
14 foreperson to write for the jury. Now, Madam Forelady, in
15 a few minutes you will have the indictment, and on the
16 back corner of the indictment there is an area called the
17 verdict. Once the jury has reached a verdict it will be
18 your duty to write the appropriate verdict, whenever it
19 may be, date the form in that area and sign your name as
20 the foreperson.

21 Let me go over that one more time. If the jury finds
22 the defendant not guilty please write two words, 'not
23 guilty' on the back of the indictment. If the jury finds
24 the defendant guilty it will be your duty to the write one
25 word, 'guilty' on the back of the indictment. All of that

1 is completed under the area called verdict. Once again,
2 your verdict will have to be a unanimous verdict. Every
3 one must agree on whatever it is.

4 I'm going to ask y'all to step back to the jury room.
5 Do not discuss this case until I give you instructions to
6 begin. We've got to check in with counsel one last
7 second. And that purpose is to see if I've overlooked
8 anything I need to discuss with you in this charge. There
9 will be a bailiff located close by the jury room. If you
10 need anything just knock on the door and let her know, and
11 we will try to attend to it.

12 Madam Forelady, I have mentioned to you in the
13 beginning of this trial nobody is to do any kind of
14 independent research. Nobody should even be using a cell
15 phone during the deliberations. If someone needs to go to
16 the restroom or step out for any reason please cease your
17 deliberations until all 12 are back. And continue
18 deliberations only after you have all 12 back.

19 In the event that any juror refuses to take part in
20 the deliberations immediately knock on the door and let me
21 know of that. That's why we have alternate jurors, okay.
22 I think I covered about everything I needed to cover. If
23 y'all will just relax a few minutes. Step back there, and
24 let me check in with counsel and I'll be right back with
25 you. As far as the two alternates, if y'all will remain

1 in the courtroom just a few minutes I'm going to send
2 y'all back to another room to relax just a few minutes.

3 Okay

4 (WHEREUPON, the jury panel was excused from the
5 courtroom at 2:51 p.m.)

6 THE COURT: Yes, sir.

7 MR. LETTEER: Your Honor, we just respectfully
8 request that you also submit a jury instruction on the
9 crime of malicious injury to personal injury less than
10 \$2,000. Solicitor indicated that was the crime that the
11 committed. I mean there was evidence that entered into,
12 and I don't think that there is any evidence to show that
13 was malicious injury over \$2,000.

14 THE COURT: What say the State?

15 MR. FOARD: Your Honor, I think the evidence and the
16 charge is sufficient as it is.

17 MR. LETTEER: And, again, just briefly, Your Honor.
18 They submitted evidence on that and they contended in
19 their closing that he committed that crime.

20 MR. FOARD: And I also ask for trespassing. Yeah, I
21 mean, Judge, I also argued trespass. If he's wanting
22 malicious injury trespass should be given, too. Where do
23 you stop.

24 THE COURT: I know that trespass one. I've read it.
25 Might better leave that one alone. Let me read it again.

1 What do you say about the trespass one?

2 MR. LETTEER: I defer to the wisdom of the Court.

3 May we approach?

4 (WHEREUPON, a bench conference was held off the
5 record, but out of the presence of the jury.)

6 THE COURT: I need those alternates back.

7 (WHEREUPON, the jury panel enters the courtroom at
8 3:05 p.m.)

9 THE COURT: Ladies and gentlemen of the jury, counsel
10 has requested that I give you an additional charge, and I
11 have agreed to do so. And that concerns the malicious
12 injury discussion of malicious injury to property and also
13 trespass. I'm going to read to you Section 16-11-520 of
14 the Code of Laws of the State of South Carolina.

15 It is unlawful for a person to willfully and
16 maliciously cut, mutilate, deface or otherwise injure a
17 tree, house, outside fence, or fixture of another or
18 commit any other trespass upon real property of another.

19 Now, for further explanation you're not concerned
20 with any charge as far as finding a verdict except on
21 burglary second. That is just more or less what I would
22 term as background discussion of the law involving what
23 the State has alleged in the case to be used as simply
24 background information. So I have agreed to do that
25 additional charge. Anything else, gentlemen?

1 MR. LETTEER: Nothing from the Defense, Your Honor.

2 MR. FOARD: Nothing from the State, Your Honor.

3 THE COURT: All right. I have simplified this
4 process about a verdict and, Madam Forelady, right here to
5 the bottom of this form it says, 'verdict as to burglary
6 second-degree'. If you just follow the instructions that
7 I gave you about these lines.

8 All right. The 12 of you step back. You may begin
9 your deliberations, and I'll ask the two alternates to
10 remain back in the room for just a few minutes.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom to begin deliberations at 3:08 p.m.)

13 (WHEREUPON, Court was in recess at 3:08 p.m. and
14 reconvenes at 3:20 p.m.)

15 (WHEREUPON, the jury panel enters the courtroom at
16 3:20 p.m.)

17 QUESTION OF THE JURY

18 THE COURT: I've got your request up here, Madam
19 Forelady, that is to specifically recharge you on burglary
20 second degree.

21 JURY FOREPERSON: Yes, sir.

22 THE COURT: A person is guilty of burglary in the
23 second degree if the person enters a dwelling without
24 consent and with intent to commit a crime therein. Now, I
25 didn't do this in the first charge, but just for the sake

1 of covering the angle of a definition since the term
2 'dwelling' is used I will read to you the State's
3 definition of dwelling.

4 That's under 16-11-10. And it reads, "With respect
5 to the crimes of burglary and arson and to all criminal
6 offenses which are constituted or aggravated by being
7 committed in a dwelling the house. Any house, out house,
8 apartment, building, erection, shed or box in which there
9 sleeps proprietor or tenant, watchman, clerk, laborer or
10 person who lodges there with a protection of the property
11 shall be deemed a dwelling house, and if such a dwelling
12 house or any other dwelling houses, all houses, out
13 houses, buildings, sheds and erections which are within
14 200 yards of it and are pertinent or to the same
15 establishment of which it is an appertinent shall be
16 deemed parcels.

17 And those of you who may be familiar with the old
18 common law I think that used to be called or still would
19 be referred to as the curtilage of the area which refers
20 to all those surrounding buildings within that 200 yards.
21 But that's the definition of a dwelling.

22 Was there anything else you needed recharged?

23 JUROR: Judge, could you just read that one more
24 time? I believe a little louder and a little bit slower;
25 second-degree definition.

1 THE COURT: Yes, sir. 16-11-312, burglary second
2 degree. A person is guilty of burglary in the second
3 degree if the person enters a dwelling without consent and
4 with intent to commit a crime therein.

5 JURY FOREPERSON: Does that go for anything around
6 the house or anything on the property? Does that go for
7 everything that's on the property also?

8 THE COURT: A dwelling could include a curtilage
9 which includes the outer buildings that are within that
10 200 yard area. Okay. Y'all may step back.

11 (WHEREUPON, the jury panel was excused from the
12 courtroom to continue deliberations at 3:25 p.m.)

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification and received into evidence.)

15 (WHEREUPON, Court was in recess at 3:25 p.m. and
16 reconvenes at 3:46 p.m.)

17 (WHEREUPON, the jury panel enters the courtroom at
18 3:46 p.m.)

19 VERDICT OF THE JURY

20 THE COURT: Madam Clerk.

21 CLERK OF COURT: Madam Forelady, have you reached a
22 verdict?

23 JURY FOREPERSON: Yes, ma'am.

24 THE COURT: If you would please hand it to the
25 bailiff. Okay. You may publish the verdict.

1 CLERK OF COURT: The State of the South Carolina v.
2 Dennis Matthew Penny. We the jury find the guilty -- find
3 the verdict as to burglary second-degree guilty. Petit
4 jury foreman, Brenda Mills. June 4th 2013. The Honorable
5 Paul Burch presiding.

6 Is this -- Madam Forelady, is this your verdict and
7 still your verdict?

8 JURY FOREPERSON: Yes, ma'am.

9 CLERK OF COURT: Is this the verdict of all 12?

10 THE COURT: Anything further of the jury?

11 MR. FOARD: None from the State, Your Honor.

12 MR. LETTEER: None from the Defense, Your Honor.

13 THE COURT: Ladies and gentlemen, thank you so much
14 for serving on this case. Thank you for your patience
15 with the Court because I know we had to keep you waiting a
16 little bit yesterday because of other matters and then a
17 little delay this morning. We got off track a little bit
18 this morning, and I apologize for it, but that's just how
19 complicated things are in multi-jurisdiction situation
20 where we have two circuit judges and we've got four large
21 counties. So I have to sort of take care of the other
22 counties as we need to.

23 And then you put a State Grand Jury case involving
24 Kershaw, Lee and Sumter Counties in there and having to
25 deal with that. That really threw us off yesterday

1 your check. It's \$10 a day and 15 cents a mile both ways.
2 The bailiff is giving you a slip for your employer. You
3 can also use your check stub, and I would like to thank
4 each of you for helping us. Thank you.

5 THE COURT: Any motions at this time?

6 MR. FOARD: None from the State, Your Honor.

7 MR. LETTEER: Your Honor, I make a motion for a new
8 trial. Same evidence as my directed verdict motion.

9 THE COURT: I'm going to deny that at this time,
10 however you think of anything you might be possibly
11 overlooked right now you know you've got ten days.

12 Am I'm going to go ahead and tell both of you now.
13 I'm not going to sentence him today. This is a unique
14 situation and it involves children. I'm going to take the
15 extra step to have Probation and Parole talk with
16 Mr. Penny and anybody he wants them to talk with and let
17 them do a pre-sentence investigation.

18 Simple. It is a unique situation, and I want to take
19 time now to thank all three counsel involved in it for
20 your work working with the Court. All four. Excuse me.
21 You had walked out. I want to include you. Thanking you
22 for getting this case prepared and in the Court.

23 MR. REDMOND: Oh, thank you.

24 THE COURT: What I'm going to do is I'm not going to
25 sentence now. I'm going to let Probation and Parole

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2013-GS-13-00182

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
))
 DENNIS M. PENNY, II)
) DEFENDANT)

July 9, 2013
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

A P P E A R A N C E S:

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

KERNARD REDMOND, DEPUTY SOLICITOR
 Attorney for the State

BRYAN LETTEER, PUBLIC DEFENDER
 Attorney for the Defendant

CHASITY PENNY, Defendant's Wife

HATTIE O. GORDON
 Circuit Court Reporter

I N D E X

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

MR. FOARD: Thank you, Your Honor. May it please the Court. Before you is Dennis Matthew Penny the 2nd. He was found guilty by a jury of his peers here in Chesterfield County during the last term of General Sessions Court. He was found guilty on Indictment Number 2013-GS-13-0182 for the lesser included offense of burglary in the second degree having originally been indicted for the offense of burglary in the first degree.

Your Honor was the presiding judge over the trial of that case, and after the jury verdict was returned Your Honor asked for a pre-sentencing report prior to final sentencing. The pre-sentencing report has been completed by the Department of Probation and Parole and Pardon Services, and I believe Your Honor is in possession of a copy of that. We are prepared to go forward with the sentencing at this time.

THE COURT: All right. Mr. Letteer.

MR. LETTEER: Yes, sir. We're ready to proceed.

THE COURT: Anything you'd like to say.

MR. LETTEER: I would like add some stuff in mitigation after Mr. Foard.

MR. FOARD: Would you like for me to go first?

MR. LETTEER: If you don't mind.

MR. FOARD: I'm fine with that, Judge.

1 THE COURT: Solicitor.

2 MR. FOARD: Thank you, Judge. Your Honor, I believe
3 you're well acquainted with the facts of the case, but
4 just to make sure the record is clear Mr. Penny has been
5 convicted of burglary second degree for his actions in
6 entering unlawfully and wrongfully the residence of his
7 in-laws and taking away or damaging property. And at the
8 same time taking away his two children.

9 Of course, that's not an element of the offense for
10 which he was found guilty. But I think it should be
11 mentioned, Your Honor, and ultimately did lead law
12 enforcement on an extensive set of circumstances in
13 apprehending him through Lancaster County and through
14 Union County, North Carolina.

15 Mr. Penny has from the information that I've received
16 exhibited not a single sign of remorse for his actions at
17 a single point in this process. He specifically believes
18 that he's been wronged by the judicial system. He says
19 that he was compelled to take the actions that he did by
20 the Holy Spirit speaking to him, Your Honor. He has
21 repeatedly said that no man has the authority to tell him
22 what to do. Not the justice system. Not the Court. Not
23 any individual. So I believe that presents a very
24 difficult set of circumstances to the Court for sentencing
25 because you have a person who is not willing to admit the

1 wrongfulness of what he's done and is not willing to
2 willfully submit to the punishment of the Court, Your
3 Honor.

4 I think that Probation, Pardon and Parole have done a
5 phenomenal job in producing the report that they have. I
6 believe in the time that I have been able to briefly look
7 at it I believe it is very thoroughly done report that
8 covers many of the aspects of this. I believe that the
9 opinions that they've given in that report are entirely
10 appropriate. And I share many of their same concerns,
11 Your Honor.

12 Specifically, the fact that if Mr. Penny is placed on
13 any type of supervised probation it will be exceptionally
14 difficult for the probation agent to be able to supervise
15 him because, again, like I've said he doesn't think he's
16 done anything wrong. He doesn't think that he should
17 submit to any authority but the authority of God. And,
18 therefore, I think it's a fruitless endeavor to try to
19 sentence Mr. Penny to any kind of probationary sentence.

20 The crime that's he's been convicted of carries a
21 penalty of zero to ten years in prison, Your Honor. And
22 while his prior criminal record is not that extensive he
23 does have prior convictions, Your Honor. He has one prior
24 conviction for a violent incident in that happened in the
25 State of North Carolina. I don't have the N.C.I.C.

1 printout in front of me to give you the exact specifics of
2 it, but by any event it did occur.

3 I believe that Mr. Penny deserves an active jail
4 sentence. At minimum a jail sentence needs to be
5 somewhere in the four year range, Your Honor. And more
6 appropriately, I believe that six to seven years is
7 actually what Mr. Penny deserves for what he has done.
8 And I believe it is what he needs given the fact that any
9 sentence involving any kind of parole or probation is
10 going to be a complete waste of the Court and the State's
11 time because Mr. Penny is not going to willingly comply
12 with anything. Thank you very much.

13 THE COURT: Thank you, Solicitor. Counsel.

14 MR. LETTEER: Thank you, Your Honor. I don't
15 necessarily want to belabor anything too much because Your
16 Honor is very familiar with the actual facts of the case
17 itself and general facts surrounding it. It's obviously
18 somewhat of a unique case because up until this point
19 Mr. Penny really has had a minimal involvement with the
20 judicial system.

21 On Page 11 of the report has his prior criminal
22 record which consists of one victim for breach of the
23 peace in 2003. Other than that he's been a law abiding
24 citizen. He's been a father, served his country for 13
25 years. Put off having a family while he was doing that

1 service because it wasn't necessarily conducive to that
2 kind of home environment that he wanted for his family.
3 He's a volunteer firefighter. Had been gainfully employed
4 up until a week proceeding this incident, which was only
5 due to changing jobs and a small business owner.

6 Been married to his wife for 16 years, and I think
7 above everything during the trial the supposed victims
8 said that they didn't think he should be prosecuted for
9 it. And obviously aware that the Solicitor's Office on
10 behalf of the State prosecutes cases regardless of what
11 the victims feelings and regard to this specific case.

12 But I do think it's important that the victims do not
13 want to see him in prison; that his wife, Chasity, wants
14 him back home with her and the children. As far as any
15 kind of probationary sentence we agree with the Solicitor
16 that I don't think -- I know that it would not -- that
17 Mr. Penny would not be a good probation candidate. He's
18 expressed to me throughout the whole process that he
19 didn't want anything from this incident necessarily
20 hanging over his head whenever it was over he wanted it to
21 be done and be able to move on with his life.

22 So with all that being said, Your Honor, we would --
23 sorry, Your Honor. He also wanted me -- he also wants to
24 be able to leave the state because South Carolina doesn't
25 have the kind of aviation assets that he presently working

1 on. He wants to be able to be free to travel around and
2 work.

3 So, Your Honor, we just respectfully request that you
4 be as lenient as possible and possibly consider some sort
5 of time served sentence. To my knowledge, and Your Honor
6 is also aware of this, the suspended charges over in
7 Lancaster that he still has to address that issue before
8 this is all behind him. So a time served sentence would
9 allow him to go and deal with that, whatever the
10 consequences of that might be.

11 Your Honor, he does have approximately two -- I'm
12 sorry, Your Honor. I picked up the wrong -- 206 days
13 credit. He was actually arrested and held in Union County
14 for ten days before coming here. So we would just request
15 that whatever sentence Your Honor would impose that he
16 also be given good time for the time that he's served here
17 in the County.

18 THE COURT: County and up there is 206 or 216?

19 MR. LETTEER: Two hundred six.

20 THE COURT: Mr. Penny.

21 MR. PENNY: Yes, sir.

22 THE COURT: Anything you'd like to say?

23 MR. PENNY: Your Honor, my whole thing is before all
24 this was to bring my children and my wife in a nurturing
25 atmosphere of the lord. We've been married -- we've been

1 together for 19 something years. We've never had no
2 incidents. She would tell you we never had no abusive
3 relationship or anything. And so for this to come about
4 is unforeseen. Firefighter. I mean since I came back in
5 2007 they asked me to join the fire department. Had a
6 business in Mt. Croghan. I'm completely blown away by
7 these things.

8 And here I fought for my country, seen my fellow
9 comrades die for -- I mean all I want to do is live my
10 life in God's word and raise my family.

11 THE COURT: Is there anyone else?

12 MR. FOARD: Your Honor, I could briefly address
13 something Mr. Letteer said. And the prosecution and the
14 defense have had two very different opinions of this from
15 day one. But, Your Honor, the opinion of the victims who
16 are actually not Mrs. Penny but would be her parents and
17 the opinion of Miss Penny herself I believe are
18 distinguishably different from the manner in which
19 Mr. Letteer has indicated.

20 Mr. Penny's in-laws, specifically his father-in-law,
21 has repeatedly told me when he's not in the presence of
22 Mr. Penny's wife that he is afraid of Mr. Penny. He is
23 afraid for his daughter, and he does not want Mr. Penny
24 out, loose and free, Judge. He's repeatedly said that to
25 me. Miss Penny has just spoken to Mr. Redmond and she

1 previously communicated it to me, and she's in the
2 courtroom. She can address the Court if need be, but
3 she's previously indicated to me that she wants Mr. Penny
4 to get help for what we all perceived may be either an
5 undiagnosed or under diagnosed hyper-religious disorder.

6 She has not told me that she wants him to come home
7 with unfettered freedom. She has told me repeatedly that
8 she wants him to receive help for his disorder. And if he
9 were to received help and if he were the man that she
10 married then it would be a different story with him coming
11 home, Judge.

12 But the idea that everyone is willing to just open
13 their arms and accept him back into the fold exactly how
14 he is and exactly how he stands before Your Honor today I
15 believe is a mischaracterization of where we stand.

16 MR. REDMOND: And, Your Honor, just briefly. I think
17 to sum it all up. In talking with Miss Penny, and I'll be
18 brief, and I asked her point blank as I had before about
19 him coming home it's not that she doesn't want him to come
20 home. It is the circumstances as they are now.

21 She advised me that since the conviction there has
22 been an issue now since she will not cut her hair. And
23 that he doesn't want to come home until she were to cut
24 her hair. Don't know the reason behind it. Don't need to
25 know at this point. But I think that sums up what we're

1 dealing with here; that despite everything we've got a
2 situation where it's going to be on his terms. And if
3 it's not, Your Honor, my fear is that it's a recipe for
4 disaster. That's all I would add.

5 THE COURT: Miss Penny or anyone in the gallery like
6 to make any statement? Good afternoon.

7 MRS. PENNY: Good afternoon. I would like to say
8 what I said from the start; that I mean all this stuff has
9 changed since his mom died in our house, and I mean when I
10 say something about it he doesn't say anything has changed
11 in him. But I just don't think that he's the same person
12 that he used to be. Something has happened.

13 But I want him to come home. It's just like I mean I
14 don't want him to come home today, but I think he doesn't
15 want to talk to me cause I won't cut my hair. Shave my
16 hair off. So I don't think that he would even come home
17 as of right now.

18 THE COURT: He wants you to shave your hair off?
19 Thank you for coming.

20 MRS. PENNY: Your Honor, you're welcomed.

21 THE COURT: Okay. At the conclusion of the trial we
22 had some motions entered, and I sort of left that up in
23 the air. I want to clear that up so there won't be a
24 question on the record.

25 First of all I remind Mr. Penny of his rights I've

1 already given him about appellate rights. You've got ten
2 days to file a notice of appeal with the sentencing if you
3 so desire.

4 Second of all, deny all post trial motions. And I'm
5 just going to be very frank on the record that the actual
6 circumstances of the burglary do not concern me as much as
7 the endangerment of the children. And the way I look at
8 this you committed a burglary when you kicked that door
9 in. Not only doing structural damage to the house, but
10 you recklessly endangered those children.

11 Suppose one of those children had been standing
12 behind that door when you kicked it in? And then to add
13 to that the endangerment of the children across at least
14 two counties -- three counties, at least.

15 SENTENCE OF THE COURT

16 So, bottom line, I'm going to follow recommendation
17 of Probation and Parole, all the hard work they put in
18 here. So the sentence is five years suspended upon the
19 service of four years with two years probation.

20 I'm going to add to that with my recommendation that
21 you be placed where S.C.D.C. can coordinate treatment with
22 the V.A. for hyper-religious disorder as well as P.T.S.D.
23 Not necessarily saying that you have that, but they can
24 assess you to see if there is a problem. And hopefully
25 you will follow the advice they may give. That's a

1 recommendation. That's all I can do.

2 And hopefully they could coordinate with V.A. And if
3 not maybe they've got some experts that can help with
4 that.

5 Also the probation may be terminated upon a motion of
6 South Carolina Department of Probation and Parole if they
7 see that everything is satisfactory and that you can go
8 back to your family or whatever. Hopefully you will.

9 You get credit for 206 days. All right. I hope they
10 can get some help for you, and please do not ever put
11 those children in danger like you did on that occasion.
12 Anything else?

13 MR. FOARD: Thank you, Your Honor.

14 MR. LETTEER: Thank you, Your Honor.

15 THE COURT: And I'd like to thank Probation and
16 Parole for their hard work.

17 END OF TRANSCRIPT OF RECORD

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HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHESTERFIELD) 2013-GS-13-00182

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
)
 DENNIS M. PENNY, II)
) DEFENDANT)

July 10, 2013
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

A P P E A R A N C E S:

ADAM FOARD, ASSISTANT SOLICITOR
 Attorney for the State

KERNARD REDMOND, DEPUTY SOLICITOR
 Attorney for the State

BRYAN LETTEER, PUBLIC DEFENDER
 Attorney for the Defendant

MARK FUNDEBURK, Probation Officer

HATTIE O. GORDON
 Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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CONTEMPT OF COURT HEARING

THE COURT: Solicitor.

MR. FOARD: Thank you, Your Honor. We're back on the record in the State v. Dennis Matthew Penny, Docket Number 2013-GS-13-0182. As Your Honor will recall you sentenced Mr. Penny yesterday to, I believe, a sentence of five years suspended to four years incarceration followed by two years probation. Agent Mark Funderburk of the Probation Department attempted to conduct the post-sentencing interview yesterday at which time some problems occurred, and I will yield to Mr. Funderburk to inform the Court as to the issues.

THE COURT: Agent Funderburk.

MR. FUNDERBURK: Your Honor, I don't know -- have so much as problems. It was just that when someone is placed on probation there are a series of forms that we're required to have signed by new probationers. Mr. Penny was 100 percent uncooperative on not signing any paperwork with us. He has refused to sign and he made several comments to the effect that he didn't want to be on probation and preferred to serve his time.

I brought this attention up to Assistant Solicitor Foard this morning and requested that the Court hear our argument on -- we just don't think that if Mr. Penny can't be cooperative with us it's our motion that we don't see

1 how we could supervise him adequately when he gets out.
2 And if he can't be cooperative and can't be supervised
3 then maybe we can make a motion that you amend his
4 sentence and take away the probation part.

5 But if he's willing to do probation we'll be glad to
6 work with him, but he was totally uncooperative yesterday.

7 THE COURT: Counsel.

8 MR. LETTEER: Thank you, Your Honor. And I was back
9 there part of it sitting and trying to get some other
10 paperwork taken care of. We're not necessarily opposed to
11 having the sentence amended to not having a probationary
12 period. Like I said yesterday Mr. Penny is, you know,
13 apparently expressed to me that once this was over he
14 wanted it to be over. And if that meant, you know, that
15 he had to serve more time in prison then he was willing to
16 do that as opposed to having probation hanging over his
17 head when he got out.

18 THE COURT: Mr. Penny, anything you'd like to say?

19 MR. PENNY: I don't want probation.

20 THE COURT: It's not what you want.

21 MR. PENNY: Yes, sir.

22 THE COURT: It's what I ordered. Now, we can do this
23 the easy way or we can do this the hard way. You can go
24 back there and cooperate with them because I think
25 probation is appropriate here for the protection of your

1 children. And I don't need to harp on that any further.
2 You can discuss this with your attorney, but you right off
3 the bat are being defiant to the Court, and you're putting
4 me in the position that I'm probably going to have to find
5 you in contempt of Court.

6 You're either going to sit down and you're going to
7 cooperate with them or I'm going to hit you with a
8 contempt sentence which will be a consecutive sentence to
9 what you already face. So I would suggest you sit down
10 with Mr. Letteer and you discuss with him the
11 ramifications of what a consecutive sentence is going to
12 do to you and maybe you will see the light.

13 Now, with that admonishment do you think you can do
14 that or have you made it up in your mind that you're not
15 going to do anything that you're ordered to as far as
16 probation? Would you like a minute or two, a few minutes
17 to discuss it with your attorney?

18 MR. LETTEER: Beg the Court's indulgence.

19 THE COURT: Court will stand at ease.

20 MR. LETTEER: Thank you, Your Honor. I explained to
21 Mr. Penny the general legal situation he's in. I think
22 he's made a decision. Might leave it up to him.

23 THE COURT: Yes, sir.

24 MR. PENNY: (unintelligible).

25 MR. LETTEER: He maintains that he does not want to

1 cooperate with Probation and Parole, and understands the
2 consequences of and is willing to accept it.

3 THE COURT: Okay. You understands what happens to
4 ---

5 MR. PENNY: Sir, I'm not trying to push your hand.

6 THE COURT: Pardon?

7 MR. PENNY: I'm not trying to push your hand.

8 THE COURT: You understands what happens when you
9 back anybody into a corner?

10 MR. PENNY: That's what I'm asking, sir.

11 SENTENCE OF THE COURT

12 THE COURT: Okay. You are disobeying what I ordered
13 you to do, so therefore, we'll start out with this: For
14 contempt of Court you are sentenced to 90 days. You will
15 be held here in the County. That will be a consecutive
16 sentence to what I've already passed.

17 The Court on its own motion at this time notes on the
18 record that I will preserve the motion to reconsider this
19 sentence in case you change your mind after due
20 deliberation.

21 MR. FOARD: Your Honor, the State respectfully
22 requests that, and I understand you may want to retain and
23 hold judgment on this, but we feel that in light of the
24 circumstances the sentence should be adjusted upwards,
25 Your Honor. He was looking at doing four years plus two

1 on probation. We would ask for a six year sentence,
2 Judge.

3 THE COURT: I will certainly entertain that.
4 However, I want to do a little research about that
5 situation.

6 MR. FOARD: Yes, Your Honor.

7 THE COURT: Mr. Funderburk, I don't know y'all
8 procedure well enough, and under unusual circumstances
9 like this if he has not actually gone on probation can you
10 institute a revocation before that?

11 MR. FUNDERBURK: We may have to do some research on
12 that, Your Honor.

13 THE COURT: So for right now I'm going to leave the
14 record open by the Court's own motion to reconsider the
15 sentence which could be a lot more severe. Give him time
16 to think about what he's done because he will be right
17 here for 90 more days for contempt sentence. There is no
18 credit and you are jeopardizing your welfare by forcing a
19 consecutive sentence on this.

20 And I'm going to give you time to reflect on this
21 cause things are happening quick for you. I understand
22 that.

23 MR. FOARD: Your Honor, just for clarification for
24 the detention center he will need to be held here for 90
25 days to serve that first prior to being sent to S.C.D.C.

1 I'll make sure they understand that.

2 THE COURT: Okay. Now, I handle so many different
3 defendants you're going to have to help me refresh my
4 memory. Who did a competency exam on him?

5 MR. FOARD: Who -- what doctor actually performed it?
6 Your Honor, I don't know if I have that close at hand.

7 THE COURT: Yes, sir.

8 MR. LETTEER: I think it was in the pre-sentence
9 report. I think the entire report from D.M.H. was in
10 there.

11 THE COURT: You don't remember who it was?

12 MR. LETTEER: Yeah, I was there, but I can't remember
13 the girl's name.

14 MR. FOARD: I don't see it in the pre-sentence
15 report, Your Honor. We can get that from our office. We
16 just don't have it in the file right here with me.

17 MR. LETTEER: I can pull it up on the computer.

18 THE COURT: We are going to start with that and see
19 where it goes from there. It leaves us some doors. It
20 could get worse, or if you decide to think about this
21 thing and cooperate like I asked you to do it can get
22 better. But I want you to keep in mind that I'm not doing
23 anything as strict punishment in this. I'm concerned
24 about your future welfare as well as your family and your
25 children, and they come first.

1 MR. PENNY: Exactly, sir. Daniel Chapter Three and
2 Daniel Chapter Six.

3 THE COURT: All right.

4 MR. PENNY: We know that in Daniel Chapter Three the
5 sheriff, the counselors, the treasurers and all these
6 people required Shadrach, Meshach, and Abednego to bow
7 down before their island of great demons. And they would
8 not. And they said, "Throw them in the fire." They threw
9 them in the fire and turned around and said, "I through
10 threw three in the fire." And he said, "I see four in the
11 fire." Shadrach, Meshach and Abednego come out of the
12 fire.

13 THE COURT: Okay. I'm going to talk with your
14 attorney and the State's attorney here in just a few
15 minutes.

16 MR. FOARD: I'll prepare an order for contempt. I
17 believe the County is going to need something to hold him
18 on that for.

19 MR. LETTEER: Your Honor, the chief psychiatrist was
20 Brandi with an I Justice, and she also had a -- I think
21 she was still in school. There was another girl that sat
22 in there with her, Elizabeth Whetstone, W-H-E-S-T-O-N-E.

23 THE COURT: Sheriff, I have just found him in
24 contempt, and I've added a consecutive 90 days sentence
25 that he will have to serve with the County because the

1 State won't accept a contempt violation.

2 SHERIFF: Yes, sir.

3 THE COURT: In the meantime I'm going to talk with
4 the attorneys. I am probably going to sign an order for
5 him to be reevaluated so I'll need your law enforcement
6 officers assistance to get him to that evaluation and back
7 before I completely seal this sentence off.

8 I have already on the record on the Court's own
9 motion to reconsider so I can leave it open. I've got
10 grave concerns about Mr. Penny.

11 SHERIFF: Whatever you need we'll make sure it
12 happens. Yes, sir.

13 THE COURT: All right.

14 MR. FOARD: Thank you, Your Honor.

15 MR. LETTEER: Thank you, Your Honor.

16 MR. FUNDERBURK: Thank you, Your Honor.

17 (WHEREUPON, other Court-related business was
18 conducted on the record but not related to this case
19 and not included in this transcript of record.)

20 MOTION TO RECONSIDER SENTENCE

21 THE COURT: Mr. Penny, Mr. Letteer, any reflection?
22 I know I've rushed this up. I've done some research and I
23 just don't like the way this whole situation was headed.
24 So I'm going to go ahead and close this matter out unless
25 you tell me that you've had some time to reflect back

1 there and you want to cooperate with Probation and Parole?
2 No. Okay. Based on the State v. Best case, since you
3 won't cooperate; you seem to be dead set on that, I'm
4 reconsidering the sentence.

5 First thing I'm going to do is vacate my contempt
6 order cause I don't think that any good is going to come
7 out of the matter by keeping you in Chesterfield County
8 when they're limited medical and psychological assistance.

9 And your sentence upon reconsideration is now a
10 straight five years with no suspended sentence, no
11 probation. You still get your jail credit. Good luck to
12 you.

13 MR. PENNY: Thank you.

14 MR. FOARD: Thank you, Your Honor.

15 MR. LETTEER: Thank you, Your Honor.

16 END OF TRANSCRIPT OF RECORD

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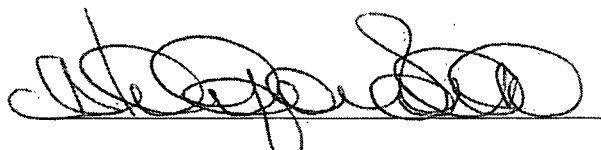
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Chesterfield County, South Carolina, on the 10th day of
July, 2013.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

December 3, 2013

A handwritten signature in dark ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

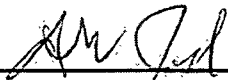
HATTIE O. GORDON, Court Reporter

WITNESSES

Wayne Jordan

Chesterfield County Sheriff

Law Enforcement Case #:



583

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER
2013A1310400001

ARRESTED ON: 2013-01-02

ACTION OF GRAND JURY

TB

Grand Jury Foreperson

May 14 2017

Date

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-13-0182

The State of South Carolina

County of Chesterfield

COURT OF GENERAL SESSIONS

Term:
May 2013

THE STATE

vs.

Dennis Matthew Penny II

INDICTMENT FOR

Burglary / Burglary (After June 20, 1985) -

First degree

Second

§16-11-0311

0312

CDR Code: 0079

0080
JUN 4 PM 4 06
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF CHESTERFIELD)

Burglary / Burglary (After June 20, 1985) - First
degree

§16-11-0311

At a Court of General Sessions, convened on May 14, 2013, the Grand Jurors of Chesterfield County present upon their oath:

BURGLARY, ^{2nd} DEGREECDR: ⁰⁰⁸⁰ ~~0079~~ 16-11-0311

0312

That Dennis Matthew Penny II did in Chesterfield County on or about January 14, 2013 enter the dwelling of Joey Oliver located at [REDACTED] without consent and with the intent to commit a crime therein ~~and the defendant did so in the nighttime~~, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

0314

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

William B. Rogers, Jr.
WILLIAM B. ROGERS, JR.
SOLICITOR

CLERK OF COURT
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Chesterfield

VS.

Dennis Matthew Penny II

AKA:

Race: Sex: M Age: 38

DOB: SS#:

Address:

City, State, Zip

DL#:

2013 JUL 9 PM 2 58

SENTENCE SHEET

INDICTMENT/CASE#: 2013-GS-13-0182

A/W#: 2013A1310400001

Date of Offense: 1/14/2013

S.C. Code §: 16-11-0311

CDR Code #: 0079

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐ ELLERSIn disposition of the said indictment comes now the Defendant who was COURT ☒ CONVICTED OF or ☐ PLEADS
TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree offense Statute 16-11-0312(C)(1); Felony Class E

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Redmond, Kernal B

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 5 (PMB) days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 (PMB)months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ 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 the State Department of Corrections. 206 days.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition. (PMB)

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 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
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$1,338.50

PTUP: may PUP upon motion of SCDPPS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

Can't strongly recommend
place where SCD can coordinate
treatment with VA for hyperchris
disorder as well as PTSD (hyperchris)☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentencing Date:

Clerk of Court Deputy Clerk

Court Reporter

Charity G. G...
Hattie S. G...2048
7/9/2013 (PMB)
7/10/2013

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."

February 11th, 2015



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Chesterfield County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DENNIS M. PENNY, II,

APPELLANT

APPELLATE CASE NO. 2013-001554

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mary Williams Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of February, 2015.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of February, 2015.

Bailey Reed (L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021

RECEIVED

FEB 11 2015

SC Court of Appeals