

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County

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Honorable Roger E. Henderson, Circuit Court Judge

AUG 22 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN HENRY HOLMES, JR.,

APPELLANT

APPELLATE CASE NO 2015-002195

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
)
) COURT OF GENERAL SESSIONS

John Henry Holmes, Jr.,

PLAINTIFF,

v.

State of South Carolina,

DEFENDANT.

)
)
) **TRANSCRIPT OF HEARING**
) C/A No. 2014-GS-10-06159
)
)
)

Charleston County Courthouse
October 12-13, 2015

BEFORE:

HONORABLE ROGER E. HENDERSON, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Chris Lietzow, Esquire
Assistant Solicitor Charles Condon, Esquire
Attorneys for the State of South Carolina

Assistant Public Defender John Kozelski, Esquire
Assistant Public Defender Annie Andrews, Esquire
Attorneys for John Henry Holmes

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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JOHN HENRY HOLMES VS. STATE OF SOUTH CAROLINA

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1 Clerk: Case #2014GS1006159. State of South Carolina
2 vs. John Henry Holmes indicted before Burglary 1st
3 degree. If you answer to that name, please raise your
4 right hand. You may put it down. Do you still answer by
5 the name John Henry Holmes? In Charleston County, South
6 Carolina on or about January 30th, 2014, the defendant,
7 John Henry Holmes did enter the dwelling of Ann Blandin,
8 located at ..Avenue, North Charleston, South
9 Carolina without consent with intent to commit a crime
10 that therein. That and the entry occurred at night in
11 violation of section 16-11-311 South Carolina Code of
12 Laws as ... As say you, are you guilty or not?

13 Mr. Holmes: Not guilty.

14 Clerk: How will you be tried?

15 Mr. Holmes: By God and my country.

16 Clerk: May they send you a true deliverance. Are
17 you ready for trial?

18 Mr. Holmes: Yes I am.

19 Clerk: Thank you Sir.

20 The Court: Alright ladies and gentlemen of the jury,
21 you have heard the formal arraignment of John Henry
22 Holmes. You have heard the indictment read. Mr. Holmes
23 has pled not guilty to the charge of burglary in the 1st
24 degree. We will proceed with the selection of the jury
25 in this matter. No I'm going to have all of the

1 Mr. Kozelski: As to the defense is motion to
2 suppress restatement of third party and defense's motion
3 to suppress statements. We feel it would be
4 appropriate...to address the issues. And the last issue,
5 Your Honor, the termination of prior convictions. I
6 talked to my client at length about whether or not he's
7 going to be testifying. He might need a little more time
8 but I think that's something that we can address after
9 The State's ...

10 The Court: At the time - yes.

11 Mr. Kozelski: We have a list of convictions we
12 believe would apply to that hearing at that time.

13 The Court: And he may not testify so it may not
14 So we need to deal with the statements. Correct
15 Solicitor?

16 Mr. : Yes sir. Your Honor, The State's ready to
17 proceed when you are.

18 The Court: The Court's ready.

19 Mr. Lietzow: The State calls Officer Tony Bunch.

20 Clerk: Do you swear and affirm the testimony you are
21 about to give The Court in the trial in this case is the
22 truth, the whole truth, and nothing but the truth so help
23 you God?

24 Mr. Bunch: I do.

25 Clerk: Please state your first and last name and

1 spell your last name loudly in the mic.

2 Mr. Bunch: Tony Bunch B-U-N-C-H.

3 MR. BUNCH - EXAMINATION BY MR. LIETZOW:

4 Q Good morning Mr. Bunch.

5 A Good morning.

6 Q Can you explain to The Court how you became involved
7 in this case?

8 A I was a case agent.

9 Q How were you made aware to respond to the ...

10 A There was a dispatch call...

11 Q And then you responded at that time?

12 A Correct.

13 Q And when you got to the house, what happened?

14 A I got to the house. We saw a ..in the house. We
15 observed a large piece of glass on the back patio.
16 So we entered through the patio where the piece of
17 glass where the door was opened. So we
18 just...inside.

19 Q At that point, did you make an announcement?

20 A We did.

21 Q What did that constitute?

22 A We are North Charleston Police, ...come out with
23 your hands up.

24 Q And what happened at that point?

25 A ...the announcement, the defendant came out.

1 Q How long after you arriving on the scene did the
2 defendant comply with your orders?

3 A Maybe roughly a minute.

4 Q So it was not a long time?

5 A No not at all.

6 Q What time of day was this?

7 A It was night time.

8 Q Did you have an opportunity to speak with Mr.
9 Holmes?

10 A Sir?

11 Q Did you speak with Mr. Holmes?

12 A After he was read his rights.

13 Q Okay so let's back up. So did you mirandize Mr.
14 Holmes?

15 A I did.

16 Q And was that done on camera?

17 A I don't believe it was on camera.

18 Q When you mirandize an individual, how do you go
19 about doing that process?

20 A I have a card I read to them and ask if they
21 understand them.

22 Q Do you have a card with you here today?

23 A I do.

24 Q Can you pull that out and read to The Court what the
25 Miranda on your card consists of?

- 1 A You have the right to remain silent. Anything you
2 say can and will be used against you in a court of
3 law. You have the right to an attorney and having
4 an attorney present during any questions. If you
5 cannot afford a lawyer, one will be provided to you
6 at ...expense. Do you understand these rights as I
7 have explained them to you ...will you be answering
8 questions without an attorney present.
- 9 Q And did Mr. Holmes indicate that he understood those
10 rights as you read them to him?
- 11 A He did.
- 12 Q And did Mr. Holmes indicate that he was willing to
13 waive those rights?
- 14 A He did.
- 15 Q Did Mr. Holmes make a statement to you after waiving
16 his Miranda rights?
- 17 A No sir....asked him a few minutes later.
- 18 Q Back up. Explain what you just said.
- 19 A Alright we asked what he was doing there and that's
20 when he stated -
- 21 Q So he responded specifically to your question?
- 22 A Yes sir.
- 23 Q And that question was what were you doing here?
- 24 A What were you doing here?
- 25 Q Was anyone else present during the questioning?

1 A My sergeant.

2 Q Did he witness all this?

3 A He did.

4 Q Was the defendant under the influence of drugs or
5 alcohol to the extend that it would impair his
6 ability to understand what was going on?

7 A No sir.

8 Q Did the defendant have physical or mental
9 disabilities that would have impaired his ability to
10 understand what was going on?

11 A No.

12 Q Were you outside when the questioning took place?

13 A Yes sir, by the patrol car.

14 Q The blue lights were flashing?

15 A No sir.

16 Q How long did the defendant's questioning take place?

17 A Maybe five minutes..

18 Q At any time, did he ask for a lawyer?

19 A No sir.

20 Q At any time, did he indicate to you that he was
21 uncomfortable, needed a bathroom break, needed food
22 or anything of that nature?

23 A No sir.

24 Q Did he ask for anything period that you denied him
25 access to?

JOHN HENRY HOLMES VS. STATE OF SOUTH CAROLINA

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1 A No sir.

2 Q Did you threaten him?

3 A No sir.

4 Q Did you make any promises to him?

5 A No sir.

6 Q Did you coerce him ...

7 A No sir.

8 Q Did Mr. Holmes offer his statement free of any
9 outside influence that would be against the law?

10 A He didn't.

11 Q He did not?

12 A He offered...

13 Q When prior to you issuing Miranda, was the defendant
14 under arrest?

15 A Yes sir.

16 Q Okay. Was he free to go at any time?

17 A No sir.

18 Q And is that why you mirandized him?

19 A Yes sir.

20 Q Did you advise of the reasoning why you were
21 questioning him?

22 A Yes sir.

23 Q Did Mr. Holmes's answers appear rational and
24 responsive? Or was he highly emotional so that
25 ...his abilities to understand what was going on.

1 A He appeared rational.

2 Q Did he ever later change his mind and ask to have an
3 attorney while you were questioning him?

4 A No sir.

5 Q Specifically what did you ask Mr. Holmes?

6 A What was he doing in the residence.

7 Q What was his response to that question?

8 A When I asked him what he was doing there, he stated
9 he didn't know.

10 The Court: Said what?

11 A Originally he stated that he didn't know.

12 Q Did you follow up with any additional questions?

13 A Yes sir. I then asked him how he got into the
14 residence.

15 Q What was his response to that question?

16 A That he entered through the patio window and side
17 door.

18 Q Did you ask him if he had permission to be inside
19 the residence?

20 A I did.

21 Q What was his response?

22 A He said he did not.

23 Q Did you ask him if he knew the owner of the
24 residence?

25 A I did.

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1 Q And his response was?

2 A He did not.

3 Q Was there any other questions asked at that point?

4 A No sir.

5 Q Did he make any additional statements at that point?

6 A No sir.

7 Mr. Lietzow: The State has no further questions for
8 Officer Bunch. Officer Bunch, please respond and answer
9 any questions Mr. Kozelski or Ms. Andrews asks you.

10 The Court: Mr. Kozelski?

11 Mr. Kozelski: Thank you Your Honor. May it please
12 The Court.

13 MR. BUNCH - CROSS BY MR. KOZELSKI:

14 Q Officer Bunch, when you got to that house, Mr.
15 Holmes was still inside?

16 A Yes sir.

17 Q It wasn't until you got into the house when you
18 announced North Charleston that he came out of the
19 back bedroom?

20 A I entered the actual residence where the patio door
21 was wide open and I made the announcement through
22 the door.

23 Q And you went in - you went in the house?

24 A No sir, I stayed

25 Q So you were standing on the patio, you never went

1 into the house?

2 A I never went over the threshold of the house.

3 Q Okay. And Mr. Holmes came all the way out to you on
4 the patio?

5 A Yes sir. We called him out to us.

6 Q How were you able to get him out of the patio?

7 A From the patio, once I put him in custody,
8 another officer escorted him through the house
9 to the front door because we ...through glass.

10 Q Did you ever go into the house?

11 A I did not.

12 Q So you went back out the window that you came in?

13 A Yes sir.

14 Q Okay and you went around the front?

15 A I met the officers around the front.

16 Q And were any of the other officers speaking with Mr.
17 Holmes at that time?

18 A No sir.

19 Q So you're the only person that exchanged words with
20 Mr. Holmes?

21 A Yes sir.

22 Q And you were with him the whole time?

23 A Once I got him outside of the house, I walked to the
24 car with him.

25 Q And he was still in handcuffs from where you put

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1 them on the patio?

2 A Yes sir.

3 Q And then you picked up the pat down?

4 A Yes sir.

5 Q You found his identification card on him?

6 A I don't recall the ID on him at that point. We had
7 to identify him by other means.

8 Q Did he tell you his name?

9 A I believe he did sir.

10 Q And eventually you told Mr. Lietzow that you
11 mirandized him?

12 A Yes sir.

13 Q You asked him what he was doing in the house?

14 A Yes sir.

15 Q He told you that he was trying to find a place to
16 sleep?

17 A At first, he said he didn't know.

18 Q And then he does eventually tell you he's trying to
19 find a place to sleep?

20 A Eventually, that was what he said.

21 Q He told you he didn't know the owner?

22 A He did not.

23 Q And that he didn't have permission to be there?

24 A He did not.

25 Q You said he didn't appear to be under the influence

1 of any drugs or alcohol?

2 A No sir.

3 Q And didn't appear any sort of mental condition?

4 A No sir.

5 Q When you're questioning him, is he by the patrol car
6 or is he inside the patrol car?

7 A I had him sitting down on the seat facing toward me.

8 Q Okay so the car door was open?

9 A The car door was open, yes sir.

10 Mr. Kozelski: May The Court...

11 The Court: Yes sir.

12 Mr. Kozelski: I don't have any further questions at
13 this time.

14 The Court: Solicitor?

15 Mr. Lietzow: Just briefly, Your Honor, Officer Bunch
16 indicated that Mr. Holmes was under arrest. He was not
17 free to go. As a result, Mr. - Officer Bunch mirandized
18 him. Officer Bunch testified that the defendant, John
19 Holmes, made an intelligent voluntary waiver of his
20 Miranda rights. Officer bunch testified that there was
21 no coerces, no threats, no promises, under the influence
22 of any kind to convince Mr. Holmes to testify. It's The
23 State's position that Mr. Holmes testify completely on
24 his own free will and as such, The State would ask Your
25 Honor to, if you'll allow us, to introduce those

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1 statements against Mr. Holmes through Officer Bunch in
2 his trial...Thank you Your Honor.

3 Mr. Kozelski: Your Honor, we ...withdraw the motion
4 at this time to suppress those statements. It seems the
5 testimony was voluntarily given. In that affect, we will
6 withdraw our motion.

7 The Court: Thank you sir. You may step down sir.

8 Mr. Lietzow: Your Honor for the purposes of this
9 case, can I have this witness back here at 2pm sharp to
10 begin the trial?

11 The Court: Yes sir. Is he your first witness?

12 Mr. Lietzow: No sir, he is my second witness.

13 The Court: Any other issues, gentlemen, that we need
14 to take up?

15 Mr. Lietzow: Your Honor, at what point would it be
16 appropriate to address the request to charges?

17 The Court: We can do it now if you want to or we can
18 wait until The State's case if you want to?

19 Mr. Kozelski: I think for that particular charge,
20 The State requests, we ask, that we hold off.

21 Mr. Lietzow: That's fine with me Your Honor.

22 The Court: We'll wait...The State's case...

23 Mr. Lietzow: Besides the Jackson v. Denno, The State
24 has no further pretrial motions to make. Thank you.

25 The Court: Thank you sir.

1 Mr. Kozelski: Your Honor, the only other motion that
2 the defense has is the motion to suppress ..3rd party.
3 There was a 911 call made. It's unclear who made the 911
4 call, it might have been a neighbor. He said that - it
5 was very vague as to what was said because the 911 tape
6 isn't actually saved. I just want to make sure that Mr.
7 Lietzow makes his witnesses aware not to say anything
8 that was regurgitated by this 3rd party who we don't know
9 who it is.

10 Mr. Lietzow: Your Honor, if anybody was to testify
11 as to what that statement would be, it would not be
12 hearsay in my opinion. It would be offered to show why
13 the officer made his determination to go to the scene as
14 quickly as he did. We're not trying to offer any ...
15 statements to ...The truth of the matter is showing why
16 the officer took a specific course of action.

17 The Court: Was he not dispatched?

18 Mr. Lietzow: Yes he was dispatched as a result of
19 this 911 call that Mr. Kozelski is asking us to not get
20 into specifically.

21 The Court: If he's dispatched, that's the reason for
22 him to go there.

23 Mr. Kozelski: We have no objections to them saying
24 that they were dispatched to a possible burglary. What
25 we do have an issue with is some of the details about

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1 what the statement said, as far as breaking glass. I'm
2 not sure - it's very unclear. They said they saw him
3 break the glass, they saw him enter the house after
4 breaking glass. But there is definitely breaking glass
5 is part of that.

6 The Court: I think what he found when he got there
7 was broken glass...

8 Mr. Lietzow: For purposes of clarifying the
9 statement would be that glass was - somebody heard glass
10 break and somebody saw someone entering the house. There
11 was no identification Mr. Holmes - again we were just
12 offer that we're not trying to admit that as hearsay.
13 We're barely trying to admit that to explain the
14 officer's reactions when he got to the scene, explain why
15 he would draw his weapon when he got to the scene,
16 explain why he rushed to the scene as quickly as he did.
17 We think that's important to take into consideration
18 exactly why Officer Bunch took what some people would
19 consider a very aggressive approach when he got to the
20 scene and I think that having that information...would
21 explain and justify his specific reactions upon arriving
22 on the scene, Your Honor.

23 Mr. Kozelski: Our contention of course, Your Honor,
24 is that the glass wasn't broken at the time. The glass
25 was broken at an earlier time in the day. I think we

1 have some evidence to support that. So we would ask The
2 Court to exclude any statements from this 3rd party
3 saying that this defendant broke the glass.

4 Mr. Lietzow: Your Honor, if I may briefly. Officer
5 Bunch is, obviously, I can't put words in his mouth.
6 When I met with him, I asked him the question what were
7 your thoughts when you got on the scene. And he said
8 that I had a 911 call that glass was broken and that's
9 how he entered the house. When I got there, I drew my
10 weapon because of safety. I think - and then I made the
11 announcement North Charleston Police Department, if
12 you're here, come out with your hands up. I think those
13 are very key factors explaining, like I sad, Officer
14 Bunch's behavior and it would be unfair to the jury not
15 allow them to have the entire story of exactly what
16 Officer Bunch was going through and why he made the
17 decision that he made.

18 The Court: Okay.

19 Mr. Lietzow: And again, we're not offering that to
20 prove the truth of the matter.

21 The Court: Alright, I'll let you know what I'm going
22 to do. Thank you. Anything else for the defendant?

23 Mr. Kozelski: Not at this time, Your Honor.

24 (Back from lunch)

25 The Court: Juror #36?

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1 Charles Brown: Yes sir?

2 The Court: Okay I was handed a note during lunch
3 today, you wrote indicating that your nephew has been
4 charged with leaving the scene of an accident with
5 injury. The warrant is still outstanding and you just
6 discovered this because your sister just called you?

7 Charles Brown: Yeah on the lunch break. She called
8 on the lunch break.

9 The Court: So you didn't know this obviously when we
10 questioned you earlier?

11 Charles Brown: No.

12 The Court: The reason I brought you out is now that
13 this has occurred and you have this information, would
14 this interfere with your ability to render a fair and
15 impartial judgement in this case? In other words, would
16 you be fair and impartial to both parties, even after
17 discovering this?

18 Charles Brown: Yeah I just thought you should know
19 this.

20 The Court: Okay I appreciate it and counsel does as
21 well. You will remain on the jury panel. If you'll go
22 back, she's going to bring all of you back in right now.
23 Alright while she's getting those jurors, I want it on
24 the record that I indicated to counsel in chambers that I
25 was going to allow the statement from the 3rd party with

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1 regards to the 911 call. So that's my ruling in that
2 case.

3 (Jurors entering courtroom)

4 : All jurors present Your Honor.

5 The Court: Thank you ma'am. You may be seated. Mr.
6 Whittington, you're our alternate correct?

7 Mr. Whittington: Yes.

8 The Court: ...you may have already been instructed
9 to do that.

10 Clerk: Ladies and gentlemen of the jury please rise.
11 Raise your right hands. Do you swear ...you shall ...try
12 a true deliverance made to the State of South Carolina
13 and the defendant of the bar who you shall
14 ...charge...render according to the evidence and laws so
15 help you God? Please indicate by saying "I do".

16 Jury: I do.

17 Clerk: If you have accepted this oath, you may be
18 seated. Please let the record reflect all jurors have
19 been seated.

20 The Court: Thank you. Alright ladies and gentlemen
21 of the jury, we are about to begin the trial of the case
22 of the State of South Carolina vs. John Henry Holmes.
23 You've already been introduced to Mr. Holmes earlier when
24 we began the selection process. Before we begin this
25 trial, I'll tell you that this trial will probably be

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1 The Court: By the defendant?

2 Mr. Kozelski: No Your Honor.

3 The Court: Alright, we will now begin the trial.

4 Solicitor?

5 Mr. Lietzow: Thank you. Your Honor may it please

6 The Court?

7 The Court: Yes, sir.

8 Mr. Lietzow: Ladies and gentlemen, we are here
9 today because John Henry Holmes committed a burglary in
10 the 1st degree. When he broke in to an elderly woman's
11 house, invaded her privacy, destroyed her property, and
12 literally got caught red-handed in the act. Actions have
13 consequences. That's something you hear from when you're
14 very small. You probably still hear it.

15 John Holmes carefully made his decision that night.
16 He deliberately made that action when he broke in to
17 , North Charleston, South Carolina. And
18 today he is being held accountable for his actions. July
19 30, 2014 about 12:30 at night, as I mentioned,
20 , clear night, no rain, it's typical
21 Charleston summer evening, middle of the night. A
22 vigilant citizen is in the area and suddenly they hear
23 glass shatter. When they look up, they see someone going
24 into this house. Thankfully that person had the courage
25 to call 911. The 911 call was made at 12:31:34. The

1 North Charleston Police Department is dispatched to the
2 scene and Officer Tony Bunch arrives at 12:35:57; four
3 minutes and 23 seconds between the time 911 was called
4 and between the time Officer Bunch arrives on the scene.
5 Less than four and a half minutes; that's an incredible
6 response time.

7 When Officer Bunch arrives on scene, one of the
8 first things he notices is shattered glass on the ground
9 near the steps that lead up to the patio. Officer Bunch
10 goes into the patio, which is enclosed by glass and is
11 attached to the house. And he sees a pane of glass
12 broken off on the window on the door leading into the
13 house. Now Officer Bunch is going to testify today and
14 he's going to explain to you that based on the 911 call
15 that somebody heard glass break and somebody saw someone
16 go into this house. Him actually visually confirming
17 that glass had been broken and him seeing that on the
18 ground and less than four and half minute response time,
19 he's thinking to himself a burglary just took place.
20 There's a pretty good chance that whoever committed that
21 burglary is still inside that house. Officer Bunch draws
22 his service weapon and makes an announcement. North
23 Charleston Police Department. If you're in the house,
24 come out with your hands up. Where Officer Bunch is
25 located, he has an unobstructed view down the hallway.

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1 He sees John Holmes poke his head out, dip back in the
2 room real quick. Eventually, Mr. Holmes does comply with
3 the officer's commands and he comes out and Officer Bunch
4 takes him into custody.

5 In addition, to the fact that John Holmes was caught
6 inside the house, he also tells the officer exactly where
7 he entered the house, which is from the patio, into the
8 patio and then through the side door that leads into the
9 house. He told the officer that he didn't have
10 permission to be inside the house, that he didn't know
11 the owner either. Judge Henderson mentioned that at the
12 conclusion of the trial, you'll get an instruction on the
13 law. He briefly mention that there are elements of a
14 burglary in the 1st degree. I think it's really
15 important that I just take a quick second right now to
16 tell y'all what those elements are. And that way, when
17 you hear certain pieces of testimony, when I enter
18 certain pieces of evidence in, you're understanding why
19 I'm doing that. It makes sense to you; otherwise you
20 might think some of the questions I ask are a little
21 crazy. Five elements of burglary in the 1st degree.
22 First one is entering a dwelling without consent with the
23 intent to commit a crime therein at night time. Entering
24 without consent with the intent to commit a crime therein
25 at night. Every single one of you come in here into this

1 courtroom today with unique life experiences and a unique
2 perspective. This case is going to come down to one
3 thing and that's common sense. Whatever excuse the
4 defense might try to come up with to explain away the
5 fact that John Holmes was caught inside that house only
6 requires you to apply your common sense. You don't get
7 to break into someone's house in the middle of the night,
8 you don't get to invade their privacy, you don't get to
9 destroy their property, you don't get to get caught in
10 their house and get away with a burglary. Actions have
11 consequences and at the end of this trial, I'll stand up
12 here in front of all y'all again and I'll ask you to find
13 John Henry Holmes guilty of burglary in the 1st degree.
14 Thank you.

15 Mr. Kozelski: May it please the Court, Your Honor.

16 The Court: Yes, sir.

17 Mr. Kozelski: I don't know of anywhere in the
18 world, let alone, any jurisdiction in America, where
19 sleeping is considered a crime. And that's exactly what
20 Mr. Holmes was trying to do on the night of July 30th,
21 2014. After a long and extremely hot day in North
22 Charleston where Mr. Holmes was walking the streets all
23 day and the reason he was walking the streets all day is
24 because at the time he didn't have a home. He didn't
25 have a shelter or a refuge to go to so he'd stick to his

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1 surroundings. And his surroundings were rough. It's
2 East Montague, North Charleston. It's not a place I
3 would want to be walking around at night. He could be
4 dangerous. May be hot. And right off of East Montague
5 on a dimly lit road, there's Luella Avenue. And on the
6 corner of East Montague and Luella, there's a
7 neighborhood store attached to a Hot and Crispy
8 restaurant. Behind that restaurant is a small trailer
9 park. And a little bit farther down the road is

10 Now, when Mr. Holmes walked past this home, he
11 could see that nobody lived there. He could see the
12 boarded up doors and boarded up windows from the dozen or
13 so burglaries that had happened earlier in the month. He
14 could see the broken glass and the broken door from the
15 burglary that happened earlier in the day. It wasn't his
16 intention to go in the home that somebody lived in. He
17 believed this house was abandoned. And it was a house
18 that wasn't a home but it was a house that he could seek
19 refuge. So, Mr. Holmes went into the window that was
20 already broken. He didn't break it like Mr. Lietzow
21 said. He went into the door that was already broken and
22 he headed towards the back bedroom. He gets in the back
23 bedroom, he begins to lie down. He's exhausted, his feet
24 having to endure the asphalt all day. He just wants to
25 rest his head. But right before he does, he hears the

1 sound of a North Charleston police officer. He announces
2 himself this is North Charleston Police. If anybody's in
3 there, identify yourself and come out with your hands up.
4 So Mr. Holmes gets up. There is an alarm that starts to
5 sound. Then he walks towards the officer. Now this
6 officer does have a gun pointed at him. It does startle
7 him at first but he comes out with his hands up. Mr.
8 Holmes doesn't make a beeline to the bathroom to try to
9 escape out the window, he doesn't try to run past the
10 officer and go out the front door. The officer doesn't
11 come in the house. The officer is on the outside of the
12 patio. Mr. Holmes walks up to the officer with his hands
13 up and he puts them behind his back. And he does that
14 because he knows he hasn't been in that house with
15 intentions of stealing anything. He was trying to sleep.
16 So Officer Bunch puts Mr. Holmes in handcuffs. He's
17 escorted around to the front of the house where Officer
18 Bunch performs a protective pat down. He searches
19 through his pockets. And in his pockets, they don't find
20 any items from the house. They don't find any burglary
21 tools in his possession. They don't find any gloves, a
22 ski mask, any money, any drugs. All they find is junk.
23 It was junk. They don't even take it into evidence.
24 It's what homeless people have in their pockets. So they
25 begin to question him about why he was in the house. He's

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1 honest with them. I don't have permission, I don't know
2 the owner, I didn't know there was an owner. He has
3 nothing to hide. He tells them these things. To the
4 police, this is an open and shut case. He got caught in
5 the house. He must have been in there to steal
6 something. They call in a crime scene, take about five
7 pictures, broken glass, case closed. That's it. They're
8 completely unaware of the burglary that happened earlier
9 in the day. They're completely unaware of the dozen or
10 so burglaries that happened earlier in the month. This
11 house is not a home, this house was just a refuge. Mr.
12 Lietzow wants you to find that Mr. Holmes had the intent
13 to steal something because he went in that house. Says
14 he broke the glass. But that's not the case. The glass
15 was reported broken earlier in the day. He went in there
16 for the exact reason that he told the police. Trying to
17 find some sleep. Sleeping is not a crime. And that's
18 why at the end of this trial, I will come back before you
19 and I'm going to ask you to find him not guilty of
20 burglarizing this house.

21 The Court: Solicitor?

22 Mr. Lietzow: Thank you Your Honor. The State calls
23 it's first witness, Lisa Kubicsko.

24 Clerk: Do you swear that the testimony you are about
25 to give the jury and the Court in the trial in this case

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

3 Ms. Kubicsko: I do.

4 Clerk: Thank you. Please be seated. Please state
5 your first and last name. Spell your last name loudly
6 and clearly in the microphone.

7 Ms. Kubicsko: Lisa Kubicsko K-U-B-I-C-S-K-O.

8 MS. KUBICKO - EXAMINATION BY MR. LIETZOW:

9 Q Thank you Ms. Kubicsko. Good afternoon. Please
10 tell the jury who you're employed by.

11 A I'm employed by the City of North Charleston. I'm
12 with the North Charleston Police Department as a
13 crime scene technician.

14 Q And how long have you been with North Charleston?

15 A It'll be five years in December.

16 Q What are your titles and what are your duties with
17 the North Charleston Police Department?

18 A I'm a crime scene technician. My duties are to
19 respond to calls of service, different crime scenes.
20 Whether it be burglary, robberies, shootings,
21 homicides, suicides. We're in charge of coming to
22 the scene, documenting the scene, taking
23 photographs, collecting evidence, preserving that
24 evidence. We also dust for fingerprints, collect
25 DNA evidence, prepare items to go to SLED for

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1 further testing.

2 Q Were you working in that capacity in July of 2014?

3 A Yes.

4 Q And please explain how you became involved in this
5 case.

6 A I was working this evening so I was called by the
7 officers to respond to the incident location.

8 Q Do you recall approximately when you arrived at the
9 crime scene?

10 A It was around 1am.

11 Q So it was dark outside?

12 A Yes.

13 Q What did you learn when you arrived?

14 A I spoke to the responding officers. I was informed
15 that they had responded for somebody that had broken
16 into the residence, they had broken glass. When
17 they asked that I take photographs to document the
18 damage to the residence.

19 Q Ms. Kubicsko, I'm showing you what's been marked for
20 identification purposes only as the State's exhibit
21 1, 2, and 3. Do you recognize those photos?

22 A Yes.

23 Q And what are those photos of?

24 A These are of the residence itself.

25 Q And are those photos fair and accurate

1 representation of the location that you responded to
2 on July 30, 2014?

3 A Yes.

4 Mr. Lietzow: Your Honor, may we approach?

5 (Attorneys at bench)

6 Q Could you please state for the record and the jury
7 what days those photos were taken?

8 A These are Google maps photos of the front of the
9 residence. It says street view March 2015.

10 Q And to be clear, this incident occurred in - when?

11 A July 30 of 2014.

12 Q And to be clear, those are not photos taken on the
13 day of the incident? Those are merely re-
14 enactments, merely Google street view photos of the
15 house in March of 2015?

16 A Correct.

17 Q At this point, Your Honor, The State will move to
18 enter those photos in evidence for the sake of the
19 jury.

20 The Court: Objection?

21 Mr. Kozelski: Your Honor, we just stand by our
22 previous objection.

23 The Court: Okay, I'm going to overrule the
24 objection. It's been made clear that this is not the way
25 the house looked the day of the accident or at the time

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1 of the accident. But on the day in question when Google
2 was downloaded on the computer. So these will be marked
3 and admitted into evidence as 1, 2, and 3 by the court
4 reporter.

5 (State's Exhibits 1, 2 and 3 were marked into evidence)

6 Mr. Lietzow: Your Honor, permission to publish this
7 for the jury?

8 Q Explain to the jury what that is Ms. Kubicsko.

9 A This is a Google maps image of the front of the
10 residence.

11 Q Is this that same photo, just zoomed in a little bit
12 more?

13 A Yes.

14 Q And is this photo that same residence, just from
15 straight ahead?

16 A Yes.

17 (State Exhibits 4, 5, 6 and 7 were marked for I.D. only)

18 Q Ms. Kubicsko, I'm now going to show you what's been
19 marked for identification purposes only. That's
20 State's exhibit 4, State's exhibit 5, State's
21 exhibit 6, and State's exhibit 7. Do you recognize
22 those photos?

23 A Yes.

24 Q Did you take those photos?

25 A Yes.

1 Q Are those photos a fair and accurate representation
2 of the scene that you responded to that night?

3 A Yes.

4 Mr. Lietzow: At this point Your Honor, The State
5 will move to enter State's 4-7 into evidence and
6 publish to the jury.

7 Mr. Kozelski: No objections.

8 The Court: Alright, without objections.

9 (State Exhibits 4, 5, 6 and 7 marked into evidence)

10 Mr. Lietzow: Permission to publish Your Honor?

11 The Court: Yes, exhibits 4-7 will be admitted into
12 evidence.

13 Q Ms. Kubiscko, I'm showing State's exhibit 4. I know
14 it's a little difficult. Take a look at it....Tell
15 the jury what this is a photo of.

16 A This is a photo taken from the rear of the
17 residence. As you saw on the Google maps image, on
18 the right side of the residence, there was that
19 glassed-in porch area. This is a photo taken of the
20 rear side of that area.

21 Q And is that broken glass on the ground there?

22 A Yes.

23 Q Now showing State's exhibit 5. Same photo, just a
24 little bit closer in?

25 A Yes.

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1 Q Now showing State's exhibit 6. Please explain what
2 that is to the jury. Ms. Kubicsko, can you please
3 explain what that is to the jury?

4 A I want to say it's upside down. This is a photo of
5 me reaching in that broken pane that you saw and
6 looking up into the interior door that goes into the
7 residence and the shattered glass right by the door
8 knob.

9 Q Is that a closer-in view of that?

10 A Yes.

11 Mr. Lietzow: Your Honor, may we approach briefly?

12 The Court: Yes sir.

13 (Attorneys at bench)

14 The Court: I want to remind all the jurors that I
15 need you to pay close attention to all of the testimony
16 that is being introduced. If at any time any of you feel
17 yourself getting drowsy or something else since we've had
18 lunch, just stand up in place and then you can sit back
19 down. I need everybody to stay focused on this and
20 remain alert and pay attention to what's taking place and
21 all the testimony. You may continue, sir.

22 Mr. Lietzow: May we approach Your Honor?

23 (Attorneys at bench)

24 Mr. Lietzow: May I continue Your Honor?

25 The Court: In just a second.

1 Q Ms. Kubicsko, did you have any other involvement in
2 this case?

3 A No.

4 Q Did you dust for fingerprints?

5 A No.

6 Q Did you look for samples of DNA?

7 A No.

8 Q Please explain to the jury why you didn't do those
9 things.

10 A Those are techniques that we do when we are trying
11 to identify an unknown suspect. In this case, we
12 did not need to do that.

13 Mr. Lietzow: Thank you Ms. Kubicsko, I have no
14 further questions for you. Please answer any questions
15 Mr. Kozelski or Ms. Andrews have.

16 MS. KUBICKO - CROSS BY MR. KOZELSKI:

17 Q May it please the Court, Your Honor.

18 The Court: Yes, sir.

19 Q: Are you Officer Kubicsko or Crime Scene Technician
20 Kubicsko?

21 A Crime Scene Technician Kubicsko.

22 Q Okay. I want to talk to you a little bit about
23 that. Your job is to investigate crime.

24 A My job is to respond to the crime scenes and
25 document the scene, collect the evidence, analyze

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1 the evidence, and report my findings usually to the
2 investigators.

3 Q So you collect the evidence to convict the guilty?

4 A Yes, sir.

5 Q Sometimes you collect evidence that excludes
6 innocent people?

7 A Yes, sir.

8 Q One thing that you do is that you write reports.

9 A Yes.

10 Q You do that so you can refresh your recollection
11 about the cases?

12 A Yes.

13 Q Because you handle a lot of cases?

14 A Yes.

15 Q It's important that those reports are accurate.

16 A Yes, sir.

17 Q Other people rely on your reports too?

18 A Yes.

19 Q You have officers who rely on them?

20 A Yes.

21 Q Solicitor relies on them?

22 A Yes.

23 Q I rely on them?

24 A Yes.

25 Q Eventually the jury relies on them?

1 A Yes.

2 Q So it's important to be complete when you write
3 these reports?

4 A Yes.

5 Q You don't want to leave anything out?

6 A Yes.

7 Q Otherwise the people who do rely on your reports
8 wouldn't have the full story?

9 A Correct.

10 Q And getting the full story is very important?

11 A Correct.

12 Q And being a Crime Scene Technician is an important
13 part of most investigations?

14 A Yes.

15 Q As we stated, you collect evidence?

16 A Yes.

17 Q That evidence helps identify a specific perpetrator
18 or perpetrators?

19 A Yes.

20 Q And you were trained on how to protect the crime
21 scene?

22 A Yes.

23 Q You're also trained in specialized techniques?

24 A Yes.

25 Q You're trained on how to preserve evidence?

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- 1 A Yes.
- 2 Q You're trained on how to collect fingerprints?
- 3 A Yes.
- 4 Q You're trained on how to collect DNA?
- 5 A Yes.
- 6 Q And that would be blood?
- 7 A Yes.
- 8 Q And saliva?
- 9 A Yes.
- 10 Q Touch DNA?
- 11 A Yes.
- 12 Q Other bodily fluids?
- 13 A Yes.
- 14 Q Now when you were called to this scene on
- 15 , you said you had just gotten on
- 16 shift, the night shift?
- 17 A I was working on night shift, yes.
- 18 Q So you were not working earlier in the day?
- 19 A No.
- 20 Q So this was the first time that you had arrived at
- 21 this residence?
- 22 A Yes.
- 23 Q And the first time that you attempted to collect any
- 24 evidence from this scene?
- 25 A Yes.

1 Q And you were told that Mr. Holmes broke a window to
2 the porch?

3 A Yes.

4 Q But you didn't see him break any window?

5 A No.

6 Q And you weren't aware that there was a burglary
7 reported earlier that day?

8 A No.

9 Q So you block off the scene?

10 A I'm sorry?

11 Q You blocked off the scene?

12 A No.

13 Q Okay so you didn't block off the scene?

14 A No. That is usually --- if that's going to be done,
15 it's usually something that is done before I even
16 arrive by the officers to secure the crime scene.

17 Q Okay you took some photos?

18 A Yes.

19 Q To document ...

20 A Yes, to document the damage to the residence in this
21 case.

22 Q So just the outside of the house?

23 A Yes.

24 Q You never went inside the house?

25 A No.

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- 1 Q And the photos that you took were of broken glass?
- 2 A Yes.
- 3 Q There's a broken glass window that we just showed?
- 4 A Yes.
- 5 Q There were no other broken glass windows that you
- 6 saw?
- 7 A No.
- 8 Q And you didn't take any photos of any other broken
- 9 glasses, did you?
- 10 A No, I was not informed of any other broken glass to
- 11 that residence.
- 12 Q I'm going to show you what's been marked State's
- 13 exhibit 5. In this photo, it appears that there are
- 14 some items right inside the window.
- 15 A Yes.
- 16 Q There are two, it seems like, metal canisters?
- 17 A I'm not exactly sure what they are.
- 18 Q There's a styrofoam cup?
- 19 A Yes.
- 20 Q There is some wooden walking sticks? Wooden sticks?
- 21 Fair to say?
- 22 A It looks like wood. I can't say what it is exactly.
- 23 Q Okay it looks like items that could be used for
- 24 breaking glass?
- 25 A I think anything could be used to break glass with

1 enough force.

2 Q Yes but you didn't collect those items?

3 A No.

4 Q You didn't find any fingerprints on those items?

5 A I did not dust for fingerprints, no.

6 Q And you took a picture of the inside door as well?

7 A Yes, just from reaching into that broken pane. I
8 just pointed out the broken glass on that door and
9 took a photo.

10 Q And once again, you never went in?

11 A No.

12 Q And you didn't see if there was glass on the other
13 side of the door?

14 A No.

15 Q And you didn't collect the glass?

16 A No.

17 Q And you didn't see any blood on the glass?

18 A I did not.

19 Q So there were no blood samples collected at all?

20 A No.

21 Q And you didn't find any blood coming from Mr.
22 Holmes's hands?

23 A I never saw the suspect that the officers had
24 detained that night.

25 Q So you never went into the house to document

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1 anything that was in there?

2 A No. I was asked by officers to respond and to
3 document the broken glass. We often are not called
4 to burglaries in cases where they enter the
5 residence and catch the suspect inside.

6 Q But once again, you were not familiar with the prior
7 broken glass?

8 A No.

9 Q And so no evidence was collected from inside the
10 house?

11 A No.

12 Q And there was no physical evidence collected at all?

13 A No just the photograph.

14 Q Just so we're clear. When you chose not to
15 fingerprint the glass or the wooden stick, you did
16 not know about the previous burglary?

17 A Correct.

18 Mr. Kozelski: No further questions.

19 The Court: Solicitor?

20 Mr. Lietzow: Nothing further for this witness, Your
21 Honor.

22 The Court: Alright, you may step down now. Call
23 your next witness?

24 Mr. Lietzow: The State calls Office Tony Bunch.

25 Clerk: Do you swear and affirm the testimony that

1 you are about to give the jury and the Court in the trial
2 in this case will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 Mr. Bunch: I do.

5 Clerk: Thank you sir. Please be seated. What say
6 it, please state your first and last name and spell your
7 last name loudly and clearly into the microphone.

8 Mr. Bunch: Tony Bunch B-U-N-C-H.

9 MR. BUNCH - EXAMINATION BY MR. LIETZOW:

10 Q Good afternoon Officer Bunch.

11 A Good afternoon, sir.

12 Q Please tell the jury what you do for a living.

13 A I'm a law enforcement officer.

14 Q And who are you employed by?

15 A City of North Charleston through North Charleston
16 PD.

17 Q And how long have you been with the North Charleston
18 Police Department?

19 A Six years.

20 Q And what are your titles and duties with North
21 Charleston?

22 A Patrolman First Class. Preventing crime, take
23 action with crimes that have been committed, make
24 misdemeanor arrest and felony arrest where
25 warranted.

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1 Q And were you working in that capacity in July of
2 2014?

3 A I was.

4 Q Tell the jury how you became involved in this case
5 on July 30th, 2014.

6 A On that date, dispatch had a call from a person that
7 appeared to be entering a residence from the rear
8 and saw broken glass...

9 Mr. Kozelski: Objection Your Honor.

10 The Court: I'm going to overrule the objection.
11 I've already indicated that I'm going to allow that
12 testimony.

13 Q Please continue.

14 A That concerned citizen said there was broken glass
15 that appeared to see, saw a person appear to be in
16 the rear of the residence. My team and I got there
17 ... all the officers got around the house, made sure
18 nobody came out. Upon seeing the broken glass, it
19 appeared there was possibly a burglary in progress
20 and somebody may be in the residence.

21 Q And do you recall exactly what time the 911 call was
22 placed? It's all right if you don't, I may can help
23 refresh your memory.

24 A 12:30, 1am.

25 Q Can you be more specific than that?

1 A 12:31am and 54 seconds.

2 Q And were you patrolling in that area?

3 A Yes, sir, we were already in the area.

4 Q Do you recall exactly when you arrived on the scene?

5 A 12:35 and 57 seconds.

6 Q So that was about four and a half minutes between
7 the call and arrival?

8 A Yes sir.

9 Q Was it dark when you arrived?

10 A It was.

11 Q Night time?

12 A Yes sir.

13 Q Can you explain the lighting situation that was
14 around the house?

15 A Very dim, mostly street light near the residences.

16 Q When you arrived, take the jury through what
17 happened.

18 A We got on scene, ...we surrounded the house, went
19 around to the back and saw the glass was broken. So
20 once we established someone was possibly in there
21 myself along with my partner climbed through the
22 patio window. The interior door was wide open,
23 there was broken glass at the interior door. So at
24 that point, we began making announcements, you know,
25 North Charleston Police, pronounce yourself and come

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1 out with your hands up.

2 Q Officer Bunch, I'm showing you what's been marked as
3 State's exhibit 4. Is that the first location that
4 you noticed the broken glass?

5 A Yes sir.

6 Q Explain to the jury how you got in through there.

7 A The window. Kind of crawled through it, worked my
8 way through it as best as possible.

9 Q Showing the State's exhibit 6. Explain what this
10 is.

11 A That's the window pane closest to the door knob that
12 was broken, possibly where the suspect accessed the
13 door knob to unlock it from the inside.

14 Q Explain to the jury your frame of mind at this
15 point, before you had seen anybody inside the house.

16 A At this point, we got somebody had called in and
17 said somebody had entered the residence through the
18 back entrance. So at this point, I had every right
19 to believe there was somebody inside the house.

20 Q What did you do as a result?

21 A We drew our weapons. Once my partner and I got in
22 we drew our weapons, made the announcements for
23 whoever is in the house, come out with your hands
24 up.

25 Q And when you made that announcement, where were you

1 standing?

2 A At the --- just outside of the threshold of the
3 door.

4 Q That door right there?

5 A Yes sir.

6 Q And explain the view you had into the house from
7 that location.

8 A From there I could see a portion of the living room
9 to the left. To the right was a little area and I
10 could see straight down the hallway to the opposite
11 wall at the other end of the house.

12 Q You mentioned you drew your weapon. Why did you do
13 this?

14 A Just in case the suspect is armed.

15 Q So safety for you?

16 A Yes sir, safety.

17 Q Is that also a measure of safety for the suspect
18 himself?

19 A Yes sir.

20 Q And after the announcement, what happened?

21 A We made the announcement multiple times then we
22 heard movement and then saw somebody come out the
23 back with their hands up.

24 Q When you saw him originally, did that individual
25 duck back in or make any evasive movements?

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1 A When we called him out, he appeared to duck into
2 another room briefly, then come back out.

3 Q Where in relation did the defendant come out of from
4 where he entered the residence?

5 A From where we were, the back side. Farthest away
6 from the entry point.

7 Q Okay. Did the defendant comply with your orders?

8 A He did.

9 Q And what happened next?

10 A Once he got to the door where I was standing, we
11 detained him with handcuffs we made more
12 announcements in case there was anybody else was
13 inside the residence with him and then the rest of
14 my team went in there and they cleared the
15 residence, just to make sure there wasn't anybody
16 else in there.

17 Q Was there anyone else in the house?

18 A No sir.

19 Q And what did you and Mr. Holmes do at this point?

20 A Once the residence was secured, I stood there waited
21 until an officer came and escorted him to the front
22 of the house because we couldn't take him back
23 through the patio. I climbed back through the glass
24 and I met him around front.

25 Q Did you place him under arrest at this point?

1 A He was under arrest, yes sir.

2 Q Put him in handcuffs?

3 A Yes sir, he was cuffed.

4 Q Did you search him?

5 A We did.

6 Q Was that standard?

7 A Yes, sir.

8 Q Did he have anything in his possession?

9 A Just some trash.

10 Q Do you see the man that was in the house that night
11 in the courtroom today?

12 A I do, sir.

13 Q And if you could point him out and describe him.

14 A It's the older African male. At the time, he was
15 wearing some dark colored clothing.

16 Q That's the same man?

17 A That's the same man, yes sir.

18 Mr. Lietzow: Please let the record reflect that
19 Officer Bunch has identified the defendant as the
20 individual inside the house that night.

21 Q Was there anyone else in the house? The owner?

22 A No sir.

23 Q Did that individual ever come to the scene?

24 A The daughter did.

25 Q Did you learn why there was nobody in the house that

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1 night?

2 A She stated that the AC was broken in the house at
3 that point in time and there was possibly some
4 health issues.

5 Q Did you issue what is known at the Miranda rights,
6 read Miranda to the defendant?

7 A I did.

8 Q Why do you do that?

9 A Just so they're aware of their rights.

10 Q Do you do that from memory?

11 A No sir.

12 Q How do you go about reading that?

13 A I have a card.

14 Q Could you briefly tell the jury what Miranda rights
15 are; reading it from your card? Is that pretty much
16 how you Mirandize somebody?

17 A Yes, sir. Miranda rights are as followed: You have
18 the right to remain silent. Anything you say can
19 and will be used against you in a court of law. You
20 have the right to speak to an attorney or have an
21 attorney present during questioning. If you cannot
22 afford a lawyer, one will be provided for you at
23 government expense. Knowing and understanding your
24 rights as I have explained them to you, are you
25 willing to answer any questions without an attorney

1 present?

2 Q Was John Holmes cooperative with you?

3 A Slightly less than.

4 Q Explain that.

5 A When we were trying to get his information, his
6 name, he wasn't very forthcoming at first.

7 Q Explain further, please.

8 A Hesitant to give his name, didn't really respond at
9 first when we were asking the initial questions about
10 who he was.

11 Q Did he understand his Miranda --- did he waive his
12 Miranda rights?

13 A He did.

14 Q Did he appear that he understood everything?

15 A Yes sir.

16 Q Was he heavily intoxicated?

17 A I wouldn't say heavily intoxicated; no, sir.

18 Q Did it seem as though he was disoriented in any way?

19 A No sir.

20 Q So he was all there mentally?

21 A Yes sir.

22 Q What did you ask him?

23 A First, we asked him what he was doing there. He
24 stated he didn't know. And then later asked him how
25 he had gotten in there.

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1 Q What was his response to that?

2 A He stated he went through a patio window and then
3 through the open door.

4 Q Are those the same two locations that you saw broken
5 glass?

6 A Yes sir.

7 Q Did he mention anything about the homeowner?

8 A No sir.

9 Q Did he know who the owner was?

10 A He did not.

11 Q Did he specifically tell you that?

12 A When I asked, he said he didn't know who lives
13 there.

14 Q Did you ask him if he had permission to be inside
15 the house?

16 A I did.

17 Q What was his response to that?

18 A He did not have permission.

19 Q Officer Bunch, I'm coming to you with what is marked
20 as State's exhibit 2. Is this the location that you
21 were called out to that day?

22 A Yes sir.

23 Q What is this right here?

24 A That's the patio area.

25 Q Is that completely enclosed?

1 A It is.

2 Q Are those glass panes?

3 A Yes sir.

4 Q Is there a door in that patio that leads directly
5 into the house?

6 A There is.

7 Q So where in relation to the entry point --- is the
8 entry point around back on this photo?

9 A Yes sir, it's the very back where you see that
10 yellow light coming through right before ... the
11 house.

12 Q And then the door that leads into the house was on
13 the side of the patio in there?

14 A Yes sir.

15 Q I guess if we are going to pretend like we have x-
16 ray vision, then you could see directly across the
17 house into the back area?

18 A Yes sir.

19 Q And that's approximately, is that approximately
20 where John Holmes came out of?

21 A Yes sir.

22 Q And what was the location address that you responded
23 to?

24 A It was in the City of North
25 Charleston, county of Charleston, South Carolina.

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1 Q And to be clear, both locations that Mr. Holmes said
2 he entered into had broken glass?

3 A Yes sir.

4 Mr. Lietzow: Beg the Court's indulgence?

5 The Court: Sure.

6 Q Was there anyone else in the house?

7 A No sir.

8 Q Did you have any other involvement in this case?

9 A No sir.

10 Mr. Lietzow: I have no further questions. Please
11 answer any questions that Mr. Kozelski or Ms. Andrews has
12 for you. Thank you.

13 **MR. BUNCH - CROSS BY MR. KOZELSKI:**

14 Q Officer Bunch, I want to talk to you about what it
15 means to be a police officer. Not everybody can be
16 a police officer, correct?

17 A I suppose.

18 Q Special training?

19 A It's required, yes.

20 Q Did you go to the police academy?

21 A Yes sir.

22 Q Part of what you learn at the police academy is how
23 to write incident reports.

24 A Correct.

25 Q That's a big part of what you do?

1 A Correct.

2 Q You work on a number of cases?

3 A Yes, sir.

4 Q Sometimes you work on more than one case at a time?

5 A (Nods head affirmatively).

6 The Court: You need to say yes or no.

7 A Yes sir.

8 Q Ms. Singletary is trying to write you down so I need
9 you to say yes or no.

10 A Yes sir.

11 Q You want to write this stuff down so you can
12 remember it later?

13 A Yes sir.

14 Q Because from the time that you write it down and the
15 time that we might come to trial could be months,
16 years.

17 A Yes sir.

18 Q You also use these reports to review for your
19 testimony?

20 A Yes sir.

21 Q So you can recall facts when people like me ask you
22 about it?

23 A Yes sir.

24 Q So it's important that when you write these reports,
25 that they be accurate?

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1 A Yes sir.

2 Q And complete too?

3 A Right.

4 Q You put everything that you possibly can in there so
5 that you don't leave anything out.

6 A Correct.

7 Q And you also prepare these in anticipation that I'm
8 going to cross-examine you?

9 A Correct.

10 Q So when I ask how do you remember that, you say I
11 wrote it down.

12 A Correct.

13 Q As a cop, you also investigate criminal activity.

14 A Yes sir.

15 Q You gather facts?

16 A Yes sir.

17 Q And gathering facts, isn't good enough, you've got
18 to be able to communicate those facts to people?

19 A Yes sir.

20 Q So report writing helps you communicate those facts
21 that you learn during your investigation?

22 A Correct.

23 Q You might leave the department, another detective,
24 or officer might get it, you want to make sure they
25 get the full story?

1 A Yes.

2 Q And a copy also goes to the solicitor?

3 A Yes.

4 Q Solicitor gives a copy to me.

5 A Yes.

6 Q And eventually the jury gets to hear what's in your
7 report.

8 A Correct.

9 Q So we're all depending on you to write these reports
10 completely and accurately?

11 A Correct.

12 Q So you described some of the jobs that you do, but I
13 want to talk to you specifically about investigating
14 burglaries.

15 A Okay.

16 Q Is it fair to say there's a decent amount of crime
17 in North Charleston.

18 A That would be fair to say, yes sir.

19 Q And particularly off of the area of East Montague?

20 A Not so much as of late, but there is a fair amount,
21 yes.

22 Q Like you said, it's dimly lit, this area?

23 A For the most part, yes sir.

24 Q And the corner of Montague and Luellen, there's a
25 neighborhood store.

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1 A Correct.

2 Q People can buy, like a convenience store.

3 A Yes sir.

4 Q Attached to it is a restaurant, like a Hot and
5 Crispy, I guess they serve fried chicken. I'm not
6 sure.

7 A I'm not familiar with the restaurant.

8 Q And then right behind that, there's a small trailer
9 park.

10 A There could be, I don't ...

11 Q That's what backs up to

12 A Okay.

13 Q And there were a number of burglaries reported
14 directly in this area around the time of this
15 incident.

16 A Yes sir.

17 Q People who commit burglaries often times carry
18 burglary tools?

19 A Depends.

20 Q But burglars do often times carry burglary tools?

21 A Well they find things laying around on the ground.

22 Q They don't wear gloves?

23 A Sometimes not, sometimes they do.

24 Q Okay but when they do wear gloves, they wear gloves
25 so they don't leave any prints?

1 A For the most part, yes.

2 Q Sometimes they bring in a bag to carry stuff with
3 them?

4 A Sometimes.

5 Q And so you would consider this area a hot crime
6 area?

7 A Yes.

8 Q It's not some place that you would want to sleep out
9 in the open at night?

10 A No.

11 Q So you get a call around, a little after 12:30 from
12 your dispatch?

13 A Correct.

14 Q And your dispatch is what all you officers are
15 connected to, one main dispatcher?

16 A Correct.

17 Q And you relay information, what's going on and they
18 relay information back to you?

19 A We also have the computer that shows us the call.

20 Q But somebody's typing that, all the things that
21 you're saying?

22 A Yes.

23 Q And what you're reporting back?

24 A Yes.

25 Q So all the officers are on the same page?

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1 A Yes.

2 Q And that comes through your walkie talkie or your
3 speaker?

4 A Either the walkie or the in-car radio.

5 Q So you arrived at the scene about two minutes after
6 you're dispatched?

7 A Yes that's what the times are.

8 Q You get out of your patrol car?

9 A Yes sir.

10 Q You form a barricade unit in the back of the
11 residence?

12 A We formed a perimeter all through the back, yes sir.

13 Q You have your flashlight with you, I take it?

14 A Yes sir.

15 Q And you see a broken window?

16 A Yes.

17 Q And you had heard reports of the sound of glass
18 breaking?

19 A Yes sir, that was relayed to us.

20 Q Nothing saying that the suspect broke the glass?

21 A Well, what was relayed to us was the sound of glass
22 breaking. When the neighbor looked over, saw
23 somebody going in the back of the residence.

24 Q And you see the broken window?

25 A Yes sir.

1 Q You crawl through the broken window?

2 A Yes sir.

3 Q So it was big enough for you to get through?

4 A Yes sir.

5 Q Once inside, you draw your service weapon?

6 A Once my partner got inside, we drew our weapons.

7 Q The inside door is already cracked?

8 A The inside door was open.

9 Q But you don't go in the house?

10 A No sir.

11 Q But you can see in the house?

12 A Yes sir.

13 Q You can see that the house is full of boxes?

14 A There was some low-lying boxes, yes sir.

15 Q Sort of disorganized, all over the place?

16 A I wouldn't say disorganized but there was some boxes
17 in there.

18 Q You announced yourself?

19 A We did.

20 Q You said if anybody's inside to say that they're
21 there --- announce themselves?

22 A Announce themselves and come out with their hands
23 up.

24 Q Come out with their hands up

25 A Yes sir.

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1 Q And you still have your gun out when you're saying
2 this right?

3 A Yes sir.

4 Q And eventually, you see Mr. Holmes down the hallway?

5 A Yes sir.

6 Q You said he dipped into another room. Did he just
7 sort of shy away from you?

8 A While we were calling for him, he kind of went to
9 another room just briefly then popped right back
10 out.

11 Q Okay but you were still pointing your gun?

12 A We still had our guns drawn, yes.

13 Q And he comes out to you?

14 A Yes sir, when we call him out, he comes out to us.

15 Q So I want to talk to you a little bit about that
16 initial contact that you had with him. He has his
17 hands above his head? Is that correct?

18 A Yes sir.

19 Q He walks toward you?

20 A Yes sir.

21 Q You have your flashlight pointed at him?

22 A Yes sir.

23 Q And when you look at him, he doesn't have any, he
24 wasn't wearing any gloves?

25 A No sir.

1 Q He wasn't wearing a ski mask to conceal his face?

2 A No sir.

3 Q You never saw him try to escape out a window?

4 A I don't know what his intention was to get out of
5 the room but I did not see him try to go out the
6 window, no.

7 Q You didn't see him try to beeline for the front
8 door?

9 A He never went toward the front door, no sir.

10 Q So he never tried to run from you?

11 A No sir, he came toward us.

12 Q Didn't hide himself in a closet?

13 A Like I said when he briefly went into the room for
14 whatever reason that was.

15 Q He never hid under some of those boxes?

16 A No sir.

17 Q And he didn't struggle with you at all when he
18 got...

19 A No sir.

20 Q He complied pretty much with your every demand?

21 A Yes sir.

22 Q Then you detained him?

23 A Yes sir.

24 Q Put handcuffs on him?

25 A Yes sir.

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1 Q Then the assisting officers went through the rest of
2 the residence to see if anything - anybody else was
3 there?

4 A Yes sir.

5 Q They didn't find anybody else?

6 A No sir.

7 Q And after the scene is cleared, you took Mr. Holmes
8 outside?

9 A Another officer walked him through the house, one
10 that had already been through the house and I went
11 back out the patio window and came around.

12 Q And once you were outside, you did a pat down of Mr.
13 Holmes?

14 A Yes sir.

15 Q And you're essentially checking to see if he has any
16 weapons or...

17 A Make sure he doesn't have any weapons or anything
18 that could harm us, any contraband or items that had
19 been stolen.

20 Q So you go through his pockets?

21 A Yes sir.

22 Q And you didn't find any gloves in his pockets?

23 A No sir.

24 Q You didn't find any burglary tools on him?

25 A No sir.

1 Q You didn't find any items from the house on him?

2 A Not that I'm aware of.

3 Q You didn't find any money on him?

4 A No sir.

5 Q No drugs on him?

6 A No sir.

7 Q You didn't find any evidence on Mr. Holmes?

8 A Define evidence?

9 Q You didn't take any evidence and put into an
10 evidence locker, did you?

11 A Correct.

12 Q So his pockets were basically filled with junk?

13 A Correct.

14 Q Now after you have him under arrest, you call crime
15 scene?

16 A We did.

17 Q And you're expecting crime scene to gather evidence
18 and take photos?

19 A Mostly to document photographs. What damage was
20 done, once the victim arrives on scene, if the
21 victim says stuff's been rearranged, organized,
22 whatever. They can coordinate with the crime scene
23 technician and take pictures as well if need be.

24 Q So you were waiting on the owner to get there as
25 well?

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1 A Dispatch advised they were on their way out.

2 Q But you came to find out that the owner didn't live
3 there?

4 A She did live there. She was just temporarily out of
5 the residence due to AC issues.

6 Q So you don't know when the last time she actually
7 did live there was?

8 A If I recall from what the victim says, the victim's
9 daughter said it was only a week or less than a week
10 is what she had told me.

11 Q So you spoke with Ms. Campbell about the incident?

12 A ...yes sir.

13 Q But you didn't have her write any sort of statement?

14 A I did not. I don't know if one of the officers on
15 scene did.

16 Q When talking to Ms. Campbell, you didn't find out
17 that the house was broken into earlier that day?

18 A I didn't ask her about any previous break-ins. We
19 were there for the current incident.

20 Q You weren't able to speak to the neighbors about
21 what they saw?

22 A It was 1 a.m. and the person that called in was a
23 concerned citizen.

24 Q Okay so you weren't able to track that person down
25 who did call?

1 A No sir.

2 Q So you weren't really able to figure out what
3 exactly they saw?

4 A No sir. A lot of times, they don't like to be seen
5 talking to the police officers.

6 Q So you never got any sort of statement from the
7 concerned citizen?

8 A No sir.

9 Q Did you ever do any sort of follow up investigation?

10 A No sir.

11 Q So you didn't --- like I said, you didn't know the
12 house was broken into earlier that day?

13 A No sir.

14 Q Through that same window?

15 A No sir. Usually burglary, detectives follow up on
16 something like that.

17 Q So you're not quite a detective yet? You're still
18 the Private First Class?

19 A I'm assigned to the patrol division. The detective
20 division is a separate division.

21 Q Was this case ever given to a detective?

22 A I have no knowledge if it was.

23 Q So there's no follow up done to find out who
24 actually broke that window and the door from the
25 prior burglary?

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- 1 A I'm not aware of any follow up, no sir.
- 2 Q After searching Mr. Holmes, you read him his Miranda
- 3 rights?
- 4 A Correct.
- 5 Q And we just went over those. You have the right to
- 6 remain silent.
- 7 A Yes sir.
- 8 Q Anything that you say will and can be used against
- 9 you.
- 10 A Yes sir.
- 11 Q The right to an attorney.
- 12 A Yes sir.
- 13 Q And you asked him if he understood those rights.
- 14 A Yes sir.
- 15 Q And he said he did.
- 16 A He did.
- 17 Q He didn't seem intoxicated.
- 18 A No sir.
- 19 Q He didn't seem like he was on drugs.
- 20 A No sir.
- 21 Q Didn't seem like he had any sort of mental
- 22 deficiency.
- 23 A No sir.
- 24 Q So you asked him if he wanted to waive those rights?
- 25 A Yes sir.

- 1 Q And speak to you?
- 2 A Yes sir.
- 3 Q He told you that he did.
- 4 A Yes sir.
- 5 Q And you started asking him questions about who he
- 6 was and why he was there?
- 7 A Yes sir.
- 8 Q And you said he was initially not compliant but he
- 9 did give you his name?
- 10 A Hesitant at first but he did eventually come forth
- 11 and was identified, yes sir.
- 12 Q And you're not sure if he had his ID on him?
- 13 A I don't recall.
- 14 Q But eventually you found out who he was?
- 15 A Yes sir.
- 16 Q You found out that he was homeless?
- 17 A Yes sir.
- 18 Q You asked him how he got into the house?
- 19 A Yes sir.
- 20 Q And he told you that he got through the broken glass
- 21 window.
- 22 A Yes sir.
- 23 Q You never asked him if he broke the window?
- 24 A I did not.
- 25 Q You asked him if he knew the owner?

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1 A Correct.

2 Q And he told you that he didn't?

3 A He did not know the owner.

4 Q And he said that he thought the house was vacant?

5 A He didn't say the house was vacant.

6 Q Okay, he didn't tell you that the house was vacant?

7 A No.

8 Q Do you - remember, we talked about dispatch going on
9 with all the police officers and somebody taking
10 that down?

11 A Right.

12 Q And you're familiar with what's called a CAD report?

13 A What's that?

14 Q The CAD report, which is the incident. Do you know
15 what that looks like?

16 A Is that a printout?

17 Q Yes.

18 Mr. Kozelski: Permission to approach Your Honor?

19 The Court: Yes sir.

20 Q I'm going to show you what the incident detail
21 report. The CAD report is of that night. Maybe
22 that could help refresh your recollection a little
23 bit. You were with Mr. Holmes the entire time?
24 Correct?

25 A Correct. Once we were outside, I was with him.

1 Q So anything he said, you would have heard?

2 A Yes sir.

3 Q Or anything that was said over dispatch would've
4 been heard by you as well?

5 A Unless I was talking to my sergeant or officers,
6 yes.

7 Q And so in that CAD report, I'm going to focus you in
8 on comment 27, should be on the second page. It
9 does say that the suspect thought the house was
10 vacant?

11 A My sergeant advised that, yes.

12 Q You asked him if he had permission to be in the
13 house?

14 A I did.

15 Q And he told you that he didn't have permission?

16 A Correct.

17 Q And you asked him what he was doing in the house?

18 A I did.

19 Q And he told you he was trying to find a place to
20 sleep.

21 A First, he said he didn't know. He did say he was
22 trying to find a place to sleep.

23 Mr. Kozelski: Beg the Court's indulgence, Your
24 Honor. No further questions Your Honor.

25 Mr. Lietzow: Just briefly Your Honor.

MR. BUNCH - REDIRECT BY MR. LIETZOW:

Q Was the inside door wide open?

A The door leading into the residence, yes sir.

Mr. Lietzow: May I approach the witness, Your Honor?

The Court: Yes sir.

Q I'm going to draw your attention to what Mr. Kozelski was just drawing your attention to. Number 27.

A Yes sir.

Q Who is unit 143?

A My sergeant at the time.

Q And without reading exactly what this says, can you tell the jury approximately what that says? You can refresh your mind and then you can tell me. Just make sure you don't read off the paper.

A He was advised that he, he was advised that the keyholder, which would be the owner of the house or somebody who has access to the house lawfully, was on scene. He requested that they call back and get a phone number for the correct person to be there and advised that the only person that was seen was the defendant who had entered through the back of the residence. Advised that the house was vacant for a few months.

Mr. Lietzow: No further questions Your Honor.

1 Mr. Kozelski: No further recross.

2 The Court: Alright, you can step down sir. Thank
3 you.

4 Mr. Lietzow: Your Honor, may we approach?

5 The Court: Yes sir.

6 (Counsel to bench)

7 The Court: Alright, we're going to take a 10 minute
8 break at this point in time. If everybody would remain
9 seated while the jury is taken out.

10 (10 minute break)

11 The Court: Alright before we proceed, Mr. Wilson,
12 juror #336? I understand you had an electronic device in
13 the jury room after the phones were put in the basket.
14 Is that correct?

15 Mr. Wilson: Yes sir. I had a tablet. I didn't know
16 that was considered an electronic ...

17 The Court: It's an electronic device. Did you use
18 that to try to find out anything about any of the parties
19 or witnesses or anything about this case while you were
20 back there in the jury room?

21 Mr. Wilson: None.

22 The Court: Alright, I just want to caution you as I
23 did in my earlier charge that you know, no video of any
24 electronic devices. That includes any kind of tablet,
25 Ipad, computer, cell phone, whatever. Just wanted to

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1 caution you again. Counsel, any other questions you want
2 me to ask of this gentleman concerning that?

3 Mr. Lietzow: Nothing from the State, Your Honor.

4 The Court: Anything from the defendant?

5 Mr. Kozelski: No sir.

6 The Court: I'm going to take up one other matter
7 before we hear from the next witness. And that is the
8 appointment of a foreperson. Juror #110, Gina Garrett.
9 Ms. Garrett, I'm going to appoint you as a foreperson.
10 And from this point on, anything that takes place such as
11 that, question all the jurors, or whatever you want to
12 do. You're presiding in that jury room. You make sure
13 they don't do anything to violate any of my instructions.
14 If they do, then you report it to the Court. Do you
15 understand that?

16 Ms. Garrett: Yes sir.

17 The Court: And you will be presiding throughout the
18 deliberations. So, if you and this gentleman on the end
19 would swap seats, that will always be your seat. The
20 alternate will always sit where he is now and you and the
21 gentleman on the very end; sir, on the front, yes sir.
22 If y'all would just swap places and that would be the
23 foreperson's seat throughout the remainder of this trial.
24 Alright, you may call your next witness.

25 Mr. Lietzow: Thank you Your Honor. The State calls

1 Corona Campbell.

2 Clerk: Do you swear and affirm the testimony you
3 shall give to the Court and the jury the trial in this
4 case shall be the truth, the whole truth, and nothing but
5 the truth, so help you God?

6 Ms. Campbell: I do.

7 Clerk: Thank you ma'am. Please be seated. Please
8 state your first and last name and spell your last name
9 loudly and clearly into the microphone.

10 Ms. Campbell: Corona Campbell C-A-M-P-B-E-L-L.

11 MS. CAMPBELL - EXAMINATION BY MR. LIETZOW:

12 Q Good afternoon Ms. Campbell.

13 A Good afternoon.

14 Q Could you speak a little bit more into the mic for
15 us please? Thank you. Please tell the jury where
16 you're from.

17 A Charleston, South Carolina.

18 Q North Charleston?

19 A Yes.

20 Q Born and raised there?

21 A The City of Charleston, right beside North
22 Charleston.

23 Q And where do you live now?

24 A In North Charleston.

25 Q What's your address specifically?

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1 A

2 Q Who owns ?

3 A My mother, Ms. Anne Blandin.

4 Q And how old is your mother?

5 A 71.

6 Q What's your relationship like with Ms. Blandin?

7 A We're tight.

8 Q Okay, you're close with your mother?

9 A Yes.

10 Q What's your mother's health like?

11 A It's not good. She was in a car accident on January
12 3rd. She's been in the hospital. She's also in
13 kidney failure.

14 Q Is the car accident the reason why she's not here
15 today to testify?

16 A Yes sir.

17 Q Is it safe to say that you're her caretaker?

18 A Yes sir.

19 Q What was your mother's permanent address in July of
20 2014?

21 A

22 Q Is that in North Charleston?

23 A Yes sir.

24 Q Did she ever stay at your house though?

25 A Yes sir.

1 Q Why would she stay at your house?

2 A She had gotten sick in October. That's when we
3 found out, she had kidney failure.

4 Q Speak up a little bit please. In October of 2014 -
5 or 2013.

6 A Yes sir, 13.

7 Q Before this incident?

8 A Yes sir.

9 Q When you say kidney failure, does that mean she had
10 to take dialysis treatments?

11 A Yes sir.

12 Q So just depending on the situation and her health
13 would dictate where she stayed at?

14 A Right.

15 Q Okay. Did you ever spend the night at her house at
16 ?

17 A Yes sir.

18 Q Did she keep a refrigerator there?

19 A Yes sir.

20 Q Did she keep her clothes there?

21 A Yes sir.

22 Q Did she have medicine there?

23 A Yes sir.

24 Q Did she get mail there?

25 A Yes sir.

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- 1 Q This is to be clear; .?
- 2 A Yes sir.
- 3 Q Did she have a bed there?
- 4 A Yes sir.
- 5 Q Did she sleep there at night?
- 6 A Yes sir.
- 7 Q Who was the caretaker of ?
- 8 A Her, me.
- 9 Q You, her? Okay.
- 10 A Yes sir.
- 11 Q Who cut the grass there?
- 12 A I did.
- 13 Q Who maintained the bushes?
- 14 A I did.
- 15 Q Who got the mail?
- 16 A I did.
- 17 Q Do you have keys to all the doors and the locks in
- 18 the house?
- 19 A Yes sir.
- 20 Q Does anyone else have keys to the doors and locks?
- 21 A No sir.
- 22 Q So the only people with keys to locks are you and
- 23 Ms. Blandin?
- 24 A Yes sir.
- 25 Q How often did you go to in July of 2014?

1 A Every day.

2 Q I'm showing you what's been marked as State's
3 exhibit 1, 2, and 3. Take a look at those three
4 photos and tell me whether you recognize those.

5 A Yes sir. This is my mom's house.

6 Q Is that ?

7 A Yes sir.

8 Q Focus on a few in particulars. You might need to
9 turn around just to see where I'm pointing but we'll
10 work together and try to figure it out. Tell the
11 jury what this is right there.

12 A The Florida porch.

13 Q What's a Florida porch?

14 A A table, chairs sit out there if you want to read
15 the paper or eat breakfast.

16 Q Is it like a sunroom?

17 A Yes sir.

18 Q Is it completely closed in?

19 A Yes sir.

20 Q Does it lead into the house?

21 A Yes sir.

22 Q What's that right there?

23 A That's the garage. I just had it enclosed.

24 Q Is that attached to the house?

25 A No.

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1 Q Did you say you just had it enclosed?

2 A Yes.

3 Q What was it like in July of 2014?

4 A Opened up.

5 Q Help the jury - take the jury into the house.

6 Explain where everything is okay? I know I'm - what
7 is this room right here?

8 A That's the living room.

9 Q Okay and what's to the other side of the living room
10 as if you would go into the porch and go to the
11 right?

12 A The dining room.

13 Q Okay, where's the kitchen at?

14 A On the back.

15 Q Is there a long hallway that runs all the way from
16 here to the end of the house?

17 A Yes sir.

18 Q Okay and what is this bedroom right here?

19 A That is the first bedroom.

20 Q Okay and what's on the other side of that on the
21 back side of the house?

22 A There's a bedroom, bathroom, the master bedroom.

23 Q Okay, where is your mother's bed at?

24 A In the back master bedroom.

25 Q And what is this area right here?

1 A That's the den.

2 Q Okay. Is there another door into the house?

3 A Yes sir.

4 Q Where is that door at?

5 A On the back where the laundry room is.

6 Q So there's three doors that lead into the house?

7 A Yes sir.

8 Q I'm showing you State's exhibit 4. Do you recognize
9 that photo?

10 A Yes sir.

11 Q Is that the back porch that leads into the Florida
12 room?

13 A Yes sir.

14 Q So on State's exhibit 1, that would be around the
15 backside where we're not able to see?

16 A Yes sir.

17 Q Is the sunroom or Florida room attached to the
18 house?

19 A Yes sir.

20 Q Is there a door that leads into the house - the rest
21 of the house from that location?

22 A Yes sir.

23 Q Do you know - if you don't know, don't answer - but
24 do you know where John Holmes was caught in the
25 house that night?

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1 A No sir.

2 Q Okay, that's fine. Was your mother at home the
3 night this happened?

4 A No sir.

5 Q Why wasn't she there?

6 A Because she was sick.

7 Q So, was she staying with you?

8 A She was in the hospital.

9 Q She was in the hospital that night?

10 A Yes sir. It's so far back.

11 Q I know, I understand.

12 A Excuse me, she was at my house.

13 Q Okay so she was not at the house. Was it uncommon
14 for her to spend the night at your house?

15 A No.

16 Q It was common?

17 A Yes.

18 Q Was it common for her to spend the night at her own
19 house?

20 A Yes.

21 Q It largely depended on the situation? Is that a
22 fair statement?

23 A Yes.

24 Q Okay. What are the houses like in the neighborhood
25 around your house?

1 A Apartments, house down the street.

2 Q If the photographer is looking at your house, is on
3 the very other side, is there a house on the very
4 other side of this house on the road?

5 A Like behind the house?

6 Q No. So, if I'm on the front porch and I'm looking
7 out of this house, do I see a house directly in
8 front of me?

9 A Yes sir.

10 Q Describe that house for the jury.

11 A Cinder block house.

12 Q Is it boarded up?

13 A No sir, just at the garage.

14 Q Does anybody live there?

15 A No sir, not now.

16 Q Was anybody living there around this time?

17 A Yes sir.

18 Q Are the doors closed in this house when you're not
19 there?

20 A Yes sir.

21 Q Do you keep - are there locks on the doors?

22 A Yes sir.

23 Q Do you keep the doors locked?

24 A Yes sir.

25 Q Are the windows closed?

1 A Yes sir.

2 Q Do you keep the windows locked?

3 A Yes sir.

4 Q Are there glass windows on your house that allow you
5 to see into some of the rooms?

6 A Just the porch.

7 Q What about the laundry room around back?

8 A Yes sir. It's like that, like the Florida porch is.

9 Q Okay. Do you keep common household items in some of
10 these rooms?

11 A Yes sir.

12 Q Do you keep a container of water, for example, in
13 the Florida room?

14 A Yes sir.

15 Q In the laundry room, do you keep bottles of
16 detergent?

17 A Yes sir.

18 Q Are those visible from the outside?

19 A Yes sir.

20 Q When was the last time you went to the house before
21 this incident occurred?

22 A That night. I'm there like two and three times a
23 day. Sometimes I just be there after the day.

24 Q Do you ever hang out there while your mom's not
25 there?

1 A Sometimes. I be doing work around there.

2 Q Did you break the glass?

3 A No sir.

4 Q Did you give anyone permission to break the glass?

5 A No sir.

6 Q Did you respond to the scene after the police got
7 there?

8 A Yes sir.

9 Q How did you know to go?

10 A The alarm company called and they...

11 Q Okay. When you got there was it dark?

12 A Yes it was at night.

13 Q Do you - is John Holmes known around the
14 neighborhood?

15 A Yes sir, from what I understand.

16 Mr. Kozelski: Objection Your Honor.

17 The Court: I haven't let him go any further, but I'm
18 not going to let him go any further than that. If you
19 know him around the neighborhood ... he had to establish
20 the foundation of him getting into ...

21 Mr. Lietzow: May we approach the bench?

22 (Attorneys at bench)

23 Mr. Lietzow: The State will withdraw that previous
24 question.

25 Q Do you personally know John Henry Holmes?

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1 A No sir.

2 Q Okay. Does your mother personally know him or have
3 a relationship with him?

4 A No sir.

5 Q Did you give John Holmes permission to break into
6 your house?

7 A No sir.

8 Q Did your mother give John Holmes permission to go
9 inside of your house?

10 A No sir.

11 (State's Exhibit Number 8 was marked for identification
12 purposes)

13 Q I'm showing you what's been previously marked for
14 identification purposes only as State's exhibit 8.
15 Do you recognize that photo?

16 A Yes sir. No, I've never seen it.

17 Q Is this a Google maps of where is
18 located at and the surrounding area?

19 A Yes sir.

20 Q If you take a look at some of those streets, are
21 those streets familiar to you as being the ones that
22 are around this area?

23 A Yes sir.

24 Q Would you say that's a fair and accurate
25 representation of the neighborhood that

1 Avenue is located in?

2 A Yes sir.

3 Q At this point, Your Honor, I'd move to enter State's
4 8 through 10 into evidence and publish it for the
5 benefit of the jury.

6 Mr. Kozelski: No objection Your Honor.

7 The Court: No objections. Admitted into evidence as
8 exhibit 8.

9 (State's Exhibit Number 8 was admitted into evidence)

10 Q Ms. Campbell, is this River's Avenue right there?

11 A Yes sir.

12 Q Is that a pretty heavily trafficked area?

13 A Yes sir.

14 Q And is this ?

15 A Yes sir.

16 Q That's your location?

17 A Yes sir.

18 Q Corona, how did this burglary affect your mother?

19 A Besides her basic ... she said I ain't gonna let
20 nobody run me out of my house, my home. And my
21 mother is a good lady, a God-fearing woman. She's
22 the type of person that if she can't help you, she's
23 not going to hurt you. And this is just devastated
24 her.

25 Q How did it effect you?

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1 A To get a call saying someone broke in the house...I
2 go by there and glass is broken out, I call the
3 police. I mean, I'm there constantly but then she's
4 worked hard for everything she has. No one gave her
5 anything and the Lord blessed her to have a nice
6 home and you know, we try to keep it up but all I
7 can say is you don't know how it hurts her when
8 somebody goes in and tear up her house.

9 Q Was that house abandoned?

10 A No.

11 Q Did you let the grass grow...

12 A No.

13 Q ...up to the knee level? Was it falling apart?

14 A No.

15 Q Was it decaying?

16 A No.

17 Q Was there boards over several of the windows or
18 doors?

19 A No sir.

20 Q On this photo, there is a board over that door. Did
21 you put that there?

22 A Yes sir. I had to because it was broken out.

23 Q Do you know about when that door was broken out?

24 A No sir, I can't think exactly.

25 Q And you went there every single day?

- 1 A Yes sir.
- 2 Q Had you noticed this broken glass yet?
- 3 A Yes sir.
- 4 Q When did you notice that?
- 5 A I think that morning?
- 6 Q So this glass was broken that morning?
- 7 A Yes sir.
- 8 Q What about this door right there?
- 9 A That wasn't.
- 10 Q Are you sure?
- 11 A I'm pretty much sure.
- 12 Q Why had you not boarded that up yet then?
- 13 A That was taken when I went there to check out the
- 14 house and as I found out somebody had break in the
- 15 house again.
- 16 Q What do you mean? What was taken?
- 17 A When the house was broken into, I boarded up that
- 18 door. And I came back and another glass was broke
- 19 out. Each time it got broken, I put up a board.
- 20 Q Okay. Were you there when the investigators took
- 21 these photos?
- 22 A Yes sir.
- 23 Q When did you get on the scene? Do you remember
- 24 approximately what time?
- 25 A No sir. I just know it was in the morning.

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1 Mr. Lietzow: Court's indulgence.

2 The Court: Yes sir.

3 Mr. Lietzow: No further questions. Please answer
4 any questions the defense asks you. Thank you.

5 MS. CAMPBELL - CROSS BY MR. KOZELSKI:

6 Q May it please The Court. Ms. Campbell, I just want
7 to make clear: your mother lives with you, correct?

8 A Now?

9 Q Yes.

10 A No.

11 Q She does not live with you at on North Atlantic
12 Street?

13 A No sir.

14 Q So she lives in the house?

15 A She's in the hospital.

16 Q She's in the hospital? But when she's not in the
17 hospital, she lives with you?

18 A No sir. She lives at

19 Q Okay but she wasn't living there at the time of this
20 incident?

21 A No sir.

22 Q And in fact she had lived with you for almost three
23 years before that? Right?

24 A Yes sir.

25 Q And she used her house mainly as storage?

1 A No sir.

2 Q Okay. Were with your mother when she made a police
3 report in July of 2013?

4 A I'm not sure.

5 Q Okay it was a burglary that somebody had pushed
6 through a AC unit and tried to get in through the
7 kitchen?

8 A Oka. I can't remember.

9 Mr. Lietzow: Objection Your Honor. How's this
10 relevant?

11 Mr. Kozelski: Your Honor, it's going directly.

12 The Court: I find that it's relevant. I overrule
13 the objection...

14 Q Were with your mother when she made that report?

15 A I can't remember.

16 Q Okay. Do you recall her saying that she lives with
17 you on North Atlantic Street?

18 A Yes sir, she was at my house about that time.

19 Q Okay and do you recall if she said that she hasn't
20 lived in the residence for two years? And that the
21 house is only used for storage at this time?

22 A No sir, I don't know anything about that but it's
23 not used for storage.

24 Q Okay, so you don't remember her saying that?

25 A No sir.

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1 Q And where you live on North Atlantic Street is about
2 three and a half miles away?

3 A Yes sir.

4 Q So it's not too far of a drive?

5 A No sir.

6 Q And you're in charge of care taking and checking in
7 on the house?

8 A Yes sir.

9 Q And you call the police if you see any signs of
10 vandalism?

11 A Yes sir.

12 Q Or theft?

13 A Yes sir.

14 Q Your mom's called the police on a number of
15 occasions as well?

16 A Yes sir.

17 Q And the police would come into the house?

18 A Yes sir.

19 Q Question you about any damage that you see?

20 A Yes sir.

21 Q Ask you if anything was taken?

22 A Yes sir.

23 Q If something was taken, they would ask you for any
24 sort of identifying characteristics of what was
25 taken?

- 1 A Yes sir.
- 2 Q Just like serial number or something like that so
- 3 that they can try to retrieve it for you?
- 4 A Yes sir.
- 5 Q And then they write that in their reports and try to
- 6 track it down?
- 7 A Yes sir.
- 8 Q Sometimes you might have a crime scene technician
- 9 come to the house?
- 10 A Yes sir.
- 11 Q Take some pictures?
- 12 A Okay. Yes sir.
- 13 Q Have you seen them take pictures of your house
- 14 before?
- 15 A Yes sir.
- 16 Q Okay do they take pictures of the inside?
- 17 A No sir.
- 18 Q Just the outside?
- 19 A As far as I can remember, yes sir.
- 20 Q They were taking your statement about what happened?
- 21 A Yes sir.
- 22 Q They ever make you write a statement?
- 23 A No sir.
- 24 Q What about talking to your neighbors?
- 25 A I don't know.

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1 Q Do you ever talk to your neighbors and ask them to
2 keep an eye out?

3 A Yes sir.

4 Q And in this time when your mom wasn't living in the
5 house, we talked about your calling the police a
6 number of times, but you don't call them every time
7 that somebody breaks in?

8 A Yes sir, I do. So I can have a report.

9 Q Well around this time of year when this was
10 happening back in July, that house was broken into
11 twelve times in the month of July?

12 A Yes sir.

13 Q But you didn't call the police every one of those
14 ...

15 A Yes sir I did.

16 Q You did? Okay they just didn't do an incident
17 report every time that you know of?

18 A As far as I know, they did a report.

19 Q Okay. Your mom's very upset about this?

20 A Yes sir.

21 Q You've had a lot of items taken from the property?

22 A Yes.

23 Q AC units.

24 A Yes sir.

25 Q You've had your purse fall off the back of your car.

1 A Yes sir.

2 Q You've had doors that were left in the back yard?

3 A Yes sir.

4 Q Had a stand-up fan that was taken from the home?

5 A Yes sir.

6 Q The house - it was also vandalized a good bit?

7 A Yes sir.

8 Q You have that commercial glass door on the patio
9 that was broken?

10 A Yes sir.

11 Q That was in June of 2014, right?

12 A I'm not sure.

13 Q Do you remember making a complaint on June 23rd of
14 2014 about the vandalism?

15 A Yes sir. Every time there was an incident, I called
16 the police.

17 Q And then there was a followup by Officer Thomas of
18 North Charleston Police Department? Do you remember
19 Officer Thomas?

20 A Maybe if I see him.

21 Q He was the one that responded earlier in the day to
22 the burglary that you had at your house. Do you
23 remember that?

24 A Yes sir.

25 Q And he came there and he was the same one you

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1 reported the back door broken to. He made an
2 incident report that morning on the 29th.

3 A Yes sir.

4 Q And took note of the broken windows that you showed.

5 A Yes sir.

6 Q And it's obvious someone entered through that broken
7 glass window to get to the back door.

8 A Yes sir.

9 Q And that's when they stole the stand-up fan?

10 A Yes sir.

11 Q And then twelve hours later, you got a call that the
12 house was burglarized again?

13 A Yes sir.

14 Q You go to the house when you're gone?

15 A Yes sir.

16 Q Did you speak with Officer Bunch, I think, over
17 there?

18 A Yes sir.

19 Q And they want you to go through the house, see if
20 anything is missing?

21 A Yes sir.

22 Q And nothing appeared to be missing from the house?

23 A No sir.

24 Mr. Kozelski: May The Court....Your Honor.

25 Q Just a few more questions Ms. Campbell. You talked

1 with Mr. Lietzow about having to board up your home
2 every time somebody came in and broke glass?

3 A Yes sir.

4 Q And so they broke that big door probably about eight
5 windows?

6 A More than that.

7 Q Okay and you had to board up every one of those.

8 A Right. Two doors.

9 Q Oh, two doors...

10 A Two commercial doors.

11 Q Okay, two big full size doors.

12 A Yes sir.

13 Q That were broken? And you had to board those up
14 along with all the windows?

15 A Yes sir.

16 Mr. Kozelski: No further questions, Your Honor.

17 The Court: Mr. Lietzow, anything else?

18 Mr. Lietzow: Yes sir, may we approach, Your Honor?

19 The Court: Yes sir.

20 (Attorneys at bench)

21 MS. CAMPBELL - REDIRECT BY MR. LIETZOW:

22 Q Corona, just to be clear, there is a detached garage
23 behind your house?

24 A Yes sir.

25 Q At the time this incident happened, it was wide

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1 open?

2 A Yes sir.

3 Q And what separates the Florida sunroom, which I've
4 been calling a patio, from the rest of the house?
5 Is there a door?

6 A Yes.

7 Q And is the Florida patio room completely enclosed?

8 A Yes.

9 Q Closed off from the elements outside?

10 A Yes sir.

11 Q And just to be clear, both you and your mother do
12 not personally know John Holmes?

13 A I don't know him.

14 Q Does your mother know him?

15 A I don't think so.

16 Mr. Lietzow: Nothing further Your Honor.

17 The Court: Alright you can step down now ma'am.

18 Mr. Lietzow: Your Honor, may this witness be
19 excused?

20 The Court: No objections?

21 Mr. Kozelski: No Your Honor.

22 The Court: This witness may be excused. Thank you
23 ma'am. How many more witnesses do you have?

24 Mr. Lietzow: Your Honor, The State rests it's
25 testimony at this time.

1 tomorrow morning?

2 Mr. Lietzow: Nothing from the State Your Honor.

3 Mr. Kozelski: Nothing from the defense Your Honor.

4 The Court: Okay I'll see you folks at 10:15 tomorrow
5 morning.

6 (Next Day 10/13/15)

7 The Court: Yes, sir.

8 Mr. Kozelski: Your Honor, we are asking for a
9 directed verdict in this case and our Motion is based off
10 of two arguments. And, if I can approach and hand the
11 court some case law that I'm referencing.

12 (Counsel approaches bench)

13 Mr. Kozelski: These are two cases that I am relying
14 on, I believe, the State has actually cited them in their
15 jury charges. But the first case State vs. Farabee,
16 we're using that to demonstrate this house at

17 is not a dwelling. The evidence used at trial was
18 that Ms. Blandin has been sick for several years. She
19 has been living with her daughter on North Atlantic
20 Avenue. She hasn't been living with her daughter she has
21 been in the hospital but that she has not been living in
22 that house for almost two years and that was in July of
23 2013 and there was no testimony that she ever went back
24 to live in that house. I believe the testimony that was
25 let him without objection to Ms. Blandin's statement that

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1 they only used that house for storage. Now, there was
2 testimony from Ms. Campbell that said that she did stay
3 at that house every once in a while; however, that was
4 not her residence. She did say that her residence was on
5 North Atlantic. She was the primary care taker of her
6 mother so I think it is reasonable to infer that she be
7 at that house and be at her house at North Atlantic
8 taking care of her mother where her mother stayed. In
9 Farabee, it is a very similar situation which the court
10 reversed a burglary first on the basis of almost an
11 abandonment. There was tenants in this apartment
12 complex, they had moved out the week before. The owner
13 of the apartment complex didn't live there at all. There
14 was no sort of intention to return here and I think it's
15 very similar to the case before us today. I don't think
16 the owner had any intention to return. She used the house
17 as storage. While the daughter might have stayed there
18 from time to time I don't believe there is any
19 significant period of time. It certainly wasn't during
20 the time of July when she said the house was broken into
21 over a dozen times. She wasn't staying there and there
22 was no testimony to that effect. So, I don't believe
23 that this house would constitute a dwelling under the
24 burglary first statute.

25 The second case that we're relying on Your Honor, is

1 State vs. Pinckney. This is a case that goes to the
2 criminal intent in a burg first and our position is, Your
3 Honor, there has been no testimony, no evidence
4 whatsoever that at the time Mr. Holmes entered into
5 that he had any criminal intent to commit a
6 crime in that house. I believe that what Mr. Lietzow was
7 relying on and I make this assumption due to the jury
8 charges was the breaking and entering. The entire jury
9 charges and I believe that his entire argument is that
10 Mr. Holmes broke this window and entered in. I think if
11 that was actually the case he might have an argument that
12 there was some intent that could, the breaking element
13 would be, could be used as an inference of intent.
14 However, here that was affirmatively denied by Ms.
15 Campbell when she said those windows were broken earlier
16 that morning when she made the police report on the 29th
17 and he actually asked her again, are you sure, and she
18 said yes. So, we know for a fact that Mr. Holmes did not
19 break those windows. So, what we have here is entirely a
20 case on him entering a house without consent at night,
21 which is not burglary and we'd ask the court to direct a
22 verdict as to burg first based on that element alone as
23 well. But, I think either --- I think the intent to
24 commit a crime therein and the lack thereof would be
25 dispositive of this case however if the court felt this

1 was not a dwelling, I believe the case could still go
2 forward on say a burglary second or burglary third if
3 they did think this was some type of storage unit which I
4 believe that the the testimony request.

5 The Court: Thank you, sir.

6 Mr. Lietzow: Thank you, Your Honor. May it please
7 the court. As, Your Honor, is aware, the Judge must
8 consider the existence or non-existence of the evidence
9 and not its weight. If there is any direct evidence or
10 substantial circumstantial evidence reasonably tending to
11 prove the guilt of the accused, the case is properly
12 submitted to the jury. I'll go through each of the
13 elements just to make the record abundantly clear.
14 Entering, I don't think there's any question that Mr.
15 Holmes entered the house, he admitted in his own
16 statement that he entered the house. Dwelling, Mr.
17 Kozelski argues that the house is not a dwelling and
18 cited State vs. Farabee. What that case also states is
19 that temporary absents of the occupants does not prevent
20 the residence from being the subject of a burglary. What
21 is important is that the occupants have the intent to
22 return to the dwelling. There was ample testimony
23 yesterday from Ms. Campbell that Ms. Blandin slept there,
24 maintained her medicine there, had a refrigerator there.
25 Ms. Campbell went to the house every single day. There

1 was an alarm on the house and most importantly at the end
2 of her testimony I asked her how this affected her and
3 her mother she said that she was not going to let this
4 situation run her out of her house. She had every
5 intention to return to that house despite what had taken
6 place in the month of July. Without consent, Your Honor,
7 I think that element speaks for itself. Mr. Holmes
8 admitted that he did not have consent. Ms. Campbell told
9 you that he did not have consent. With intent to commit a
10 crime therein. Mr. Kozelski cites Pinckney. I'll also
11 mention in Pinckney v. State that case says it is not
12 necessary that the defendant actually commit or be
13 convicted of the crime he intended to commit during the
14 burglary. It is only necessary that he had the intent to
15 commit any crime when he entered the building. State vs.
16 Fresita, 479 SC2d 50, South Carolina Supreme Court, 1996
17 states that intent may be shown by acts and conduct of
18 the defendant from other circumstances from which you
19 naturally and reasonably infer intent. What this is
20 saying is that you can look at the defendant's conduct
21 and you can infer intent coupled with Pinckney you don't
22 have to actually commit a crime therein. In Fresita, you
23 can infer conduct. There's testimony that officers
24 responded to the house due to broken glass in less than
25 four and a half minutes. There was some confusion

1 yesterday with Ms. Campbell about when the glass was
2 broken, but I still maintain that the citizen hearing
3 glass break and Officer Bunch's quick arrival time, John
4 Homes is the one that broke that glass. Furthermore,
5 there is ample case law that says it is reasonable to
6 assume that one breaking and entering a house at night is
7 doing so with the intent of theft, larceny. Reasonable
8 minds can assume that one does not come into a house at
9 night but without the intent to steal. There is ample
10 evidence on the record of intent that can be inferred by
11 Mr. Holmes that he was there with criminal intent. Night
12 time, I don't think there is any issue with that. All
13 the witnesses said that they arrived after midnight, that
14 element speaks for itself, Your Honor. Again, we would
15 argue that the weight of the evidence does not concern,
16 Your Honor, in this hearing, it's merely the existence of
17 the evidence. There is ample evidence that suggest that
18 all of the elements of the burglary first degree have
19 been met and this is a proper determination for the jury
20 to make. If, Your Honor, would consider it as Mr.
21 Kozelski mentioned there is the burglary second violent
22 element that could also be presented to the jury if they
23 do not find that it is a dwelling, they find that it is
24 merely a building then they could have that option as
25 well. What the bottom line is, Your Honor, this is a

1 determination for the jury to make. The evidence exist.
2 They can infer that evidence however they want. If they
3 don't believe he had intent, they can infer that. If
4 they believe he had intent they can also infer that. The
5 case law is clear. That can be inferred. That is clearly
6 a matter for the jury to decide. We ask, Your Honor, to
7 deny the directed verdict and we ask, Your Honor, to
8 allow the jury to determine this case. Thank you.

9 The Court: Thank you.

10 Mr. Kozelski: Your Honor, if I may briefly respond.
11 I believe that Mr. Lietzow is still hung up on the fact
12 of this breaking glass. What he is relying on is the
13 hearsay statement that comes from the 911 call that
14 doesn't say they see breaking glass. The only thing that
15 is said is that they hear breaking glass and they see
16 somebody going into the house. I think Ms. Campbell's
17 testimony is very clear. She repeated herself. She said
18 that was broken the morning before. I asked her about
19 the police report that she made to the officer on the
20 29th and how they entered in through that same doorway
21 and she affirmed my questions. So, I don't think there
22 is any evidence that it was a breaking and entering and
23 that is the only thing that Mr. Lietzow is relying on to
24 prove there was a intent to commit a criminal action
25 inside of that building. I don't think that there is any

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1 actions after the fact. It think Mr. Holmes complied
2 with all the demand of the officer. There were no signs
3 of flight. There was no signs of concealment. All there
4 was was him coming to the officer and basically telling
5 him why he was in there. This is a very, I think
6 extraordinary case in that sense. I mean it would be
7 akin to you walking into your neighbors house and you
8 weren't invited but there is no proof on an intention to
9 commit a crime. And that's exactly what he did. He said
10 the only evidence that we to consider is that he told the
11 officer that he was going in there to sleep and they have
12 not disproved that one bit. There's no other conduct
13 that was done by Mr. Holmes to suggest that he had that
14 intent.

15 Mr. Lietzow: Would, Your Honor, like me to respond?

16 The Court: No, sir.

17 Mr. Lietzow: Thank you.

18 The Court: Ms. Campbell probably was not the best
19 witness in the world quite frankly but, and, she offered
20 conflicting testimony particularly with regard to whether
21 this was a dwelling or not, I mean, I heard testimony
22 that nobody had been there is three years is what I heard
23 but then I heard they were using it so I mean that's a
24 issue for the jury to decide quite frankly whether it was
25 a dwelling or whether it wasn't. They are going to have

1 to sift through that conflicting testimony that she
2 offered. I think it is a jury question so I'm going to
3 deny your motion for directed verdict on that ground.
4 With regards to the intent, I think it could be inferred
5 from that, at night time. He didn't have to break the
6 glass out to, you know, to be a burglary or commit a
7 crime. He's going into somebody's else he's not suppose
8 to. Now, whether he intended to commit a crime you can
9 certainly argue to the jury vigorously and we can see how
10 it plays out but I think there is a intent and case law
11 indicates it could be inferred. So, I respectfully deny
12 your motion for directed verdict.

13 Now, you've indicated that your client is not going
14 to testify?

15 Mr. Kozelski: Yes, Your Honor. At this time.

16 The Court: Mr. Holmes, would you stand, please sir.

17 Mr. Holmes I want to make it clear on this record that
18 you understand, sir, that you do have the right to
19 testify in your own defense if you want to. You aware of
20 that, are you not?

21 Mr. Holmes: Yes, sir.

22 The Court: Do you also understand that you could
23 call other witnesses on your behalf if you wanted to. You
24 might not want to testify yourself but you could come
25 some other people in your defense, do you understand

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1 Mr. Holmes: No, I don't.

2 The Court: Okay. And, again, you're making this
3 decision after several conversations with Mr. Kozelski,
4 Your Honor, correct?

5 Mr. Holmes: Yes, sir, Your Honor.

6 The Court: Mr. Kozelski, do you have any questions
7 you want to ask your client concerning his decision not
8 to testify?

9 Mr. Kozelski: No, Your Honor.

10 The Court: All right. You may be seated.

11 Mr. Holmes: Thank you.

12 The Court: Alright counsel. We are ready for
13 closing arguments then correct?

14 Mr. Lietzow: The State has rested. I'm not sure of
15 the position of the defense at this time.

16 Mr. Kozelski: We can rest in front of the jury, Your
17 Honor, and then we will be prepared for closing.

18 The Court: Alright. Of course, by not putting up
19 any defense then that give you the last argument. What
20 I'd like to do is after we have the closing arguments is
21 send the jury back out, then I'm going to get together
22 with the two of you to make sure we are all on the same
23 page with regard to the charges and make sure there is
24 not a problem with that, okay?

25 Mr. Lietzow: Your Honor, if I may, I'd like to

1 settle that issue now, that might effect how I do my
2 closing argument. Particularly if I know for a fact they
3 are getting a burglary second violent charge. I'd like
4 to address that in my closing. I wouldn't want to
5 address that in my closing and then not have not.

6 The Court: Are you going to request that I charge
7 the lesser included offense of burglary second?

8 Mr. Kozelski: I believe we are but we are going to
9 request lesser included. I have to look at the statute
10 exactly, Your Honor, as far as burglary second violent as
11 opposed to non violent. I'm not sure why this is a
12 violent as opposed to a non violent crime. But we would
13 request a lesser included.

14 Mr. Lietzow: Your Honor, I have the statute in front
15 of me. Burglary second degree, 16-11-312(a). A person
16 is guilty of burglary second degree if a person enters
17 into a dwelling without consent with the intent to commit
18 a crime. B says a person is guilty of burglary in the
19 second degree when a person enters a building without
20 consent and an intent to commit a crime therein. And
21 when effecting entry or while in the building, the
22 entering or remaining occurs in the nighttime. And that
23 subsection is punishable up to fifteen years and it's
24 denoted as a violent crime. So, if, Your Honor, we would
25 argue, Your Honor, this would be a burglary second

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1 violent if in fact they do not think that this is a
2 dwelling, a building, enter or remaining occurred in the
3 nighttime. That's the aggravating statute. The
4 circumstances make it a violent crime. So, obviously
5 we're going to argue for a burglary first but the fall
6 back position would be that if you do not find it's a
7 dwelling, it's a building, still guilty of a crime. Just
8 because the house may or may not be abandoned.

9 Mr. Kozelski: That is how I read the statute too,
10 Your Honor.

11 The Court: Okay. What was that code section?

12 Mr. Lietzow: 16-11-312.

13 The Court: Okay.

14 Mr. Lietzow: Particularly 3(b).

15 The Court: What about burglary third? If you want
16 the lesser included. That is a lesser included offense.

17 Mr. Kozelski: We are fine with charging that as
18 well, Your Honor.

19 Mr. Lietzow: I would object against that, Your
20 Honor, I don't think there's any question that it was at
21 nighttime. The jury would have to find that it was not
22 at night time to believe it was a burglary third. I
23 think the testimony is clear on that issue.

24 Mr. Kozelski: I would still argue, Your Honor, that
25 is a charge that would be included. I think it's a

1 charge that the jury could consider.

2 The Court: There's no doubt it occurred at night
3 time, but ...

4 Mr. Lietzow: Your Honor, I think the lesser included
5 charges, what the evidence is at trial. All the evidence
6 is that this occurred in the night time, which would
7 place it squarely in burglary first degree or burglary
8 second degree violent.

9 The Court: The thing with burglary third is it is
10 just one less element. The night time elements been
11 removed. You've still got to show that he's entered the
12 building without consent.

13 Mr. Kozelski: Your Honor, we would agree with that
14 there was an issue about the time that this thing
15 happened. I don't think there was any contrary testimony
16 but that this squarely happened at night they would have
17 to object ...

18 The Court: I mean, I'm going to read the statute to
19 them so they're going to have to hang a third on it
20 because it doesn't say anything about ...

21 Mr. Kozelski: I don't think they have to consider
22 that aggravated element.

23 Mr. Lietzow: That would be against all the evidence
24 that was presented at trial.

25 The Court: No, sir. It wouldn't be against all the

1 elements because you've still got these elements. He
2 entered the dwelling, excuse me not dwelling. He entered
3 the building, it just leaves out the element of night
4 time. I agree with you that it happened at night time.
5 There is no dispute about that. It's just that element
6 is removed on third degree. You can be third degree
7 night time or day time.

8 Mr. Lietzow: I would disagree with that contention,
9 Your Honor, and I think where you determine lesser
10 included is through that evidence entered at trial and
11 Your Honor says there's been no evidence other than night
12 time so I think it would improper to put the less
13 included of burglary third degree.

14 Mr. Kozelski: That's not the element, Your Honor.
15 We're on the same page as far as it not being a element
16 so they don't have to consider it with that charge.

17 The Court: I'll decide while you're making your
18 argument. You'll know when I've decided when I do it.
19 I'll note your objection, sir. It's an interesting
20 question.

21 The Court: Gentlemen, approach the bench.

22 (Counsel approaches)

23 (Charge talk off the record)

24 The Court: We're going to go back on the record.

25 Are there any objections to these charges we talked about

1 off the record. Counsel, are you ready to state your
2 objections to proposed charges or request charges?

3 Mr. Kozelski: Yes, Your Honor, as to the State's
4 charge for intent to commit a crime therein, we do take
5 objection to the first statement, the first sentence
6 where it says the unexplained breaking and entering in
7 the night is evidence itself intending to commit a
8 larceny rather than (coughing interruption). Here we
9 don't have a unexplained entry into the night. We have
10 an explained entry in the night and the only explanation
11 that was given at trial, the only evidence used at trial
12 was from Officer Bunch which said that when he asked Mr.
13 Holmes why he entered the home he said he was trying to
14 find a place to sleep. So, I don't believe that applies
15 to this case because I believe there is an explained
16 entry as to why he went in. The same thing goes for the
17 second sentence. The absence of any intent or explanation
18 for breaking and entering is the usual objection for
19 purpose of burglarizing a dwelling, a house at night is
20 theft. Here we do have evidence of intent or explanation
21 for the entering and that being that he went into the
22 house to sleep. These cases that are relied upon, Your
23 Honor, are cases in which, first it was never a trial,
24 it's a PCR from a plea, so it's hard to say what would
25 happen if that was the case, but in *Haney*(sic) I don't

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1 believe the defense presented any evidence. They were
2 just simply caught in the house. There was not
3 explanation for why they were caught in the house and
4 that's why these charges were given because there was no
5 explanation, the defense offered no explanation so the
6 Judge charged these to the jury as saying well if there
7 is no explanation for why he was in here this could be,
8 this is an inference that you can draw. This is why I
9 don't believe any of these apply in this case because we
10 have presented evidence, there is evidence on the record
11 to say why he went into the house and therefore charging
12 these is just repeating over and over entering into a
13 dwelling at night is an inference of an intent to commit
14 a crime. I don't believe that is the correct state of
15 law when, especially when you leave out in the absence of
16 other intent because in this case we do have the presence
17 of other intent.

18 The Court: Your response.

19 Mr. Lietzow: Yes, Your Honor. Our request to charge
20 is not --- if it is a correct statement of law on an
21 issue raised by the indictment on the issues presented at
22 trial. State vs. Alston(sic), which is a South Carolina
23 Supreme Court case decided in 1989. Mr. Kozelski is
24 concerned about the statement in the absence of other
25 intent or explanation for breaking and entering. The

1 State would agree that that statement that that
2 particular portion of the statement can be struck and the
3 jury charge could read, the fundamental theory is usually
4 that the purpose for burglarizing a dwelling, house at
5 night is theft. Again, the State would agree that in the
6 absence of circumstances could be struck as mentioned,
7 while off the record, at the bench. Your Honor, all of
8 these statements are correct statements of law. South
9 Carolina Supreme Court has decided that all of these are
10 correct statements of law. Pursuant to State vs. Alston,
11 we think it's appropriate to charge this language as the
12 jury charges. Breaking and entering. Breaking does not
13 have to be the shattering of glass. It's going into,
14 entering and breaking is crossing into, we think there is
15 evidence that Mr. Holmes entered and broke the home of
16 and I can reaffirm enough Mr. Kozelski
17 gives procedural issues but nothing would suggest that
18 these are incorrect statements of law as they applied in
19 this case and therefore we think it is appropriate to
20 charge language with the modifications made just to
21 alleviate any issue about tainting the juries mind
22 completely by removing those statements that we agreed to
23 in front of Your Honor. Thank you.

24 Mr. Kozelski: Your Honor, I think even redacting
25 those would completely take the sentences out of context.

1 If you just read the fundamental theory is the usual
2 object for purposes of burglarizing a dwelling house at
3 night is theft. I mean, this applies to a case in which
4 there is no evidence of why somebody entered into a
5 house. That's what the law applies to and that is not
6 the case here.

7 The Court: Do you want me to include that language
8 in there?

9 Mr. Lietzow: Your Honor, I would be completely okay.
10 I only agreed to strike it because that seem to make
11 everybody happy but I think the language as written ...

12 The Court: The explanation that you're offering is
13 the statement that the defendant made to law enforcement.
14 That could be self serving obviously to the law
15 enforcement officer. The jury can still decide whether
16 there was some other intent other than sleeping in the
17 house.

18 Mr. Lietzow: And I think this jury charge allows ...

19 The Court: You can certainly argue --- I think it's
20 a point you can argue to the jury, you know. I mean ...
21 I'm going to charge this. I've already indicated I think
22 the charge is appropriate. I'm going to charge this to
23 the jury. Now, if you want any of the absence or other
24 intent of explanation deleted, I'll delete it or I'll
25 include it. It's up to you.

1 Mr. Kozelski: I believe it's also a bit duplicative,
2 Your Honor, it says the same thing over and over and over
3 as far as breaking in, the intent is to steal. I think
4 that's in there numerous times. Not innocent intent. It
5 draws an inference for burglary. I think the sentence is
6 over and over reinforcing the fact that if somebody goes
7 into a house at night there intent is to steal and that
8 is absent for any other explanation for why they are in
9 there. I just don't believe that is the case that we
10 have before us today.

11 Mr. Lietzow: Your Honor, we would ask that you just
12 put the whole thing in as it is just so there is no
13 question. Again, this is valid case law from the South
14 Carolina Supreme Court. Thank you.

15 The Court: I agree. I'm going to read the entire
16 request to charge that is set forth. That way you can
17 certainly argue --- an explanation for his entering, so.

18 Mr. Lietzow: Your Honor, we would not have any
19 problem with mere presence being in. Give it all to the
20 jury.

21 The Court: Anything else gentlemen?

22 Mr. Lietzow: Nothing from the State, Your Honor.

23 Mr. Kozelski: Nothing from the defense, Your Honor.

24 The Court: Alright. Let's bring the jury in. I've
25 been advised that lunch for the jury will be here between

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1 12:00 and 12:10. What we'll do is let's just go ahead
2 and let you argue. Then we'll take another break, let
3 them eat their lunch and then I'll charge and then we'll
4 let them deliberate. Does anybody have any problem with
5 that?

6 Mr. Kozelski: That's fine, Your Honor. Do you want
7 me to rest in front of the jury?

8 The Court: I do so that the record will be clean
9 with regards to that.

10 (Short court break was taken)

11 Clerk: All jurors present, Your Honor.

12 The Court: Defense counsel, are you ready to present
13 your case?

14 Mr. Kozelski: Your Honor, at this time, the defense
15 rests.

16 The Court: Okay. Do we have any motions that we
17 need to take up outside the presence of the jury?

18 Mr. Lietzow: None from the State Your Honor.

19 Mr. Kozelski: Your Honor, we just renew all of our
20 previous motions and as far as direct verdict motions.

21 The Court: Alright. I will respectfully deny that
22 motion and for the reason previously stated.

23 Alright, ladies and gentlemen, the defendant has
24 rested his case now. We have reached the point in the
25 trial where it's time for the attorneys to make their

1 closing arguments to you. The arguments they are about
2 to make are not evidence in this case whatsoever. Their
3 statements and arguments are meant to help you understand
4 the evidence and apply the law to the evidence. You
5 should disregard any remarks, statement, or argument
6 which is not supported by the evidence presented during
7 this trial or the law that I will explain to you after
8 the arguments. Counsel, are you ready?

9 Mr. Lietzow: Yes sir, thank you. Mr. Kozelski, Your
10 Honor, may it please The Court? Ladies and gentlemen of
11 the jury. Mr. Clerk, may I get the TV brought up please?
12 John Holmes is charged with burglary in the 1st degree.
13 In the beginning of the trial, I mentioned that there
14 were elements that constitutes a burglary in the 1st
15 degree. Those elements are entering a dwelling without
16 consent, with the intent to commit a crime therein at
17 night time. I carry the burden of proving each of those
18 elements beyond a reasonable doubt. After lunch, the
19 judge is going to explain to you what reasonable doubt is
20 and he's going to go into great detail about the law.
21 But I want to emphasize something; beyond a reasonable
22 doubt is not beyond every single doubt in the entire
23 world. Nobody can know anything beyond all doubt in
24 their mind unless they were there and saw the entire
25 thing from start to finish. Only one person knows beyond

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1 all doubt what happened that night. Beyond a reasonable
2 doubt is that which leaves you firmly convinced. Let's
3 talk about the elements in a little bit more detail now.
4 Entering: The smallest entry is sufficient. Entry
5 includes the intrusion of any part of the defendant's
6 body or any instrument under his control. The defendant
7 was caught in the back bedroom of the house. He admitted
8 that he entered the house in his own words to the
9 officer. I don't think there's any question in this case
10 that the defendant entered this residence. What is a
11 dwelling? I don't really like the word dwelling. I like
12 the word home better but I sometimes the law has specific
13 words. A dwelling is any structure that someone sleeps
14 in on a regular basis. A building is a dwelling even if
15 the residents are temporarily absent from the building.
16 What's important is that the occupants must have the
17 intent to return. An enclosed screen porch is part of a
18 dwelling where it's used for the protection of the
19 owner's property. How do we know is a
20 dwelling? Ms. Blandin has a bed there, she sleeps there,
21 Corona sleeps there on occasion, there was a
22 refrigerator, Ms. Blandin kept her medicine there, Ms.
23 Campbell maintained the yard, cut the grass, trimmed the
24 bushes, got the mail. Ms. Blandin's health required her
25 to have almost a constant caretaker. In July of 2014,

1 her health was really bad. Her kidneys were failing and
2 she was on regular dialysis. As a result of that, she
3 spent most of the time at Corona's house, her daughter's
4 house. Corona mentioned on the night of the incident,
5 she was alerted that something had happened because the
6 neighbor called her and her alarm company called her.
7 They had an alarm on the house. Most importantly, I
8 asked Ms. Campbell how did this affect her mother and
9 her. Ms. Campbell told you that her mother worked for
10 everything she had ever gotten in her life. Never been
11 handed anything. A tough woman; she was a fighter. She
12 said she was not going to let this incident scare her out
13 of her own home. She wasn't going to let somebody else
14 take over her own home. She had every intent in going
15 back to that house. She had the intent to return to that
16 house. That's what's important for a dwelling. Without
17 consent, the next element: entering without consent means
18 without the consent of the person with lawful possession
19 of the house. Mr. Holmes admitted that he didn't know
20 the owner. Mr. Holmes admitted that he didn't have
21 permission to be in that house. Corona told you she
22 didn't give him permission to go into the house. Anne
23 didn't give him permission to go into the house. John
24 Holmes was in that house without permission, without
25 consent. The fourth element of burglary is with the

1 intent to commit a crime therein. The defendant does not
2 actually have to commit or be convicted of the crime he
3 intended to commit. Intent may be shown by acts and
4 conduct of the defendant and other circumstances from
5 which he naturally and reasonably may infer. It's fancy
6 language for you can take a look at what his conduct was
7 like and you can infer whether his conduct was that of
8 somebody with criminal intent. Furthermore, the presence
9 of closed doors and locked windows is notice to the world
10 that entry is forbidden. Doors were shut, the windows
11 were down. That's a statement that says you're not
12 allowed in this house without permission. If one breaks
13 and goes into the property to do damage or commit breach
14 of peace or commit some unlawful act, he is guilty of a
15 crime. When the building is a dwelling, the unexplained
16 breaking and entering in the night itself is evidence of
17 intent to commit larceny. The fundamental theory is that
18 the usual object or purpose of burglarizing a dwelling
19 house at night is theft. A reasonable mind recognizes
20 that people do not usually break into and enter the
21 building of another at night with innocent intent.
22 Officer Bunch responds to the scene because a concerned
23 citizen called 911 and reported that she had heard glass
24 break, she saw someone, whoever the citizen was, saw
25 someone enter the house. He arrived less than four and a

1 half minutes later. When he gets there, he sees glass on
2 the ground, on the patio, and sees glass on the ground
3 leading into the house. The defendant was caught in the
4 back bedroom in the act. He was caught as far away
5 inside the house from where he entered as possible. He
6 wasn't there looking for shelter. He was there rummaging
7 through that house, looking for things to steal. And by
8 the time the officers got there, he had already made it
9 back to the bed ...

10 Mr. Kozelski: Objection, Your Honor. Facts not in
11 the evidence.

12 The Court: There's no testimony to that effect
13 Solicitor ...

14 Mr. Lietzow: I'll strike that, Your Honor.

15 The Court: I'm going to ask the jury to disregard
16 that statement.

17 Mr. Lietzow: The defendant ducked back into the room
18 for a second after the officers saw him. He's ducking
19 back in because he has a guilty conscious. Who knows
20 what he did when he dipped back into that room. He may
21 or may not have gotten rid of some objects that he had in
22 his hands. We don't know. But what we do know is that
23 initially he tried to get out of the way. Get out of the
24 sight of the officer. The defendant admitted that he
25 entered the glass, through the patio, and through the

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1 side door. His own statement reaffirms what the officer
2 saw in his eyes when he saw the broken glass leading into
3 the house. Now, you've heard the term breaking.
4 Breaking isn't actually an element of burglary. Breaking
5 essentially means crossing a threshold. When you enter
6 and you go across the threshold, it's at that point you
7 technically broke into the house. You've heard testimony
8 that Officer Bunch responded because somebody reported
9 glass being broken. The testimony suggests that there's
10 glass broken on the ground. Conflicting testimony about
11 whether or not and when that glass was broken. However,
12 broken glass isn't an element of a crime. Going into the
13 house is what constitutes entering and breaking in the
14 house. When Mr. Holmes walks out into the patio, breaks
15 into the patio, he has entered without permission. When
16 he breaks into the house, he's committed a criminal act.
17 Two of the rooms on the house have glass enclosures. You
18 can see in them from the outside. On the patio, or the
19 sunroom, the Florida room; it's been referred to all
20 three, there were cases of water, other common household
21 objects that you could see inside and look at. Around
22 the back, there was the patio. On the patio, you could
23 see common household goods and items. John Holmes
24 deliberately picked this house. He knew there were
25 things inside that house. He could look in. He could

1 see that this house had items of value. That's why he
2 went into the house. To steal those items of value. The
3 door leading into the house from the patio was wide open
4 when Officer Bunch got there. Somebody's going in to
5 seek shelter and seek security, they're going to close
6 that door behind them. John Holmes left that door wide
7 open so he could make a quick getaway when he was done
8 inside that house. And finally, what I think is very
9 important, yesterday you heard testimony that John Holmes
10 said to Officer Bunch's sergeant the house had been
11 vacant for months. What I think is crucial about that
12 statement is the word months. John Holmes had his eye on
13 that house. He knew about that house for months.

14 Mr. Kozelski: Objection Your Honor!

15 The Court: That's something the jury can determine
16 from, there's no actual testimony to that effect, but I'm
17 going to...

18 Mr. Lietzow: It's merely my contention of the facts,
19 Your Honor.

20 The Court: That's fine. I'll allow you to continue.

21 Mr. Lietzow: Thank you.

22 The Court: I'll note your objection for the record.

23 Mr. Lietzow: He was keeping an eye out on this
24 place, he was scoping it out. In his mind, it was an
25 easy target to go in there and steal things. Reasonable

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1 mind recognizes that people do not usually break into and
2 enter the building of another at night with innocent
3 intent. We can look at his conduct and infer what he was
4 there for. The State contends that he was not there for
5 innocent intent. He was there to commit a larceny or
6 commit some crime therein. Night time. Common sense.
7 It's dark outside and you need an artificial light in
8 moonlight to see. All of the testimonies suggest that
9 this was past midnight. When all of the witnesses got
10 there, it was dark out. We think that one speaks for
11 itself. Mr. Holmes wants you to think that he's
12 homeless, just looking for a place to stay. We're not
13 really going to draw any opinions about that. But what
14 we do know is certain parts of the testimony, the defense
15 was trying to divert your attention away from what
16 actually really happened. What really happened was the
17 officer got there, caught Holmes in the back bedroom of
18 that house. If Mr. Holmes was homeless and he needed
19 security, he could've stayed in a homeless shelter. If
20 he was homeless and just looking for a safe place to
21 stay, he could've stayed in the garage that was behind
22 the house that Ms. Campbell told you existed. If Mr.
23 Holmes was homeless and he needed some place to stay, he
24 would've stopped as soon as he got to that patio. Makes
25 sense. He didn't need to go inside the house. If he was

1 looking for shelter, he would've stopped on the patio or
2 he would've gone into the garage or any other places.
3 Not in the very back bedroom of this house. Those are
4 fake excuses designed to take your attention away from
5 the elements of the crime. I mentioned to you in the
6 beginning that actions have consequences and that this
7 was a common sense case. This is not a who done it. You
8 guys don't have to determine whether or not John Holmes
9 was at the scene. There's no question about that. Ms.
10 Blandin, a 70 year old woman, declining health, her
11 kidneys are failing, just recently got into a car
12 accident. Corona was concerned with taking care of her
13 mother full time. In her spare time, she had to maintain
14 her own house and she had to maintain the house of her
15 mother. No one deserves to have to deal with this. The
16 last thing they needed was John Holmes breaking and
17 entering into their house. They don't need to worry
18 about boarding up their house. They don't need to worry
19 about getting that phone call from neighbors saying that
20 somebody had broke in. They don't need to worry about
21 going to their house and seeing evidence of a break in.
22 They don't deserve to have their sense of privacy
23 invaded. They don't deserve to have their property
24 broken. No one deserves that. John Holmes had his eye
25 on this property. Said it was vacant for months. He saw

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1 common household items through the glass windows. He was
2 not there to seek shelter or sleep. He was there to take
3 things that did not belong to him. Officer Bunch told
4 you that folks in that area don't like to talk to the
5 police. Thankfully a concerned citizen had the courage
6 to call 911. Thankfully Officer Bunch was nearby in the
7 area, was able to get there as soon as he did.

8 Thankfully no one was home that night. Don't make this a
9 case of the police doing too good a job. The police got
10 there too fast before the Holmes could steal anything and
11 get out. John Holmes entered that house as soon as he
12 broke into that patio. As soon as he entered the house
13 through the side door, he's committed a burglary. He
14 demonstrated his criminal intent by going in that house
15 at night time. This a common sense case ladies and
16 gentlemen. You don't get to break into somebody's house
17 at night time without permission and get caught in the
18 act and get away with a burglary. Find John Holmes
19 guilty of burglary in the 1st degree. Thank you.

20 Mr. Kozelski: This house isn't a home. This house
21 is something that has been swallowed up by it's
22 surroundings, by the community that surrounds it because
23 nobody lives there. This house is abandoned and it looks
24 like that from the boarded up doors, the boarded up
25 windows, the glass broken at the end where Mr. Holmes

1 crawled in. At the beginning of the trial, Mr. Lietzow
2 said "You don't get to break into somebody's house,
3 destroy their property and not have to pay for it." And
4 at the end of this trial, if you listened to Ms.
5 Campbell's testimony, you found out that Mr. Holmes
6 didn't break that window. Mr. Lietzow is trying to say
7 that she might be confused or that might not have
8 happened even though she did make a police report earlier
9 in the day saying that it was broken. She's just
10 confused. Are you sure? Yes, I'm sure it was broken
11 earlier that morning. Mr. Holmes didn't break that glass
12 and he wants you to believe that he broke that glass
13 because that's the only evidence he has that Mr. Holmes
14 would have intended to commit a crime in that house. He
15 keeps saying "He went in there to steal stuff." Steal
16 what? What's in that house? We didn't see any pictures
17 in that house. He said that there's a bed in there, a
18 refrigerator in there. I don't think Mr. Holmes is going
19 to take anything like that. See my client? I don't
20 think he can lug one of those around on his back. What's
21 he going to steal? What's in that house? We don't have
22 any pictures in that house. He tried to explain to you
23 how the officer was looking through the house and where
24 Mr. Holmes was located. Why couldn't we see a picture of
25 that? Why didn't Crime Scene Technician Kubicko take a

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1 picture of what was in the house? He says "Well maybe he
2 just threw the items when he dipped back in." Where were
3 those items? Where - where were the items? He said
4 "Well he dipped back in and that's why he was, you know,
5 trying to evade the police officer." The officer, this
6 North Charleston police officer was pointing a gun
7 straight at his face. So when he looked around the
8 corner and saw a gun, he dips back in. But his actions
9 that night show exactly the opposite; that he did not
10 intend to commit a crime. He didn't try to run. He
11 didn't try to go out a window. He didn't try to conceal
12 himself. He complied with the officer's demands. He
13 lifted his hands up and he walked directly to the
14 officer. Those are the only actions that Mr. Holmes did
15 that night. He didn't have anything in his pockets, he
16 didn't have - except for junk. He didn't have any type
17 of burglary tools, no gloves, no ski mask, no intention
18 to commit a crime there. The only intention he had was
19 to sleep which is why he went to the bedroom. There's no
20 evidence in here that he intended to steal anything.
21 There's no evidence to suggest that there was anything to
22 steal. And this wasn't a home. Ms. Blandin hadn't lived
23 there for three years. She told North Charleston police
24 officer back in July of 2013 that she was living with her
25 daughter ...

1 Mr. Lietzow: Objection Your Honor. I don't think
2 that report was ever entered into evidence. Hearsay.

3 Mr. Kozelski: It was testified to.

4 The Court: It was testified to. I'll let you
5 continue.

6 Mr. Kozelski: That she had been living with her
7 daughter on North Atlantic Street for two years and that
8 the house was being used as storage. Nobody usually
9 sleeps there. There's no reason why Ms. Campbell would
10 sleep there. She's got a house of her own. So she goes
11 there to check because there's always these burglaries.
12 There's always these vandalisms. There's always this
13 theft. There's a purse that's taken. There are AC units
14 that were taken. There are doors that are left outside
15 that are taken. There are stand up fan that was taken.
16 And every time there's a broken window and a broken door
17 and she calls the cops every time. She gets an incident
18 report. And now you can see from the picture about nine
19 months after the fact, all those things are fixed. Sure
20 hope she has good homeowner's insurance. That is, if she
21 lives there. So she has all these boards on the doors,
22 all these boards on the windows; two doors, eight
23 windows. The house didn't look the same as the picture
24 that they showed you. It was dimly lit, as Officer Bunch
25 told you. It was in a high crime area. It was a place

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1 where Officer Bunch told you he wouldn't want to sleep
2 outside. And Mr. Lietzow made this big deal about
3 sleeping in the garage; well, why would you sleep in the
4 garage when there's a house right there? It's open. You
5 could just go in it. It's the same way that the officer
6 went in it. It wasn't that big of a deal to go in. The
7 officer went in that way, he went out that way. It's the
8 same way Mr. Holmes went in. He admitted that. Those
9 were the elements that were not contested. He did enter
10 this house without permission at night time. This house
11 was not a dwelling. Nobody lived there. Nobody
12 regularly slept there. It was boarded up. It looked
13 abandoned. And he had no intent to commit a crime. And
14 what I don't understand about this case is there's
15 something off here. There's nobody - nobody's on the
16 same page. There's no sense of continuity between the
17 crime scene technicians, the police officers, the - Ms.
18 Campbell, and the solicitor's office. They don't know
19 who is who. I don't understand how your house can be
20 burglarized twelve times in a month and North Charleston
21 not even assigned a detective to the case? They don't
22 have one officer sit in that house at night time because
23 chances are somebody's going to break into it. They
24 don't do anything. They don't know. They don't even
25 know that the glass was broken that morning. And so they

1 come up before you and say he broke into this house. He
2 broke the glass. That's his intent to commit a crime.
3 That wasn't the case. That's not what Ms. Campbell spoke
4 to. This was a house, but it wasn't a home. It was a
5 refuge. It was a temporary refuge. Mr. Holmes had been
6 in there three, four minutes. He wasn't going around
7 looking for something. We don't know what was even in
8 that house. What you have to decide in this case, not
9 only is this a dwelling but what was Mr. Holmes
10 intentions that night? Did he have criminal intent? The
11 State has presented zero evidence. None whatsoever that
12 he intended to commit a felony. Or any type of crime.
13 The only evidence that you have and the only evidence you
14 should consider is what he told - what Mr. Holmes told
15 the officer. And that is "I was trying to find a place
16 to sleep." The house had been vacant for months. And
17 that's where he went. In the back bedroom. So when you
18 go back into the jury room and you take your initial
19 vote, I want you to all rely on your own experiences. I
20 know many of you have been homeowners before. Obviously,
21 you would not want somebody coming into your home.
22 Someplace where you sleep, lay your head at night.
23 That's not the case here. What this is is a storage
24 facility that is forgotten, that was abandoned, that was
25 vandalized by those around them. By the community that

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1 it was in. So I'm asking you not to hold Mr. Holmes
2 accountable for the actions of others. But to hold him
3 accountable for his own actions, his own conduct. What
4 he did was enter that house with no intent but to sleep.
5 He complied with the officer's commands. He did
6 everything that the officer asked him to do. That's why
7 he's not guilty of 1st degree burglary. That's why he's
8 not guilty of any burglary. Because he wasn't trying to
9 steal anything. And there's no evidence of that. So I'm
10 going to ask each and every one of you to return a
11 verdict of not guilty and allow my client to go find a
12 home.

13 The Court: Alright ladies and gentlemen, now that
14 the attorneys have made their closing arguments or
15 statements to you, it's my duty and time for me to charge
16 you and give you your instructions. Charge you on the
17 law and give you your instructions concerning
18 deliberations. I understand that lunch was to be
19 delivered between 12 and 12:10. So I've got the clerk
20 checking to see if it's here. If it's here, we're going
21 to go ahead and take a lunch break. When we come back
22 from lunch break, I will charge you on the law and then
23 send you back to begin your deliberations. If you'll
24 just bear with me a couple minutes, we're waiting for the
25 clerk to come back in. I understand that lunch is in the

1 on more than one occasion. I think everybody in this
2 courtroom kept monitoring him. It looked like to me what
3 he was doing was he was sleeping and when he realized he
4 was asleep, he'd make like he was making notes. And the
5 next thing you know, he seemed to be drifting off. So, I
6 mean, you know, I'm sure he'll have some explanation for
7 me at the point in time I try to excuse him, but it's my
8 intention at this point in time to excuse him and replace
9 him with the alternate. If he wasn't asleep, he was
10 putting on a good act. He was in some deep thought,
11 that's for sure. Okay.

12 (Court lunch break/Back on 1:02)

13 The Court: Alright ladies and gentlemen, I hope your
14 lunch was adequate anyway. Okay we have now reached the
15 point in the trial where I have to read to you your jury
16 instructions, it's called the charge to the jury. If
17 you'll be patient and be attentive I certainly would
18 appreciate it.

19 At this time, you have heard all of the evidence and
20 the arguments of the lawyers. It is my duty to instruct
21 you on the law which applies to this case. These
22 instructions will include the instructions on general
23 rules that define and control your duties. It will
24 include the rules of law you must apply to be able to
25 include the law of the facts. In other words, the State

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1 must prove it's case and I will go over the instructions
2 to what the State wants to prove. And it will also
3 include some rules for your deliberations. It is your
4 duty to find the facts from all the evidence in the case.
5 To those facts you must apply the law as I give it to
6 you. You must follow the law as I give it to you. You
7 should not be concerned with what the law should be, but
8 what it is. And you must not be influenced by any
9 personal likes or dislikes, opinions, prejudices or undue
10 sympathy. That means that you must decide the case
11 solely on the evidence before you and according to the
12 law. You will recall that you took an oath promising to
13 do just that at the beginning of this trial.

14 In following my instructions, you must follow all of
15 them and not single out some and ignore others. They are
16 all equally important. And you must not read into these
17 instructions or into anything I may have said or done,
18 any suggestion as to what verdict you should return.
19 That is a matter entirely for you to decide, because
20 under our Constitution, I am not allowed to have an
21 opinion on the facts of this case. You, and you alone,
22 are the judges of what the facts are. You decide what
23 the facts are by evaluating or weighing the evidence you
24 have heard during this trial. There is no way for you to
25 weigh evidence in the literal sense but I can't give you

1 a set of scales to take back with you. It is entirely a
2 mental process, and you weigh and evaluate the evidence
3 by simply using your good sense and sound judgement.
4 There are two types of evidence which are generally
5 presented during a trial. Direct evidence and
6 circumstantial evidence. Direct evidence is the
7 testimony of a person who claims to have actual knowledge
8 of a fact, such as an eyewitness. It is evidence which
9 immediately establishes the main fact to be proved.
10 Direct evidence directly proves the existence of a fact
11 and does not require deduction. Circumstantial evidence
12 is proof of a chain of facts and circumstances indicating
13 the existence of a fact. Crimes may be proven by
14 circumstantial evidence. The law makes no distinction
15 between the weight or value to be given to either direct
16 or circumstantial evidence, however, to the extent the
17 State relies on circumstantial evidence, all of the
18 circumstances must be consistent with each other, and
19 when taken together, point conclusively to the guilt of
20 the accused beyond a reasonable doubt. If these
21 circumstances merely portray the defendant's behavior as
22 suspicious, the proof has failed. The State has the
23 burden of proving the defendant guilty beyond a
24 reasonable doubt. This burden rests with the State
25 regardless of whether the State relies on direct

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1 evidence, circumstantial evidence, or some combination of
2 the two. Now, the indictment charges the defendant with
3 burglary in the 1st degree. I remind you that the fact
4 the defendant was arrested, charged and indicted in this
5 case is not evidence in this case and cannot be
6 considered by you as evidence of guilt in this case, nor
7 does it create any presumption or inference of guilt.
8 This document is simply the formal written instrument
9 which contains the charge made against the defendant. It
10 is the formal document which brought this case to court.
11 This document will be with you in the jury room.
12 Burglary in the 1st degree which the defendant is charged
13 with by this indictment. He is charged with 1st degree
14 burglary. The State must first prove beyond a reasonable
15 doubt that the defendant entered a dwelling without
16 consent. A dwelling is any building or portion of a
17 building in which a person ordinarily sleeps. A building
18 constructed as a dwelling that has never been occupied
19 cannot be considered a dwelling for purposes of burglary.
20 But, a building is a dwelling even if the residents are
21 temporarily absent from the building. An enclosed screen
22 porch is part of a dwelling. In order to prove that the
23 defendant entered a dwelling, the State does not have to
24 show that the defendant's entire body entered the
25 dwelling. The smallest entry is sufficient. It may be

1 any part of the body, such as a hand or foot, or even an
2 instrument, such as a hook or other instrument. In
3 addition, the State does not have to prove that force was
4 used to gain entry. If a person enters a building by
5 using the deception, artifice, trick, or
6 misrepresentation to get consent to enter, this is an
7 entry without consent. Next, the State must prove beyond
8 a reasonable doubt that the defendant intended to commit
9 a crime, either a felony or a misdemeanor, at the time of
10 the entry. The mere entry into a dwelling without
11 consent is not burglary. If the intent to commit a crime
12 is formed after the entry, it is not a burglary. On the
13 other hand, if the defendant intended to commit a crime
14 at the time of the entry, it is a burglary even if the
15 intent was abandoned after the entry. It does not matter
16 that the intended crime was not completed. Intent may be
17 shown by acts and conduct of the defendant and other
18 circumstances from which you may naturally and reasonable
19 infer intent. Finally, the State must prove beyond a
20 reasonable doubt that the defendant entered or remained
21 in the dwelling in the night time. Night time is the
22 period between sunset and sunrise during which there is
23 not enough daylight to recognize a person's face, except
24 by artificial light or moonlight. If you find that the
25 State has failed to prove beyond a reasonable doubt that

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1 the defendant committed first degree burglary, you may
2 consider whether the State has proved beyond a reasonable
3 doubt that the defendant committed second degree
4 burglary. Second degree burglary included all of the
5 elements of first degree burglary except that the entry
6 was into a building and not a dwelling. A building is
7 any structure, vehicle, water craft, or aircraft where
8 any person lodges or lives; or where people assemble for
9 the purpose of business, government, education, religion,
10 entertainment, public transportation, or public use; or
11 where goods are stored. Finally the State must prove
12 beyond a reasonable doubt that the defendant entered or
13 remained in the dwelling in the night time. Night time,
14 again, is a period between sunset and sunrise during
15 which there is not enough daylight to recognize a
16 person's face, except by artificial light or moonlight.
17 Now, the defendant has pled not guilty to this
18 indictment, and that plea puts the burden on the State to
19 prove the defendant guilty. A person charged with
20 committing a criminal offense in South Carolina is never
21 required to prove himself innocent. I charge you that it
22 is an important rule of law that the defendant in a
23 criminal trial, no matter what the seriousness of the
24 charge may be, will always be presumed to be innocent of
25 the crime for which the indictment was issued unless

1 guilt has been proven by the evidence satisfying you of
2 that guilt beyond a reasonable doubt. This presumption
3 of innocence does not end when you begin your
4 deliberations, but it accompanies the defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying you of that guilt beyond a
7 reasonable doubt. The presumption of innocence is like a
8 robe of righteousness placed about the shoulders of the
9 defendant which remains with the defendant until it has
10 been stripped from the defendant by evidence satisfying
11 you of the defendant's guilt beyond a reasonable doubt.
12 The presumption of innocence is not mere legal theory.
13 It is not just a legal phrase. It is a substantial right
14 to which every defendant is entitled unless you, the
15 jury, are satisfied from the evidence of the defendant's
16 guilt beyond a reasonable doubt. Some of you may have
17 served as jurors in civil cases, where you were told that
18 it is only necessary to prove that a fact is more likely
19 true than not true, such as by the greater weight or
20 preponderance of the evidence. In criminal cases, the
21 State's proof must be more powerful than that. It must
22 be beyond a reasonable doubt. Proof beyond a reasonable
23 doubt is proof that leaves you firmly convinced of the
24 defendant's guilt. There are very few things in this
25 world that we know with absolute certainty, and in

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1 criminal cases the law does not require proof that
2 overcomes every possible doubt. If, based on your
3 consideration of the evidence, you are firmly convinced
4 that the defendant is guilty of the crime charged, you
5 must find the defendant guilty. If, on the other hand,
6 if you think there is a real possibility that the
7 defendant is not guilty, you must give the defendant the
8 benefit of the doubt and find him not guilty. The
9 evidence from which you are to decide what the facts are
10 consists of the sworn testimony of witnesses, both on
11 direct and cross-examination, regardless of who called
12 the witness; the exhibits that have been introduced or
13 received into evidence; and any facts to which all the
14 lawyers have agreed or stipulated or that I instruct you
15 to find. What is not evidence. Certain things are not
16 evidence and you may not consider them in deciding what
17 the facts are. 1) Arguments and statements by lawyers
18 are not evidence. The lawyers are not witnesses. What
19 they have said in their opening statements, closing
20 arguments and at other times is intended to help you
21 interpret the evidence, but it is not evidence. If the
22 facts as you remember them differ from the way the
23 lawyers have stated them, your memory of them controls.
24 2) Questions and objections by lawyers are not evidence.
25 Attorneys have a duty to their clients to object when

1 they believe a question is improper under the rules of
2 evidence. You should not be influenced by the objection
3 or by the court's ruling on it. 3) Testimony that has
4 been excluded or stricken, or that you have been
5 instructed to disregard, is not evidence and must not be
6 considered. In addition, if testimony or exhibits have
7 been received only for a limited purpose, you must follow
8 the limiting instructions I have given. 4) Anything you
9 may have seen or heard when the court was not in session
10 is not evidence. You are to decide the case solely on
11 the evidence received at and during this trial. As to
12 the credibility of witnesses: necessarily, you must
13 determine the credibility of witnesses who have testified
14 in this case. Credibility simply means believability.
15 It becomes your duty as jurors to analyze and to evaluate
16 the evidence and determine which evidence convinces you
17 of its truth. In determining the believability of
18 witnesses who have testified in this case, you may
19 believe one witness over several witnesses or several
20 witnesses over one witness. You may believe a part of
21 the testimony of a witness and reject the remaining part
22 of the testimony of that same witness. You may believe
23 the testimony of a witness in its entirety or reject the
24 testimony of a witness in its entirety. You may consider
25 whether any witness has exhibited to you any interest,

1 bias, prejudice, or other motive in this case. You may
2 also consider the appearance and manner of a witness
3 while on the witness stand. In order to establish
4 criminal liability, criminal intent is required. For
5 example, the mental state required to be proven by the
6 State for a particular crime might be purpose, intent,
7 knowledge, recklessness, or criminal negligence.
8 Criminal intent must be proven by the State beyond a
9 reasonable doubt. Criminal intent is always a matter
10 that must be determined by the jury from the
11 circumstances surrounding the situation. There is no way
12 to prove intent to a mathematical certainty. There is no
13 way medical science can dissect a person's brain and
14 determine what the person had in mind, so the law says
15 that criminal intent may be inferred from the
16 circumstances shown to have existed. This is how you
17 make a determination of whether or not the element
18 requiring intent was present. It is not necessary to
19 establish intent by direct and positive evidence, but
20 intent may be established by inference in the same way as
21 any other fact by taking into consideration the acts of
22 the parties and all the facts and circumstances of the
23 case. Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the
25 defendant intended to do based on the circumstances shown

1 to have existed. Criminal intent can arise from action
2 or a failure to act. It may arise from negligence,
3 recklessness, or an indifference to duty or to
4 consequences that is considered by the law to be the
5 equivalent of criminal intent. When the building entered
6 into is a dwelling house, the weight of authority holds
7 that the unexplained breaking and entry in the night is
8 itself evidence of intent to commit larceny rather than
9 some other crime. The fundamental theory in the absence
10 of either intent or explanation for breaking and
11 entering, is that the usual object or purpose of
12 burglarizing a dwelling house at night is theft. A
13 reasonable mind recognizes that people do not usually
14 break into and enter the building of another under the
15 shroud of darkness with innocent intent and that the most
16 usual intent is to steal. In the absence of inconsistent
17 circumstances, proof of unlawful entry into a building
18 which contains personal property that could be the
19 subject of larceny gives rise to an inference that will
20 sustain a conviction of burglary. The inference is
21 grounded in human experience which justifies the
22 assumption that the unlawful entry was not purposeful,
23 and, in the absence of other proof, indicates theft as
24 the most likely purpose. Mere presence at the scene is
25 not sufficient to prove someone guilty of a crime. A

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1 defendant's presence where a crime is being committed or
2 mere association with a person who commits a crime does
3 not make a defendant an accomplice or an aider and
4 abetter of the person committing the crime. The burden
5 is on the State to prove every element of the crime
6 charged. If you find, after reviewing all the evidence,
7 that the State has proved that the defendant was only
8 present at the scene of a crime, and that they have not
9 proved, beyond a reasonable doubt, any other
10 participation in the crime, then you must find the
11 defendant not guilty. The law is that proof of being at
12 the scene of the crime is not sufficient to find someone
13 guilty. Now, in this trial, the defendant exercised his
14 constitutional right not to testify during the course of
15 this trial. I instruct you and emphasize that the fact
16 the defendant did not testify is not a factor to be
17 considered by you in any way in your deliberation and in
18 your consideration on the question of the guilt or
19 innocence of the defendant. It must not be considered by
20 you in any manner whatsoever. A defendant has the
21 constitutional right to remain silent, and the assertion
22 of this right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are to
24 draw no conclusion whatsoever from the fact that the
25 defendant during this case did not testify. The fact

1 that this defendant did not testify should not even be
2 discussed in the jury room. The burden of proof, as I
3 have stated to you is on the State. The defendant is not
4 required to prove his innocence. The burden of proof
5 remains on the State to prove guilt beyond a reasonable
6 doubt. There was testimony as to a statement of the
7 defendant in the course of this trial. A statement to
8 have been made by the defendant has been admitted into
9 evidence in this case. While the Court has determined
10 that the statement is admissible, I instruct you that you
11 make the ultimate decision of whether or not the
12 defendant made the statement. If the defendant did make
13 the statement, you must determine whether the statement
14 was made by the defendant voluntarily and of his own free
15 will. This means that the statement was not caused by
16 pressure, force, fear, threats, coercion, or
17 intimidation, or by hope or a promise of leniency or a
18 reward of any kind. In determining whether the statement
19 was voluntary, you should consider both the
20 characteristics of the defendant and the details of the
21 questioning. Some of the factors that you must consider
22 are: the age of the defendant, the defendant's education
23 or lack of education, the defendant's mental ability or
24 capacity, the defendant's I.Q. or intelligence, the
25 defendant's background and environment, the place and

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1 length of detention, the nature of the questioning, and
2 the advice, or lack thereof, to the defendant of his or
3 her constitutional rights including, but not limited to,
4 the right to remain silent; that any statement could be
5 used against him in a court of law; the right to have a
6 lawyer present; that if he could not afford a lawyer, a
7 lawyer would be appointed to represent him without any
8 cost; and that he could stop making a statement at any
9 time. You must carefully consider all of the surrounding
10 circumstances before you give any weight to an alleged
11 statement. The State has the burden of proving beyond a
12 reasonable doubt that the alleged statement was
13 voluntary. If you determine it was, you may give the
14 statement any further consideration that you deem proper.
15 You must decide what weight, if any, should be given to
16 the alleged statement. If you determine the alleged
17 statement was not the free and voluntary statement of the
18 defendant, you should not consider the statement at all.
19 Some of you have taken notes during this trial. Remember
20 that the notes are for your own personal use. They are
21 not to be given or read to anyone else and they are not
22 to be used in place of your memory. Now you don't serve
23 as jurors to be partisans or advocates for either side.
24 You were chosen because both sides believed you could be
25 fair and impartial and decide the case solely on the

1 evidence, and without bias or prejudice. That means you
2 are to use your experiences in life, your good common
3 sense, and your sense of logic and reasoning. You bring
4 those things to bear on what you have heard in this
5 courtroom. And once you do that, you will be able to
6 determine the truth of this case. Once you have decided
7 the truth, you take it and apply it to the law I have
8 just given you to it; and when you have done that, you
9 will be able to reach a verdict that will speak the truth
10 of this case. Now as to deliberations. Deliberation is
11 defined as "careful consideration, weighing up with a
12 view to decision." The genius of our jury system that
13 allows 12 good men and women, from 12 different
14 backgrounds, life experiences, and perspectives to
15 consider the evidence, talk about it, and ultimately,
16 reach a verdict. That is the genius of our system. We
17 call them deliberations for a reason. You are to
18 consider the evidence in this case and carefully and
19 deliberately and discuss it in a calm, thorough, and
20 courteous manner. Remember, you are not partisans or
21 advocates for either side, favoring one side over the
22 other. You are judges. Judges of the facts. Your sole
23 interest is to find the truth from the evidence you have
24 heard in this courtroom. Listen to the views of all of
25 your fellow jurors; consider other people's points and

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1 points of view, and talk through and discuss the
2 evidence. And remember, if you are doing something
3 deliberately, you are not in a big hurry, and you should
4 not be in a big hurry here. This case is very important
5 to both sides, and this is their only day in court. When
6 you retire to the jury room, you should discuss the case
7 with your fellow jurors to reach agreement if you can.
8 Your verdict must be unanimous. Each of you must decide
9 the case for yourself, but you should do so only after
10 you have impartially considered all the evidence,
11 discussed it fully with the other jurors, and listened to
12 the views of your fellow jurors. Do not be afraid to
13 change your opinion if the discussion persuades you to do
14 that. But do not come to a decision simply because other
15 jurors think it is right. It is important that you
16 attempt to reach a unanimous verdict. But of course,
17 only if each of you can do so after having made your own
18 decision. Do not change an honest belief about the
19 weight and effect of the evidence simply to reach a
20 verdict. In other words, do not change your opinion
21 solely for the sake of reaching a unanimous verdict.
22 After you have reached your unanimous agreement on a
23 verdict, your foreperson is then authorized to fill out
24 the indictment in regards to your verdict. And that will
25 be given to you in the form of the indictment. At that

1 time, Madam Foreperson will need to sign and date the
2 decision of the jury and then you can advise the bailiff
3 at that point in time and he'll inform me that you have
4 reached a decision. Madam Foreperson, if it becomes
5 necessary during your deliberations to communicate with
6 me, you may send me a note through the bailiff, signed by
7 you, or by one or more members of the jury. No member of
8 the jury should ever attempt to communicate with me
9 except by a signed writing; and I will communicate with
10 any members of the jury on anything concerning the case
11 only in writing, or only here in open court. Remember
12 that you are not to tell anyone, including me, how the
13 jury stands, numerically or otherwise, until after you
14 have reached a unanimous verdict or have been discharged.
15 In other words, if you happen to have a question during
16 the course of your deliberations, you'll put it in
17 writing, it'll be brought to me, I'll discuss it with the
18 attorneys. If it's necessary to bring all of you back in
19 to discuss that point, we'll do so. If it's something to
20 be answered just by the foreperson, I'll communicate with
21 you directly on the record. Do you understand that? But
22 at any point in time, if you were to have to come back
23 and don't tell me "Judge, we're split 10-2" or something,
24 I don't want to know that. Nobody wants to. That's not
25 for us to know. Do you understand that? Now, in this

1 case, there are a couple of possible verdicts. You will
2 be finding the defendant guilty of burglary 1st degree or
3 guilty of burglary 2nd degree or you will find him not
4 guilty. Those are the possible verdicts in this case.
5 There's no significance to the way I just stated this to
6 you. I just had to make one reference before the other.
7 Your verdict, again, and I emphasize this, must be a
8 unanimous one. Madam Foreperson, when the jury agrees on
9 the verdict, as I stated, you will write that verdict on
10 the back of this indictment and I'll, again, provide that
11 to you. And at that time, notify the bailiff, as I
12 previously instructed. Now at this point in time, I'm
13 going to ask you that you return to the jury room but do
14 not begin your deliberations yet. I'll have to take up
15 questions of law or any issues concerning my charge with
16 the lawyers. And we'll have to discuss that once we've
17 completed any of those discussions, if necessary, we will
18 send you instructions to begin your deliberations. And
19 you'll have any exhibits sent back to the jury room with
20 you as well. Alright, if you'll retire to the jury room.
21 One minute before you retire to the jury room. I've got
22 an issue. During the course of this trial, there have
23 been some concern that one of our jurors was sleeping
24 during part of the trial. And because of that, I am
25 going to replace that juror with our alternate. There

1 may have been some question whether he was or was not
2 asleep but the perception is to the Court that the
3 gentlemen was asleep on more than one occasion.
4 Therefore, the juror on the back row in the burgundy
5 shirt next to the lady in orange is going to be excused.
6 It appeared to me on more than one occasion that he was
7 asleep and not being attentive to all of the testimony
8 being presented during the trial of this case. Your name
9 sir and number?

10 Rodney Brown: Rodney W. Brown #39.

11 The Court: Mr. Brown, you are now excused from your
12 service in this matter. And you are now replaced by our
13 alternate. Now, everybody except Mr. Brown, can retire
14 to the jury room.

15 (Jury exits courtroom)

16 The Court: Alright Mr. Brown, your jury service this
17 week has now concluded and your services will no longer
18 be needed this week. Thank you sir.

19 Rodney Brown: Okay.

20 The Court: Counsel, any exceptions to the charge or
21 any requests for any additional charge?

22 Mr. Lietzow: No sir Your Honor, nothing from the
23 State.

24 Mr. Kozelski: No Your Honor, subject to our previous
25 objection.

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1 The Court: Your previous objections are on the
2 record sir. Alright here's the indictment and you have
3 the other exhibits. You may instruct the jury to being
4 their deliberations.

5 Bailiff: Yes sir.

6 (Deliberations begin at 1:31)

7 The Court: Gentlemen, stand at ease. We draw
8 another jury at 2 o'clock.

9 The Court: All right. Counsel, we have received
10 some inquiries from the jury. The first one states that
11 we would like to review the testimony and police report
12 and we would also like to review the charge on Intent.
13 Which regard to these questions that I received first we
14 are prepared to let the jury hear the testimony of the
15 Officer. Obviously there is no police report in
16 evidence, so obviously there is no police report that
17 they can receive. As to the question, we'd also like to
18 review charge details for intent, my intent is to give
19 them and also read to them, first, the actual charge on
20 Intent that I made during the course of the charge.
21 Also, incorporated within the reasonable doubt charge.
22 It talks about intent. I intend to read that to the jury.
23 And, also requested by the State was intent concerning
24 the commission of a crime in a dwelling - initially ...
25 the State's request to charge on intent to commit a crime

1 therein. That way I've covered everything that involves
2 Intent that was charged to the jury. I do intend to
3 submit these written charges to the jury when they return
4 back to the jury room. Okay. Any problems with what I
5 intend to do with the first two questions and then I'll
6 address the other question?

7 Mr. Lietzow: Nothing from the State, Your Honor.

8 Mr. Kozelski: Just briefly, Your Honor. We do
9 continue to object to the State's Request to Charge on
10 the intent to commit a crime therein. Also, I feel that
11 is a bit isolated. I know that you have, you are reading
12 your general intent but there is a section of the
13 burglary first degree that does deal with intent. I
14 forgot to mention that up there that talks about intent
15 in the sense of a burglary. I just would like to have
16 that also inputted in there because I think Mr. Lietzow's
17 charges are very one-sided in that respect so if we could
18 repeat the intent charge that was given with the burglary
19 first degree.

20 The Court: You're not talking about the actual
21 statute itself, the burglary charge that I read to them?

22 Mr. Kozelski: Yes, Your Honor. The intent portion
23 of that.

24 The Court: Okay. That's what I intend to give them.
25 I had pulled ... I sat it together, the reasonable doubt

1 charge. It does, it talks about the State must proof
2 beyond a reasonable doubt an intend to commit a crime. A
3 mere entry into a building without consent is not
4 burglary ... that's what I'm going to give them. I could
5 give them the entire first degree burglary charge, I
6 don't think ...

7 Mr. Kozelski: I don't think it's necessary,

8 The Court: Anything else in regards to how I intend
9 to handle that?

10 Mr. Kozelski: Nothing else on that, Your Honor.

11 The Court: I note your objection for the record, but
12 I think it's only fair, I've already charged all this to
13 the jury. I think that anything that I have referenced
14 concerning intent they are entitled to hear again.

15 That's their concern, so. Now, we have another set of
16 questions from the jury. They want to know how does the
17 law define the term burglary. I think the way for me to
18 handle that is for me to read them the statute concerning
19 burglary first degree and burglary second degree because
20 they said they wanted not the charge but the term.

21 That's the only term we have by the legislature on how
22 they define burglary. They also ask the question, since
23 the term larceny was brought into this, please also
24 include the definition of larceny. Larceny is not
25 necessarily an element of burglary. I'm going to explain

1 to them that I cannot give them that definition. It's
2 not relevant and that the term burglary is what they are
3 dealing with. They ask if you don't commit larceny can
4 you still be charged with burglary? I'm not going to
5 respond to that question. Again, I'm going to say I'm
6 going to give you the charge and I can't do that.
7 Something to that effect. Any objections to the way I am
8 going to handle these questions or concerns?

9 Mr. Lietzow: Court's indulgence, please. Your
10 Honor, I believe there is a language somewhere in the
11 charges. I'm not sure whether it's in the intent but
12 there is a charge that addresses that last question. I'm
13 no suggesting that you have to give them a yay or nay but
14 if we could get the language in the charge that would
15 address that I think instead of saying don't worry about
16 that they can at least read the charges themselves and
17 induce what the answer to that is. I mean, the answer to
18 that is no. I think that is clearly laid out in the jury
19 charges. So, if they have that portion of the charge
20 they can have the question answered.

21 The Court: I think it's included in your ...

22 Mr. Lietzow: Okay. I read it over ... I don't think
23 that specific - I think it is included somewhere.

24 The Court: All right. It says when the building
25 entered in is a dwelling house the weight of authority

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1 holds that an unexplained breaking and entering in the
2 night is of itself evidence of intent to commit larceny
3 whether than some other crime.

4 Mr. Lietzow: Yes, sir. I guess the question that I'm
5 addressing is the juries question of do you have to
6 commit a larceny in order to commit a burglary?

7 The Court: No, they're not asking that.

8 Mr. Lietzow: Okay. I must of misunderstood.

9 The Court: If you don't commit a larceny can you
10 still be charged with burglary?

11 Mr. Lietzow: I think there is a --- it's not
12 directly answered in the State's request to charge but I
13 do know there is a portion of the charge where I did
14 address that particular question. I wouldn't want to
15 just not answer that question for the jury especially
16 because the answer to that question is no or you can be
17 convicted of burglary if you don't commit a larceny.

18 The Court: The definition of burglary should tell
19 them what's necessary so they enter a verdict of guilty
20 on burglary.

21 Mr. Lietzow: Your Honor, part of the language is
22 that the State must prove beyond a reasonable doubt that
23 the defendant intended to commit a crime, either a felony
24 or misdemeanor at the time. The mere entry into the
25 dwelling without consent is not burglary. On the other

1 hand, if the defendant intended to commit a crime at the
2 time of the entry it is burglary even if the intent was
3 abandon after the entry. It does not matter that the
4 intended crime was not completed. Are you handed that
5 language back then - okay, I apologize that addresses my
6 concern.

7 The Court: I'm giving them that language.

8 Mr. Lietzow: Okay.

9 The Court: As a matter of fact, I think in order to
10 be fair to everyone what I'm giving them concerns intent
11 with regards to burglary in the first degree. I think I
12 need to read the entire charge or first degree burglary.

13 Mr. Lietzow: I'm fine with that, Your Honor. Your
14 Honor, I think there is nothing that prohibits you from
15 sending it back so in my opinion as much as you want to
16 read to them, the State is going to be fine with.

17 The Court: Okay. Anything else gentlemen?

18 Mr. Lietzow: Nothing from the State, Your Honor.

19 The Court: Okay. Bring them in. Also, I'm going to
20 make these questions part of the record.

21 (Court's 1 and 2 were marked for identification purposes)

22 Bailiff: All juries in, Your Honor.

23 The Court: Thank you. You may be seated. Madam,
24 forelady, I have your two sets of questions. With regard
25 to the first question, we'd like to review the testimony

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1 of the officer and the police report. I cannot allow you
2 to see a copy of the police report because it was not
3 admitted into evidence. However, we are prepared at this
4 point in time to replay the testimony of the officer in
5 full or if it reaches some point where you've heard the
6 answers to the question that you have, you can indicate
7 and we can stop. Otherwise, we will play the entirety of
8 the officers testimony. Is there any particular part you
9 are concerned about or do you want to hear all the
10 testimony madam forelady?

11 Forelady: I guess --- just ... are we allowed to ...

12 The Court: Is there one particular part that is
13 causing some concern?

14 Forelady: No, I mean just the other questions that
15 were on the list. It was kind of to interpret those, I
16 think.

17 The Court: Okay. You asked about the intent after
18 that. I'm going to recharge you on the intent and I am
19 going to give it back to you in written form as I've read
20 it because I know that it is sometimes hard to follow.
21 I'm going to read it back into the record again so that
22 the record will be clear on what I am giving you. Then I
23 will let you take my written charge back into the jury
24 room with you on the definition of intent that I
25 addressed during my charge. Do you understand that.?

1 Forelady: Yes.

2 The Court: All right. That deals with your first
3 series of questions. I intend at this point in time to
4 let you hear the officer's testimony in it's entirety.
5 However, if you as a group are satisfied at any point in
6 time we can stop it. There's 12 of you, you may have 12
7 different concerns about the officer's testimony so right
8 now we'll just play the entire testimony. Again, after
9 we do that I'll address your second set of questions.

10 Alright, everybody be quiet while we listen to the
11 officer's testimony. Madam court reporter.

12 (Testimony of Officer Bunch was replayed for the jury)

13 Clerk: Thank you sir. Please be seated. What say
14 it, please state your first and last name and spell your
15 last name loudly and clearly into the microphone.

16 Mr. Bunch: Tony Bunch B-U-N-C-H.

17 MR. BUNCH - EXAMINATION BY MR. LIETZOW:

18 Q Good afternoon Officer Bunch.

19 A Good afternoon, sir.

20 Q Please tell the jury what you do for a living.

21 A I'm a law enforcement officer.

22 Q And who are you employed by?

23 A City of North Charleston through North Charleston
24 PD.

25 Q And how long have you been with the North Charleston

1 Police Department?

2 A Six years.

3 Q And what are your titles and duties with North
4 Charleston?

5 A Patrolman First Class. Preventing crime, take
6 action with crimes that have been committed, make
7 misdemeanor arrest and felony arrest where
8 warranted.

9 Q And were you working in that capacity in July of
10 2014?

11 A I was.

12 Q Tell the jury how you became involved in this case
13 on July 30th, 2014.

14 A On that date, dispatch had a call from a person that
15 appeared to be entering a residence from the rear
16 and saw broken glass...

17 Mr. Kozelski: Objection Your Honor.

18 The Court: I'm going to overrule the objection.
19 I've already indicated that I'm going to allow that
20 testimony.

21 Q Please continue.

22 A That concerned citizen said there was broken glass
23 that appeared to see, saw a person appear to be in
24 the rear of the residence. My team and I got there
25 ... all the officers got around the house, made sure

1 nobody came out. Upon seeing the broken glass, it
2 appeared there was possibly a burglary in progress
3 and somebody may be in the residence.

4 Q And do you recall exactly what time the 911 call was
5 placed? It's all right if you don't, I may can help
6 refresh your memory.

7 A 12:30, 1am.

8 Q Can you be more specific than that?

9 A 12:31am and 54 seconds.

10 Q And were you patrolling in that area?

11 A Yes, sir, we were already in the area.

12 Q Do you recall exactly when you arrived on the scene?

13 A 12:35 and 57 seconds.

14 Q So that was about four and a half minutes between
15 the call and arrival?

16 A Yes sir.

17 Q Was it dark when you arrived?

18 A It was.

19 Q Night time?

20 A Yes sir.

21 Q Can you explain the lighting situation that was
22 around the house?

23 A Very dim, mostly street light near the residences.

24 Q When you arrived, take the jury through what
25 happened.

1 A We got on scene, ...we surrounded the house, went
2 around to the back and saw the glass was broken. So
3 once we established someone was possibly in there
4 myself along with my partner climbed through the
5 patio window. The interior door was wide open,
6 there was broken glass at the interior door. So at
7 that point, we began making announcements, you know,
8 North Charleston Police, pronounce yourself and come
9 out with your hands up.

10 Q Officer Bunch, I'm showing you what's been marked as
11 State's exhibit 4. Is that the first location that
12 you noticed the broken glass?

13 A Yes sir.

14 Q Explain to the jury how you got in through there.

15 A The window. Kind of crawled through it, worked my
16 way through it as best as possible.

17 Q Showing the State's exhibit 6. Explain what this
18 is.

19 A That's the window pane closest to the door knob that
20 was broken, possibly where the suspect accessed the
21 door knob to unlock it from the inside.

22 Q Explain to the jury your frame of mind at this
23 point, before you had seen anybody inside the house.

24 A At this point, we got somebody had called in and
25 said somebody had entered the residence through the

1 back entrance. So at this point, I had every right
2 to believe there was somebody inside the house.

3 Q What did you do as a result?

4 A We drew our weapons. Once my partner and I got in
5 we drew our weapons, made the announcements for
6 whoever is in the house, come out with your hands
7 up.

8 Q And when you made that announcement, where were you
9 standing?

10 A At the --- just outside of the threshold of the
11 door.

12 Q That door right there?

13 A Yes sir.

14 Q And explain the view you had into the house from
15 that location.

16 A From there I could see a portion of the living room
17 to the left. To the right was a little area and I
18 could see straight down the hallway to the opposite
19 wall at the other end of the house.

20 Q You mentioned you drew your weapon. Why did you do
21 this?

22 A Just in case the suspect is armed.

23 Q So safety for you?

24 A Yes sir, safety.

25 Q Is that also a measure of safety for the suspect

1 himself?

2 A Yes sir.

3 Q And after the announcement, what happened?

4 A We made the announcement multiple times then we
5 heard movement and then saw somebody come out the
6 back with their hands up.

7 Q When you saw him originally, did that individual
8 duck back in or make any evasive movements?

9 A When we called him out, he appeared to duck into
10 another room briefly, then come back out.

11 Q Where in relation did the defendant come out of from
12 where he entered the residence?

13 A From where we were, the back side. Farthest away
14 from the entry point.

15 Q Okay. Did the defendant comply with your orders?

16 A He did.

17 Q And what happened next?

18 A Once he got to the door where I was standing, we
19 detained him with handcuffs we made more
20 announcements in case there was anybody else was
21 inside the residence with him and then the rest of
22 my team went in there and they cleared the
23 residence, just to make sure there wasn't anybody
24 else in there.

25 Q Was there anyone else in the house?

1 A No sir.

2 Q And what did you and Mr. Holmes do at this point?

3 A Once the residence was secured, I stood there waited
4 until an officer came and escorted him to the front
5 of the house because we couldn't take him back
6 through the patio. I climbed back through the glass
7 and I met him around front.

8 Q Did you place him under arrest at this point?

9 A He was under arrest, yes sir.

10 Q Put him in handcuffs?

11 A Yes sir, he was cuffed.

12 Q Did you search him?

13 A We did.

14 Q Was that standard?

15 A Yes, sir.

16 Q Did he have anything in his possession?

17 A Just some trash.

18 Q Do you see the man that was in the house that night
19 in the courtroom today?

20 A I do, sir.

21 Q And if you could point him out and describe him.

22 A It's the older African male. At the time, he was
23 wearing some dark colored clothing.

24 Q That's the same man?

25 A That's the same man, yes sir.

1 Mr. Lietzow: Please let the record reflect that
2 Officer Bunch has identified the defendant as the
3 individual inside the house that night.

4 Q Was there anyone else in the house? The owner?

5 A No sir.

6 Q Did that individual ever come to the scene?

7 A The daughter did.

8 Q Did you learn why there was nobody in the house that
9 night?

10 A She stated that the AC was broken in the house at
11 that point in time and there was possibly some
12 health issues.

13 Q Did you issue what is known at the Miranda rights,
14 read Miranda to the defendant?

15 A I did.

16 Q Why do you do that?

17 A Just so they're aware of their rights.

18 Q Do you do that from memory?

19 A No sir.

20 Q How do you go about reading that?

21 A I have a card.

22 Q Could you briefly tell the jury what Miranda rights
23 are; reading it from your card? Is that pretty much
24 how you Mirandize somebody?

25 A Yes, sir. Miranda rights are as followed: You have

1 the right to remain silent. Anything you say can
2 and will be used against you in a court of law. You
3 have the right to speak to an attorney or have an
4 attorney present during questioning. If you cannot
5 afford a lawyer, one will be provided for you at
6 government expense. Knowing and understanding your
7 rights as I have explained them to you, are you
8 willing to answer any questions without an attorney
9 present?

10 Q Was John Holmes cooperative with you?

11 A Slightly less than.

12 Q Explain that.

13 A When we were trying to get his information, his
14 name, he wasn't very forthcoming at first.

15 Q Explain further, please.

16 A Hesitant to give his name, didn't really respond at
17 first when we were asking the initial questions about
18 who he was.

19 Q Did he understand his Miranda --- did he waive his
20 Miranda rights?

21 A He did.

22 Q Did he appear that he understood everything?

23 A Yes sir.

24 Q Was he heavily intoxicated?

25 A I wouldn't say heavily intoxicated; no, sir.

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1 Q Did it seem as though he was disoriented in any way?

2 A No sir.

3 Q So he was all there mentally?

4 A Yes sir.

5 Q What did you ask him?

6 A First, we asked him what he was doing there. He
7 stated he didn't know. And then later asked him how
8 he had gotten in there.

9 Q What was his response to that?

10 A He stated he went through a patio window and then
11 through the open door.

12 Q Are those the same two locations that you saw broken
13 glass?

14 A Yes sir.

15 Q Did he mention anything about the homeowner?

16 A No sir.

17 Q Did he know who the owner was?

18 A He did not.

19 Q Did he specifically tell you that?

20 A When I asked, he said he didn't know who lives
21 there.

22 Q Did you ask him if he had permission to be inside
23 the house?

24 A I did.

25 Q What was his response to that?

1 A He did not have permission.

2 Q Officer Bunch, I'm coming to you with what is marked
3 as State's exhibit 2. Is this the location that you
4 were called out to that day?

5 A Yes sir.

6 Q What is this right here?

7 A That's the patio area.

8 Q Is that completely enclosed?

9 A It is.

10 Q Are those glass panes?

11 A Yes sir.

12 Q Is there a door in that patio that leads directly
13 into the house?

14 A There is.

15 Q So where in relation to the entry point --- is the
16 entry point around back on this photo?

17 A Yes sir, it's the very back where you see that
18 yellow light coming through right before ... the
19 house.

20 Q And then the door that leads into the house was on
21 the side of the patio in there?

22 A Yes sir.

23 Q I guess if we are going to pretend like we have x-
24 ray vision, then you could see directly across the
25 house into the back area?

1 A Yes sir.

2 Q And that's approximately, is that approximately
3 where John Holmes came out of?

4 A Yes sir.

5 Q And what was the location address that you responded
6 to?

7 A It was in the City of North
8 Charleston, county of Charleston, South Carolina.

9 Q And to be clear, both locations that Mr. Holmes said
10 he entered into had broken glass?

11 A Yes sir.

12 Mr. Lietzow: Beg the Court's indulgence?

13 The Court: Sure.

14 Q Was there anyone else in the house?

15 A No sir.

16 Q Did you have any other involvement in this case?

17 A No sir.

18 Mr. Lietzow: I have no further questions. Please
19 answer any questions that Mr. Kozelski or Ms. Andrews has
20 for you. Thank you.

21 MR. BUNCH - CROSS BY MR. KOZELSKI:

22 Q Officer Bunch, I want to talk to you about what it
23 means to be a police officer. Not everybody can be
24 a police officer, correct?

25 A I suppose.

1 Q Special training?

2 A It's required, yes.

3 Q Did you go to the police academy?

4 A Yes sir.

5 Q Part of what you learn at the police academy is how
6 to write incident reports.

7 A Correct.

8 Q That's a big part of what you do?

9 A Correct.

10 Q You work on a number of cases?

11 A Yes, sir.

12 Q Sometimes you work on more than one case at a time?

13 A (Nods head affirmatively).

14 The Court: You need to say yes or no.

15 A Yes sir.

16 Q Ms. Singletary is trying to write you down so I need
17 you to say yes or no.

18 A Yes sir.

19 Q You want to write this stuff down so you can
20 remember it later?

21 A Yes sir.

22 Q Because from the time that you write it down and the
23 time that we might come to trial could be months,
24 years.

25 A Yes sir.

1 Q You also use these reports to review for your
2 testimony?

3 A Yes sir.

4 Q So you can recall facts when people like me ask you
5 about it?

6 A Yes sir.

7 Q So it's important that when you write these reports,
8 that they be accurate?

9 A Yes sir.

10 Q And complete too?

11 A Right.

12 Q You put everything that you possibly can in there so
13 that you don't leave anything out.

14 A Correct.

15 Q And you also prepare these in anticipation that I'm
16 going to cross-examine you?

17 A Correct.

18 Q So when I ask how do you remember that, you say I
19 wrote it down.

20 A Correct.

21 Q As a cop, you also investigate criminal activity.

22 A Yes sir.

23 Q You gather facts?

24 A Yes sir.

25 Q And gathering facts, isn't good enough, you've got

1 to be able to communicate those facts to people?

2 A Yes sir.

3 Q So report writing helps you communicate those facts
4 that you learn during your investigation?

5 A Correct.

6 Q You might leave the department, another detective,
7 or officer might get it, you want to make sure they
8 get the full story?

9 A Yes.

10 Q And a copy also goes to the solicitor?

11 A Yes.

12 Q Solicitor gives a copy to me.

13 A Yes.

14 Q And eventually the jury gets to hear what's in your
15 report.

16 A Correct.

17 Q So we're all depending on you to write these reports
18 completely and accurately?

19 A Correct.

20 Q So you described some of the jobs that you do, but I
21 want to talk to you specifically about investigating
22 burglaries.

23 A Okay.

24 Q Is it fair to say there's a decent amount of crime
25 in North Charleston.

1 A That would be fair to say, yes sir.

2 Q And particularly off of the area of East Montague?

3 A Not so much as of late, but there is a fair amount,
4 yes.

5 Q Like you said, it's dimly lit, this area?

6 A For the most part, yes sir.

7 Q And the corner of Montague and Luellen, there's a
8 neighborhood store.

9 A Correct.

10 Q People can buy, like a convenience store.

11 A Yes sir.

12 Q Attached to it is a restaurant, like a Hot and
13 Crispy, I guess they serve fried chicken. I'm not
14 sure.

15 A I'm not familiar with the restaurant.

16 Q And then right behind that, there's a small trailer
17 park.

18 A There could be, I don't ...

19 Q That's what backs up to

20 A Okay.

21 Q And there were a number of burglaries reported
22 directly in this area around the time of this
23 incident.

24 A Yes sir.

25 Q People who commit burglaries often times carry

1 burglary tools?

2 A Depends.

3 Q But burglars do often times carry burglary tools?

4 A Well they find things laying around on the ground.

5 Q They don't wear gloves?

6 A Sometimes not, sometimes they do.

7 Q Okay but when they do wear gloves, they wear gloves
8 so they don't leave any prints?

9 A For the most part, yes.

10 Q Sometimes they bring in a bag to carry stuff with
11 them?

12 A Sometimes.

13 Q And so you would consider this area a hot crime
14 area?

15 A Yes.

16 Q It's not some place that you would want to sleep out
17 in the open at night?

18 A No.

19 Q So you get a call around, a little after 12:30 from
20 your dispatch?

21 A Correct.

22 Q And your dispatch is what all you officers are
23 connected to, one main dispatcher?

24 A Correct.

25 Q And you relay information, what's going on and they

1 relay information back to you?

2 A We also have the computer that shows us the call.

3 Q But somebody's typing that, all the things that
4 you're saying?

5 A Yes.

6 Q And what you're reporting back?

7 A Yes.

8 Q So all the officers are on the same page?

9 A Yes.

10 Q And that comes through your walkie talkie or your
11 speaker?

12 A Either the walkie or the in-car radio.

13 Q So you arrived at the scene about two minutes after
14 you're dispatched?

15 A Yes that's what the times are.

16 Q You get out of your patrol car?

17 A Yes sir.

18 Q You form a barricade unit in the back of the
19 residence?

20 A We formed a perimeter all through the back, yes sir.

21 Q You have your flashlight with you, I take it?

22 A Yes sir.

23 Q And you see a broken window?

24 A Yes.

25 Q And you had heard reports of the sound of glass

1 breaking?

2 A Yes sir, that was relayed to us.

3 Q Nothing saying that the suspect broke the glass?

4 A Well, what was relayed to us was the sound of glass
5 breaking. When the neighbor looked over, saw
6 somebody going in the back of the residence.

7 Q And you see the broken window?

8 A Yes sir.

9 Q You crawl through the broken window?

10 A Yes sir.

11 Q So it was big enough for you to get through?

12 A Yes sir.

13 Q Once inside, you draw your service weapon?

14 A Once my partner got inside, we drew our weapons.

15 Q The inside door is already cracked?

16 A The inside door was open.

17 Q But you don't go in the house?

18 A No sir.

19 Q But you can see in the house?

20 A Yes sir.

21 Q You can see that the house is full of boxes?

22 A There was some low-lying boxes, yes sir.

23 Q Sort of disorganized, all over the place?

24 A I wouldn't say disorganized but there was some boxes
25 in there.

1 Q You announced yourself?

2 A We did.

3 Q You said if anybody's inside to say that they're
4 there --- announce themselves?

5 A Announce themselves and come out with their hands
6 up.

7 Q Come out with their hands up

8 A Yes sir.

9 Q And you still have your gun out when you're saying
10 this right?

11 A Yes sir.

12 Q And eventually, you see Mr. Holmes down the hallway?

13 A Yes sir.

14 Q You said he dipped into another room. Did he just
15 sort of shy away from you?

16 A While we were calling for him, he kind of went to
17 another room just briefly then popped right back
18 out.

19 Q Okay but you were still pointing your gun?

20 A We still had our guns drawn, yes.

21 Q And he comes out to you?

22 A Yes sir, when we call him out, he comes out to us.

23 Q So I want to talk to you a little bit about that
24 initial contact that you had with him. He has his
25 hands above his head? Is that correct?

- 1 A Yes sir.
- 2 Q He walks toward you?
- 3 A Yes sir.
- 4 Q You have your flashlight pointed at him?
- 5 A Yes sir.
- 6 Q And when you look at him, he doesn't have any, he
- 7 wasn't wearing any gloves?
- 8 A No sir.
- 9 Q He wasn't wearing a ski mask to conceal his face?
- 10 A No sir.
- 11 Q You never saw him try to escape out a window?
- 12 A I don't know what his intention was to get out of
- 13 the room but I did not see him try to go out the
- 14 window, no.
- 15 Q You didn't see him try to beeline for the front
- 16 door?
- 17 A He never went toward the front door, no sir.
- 18 Q So he never tried to run from you?
- 19 A No sir, he came toward us.
- 20 Q Didn't hide himself in a closet?
- 21 A Like I said when he briefly went into the room for
- 22 whatever reason that was.
- 23 Q He never hid under some of those boxes?
- 24 A No sir.
- 25 Q And he didn't struggle with you at all when he

1 got....

2 A No sir.

3 Q He complied pretty much with your every demand?

4 A Yes sir.

5 Q Then you detained him?

6 A Yes sir.

7 Q Put handcuffs on him?

8 A Yes sir.

9 Q Then the assisting officers went through the rest of
10 the residence to see if anything - anybody else was
11 there?

12 A Yes sir.

13 Q They didn't find anybody else?

14 A No sir.

15 Q And after the scene is cleared, you took Mr. Holmes
16 outside?

17 A Another officer walked him through the house, one
18 that had already been through the house and I went
19 back out the patio window and came around.

20 Q And once you were outside, you did a pat down of Mr.
21 Holmes?

22 A Yes sir.

23 Q And you're essentially checking to see if he has any
24 weapons or...

25 A Make sure he doesn't have any weapons or anything

1 that could harm us, any contraband or items that had
2 been stolen.

3 Q So you go through his pockets?

4 A Yes sir.

5 Q And you didn't find any gloves in his pockets?

6 A No sir.

7 Q You didn't find any burglary tools on him?

8 A No sir.

9 Q You didn't find any items from the house on him?

10 A Not that I'm aware of.

11 Q You didn't find any money on him?

12 A No sir.

13 Q No drugs on him?

14 A No sir.

15 Q You didn't find any evidence on Mr. Holmes?

16 A Define evidence?

17 Q You didn't take any evidence and put into an
18 evidence locker, did you?

19 A Correct.

20 Q So his pockets were basically filled with junk?

21 A Correct.

22 Q Now after you have him under arrest, you call crime
23 scene?

24 A We did.

25 Q And you're expecting crime scene to gather evidence

1 and take photos?

2 A Mostly to document photographs. What damage was
3 done, once the victim arrives on scene, if the
4 victim says stuff's been rearranged, organized,
5 whatever. They can coordinate with the crime scene
6 technician and take pictures as well if need be.

7 Q So you were waiting on the owner to get there as
8 well?

9 A Dispatch advised they were on their way out.

10 Q But you came to find out that the owner didn't live
11 there?

12 A She did live there. She was just temporarily out of
13 the residence due to AC issues.

14 Q So you don't know when the last time she actually
15 did live there was?

16 A If I recall from what the victim says, the victim's
17 daughter said it was only a week or less than a week
18 is what she had told me.

19 Q So you spoke with Ms. Campbell about the incident?

20 A ...yes sir.

21 Q But you didn't have her write any sort of statement?

22 A I did not. I don't know if one of the officers on
23 scene did.

24 Q When talking to Ms. Campbell, you didn't find out
25 that the house was broken into earlier that day?

1 A I didn't ask her about any previous break-ins. We
2 were there for the current incident.

3 Q You weren't able to speak to the neighbors about
4 what they saw?

5 A It was 1 a.m. and the person that called in was a
6 concerned citizen.

7 Q Okay so you weren't able to track that person down
8 who did call?

9 A No sir.

10 Q So you weren't really able to figure out what
11 exactly they saw?

12 A No sir. A lot of times, they don't like to be seen
13 talking to the police officers.

14 Q So you never got any sort of statement from the
15 concerned citizen?

16 A No sir.

17 Q Did you ever do any sort of follow up investigation?

18 A No sir.

19 Q So you didn't --- like I said, you didn't know the
20 house was broken into earlier that day?

21 A No sir.

22 Q Through that same window?

23 A No sir. Usually burglary, detectives follow up on
24 something like that.

25 Q So you're not quite a detective yet? You're still

1 the Private First Class?

2 A I'm assigned to the patrol division. The detective
3 division is a separate division.

4 Q Was this case ever given to a detective?

5 A I have no knowledge if it was.

6 Q So there's no follow up done to find out who
7 actually broke that window and the door from the
8 prior burglary?

9 A I'm not aware of any follow up, no sir.

10 Q After searching Mr. Holmes, you read him his Miranda
11 rights?

12 A Correct.

13 Q And we just went over those. You have the right to
14 remain silent.

15 A Yes sir.

16 Q Anything that you say will and can be used against
17 you.

18 A Yes sir.

19 Q The right to an attorney.

20 A Yes sir.

21 Q And you asked him if he understood those rights.

22 A Yes sir.

23 Q And he said he did.

24 A He did.

25 Q He didn't seem intoxicated.

- 1 A No sir.
- 2 Q He didn't seem like he was on drugs.
- 3 A No sir.
- 4 Q Didn't seem like he had any sort of mental
- 5 deficiency.
- 6 A No sir.
- 7 Q So you asked him if he wanted to waive those rights?
- 8 A Yes sir.
- 9 Q And speak to you?
- 10 A Yes sir.
- 11 Q He told you that he did.
- 12 A Yes sir.
- 13 Q And you started asking him questions about who he
- 14 was and why he was there?
- 15 A Yes sir.
- 16 Q And you said he was initially not compliant but he
- 17 did give you his name?
- 18 A Hesitant at first but he did eventually come forth
- 19 and was identified, yes sir.
- 20 Q And you're not sure if he had his ID on him?
- 21 A I don't recall.
- 22 Q But eventually you found out who he was?
- 23 A Yes sir.
- 24 Q You found out that he was homeless?
- 25 A Yes sir.

- 1 Q You asked him how he got into the house?
- 2 A Yes sir.
- 3 Q And he told you that he got through the broken glass
- 4 window.
- 5 A Yes sir.
- 6 Q You never asked him if he broke the window?
- 7 A I did not.
- 8 Q You asked him if he knew the owner?
- 9 A Correct.
- 10 Q And he told you that he didn't?
- 11 A He did not know the owner.
- 12 Q And he said that he thought the house was vacant?
- 13 A He didn't say the house was vacant.
- 14 Q Okay, he didn't tell you that the house was vacant?
- 15 A No.
- 16 Q Do you - remember, we talked about dispatch going on
- 17 with all the police officers and somebody taking
- 18 that down?
- 19 A Right.
- 20 Q And you're familiar with what's called a CAD report?
- 21 A What's that?
- 22 Q The CAD report, which is the incident. Do you know
- 23 what that looks like?
- 24 A Is that a printout?
- 25 Q Yes.

1 Mr. Kozelski: Permission to approach Your Honor?

2 The Court: Yes sir.

3 Q I'm going to show you what the incident detail
4 report. The CAD report is of that night. Maybe
5 that could help refresh your recollection a little
6 bit. You were with Mr. Holmes the entire time?
7 Correct?

8 A Correct. Once we were outside, I was with him.

9 Q So anything he said, you would have heard?

10 A Yes sir.

11 Q Or anything that was said over dispatch would've
12 been heard by you as well?

13 A Unless I was talking to my sergeant or officers,
14 yes.

15 Q And so in that CAD report, I'm going to focus you in
16 on comment 27, should be on the second page. It
17 does say that the suspect thought the house was
18 vacant?

19 A My sergeant advised that, yes.

20 Q You asked him if he had permission to be in the
21 house?

22 A I did.

23 Q And he told you that he didn't have permission?

24 A Correct.

25 Q And you asked him what he was doing in the house?

1 A I did.

2 Q And he told you he was trying to find a place to
3 sleep.

4 A First, he said he didn't know. He did say he was
5 trying to find a place to sleep.

6 Mr. Kozelski: Beg the Court's indulgence, Your
7 Honor. No further questions Your Honor.

8 Mr. Lietzow: Just briefly Your Honor.

9 MR. BUNCH - REDIRECT BY MR. LIETZOW:

10 Q Was the inside door wide open?

11 A The door leading into the residence, yes sir.

12 Mr. Lietzow: May I approach the witness, Your Honor?

13 The Court: Yes sir.

14 Q I'm going to draw your attention to what Mr.
15 Kozelski was just drawing your attention to. Number
16 27.

17 A Yes sir.

18 Q Who is unit 143?

19 A My sergeant at the time.

20 Q And without reading exactly what this says, can you
21 tell the jury approximately what that says? You can
22 refresh your mind and then you can tell me. Just
23 make sure you don't read off the paper.

24 A He was advised that he, he was advised that the
25 keyholder, which would be the owner of the house or

1 somebody who has access to the house lawfully, was
2 on scene. He requested that they call back and get
3 a phone number for the correct person to be there
4 and advised that the only person that was seen was
5 the defendant who had entered through the back of
6 the residence. Advised that the house was vacant
7 for a few months.

8 Mr. Lietzow: No further questions Your Honor.

9 Mr. Kozelski: No further recross.

10 The Court: Alright, you can step down sir. Thank
11 you.

12 (End of Officer Bunch's testimony that was replayed)

13 The Court: Alright ladies and gentlemen, as I
14 indicated earlier with regards to the question concerning
15 intent, I'm going to read to you again my charge that
16 covers intent and any other charges that reference intent
17 and I will provide you with a copy of this in your jury
18 room as well. Also, the second set of questions
19 submitted dealt with how does the law define the term
20 burglary, not the charge but the term. What I will do
21 with regards to that, ladies and gentlemen, is I will
22 read to you the actual statute as set forth by the
23 legislature set here in South Carolina. That would
24 define for you what burglary in the 1st degree is and
25 burglary in the 2nd degree. And with regards to these

1 charges and the definitions of burglary, I think that
2 should cover any questions concerning larceny, whether or
3 not you have to commit a larceny to be charged with
4 burglary. I think that will take care of that. Alright,
5 listen carefully. Intent: in order to establish criminal
6 liability, criminal intent is required. For example, the
7 mental state required to be proven by the State for a
8 particular crime might be purpose, intent, knowledge,
9 recklessness, or criminal negligence. Criminal intent
10 must be proven by the State beyond a reasonable doubt.
11 Criminal intent is always a matter that must be
12 determined by the jury from the circumstances surrounding
13 the situation. There is no way to prove intent to a
14 mathematical certainty. There is no way medical science
15 can dissect a person's brain and determine what the
16 person had in mind, so the law says that criminal intent
17 may be inferred from the circumstances shown to have
18 existed. This is how you make a determination of whether
19 or not the element requiring intent was present. It is
20 not necessary to establish intent by direct and positive
21 evidence, but intent may be established by inference in
22 the same way as any other fact by taking into
23 consideration the acts of the parties and all the facts
24 and circumstances of the case. Criminal intent is a
25 mental state, a conscious wrongdoing. It is up to you to

1 determine what the defendant intended to do based on the
2 circumstances shown to have existed. Criminal intent can
3 arise from action or a failure to act. It may arise from
4 negligence, recklessness, or an indifference to duty or
5 to consequences that is considered by the law to be the
6 equivalent of criminal intent. When the building entered
7 into is a dwelling house, the weight of authority holds
8 that the unexplained breaking and entry in the night is
9 itself evidence of intent to commit larceny rather than
10 some other crime. The fundamental theory in the absence
11 of either intent or explanation for breaking and
12 entering, is that the usual object or purpose of
13 burglarizing a dwelling house at night is theft. A
14 reasonable mind recognizes that people do not usually
15 break into and enter the building of another under the
16 shroud of darkness with innocent intent and that the most
17 usual intent is to steal. In the absence of inconsistent
18 circumstances, proof of unlawful entry into a building
19 which contains personal property that could be the
20 subject of larceny gives rise to an inference that will
21 sustain a conviction of burglary. The inference is
22 grounded in human experience which justifies the
23 assumption that the unlawful entry was not purposeless,
24 and, in the absence of other proof, indicates theft as
25 the most likely purpose. Alright, the charge on 1st

1 degree burglary. I'll read that again before I actually
2 read the actual definition of burglary. The defendant is
3 charged with 1st degree burglary. The State must first
4 prove beyond a reasonable doubt that the defendant
5 entered a dwelling without consent. A dwelling is any
6 building or portion of a building in which a person
7 ordinarily sleeps. A building constructed as a dwelling
8 that has never been occupied cannot be considered a
9 dwelling for purposes of burglary. But, a building is a
10 dwelling even if the residents are temporarily absent
11 from the building. An enclosed screen porch is part of a
12 dwelling. In order to prove that the defendant entered
13 the dwelling, the State does not have to show that the
14 defendant's entire body entered the dwelling. The
15 smallest entry is sufficient. It may be any part of the
16 body, such as a hand or foot, or even an instrument, such
17 as a hook or other instrument. In addition, the State
18 does not have to prove that force was used to gain entry.
19 If a person enters a building by using deception,
20 artifice, trick, or misrepresentation to get consent to
21 enter, this is an entry without consent. Next, the State
22 must prove beyond a reasonable doubt that the defendant
23 intended to commit a crime, either a felony or a
24 misdemeanor, at the time of the entry. The mere entry
25 into a dwelling without consent is not burglary. If the

1 intent to commit a crime is formed after the entry, it is
2 not a burglary. On the other hand, if the defendant
3 intended to commit a crime at the time of the entry, it
4 is a burglary even if the intent was abandoned after the
5 entry. It does not matter that the intended crime was
6 not completed. Intent may be shown by acts and conduct
7 of the defendant and other circumstances from which you
8 may naturally and reasonable infer intent. Finally, the
9 State must prove beyond a reasonable doubt that the
10 defendant entered and remained in the dwelling in the
11 night time. Night time is the period between sunset and
12 sunrise during which there is not enough daylight to
13 recognize a person's face, except by the artificial light
14 or moonlight. Now, I'm going to read to you the statute
15 concerning burglary in the 1st degree. A person is
16 guilty of burglary in the 1st degree if the person enters
17 a dwelling without consent and with intent to commit a
18 crime in the dwelling and either when in effecting entry
19 while in the dwelling while in immediate flight he or
20 another participant in the crime is armed with a deadly
21 weapon or explosive or causes physical injury to a person
22 who is not a participant in the crime or uses or
23 threatens the use of a dangerous instrument or displays
24 what is or appears to be a knife, pistol, revolver,
25 rifle, shotgun, machine gun, or other firearm or the

1 burglary is committed by a person with a prior record two
2 or more convictions for burglary or housebreaking or a
3 combination of both, or the entering occurs in the night
4 time. As to burglary in the 2nd degree, the definition
5 is and the statute reads: a person is guilty of burglary
6 in the 2nd degree if the person enters a dwelling without
7 consent and with intent to commit a crime therein. A
8 person is guilty of burglary in the 2nd degree if the
9 person enters a building without consent and with intent
10 to commit a crime therein and either when in effecting
11 entry or while in the building or while in immediate
12 flight, he or another participant in the crime is armed
13 with a deadly weapon or explosives or causes physical
14 injury to any person who is not a participant in the
15 crime or uses or threatens the use of a dangerous
16 instrument or displays what is or appears to be a knife,
17 pistol, revolver, rifle, shotgun, machine gun, or other
18 firearm or the burglary is committed by a person with a
19 prior record of two or more convictions for burglary or
20 housebreaking or a combination of both, or the entering
21 occurs in the night time. Alright ladies and gentlemen,
22 if you will retire to the jury room and resume your
23 deliberations, I'll have copies of this sent in to you.

24 **(Jury exits courtroom/deliberations continue 3:27)**

25 The Court: Thank you sir. Be at ease.

1 **(Jury Verdict reached)**

2 The Court: Okay, bring them in.

3 **(Jury enters courtroom 4:43)**

4 Bailiff: All jurors present Your Honor.

5 The Court: Thank you ma'am. Madam Forelady, do you
6 have a verdict?

7 Foreperson: Yes.

8 The Court: Okay, is it unanimous?

9 Foreperson: Yes.

10 The Court: Okay, will you pass it up please? Okay,
11 the verdict form does not appear to be complete. I need
12 for you to go back into the jury room and indicate on
13 this verdict form whether the defendant is guilty or not
14 guilty. So get back to - I'll send you back in the jury
15 room to clarify your verdict please.

16 **(Jury exits courtroom 4:45 p.m.)**

17 The Court: They just wrote on the indictment
18 burglary 1st degree. They didn't say whether he was
19 guilty or not guilty. I can't assume anything. I assume
20 they were saying he was guilty of burglary in the 1st
21 degree but it didn't say that so I'm sending them back
22 for some clarification, whether it's guilty or not
23 guilty. They didn't follow my instructions about finding
24 guilty of 1st degree burglary or guilty of 2nd degree
25 burglary or not guilty. We'll see what happens.

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1 (Jurors enter courtroom 4:49 p.m.)

2 Bailiff: All jurors present.

3 The Court: Thank you ma'am. You may be seated.

4 Hand the verdict up again please. Mr. Clerk the verdict
5 please? The defendant stand please.

6 Clerk: On Indictment number 2014-GS-10-06159, The
7 State of South Carolina vs. John Henry Holmes indictment
8 for burglary 1st degree. The verdict of the jury Guilty
9 burglary 1st degree. Signed and dated October 13th by the
10 foreperson.

11 The Court: The defendant wish to have the jurors
12 polled?

13 Mr. Kozelski: We do Your Honor.

14 Clerk: Ladies and gentlemen of the jury, when I call
15 your number, please raise your hand. I'll ask you two
16 questions and please answer my two questions. Juror #
17 110. Is this your verdict?

18 Gina Garret: Yes.

19 Clerk: Is this still your verdict?

20 Gina Garrett: Yes.

21 Clerk: Juror #96. Is this your verdict?

22 Meghan Robinson: Yes

23 Clerk: Is this still your verdict?

24 Meghan Robinson: Yes.

25 Clerk: Juror #290. Is this your verdict?

1 for that. Thank you and you may be excused. You can
2 pick up all your belongings, everything out of the jury
3 room.

4 (Jurors excused for the week 4:52)

5 The Court: Any post-trial motions?

6 Mr. Kozelski: Your Honor, once again, we would renew
7 all our previous motions and we would add to that a
8 motion for a new trial. And then we do have, I believe,
9 ten days to file such a notice and we will, of course, do
10 that. But we would ask, Your Honor, if you are so
11 inclined, to have a judgement notwithstanding verdict of
12 not guilty. I think that the evidence presented much as
13 we argued in our directed verdict motion we don't believe
14 that the State has provided any evidence of that the
15 intent to commit a crime. So we would ask The Court to
16 consider that, that motion and at the proper time, we
17 will also make the motion for a new trial.

18 Mr. Lietzow: Your Honor, just ask you to uphold the
19 verdict of the jury, uphold all your previous rulings at
20 this time.

21 The Court: And if you wish to make formal written
22 motions, that's fine. With regards to the motions that
23 have previously been made. My prior rulings will stand.
24 As far as motion for a new trial, at least at this
25 junction, there was certainly evidence upon which the

1 jury could make the decision that they did so I
2 respectfully deny your motion with regards to this. I'm
3 not so sure you can make a motion for JNOV in criminal
4 court. That's my ruling so thank you. Alright, as to
5 sentencing. I'll be glad to hear from you Mr. Kozelski
6 and I'll also hear the State as concerning any prior
7 record too.

8 Mr. Kozelski: Thank you Your Honor. May it please
9 The Court? Mr. Holmes is 58 years old. He's born and
10 raised here in Charleston. He has no children of his
11 own. He does have family in the area - in the West
12 Ashley area as well as some cousins around there in North
13 Charleston. He has worked throughout his life and is
14 somewhat as a handyman/contractor. He's worked with
15 companies making columns for bridges. He's worked in
16 landscaping. I want to say, Your Honor, he's been a very
17 unique client to me in the sense that I wish all my
18 clients were like him. He did not attempt to write me
19 all the time and demand anything. He just sort of sat
20 back and said I trust you with whatever you want to do.
21 I did tell him to reject the 15 year minimum offer for
22 the burg 1st because I thought that 15 years of violent
23 time at his age, he wouldn't be able to survive SCDC. He
24 trusted me to take that advice and here we go. But he
25 was always willing to plea to a burg 2nd. He just heeded

1 my advice and I still think in the long run he made the
2 right decision in trusting me. I just wished for a
3 different outcome. But he is a good person to me. I've
4 enjoyed my time with him and I'm asking, Judge, for the
5 minimum here. I think it's appropriate in this case. I
6 know that was the offer, but I think anything more than
7 that would sort of have him lose hope. And I don't want
8 him to lose hope in prison. I think that he has matured
9 a great deal while in there and somewhat realized and
10 reflected on some of the things he's done in his past.
11 His record is lengthy, Your Honor, but it is mainly of
12 minor crimes. He's done about seven years total in SCDC
13 throughout his life. Many of the crimes he - about half
14 his record is for mainly drug paraphernalia, open
15 containers, small misdemeanor crimes. He doesn't have
16 very many violent crimes to be had, I think with the
17 exception of an ABHAN, which recently happened. The two
18 violent crimes he has, Your Honor, are an ABHAN in 2010,
19 which he was released right afterwards. So I believe
20 it's time-served plea and which is also the case back in
21 1981, which there was a robbery charge on his record,
22 which also indicated a time-served sentence. I don't
23 think the severity of those were anything great. The
24 record mainly consists of drug charges. I'd ask the Court
25 to consider the minimum in this case given Mr. Holmes's

1 age and if it pleases the Court or if the Court would
2 consider just his cooperation with his attorneys, he
3 really did make this very easy on me and trusted me.

4 The Court: Mr. Holmes, do you wish to say anything,
5 sir?

6 Mr. Holmes: Your Honor, everything I did was
7 foolish, it was impulsive, it was selfish, it wasn't the
8 right thing to do. At that particular point in my life,
9 I had a whole lot of personal problems. I was homeless.
10 I was estranged from the family. Seemed like I was just
11 alone. I had nowhere to go. This wasn't anything
12 planned or thought out. I just wanted to rest. I wish I
13 could take it back but I can't change it. I would like
14 to throw myself at the mercy of the Court. I would like
15 to - Even though Ms. Campbell or Mrs. Blandin isn't
16 here, in my prayer, I would hope they would forgive me.
17 It was just - I've made a mockery of my life. I have
18 nobody to blame but me. I would like to thank Mr.
19 Kozelski here and Ms. Andrews for providing with me with
20 exceptional counsel. I felt that they did the best for
21 me and nobody has no right not to ask nothing greater
22 than that. So I extend my hand to them. Obviously, this
23 is not the verdict I would like. I got to suck it up, so
24 to speak. Keep moving and know that tomorrow is another
25 day speaking of hope, what Mr. Kozelski said a little

1 while ago. At this considerable moment in time, it
2 seemed like there's nothing to be hopeful for.
3 Obviously, I'm going to the penitentiary. It's a whole
4 other world but maybe there's a silver lining somewhere
5 that I just can't see it. It's not transparent to me
6 now. Everything now just seems so abstract and blurred.
7 I'm hurt. I'm deeply hurt, but I don't have nobody to
8 blame, I can't blame or point no finger at nobody. I
9 would like to thank you for giving me the opportunity to
10 speak. I would like to thank the people of the Court
11 just for hearing my side of the story. And I'm only
12 human. I'm only human. Just like everybody else in here.
13 I'm sorry. Thank you.

14 The Court: Thank you sir. Do you have the record?

15 Mr. Lietzow: Yes sir. Judge, Mr. Holmes's record
16 consists of 1974 - disturbing school, 75 - housebreaking,
17 77 - disorderly conduct petty larceny, 1978 - receiving
18 stolen goods, petty larceny, simple assault, 1981 -
19 possession of marijuana, public drunkenness, 1982 -
20 robbery, disorderly conduct, 1983 - possession of
21 marijuana, resisting arrest, resisting arrest, 1984 -
22 possession of marijuana, disorderly conduct, possession
23 of drug paraphernalia, public drunkenness, 86 - carrying
24 a concealed knife, 89 - possession of drug paraphernalia,
25 possession of a long blade knife, possession of cocaine,

1 1990 - possession of crack, shoplifting, public
2 drunkenness, open container, assault on police, and
3 resisting arrest, 1991 - possession of drug
4 paraphernalia, 93 - possession of drug paraphernalia, 94
5 - possession of cocaine 2nd, possession of drug
6 paraphernalia, 96 - possession of controlled substance,
7 98 - possession of drug paraphernalia, 99 - violation of
8 drug distribution laws times two, possession of drug
9 paraphernalia, distribution of an imitation substance,
10 2000 - possession of drug paraphernalia, possession of
11 marijuana, possession of drug paraphernalia, 2001 -
12 resisting arrest, three counts of possession of drug
13 paraphernalia, 2002 - possession with intent to
14 distribute cocaine in proximity of a school, possession
15 of marijuana 2nd, 2003 - possession and disorderly
16 conduct, possession with intent to distribute cocaine,
17 2006 - possession of drug paraphernalia, possession of
18 drug paraphernalia, disorderly conduct, possession of
19 marijuana 2nd offense and giving false information, 2009
20 - petty larceny, trespass, petty larceny, trespass,
21 burglary 2nd degree non-violent, 2010 - assault and
22 battery of a high and aggravated nature, 2011 - trespass,
23 2012 - trespass, shoplifting, shoplifting property
24 offense enhancement, 2013 - littering, tampering with a
25 vehicle, 2014 - shoplifting, tampering with an auto

1 vehicle. Your Honor, this case was brought to trial
2 based on the defendant's record. We think that criminal
3 justice system is designed for rehabilitation and
4 punishment. We think the time for rehabilitation has
5 passed for Mr. Holmes. His record is substantial. The
6 most he's ever done, all totaled, is seven years in the
7 South Carolina Department of Corrections for dozens of
8 convictions. The State's position is it's time to send
9 Mr. Holmes a message. Not let him take what doesn't
10 belong to him anymore. Not let him run around and
11 essentially be a thief. We understand that there was no
12 violence per se in this charge but we can't reemphasize
13 his record enough and the fact that he has demonstrated
14 time and time again that he will steal and violate the
15 laws of this state when he is not incarcerated. You've
16 heard testimony during the trial that that how that house
17 was broken into twelve times in the month of July. That
18 house has not been broken into a single time since Mr.
19 Holmes has been incarcerated. That location had a rash
20 of home invasions. Around this time, it has not had a
21 single report of home invasion since Mr. Holmes has been
22 incarcerated. We're asking, Your Honor, to sentence the
23 defendant above the minimum. We are leaving that in your
24 discretion but we are asking for a substantial sentence
25 in this case. Thank you.

JOHN HENRY HOLMES VS. STATE OF SOUTH CAROLINA

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1 The Court: Thank you sir. How long has Mr. Holmes
2 been in jail? Since the date of the incident?

3 Mr. Kozelski: Yes sir.

4 The Court: Do you know how many days that is?

5 Mr. Kozelski: I did not calculate it, Your Honor. I
6 can find out. 442 days Your Honor.

7 The Court: Do you dispute that?

8 Mr. Lietzow: No Your Honor.

9 The Court: 442 you said?

10 Mr. Kozelski: Yes Your Honor.

11 The Court: Alright Mr. Holmes, in this case your
12 record speaks volumes obviously. I agree with the
13 solicitor that this is not violent per se in regards to
14 what took place. The place you broke into was not
15 occupied quite frankly, but whether you knew that or not,
16 I don't know a hundred percent. I have a feeling you
17 knew it was not occupied. It's neither here nor there.
18 The jury has spoken and found you guilty of burglary in
19 the 1st degree. The sentence of the Court is you be
20 committed to the State Department of Corrections for a
21 term of 18 years. You will be given credit for time-
22 served 442 days. Good luck to you.

23 Mr. Holmes: Thank you.

24

25

LTZ20140287810

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014025634

ARREST WARRANT NUMBER

2014A1010203963

DATE OF ARREST

July 30, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *[Signature]*

OCT 7 2014

VERDICT

Guilty

Burglary First Degree

[Signature]
Foreperson of Petit Jury

10/13/15
Date:

INDICT

DOCKET NO. 2014GS1006159

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

vs.

JOHN HENRY HOLMES

DOB:

B/M

Indictment for

Burglary First Degree

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on October 6, 2014 the Grand Jurors of Charleston County present upon their oath:

Burglary First Degree

That in Charleston County, South Carolina, on or about January 30, 2014, the Defendant JOHN HENRY HOLMES, did enter the dwelling of Ann Blandin, located at North Charleston, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, entry occurred at night; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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



CHRIS LIETZOW
ASSISTANT SOLICITOR

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JOHN HENRY HOLMES

AKA:

Race: [REDACTED] Sex: [REDACTED]

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary First Degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or Lewd Act)

The charge is ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (def's initials)

The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

[Signature]

100521

Chris Lietzow, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

100153

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 18 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 _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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. Time served 442 days

☐ The Defendant is to be placed on 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

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 \$ 100.00

§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 \$ 25.00

§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 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.80

TOTAL \$ 133.80

Clerk of Court/Deputy Clerk: Jan M. [Signature]

Court Reporter: Melissa [Signature]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1006159

A/W: 2014AJ010203963

Date of Offense: 01/30/2014

S.C. Code § 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

☐ Ordered PTUP _____ 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: _____

☐ Appointed PD or appointed other counsel,

§47-12 requires \$500 be paid to Clerk

during probation

Presiding Judge: [Signature]

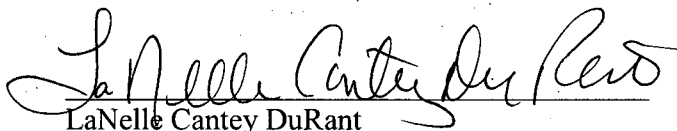
Judge Code: 2754

Sentence Date: October 13, 2015

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 22nd day of August, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Charleston County
Honorable Roger E. Henderson, Circuit Court Judge

RECEIVED

AUG 22 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN HENRY HOLMES, JR.,

APPELLANT

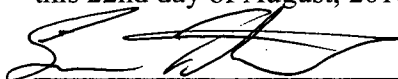
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon John Henry Holmes, Jr., #298643, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 22nd day of August, 2016.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of August, 2016.



(L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.