

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable Eugene C. Griffith, Circuit Court Judge
Appellate Case No. 2015-000431

RECEIVED

FEB 07 2017

SC Court of Appeals

THE STATE,

Appellant,

vs.

JOHN KENNETH MASSEY, JR.,

Respondent.

RECORD ON APPEAL

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INDEX

Index.	i
The State’s Post Trial Motion.....	1
Order Denying State’s Post-Trial Motion.....	3
Transcript (January 26-27, 2015).....	4
Notice of Appeal (February 5, 2015).....	57
Notice of Appeal (November 10, 2015)	58
Letter of Salley Elliot to the Court of Appeals (February 6, 2015)	59
Indictments.....	60
Court’s Exhibit No. 1	68
Defendant’s Exhibit No. 1-5	69

STATE OF SOUTH CAROLINA RECEIVED) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) 2015 FEB -6 AM 10:29) OF THE SIXTEENTH JUDICIAL CIRCUIT

The State) DAVID HAMILTON) Indictment Numbers: 2014-GS-46-00780,
C.C.P. & G.S.) 00781, 00782
YORK COUNTY, SC)

Post-Trial Motion

v.)
John Kenneth Massey Jr.,)
Defendant.)

NOW COMES THE STATE OF SOUTH CAROLINA by and through the undersigned attorney and moves for the following relief pursuant to Rule 29, SCRCrimP:

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2015 FEB 26 AM 10:28
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

The State moves to set aside the Court's quashing of indictment. Defense's motion to quash and the Court's granting of the motion constitutes an error of law. A motion to quash is appropriate when there exist "defects apparent on the face" of an indictment. S.C. Code Ann. § 17-19-90. Such a motion cannot be used to challenge the sufficiency of the State's evidence, which is an issue properly addressed through a motion for a directed verdict. *See State v. Garrett*, 305 S.C. 203, 206, 406 S.E.2d 910, 911 (Ct. App. 1991) ("A motion to quash an indictment addresses the sufficiency of an indictment, not the sufficiency of the State's evidence."), *overruled on other grounds by State v. Ramsey*, 311 S.C. 555, 430 S.E.2d 511 (1993).


Furthermore, the State would incorporate all previous arguments in opposition to the Court's quashing the burglary in the first degree indictment into this motion. The garage that the State alleges the defendant entered during the nighttime is a building within two hundred yards and appurtenant to a dwelling. *See* S.C. Code Ann. §§ 16-11-10, 16-11-310, 16-11-311, *see also State v. Smalls*, 336 S.C. 301, 519 S.E.2d 793 (Ct. App. 1999). The fact that the garage sits on land actually owned by a family member to

Kristopher Callahan and his mother does affect the garage's appurtenant relationship to the dwelling of Kristopher Callahan and his mother. *See State v. Singley*, 392 S.C. 270, 274, 709 S.E.2d 603, 605 (2011) ("We have maintained consistently for well over one hundred years that burglary is a crime against possession and habitation, not a crime against ownership.").

Therefore, the Court should set aside its ruling quashing the burglary in the first degree indictment.

Respectfully submitted,

February 6, 2015
York, South Carolina



T. Matthew Hogge, Assistant Solicitor
Sixteenth Judicial Circuit Solicitor's Office
1675-1A York Hwy
York, South Carolina 29745-7422

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
2015 NOV -9 AM 11:38

IN THE COURT OF GENERAL SESSIONS)
OF THE SIXTEENTH JUDICIAL CIRCUIT)

The State)

DAVID W. HAMILTON)
CLERK OF COURT)
YORK COUNTY, SC)

Indictment Numbers: 2014-GS-46-00780,)
00781, 00782)

v.)

**ORDER DENYING STATE'S POST)
TRIAL MOTION)**

John Kenneth Massey Jr.,)

Defendant.)

This matter is before the Court on the State's post-trial motion to set aside this Court's oral order of January 27, 2015, quashing the Defendant's indictment for burglary in the first degree.

The State moved on February 5, 2015, to set aside this Court's order quashing indictment number 2014-GS-46-00781 for burglary in the first degree, arguing that Defense's motion to quash and the Court's granting of the motion constituted an error of law as a motion to quash cannot be used to challenge the sufficiency of the State's evidence. The State also incorporated in its motion all of its previous pre-trial arguments made on the record.

The Court holds the State's arguments to be without merit. The Defendant is alleged to have entered an out building that was used as a business on a separate piece of property from the victim's mother's home. Therefore, the State's motion is denied.

IT IS SO ORDERED.

October 30, 2015

[Signature]

South Carolina

YORK COUNTY, SC)
CLERK OF COURT)
DAVID HAMILTON)

2015 NOV -9 AM 11:43)
CERTIFIED TRUE COPY)

[Signature]
The Honorable Eugene C. Griffith, Jr.
Circuit Court Judge

State of South Carolina) In the Court of General Sessions
) Sixteenth Judicial Circuit
 County of York) 2014-GS-46-0780
) 2014-GS-46-0781
) 2014-GS-46-0782

State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 John Kenneth Massey,)
)
 Defendant.)
)
)
 _____)

January 26 - 27, 2015
 York, South Carolina

B E F O R E:

The Honorable Eugene C. Griffith, Jr., Judge

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

T. Matthew Hogge, Assistant Solicitor
 Jessica E. Holland, Assistant Solicitor
 Attorneys for Plaintiff

Philip L. Smith, Esquire
 Attorney for Defendant

Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

I N D E X

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17
18
19
20
21
22
23
24
25

Proceedings 4

JACKSON V. DENNO - WITNESS

Brian Schettler,

 Direct Examination by Mr. Hogge 43

 Cross-Examination by Mr. Smith 50

 Redirect Examination by Mr. Hogge 55

PROFFER TESTIMONY - WITNESS

Kristopher Callahan,

 Direct Examination by Mr. Hogge 68

 Cross-Examination by Mr. Smith 72

Certificate Page 88

1
2
3
4
5
6
7
8
9
10
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12
13
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
C-1	Photograph	56	
D-1	Photograph	65	
D-2	Photograph	65	
D-3	Photograph	65	
D-4	Photograph	65	
D-5	Photograph	65	

1 TRANSCRIPT OF RECORD

2 TRIAL DAY 1 - 01/26/15

3 (Whereupon, the proceedings commenced at 3:00 p.m.)

4 THE COURT: All right. Good afternoon, ladies and
5 gentlemen. My name is Eugene Griffith. I'm a presiding
6 judge here in York County this week. I live down in
7 Newberry and a resident judge of the Eighth Circuit.8 I'm informed that y'all met Judge Couch this morning
9 and he's in the next courtroom. In any event, we need to
10 select a jury for the case that the state has had on the
11 trial roster. We ready to go?

12 MR. HOGGE: Yes, Your Honor.

13 THE COURT: You call the case.

14 MR. HOGGE: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. HOGGE: The next case before this Honorable Court
17 is the *State v. John Kenneth Massey, Jr.* He's indicted for
18 criminal conspiracy on 2014-GS-46-780; also indicted for
19 burglary in the first degree on 2014-GS-46-781; and also
20 indicted for -- for grand larceny, Indictment No. 2014-GS-
21 46-782.22 THE COURT: All right. Mr. Hogge, will you introduce
23 yourself to the jury, as well as your cocounsel?24 MR. HOGGE: Yes, Your Honor. My name is Matthew
25 Hogge. I work here in the York County Solicitor's Office.

1 And here with me I've got Jessica Holland with the York
2 County Solicitor's Office.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, Mr. Hogge had just introduced himself and his
5 cocounsel. He's also placed on the record the three
6 indictments for which Mr. Massey, who's seated here in the
7 courtroom with his attorney, Mr. Phil Smith -- Mr. Smith,
8 I'm going to publish the indictments. But I first want you
9 to stand and introduce yourself and your client to the
10 jury.

11 (Whereupon, Mr. Smith and the defendant conferred.)

12 MR. SMITH: My name is Phil Smith. And I have the
13 opportunity to represent John Massey today.

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, can everybody hear me okay? Because the initial
16 qualification process y'all went through was a general
17 qualification to determine whether you are eligible and
18 qualified to sit as a jury -- sit as jurors in any
19 particular case. Now the process is slightly different.

20 The Court will ask more pointed and focused questions
21 to see whether or not you're qualified and eligible and not
22 -- without knowledge of the case being called. If you have
23 prior knowledge or prior involvement with any of the
24 potential witnesses or lawyers or anybody, then perhaps
25 you're not able to be a fair and impartial juror. And so

1 That has already happened in this case. So a grand
 2 jury has made a decision that the case has facts for which
 3 to be carried over for a trial. These indictments are just
 4 allegations made by the state against Mr. Massey. And they
 5 tell him what to be prepared for with his attorney to be
 6 prepared to defend at trial when the case gets called.

7 So the three indictments, starting with Indictment 14-
 8 782, is for grand larceny. And it reads that Mr. Massey,
 9 in York County, on or about the 12th of January of '14, did
 10 take away certain personal items of Kristopher Callahan,
 11 this being in violation of the provisions of 16-13-30.
 12 That indictment, Mr. Massey's pled not guilty to.

13 Also, Indictment 14-GS-46 -- Indictment 781 for
 14 burglary in the first degree: That indictment alleges that
 15 Mr. Massey, while in York County, on the 12th of January
 16 also of '14, did unlawfully enter the dwelling of
 17 Kristopher Callahan without consent, along Parris Road in
 18 Rock Hill, with the intent to commit the crime of larceny
 19 while inside and that this did occur in violation of Code
 20 Section 16-11-311. To that indictment and allegations, Mr.
 21 Massey's pled not guilty.

22 And lastly, Indictment 14-GS-46-780, that indictment
 23 alleges that Mr. Massey, while in York County, on the 12th
 24 of January of '14, did combine or confederate with a --
 25 another gentleman -- another two gentlemen for the purpose

1 of committing the act of burglary and larceny, in violation
2 of Code Section 16-14-410. And on that indictment,
3 likewise, Mr. Massey's pled not guilty.

4 Now, first question to the jury -- jury venire: Does
5 any member of the jury know anything about the allegations
6 regarding this incident of January 12th, 2014, regarding
7 Mr. Massey and Mr. Kristopher Callahan? If so, please
8 stand.

9 (Whereupon, no potential juror stood.)

10 THE COURT: For the record, no one's standing. I'm
11 going to come back to the indictments momentarily, but I
12 want to go to the parties you've seen introduce themselves.
13 Any member of the jury panel ever been represented by any
14 of the attorneys who introduced themselves moments ago? If
15 so, please stand.

16 (Whereupon, no potential juror stood.)

17 THE COURT: No one's standing. Any member of the jury
18 panel related by blood, marriage, or close, personal
19 friends to any of the four parties who were stood and
20 introduced moments ago? If so, please stand.

21 (Whereupon, no potential juror stood.)

22 THE COURT: No one's standing. Back to the
23 allegations, any member of the jury panel related by blood,
24 marriage, close, personal friends to the alleged victim,
25 Mr. Kristopher Callahan, or live along Parris Road in Rock

1 while I'm doing that, when y'all are deliberating, I won't
2 be in the jury room with you. Because that's when y'all
3 will get to discuss the tediousness of "Well, the testimony
4 was this, that, and the other." Y'all will get to discuss
5 that without my help. It'll be y'all's decision when y'all
6 make a judgment on the facts.

7 All right. Those are my preliminary instructions.
8 Don't talk about the case, with each other or anyone.
9 Don't go inviting questions on Internet or social media.
10 Tell whoever asks, "I'm on the jury and Judge Griffith says
11 don't discuss the case."

12 If y'all will do that, I'll see you in the morning at
13 9:30. I will swear you. Don't let me forget that. I'll
14 place y'all under oath to listen attentively and to follow
15 instructions.

16 So go off -- you going take them out the back? Y'all
17 head out. I will see you in the morning at 9:30.

18 (Whereupon, the jury exited the courtroom at 3:50
19 p.m.)

20 (Off the record from 3:50 p.m. until 3:59 p.m.)

21 THE COURT: All right. We ready?

22 MR. HOGGE: Yes, Your Honor. The state would just
23 call a -- a *Denno* hearing. And the state would call Brian
24 Schettler to the stand to proffer his testimony.

25 (Whereupon, the witness came forward.)

1 BRIAN SCHESSLER, having been first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. HOGGE:

5 Q Afternoon, Mr. Schessler. Can you give us your name?

6 A Brian Edward Schessler.

7 Q Where are you currently employed?

8 A Currently employed with the National Insurance Crime
9 Bureau.

10 Q And back in January, where were you employed?

11 A York County Sheriff's Office.

12 Q All right. And what was your position with the
13 sheriff's office?

14 A I was a detective in property crimes.

15 Q And up into January, how long had you been in law
16 enforcement?

17 A Over ten years.

18 Q Were you part of the John Massey investigation in
19 January of 2014?

20 A Yes, I was.

21 Q When did you first encounter John Massey during this
22 investigation?

23 A It would've been on the -- I believe it was the 13th.

24 Q Okay. And where did you encounter him?

25 A Would've been -- I -- I saw him throughout the day.

1 And then there was actually an arrest that took place that
2 was part of. That's when I actually first ---

3 Q Okay.

4 A --- was person to person with him.

5 Q And so you -- you arrested John Massey; is that
6 correct?

7 A That is correct.

8 Q And how long after his arrest was it that you spoke
9 with John Massey?

10 A Less than 24 hours. It was the next day.

11 Q Okay. Before you spoke to him that next day, did you
12 verbally advise him of his *Miranda* rights?

13 A Yes, I did.

14 Q And did you read them from a card, or did you advise
15 him from memory?

16 A I read it from the card that's in my wallet.

17 Q Okay. Do you have that card with you now?

18 A I do.

19 Q Would you go ahead and read for us from that card.

20 A That card might be in my other wallet now.

21 Q Is that the standard card that everybody has in ---

22 A It is.

23 Q --- the sheriff's office?

24 A And I've got the card. I just didn't bring it with me
25 today.

1 Q I'm going to hand you what Detective Branham handed me
2 from his wallet. Is that the standard card that everybody
3 would have in the sheriff's office?

4 A Yes, sir. Same one I have.

5 Q Could you just go ahead and read it for us, what's on
6 there?

7 A It says (as read): "*Miranda* Warning: You have the
8 right to remain silent. Anything you say can and will be
9 used against you in the court of law. You have the right
10 to talk to a lawyer and have him present with you while
11 you're being questioned. Can't afford to hire a lawyer,
12 one will be appointed to represent you before any
13 questioning if you wish. You can decide at any time to
14 exercise these rights, not answer any questions, or make
15 any statements. Do you understand each of these rights as
16 I've explained to you? Having these rights in mind, do you
17 wish to talk to us now?"

18 Q Thank you, Mr. Schettler. Where were you and John
19 Massey when you advised him of those rights?

20 A First time it was by the bumper of the SUV he was
21 stopped in; second time was down in the jail.

22 Q Okay. Was the defendant under arrest both those
23 times?

24 A Yes, sir.

25 Q And when you met with him -- and -- and where again

1 did you say you saw him the second time?

2 A At the jail ---

3 Q Jail?

4 A --- in ---

5 Q Okay. Who else was with you when you spoke with him
6 in the jail?

7 A My lieutenant, Beth Tolson.

8 Q And where exactly in the jail were you?

9 A There's an interview room out in the booking area, and
10 we were in that room.

11 Q Okay. When you spoke with him, did you threaten him
12 in any way during your conversation?

13 A No, sir.

14 Q Did you identify yourself as a police officer?

15 A Yes, sir.

16 MR. SMITH: Your Honor, before we get into contents,
17 could I move to sequester?

18 THE COURT: That'll be fine. We'll sequester the
19 witnesses as to this issue.

20 (Off the record briefly.)

21 Q And again, Mr. Schettler, did you threaten Mr. Massey
22 in any way during your conversation?

23 A No, sir.

24 Q Did you identify yourself as a police officer?

25 A Yes, sir.

1 Q Did you promise Massey anything if he agreed to talk
2 to you?

3 A No, sir.

4 Q All right. Did he appear to be under the influence of
5 drugs or alcohol at the time?

6 A No, sir.

7 Q Did he indicate that he understood his rights?

8 A Yes, he did, sir.

9 Q Did he ask for an attorney?

10 A No, he did not.

11 Q Did he ask you any questions about his rights?

12 A No.

13 Q What did you ask him?

14 A Had some pictures from a surveillance video; asked him
15 if he recognized who was in the video, at which time he
16 indicated that he did. We discussed those pictures. Then
17 we discussed the break-in, where the four-wheeler was
18 taken, at which time Mr. Massey and I went in to have a
19 discussion.

20 He didn't like the presence of Lt. Tolson in there and
21 asked her to leave. Once she left, Mr. Massey and I
22 further went into discussion about the break-in, the four-
23 wheeler, and the fact that it was part of a bigger ring and
24 that he wanted to cooperate and help them get that ring.

25 Q And when you say -- when you talked about it being a

1 part of a bigger and that he wanted to cooperate, was he
2 saying those things or were you sharing with him
3 information that you knew?

4 A I -- the only information I shared with him that I
5 knew was that the pictures -- that he was identified in
6 them; that -- what had transpired that day, when we
7 observed a four-wheeler and black SUV -- black SUV going to
8 a house where we conduct a surveillance on until he was
9 stopped. And at that point he wanted to enter into
10 negotiation as to what could be done, how he could help
11 himself, at which time I told him I couldn't promise him
12 anything, couldn't make those kind of deals. And it pretty
13 much ended after that.

14 Q Okay. Now, what exactly did he say about his
15 involvement in all of this?

16 A That -- eventually, once we went through the pictures,
17 that that was him in the pictures and that the fact ---

18 Q Let me ---

19 A Yeah.

20 Q You say that that was him in the pictures. Did you
21 indicate to him, "This is you," or did he indicate to you
22 that that's him in the video?

23 A That he -- that was him in the video.

24 Q Okay.

25 A And -- but it wasn't the video; it was still pictures

1 that was taken from the video. And then he indicated that
2 he did take the four-wheeler and that he wanted to
3 cooperate at that point.

4 Q Okay.

5 MR. HOGGE: Beg the Court's indulgence.

6 (Whereupon, Mr. Hogge and Ms. Holland conferred.)

7 Q When you talk about the -- the video stills from the
8 surveillance, what exactly are you talking about, the
9 pictures that you showed to John Massey?

10 A There's a program that we use at the sheriff's office.
11 It's called "StarWitness." Basically, it's a program where
12 you can run the video through it and you can capture still
13 images off of it; basically, pulled up to the video where
14 you could identify the people in the building, captured
15 that still image, and that was the picture that I showed
16 him.

17 Q What video are you speaking about?

18 A Oh, I'm sorry. It's the surveillance video from the
19 shop.

20 Q What -- from the shop. Where are you referring to?

21 A Mr. Callahan's ---

22 Q Okay.

23 A --- place of business. I'm sorry.

24 Q Okay. That's all from the state.

25 THE COURT: All right. Mr. Smith?

1 MR. SMITH: If it please the Court, Your Honor?

2 THE COURT: Uh-huh.

3 CROSS-EXAMINATION

4 BY MR. SMITH:

5 Q Mr. Schettler, you indicated that you were using a
6 photograph to sort of prompt the discussion with my client;
7 is that right?

8 A Brought the photographs in to show him an example of
9 what -- the information I was talking about. Yes, sir.

10 Q Okay. Do you know how many photographs you had?

11 A I believe there was two, but I'm not 100 percent sure
12 on that.

13 Q Okay. And what was depicted in those photos?

14 A It was the inside of the garage. And depicted in
15 there, you could see the person that went into the garage.
16 You could see the person messing with the four-wheeler.
17 You could see the person taking the four-wheeler out of the
18 garage.

19 Q You could see all that occur in these two pictures?

20 A Like I said, I believe it was two pictures; could've
21 been more. I know that there specifically were two
22 pictures that I can say that there was.

23 Q Okay. And what happened to those pictures?

24 A I have no idea.

25 Q Did you give them to my client?

- 1 A No, sir.
- 2 Q Okay. Did you leave with them?
- 3 A I would've -- have to.
- 4 Q Okay. And this was your case back then, right?
- 5 A No.
- 6 Q This was not?
- 7 A No, it was not.
- 8 Q Okay. Whose case was it?
- 9 A Detective Branham's.
- 10 Q And you indicated that you read Mr. Massey rights two
11 separate occasions. I believe once, you said, was at the
12 bumper of the vehicle; is that right?
- 13 A That's correct.
- 14 Q Did you ask any questions then?
- 15 A Asked him if he'd submit for DNA.
- 16 Q Okay. And did he indicate he would?
- 17 A Yes, he did.
- 18 Q And then, the -- this subsequent interview, you said
19 it was at the sheriff's department; is that right?
- 20 A It was at the jail.
- 21 Q At the ---
- 22 A At the sheriff's -- attached to the sheriff's -- but,
23 I mean, it's the ---
- 24 Q Okay.
- 25 A --- York County Detention Center.

1 Q And -- and specifically, where within the jail? I
2 mean, it obviously wasn't in a -- a -- a main cell block.
3 Where -- where'd the interview occur?

4 A The interview room down in booking.

5 Q Okay. All right. And you indicated at some portion
6 there were multiple officers in there or -- or were --
7 someone was in there with you; is that right?

8 A That's correct.

9 Q And is that per protocol or is that form or how -- how
10 is that -- why -- why was there someone there with you?

11 A There's just two of us that went down to talk to him
12 at the time. At the time of the arrest, Lt. Tolson was
13 with me and wanted to follow through the investigation with
14 me.

15 Q Okay. Was Lt. Tolson your supervisor at the time?

16 A That's correct.

17 Q Okay. And -- but it is Lt. Tolson who left the room
18 during the interview?

19 A At one point, yes.

20 Q All right. Now, you had to go get Mr. Massey from
21 some cell or from wherever he was being held, right?

22 A I personally didn't. No.

23 Q But -- but somebody had to bring him -- you knew you
24 were going to interview him; you didn't just see him
25 walking the hall ---

1 A That's correct.

2 Q Okay. What did you take to memorialize that
3 interview?

4 A Say that again?

5 Q Write it down? Record it? What'd you take with you?

6 A We don't record interviews.

7 Q Did you take a notepad or anything with you?

8 A I asked Mr. Massey if he'd provide a statement
9 written, and he said he would not.

10 Q Okay. What about your notes so you could remember?

11 A I was there. I remember.

12 Q I understand. Did you take notes?

13 A Did I take notes?

14 Q Yes.

15 A No, sir.

16 Q How about Lt. Tolson? Did she take ---

17 A I can't ---

18 Q --- any notes?

19 A --- speak for her.

20 Q Well, you were right beside her. You -- you could
21 see?

22 A That's correct. But I don't know whether she did or
23 did not. I was -- I'm not her.

24 Q Okay. I'm sorry. You thought I asked if you were
25 her. No. Did you see her taking notes?

1 A I can't say whether I did or didn't. I don't recall.

2 Q But you just said you remember everything about the
3 interview; you didn't need notes. So surely, you remember
4 whether she was taking notes?

5 A She left the room. If she -- whatever she had, she
6 took with her.

7 Q Okay. And -- and what exactly is it you say Mr.
8 Massey said?

9 A Exact word?

10 Q Yes.

11 A Verbatim?

12 Q Yes.

13 A Can't say verbatim.

14 Q Okay. Okay. Then, your summary of what he said, what
15 would that be?

16 A The summary of what he -- the -- the summary of what
17 he said to me was he was in the pictures and that he took
18 the four-wheeler.

19 (Whereupon, Mr. Smith and the defendant conferred.)

20 Q And at this point in time, he was obviously in
21 custody. Was he handcuffed?

22 A No, he was not.

23 Q Was he -- were his legs shackled or anything like
24 that?

25 A No, they were not.

1 Q The room that you were in was a secured, locked room?

2 A The room was not locked. No. The door was closed,
3 but it wasn't locked.

4 Q But -- but no doubt, he was in custody. He wasn't
5 free to leave at that point, correct?

6 A He was free to leave the interview at any time.

7 Q What, and go ---

8 A --- back to his cell.

9 Q Back to jail?

10 A No. Back to his cell. He was already in jail.

11 MR. SMITH: I have no further questions, Your Honor.

12 THE COURT: Anything else?

13 MR. HOGGE: A few more, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. HOGGE:

16 Q Counsel referred to the photographs that you showed
17 Mr. Massey. Is that one such of those photographs?

18 A Yes, sir, it is.

19 MR. HOGGE: Your Honor, permission to put this in
20 evidence as Court's Exhibit 1?

21 THE COURT: Any objection?

22 MR. SMITH: For this ---

23 THE COURT: Purpose ---

24 MR. SMITH: --- hearing, no objection.

25 THE COURT: The Court's 1 for this hearing.

1 Q And going back ---

2 THE COURT: Wait a minute.

3 THE COURT REPORTER: Hold on.

4 THE COURT: Let her mark it.

5 MR. HOGGE: I'm sorry.

6 THE COURT: She can do several things at the same
7 time, but not that many.

8 (Whereupon, Court's Exhibit 1 was marked for
9 identification.)

10 Q And so you showed this photograph to Mr. Massey?

11 A That's correct.

12 Q And after that, more or less, he indicated to you ---

13 A --- that that was him and that that was the four-
14 wheeler that he took.

15 Q All right. And I regretted to -- failed to ask you
16 earlier: Did you have your gun on you went down to the
17 jail?

18 A No, I did not.

19 Q Okay.

20 MR. HOGGE: Nothing further, Your Honor.

21 THE COURT: Anything else, Mr. Smith?

22 MR. SMITH: No, Your Honor.

23 THE COURT: All right. You can step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Uh-huh.

1 (Whereupon, the witness exited the witness stand.)

2 MR. HOGGE: Your Honor, I believe that we've met the
3 requirements of *Jackson v. Denno* that he is -- he informed
4 Mr. Massey of his *Miranda* rights before Mr. Massey gave
5 that statement, voluntarily waiving his rights.

6 THE COURT: All right. Mr. Smith, do you ---

7 MR. SMITH: Your Honor, I would object to admission of
8 the statement, both under *Jackson v. Denno* and as well -- I
9 -- I think it's going to be -- and -- and -- and I may
10 phrase this wrong -- more prejudicial than probative.
11 Obviously, it's an alleged confession of my client.

12 But, Your Honor, they did nothing to maintain this.
13 The witness first says he can remember anything; then he
14 says he can't remember what's been said. He had the
15 opportunity to take the statement in a form that could've
16 been presented appropriately to a jury. He chose not to do
17 that. And I think the state should suffer the consequences
18 and the alleged statement should be suppressed.

19 MR. HOGGE: Your Honor, I'd only argue that there's no
20 requirement that the state actually record someone's
21 statement post-*Miranda*. There's no such requirement. And
22 all the -- the necessary requirements were met here. He
23 made a -- he voluntarily waived his rights, and he made a
24 statement. That statement was not recorded; it was not
25 written down by the officer. But nonetheless, it's still

1 comports with the requirements of the law.

2 THE COURT: All right. I -- under the case law of the
3 *Jackson v. Denno*, I find that the officer did advise him of
4 his rights in the jail. He was in custody; no promises, no
5 threats were made to him. He was aware he was talking to
6 law enforcement. And he did have a conversation with the
7 detective.

8 I'll allow the statements to -- admission of being in
9 the photo and admission of taking the four-wheeler, but not
10 any embellishment above and beyond that. I mean, it's got
11 to be limited for that purpose. Because if we hear more
12 tomorrow in front of a jury, that will be prejudicial and
13 that will create testimony against my ruling here today.

14 So understood?

15 MR. HOGGE: Yes, Your Honor.

16 THE COURT: All right. So we'll allow it to that
17 extent.

18 MR. HOGGE: Your Honor, the state doesn't have any
19 other motions. There will be some identifications in this
20 trial. I don't believe that it implicates *Neil v. Biggers*.
21 The two -- the statements -- the identifications that the
22 state would seek to admit would be the identification of
23 Kris Callahan and Ronald Mitchell of Mr. Massey. And how
24 that came about was Kris Callahan had in his garage a
25 surveillance-video system.

1 After he'd watched that surveillance-video system --
2 and I can proffer his testimony to this effect -- he -- he
3 watches the video. He -- he -- the person in the videos
4 looks familiar to him. And after he watches the video with
5 Ronald Mitchell, Ronald Mitchell identifies Mr. Massey.
6 Mr. Callahan realizes that that is indeed Mr. Massey.

7 Law enforcement had no role whatsoever in that
8 identification. So it does not fall under the normal *Neil*
9 *v. Biggers* and that there is certainly no suggestiveness
10 because there's no law enforcement there to suggest
11 anything.

12 THE COURT: Well, is Massey -- he's not listed as a
13 potential witness -- I mean -- I'm sorry. What's the other
14 gentleman's name?

15 MR. HOGGE: Kris Callahan and Ronald Mitchell.

16 THE COURT: Mitchell. Okay. Mitchell and Massey were
17 sounding the same. And Mitchell will be called as a
18 witness?

19 MR. HOGGE: Yes, Your Honor.

20 THE COURT: All right. Mr. Smith, what we got to say
21 about that?

22 MR. SMITH: Your Honor, my difficulty is I believe it
23 is suggestive. The statement I've been given by Ronald
24 Mitchell says: "My boss had a four-wheeler stolen and
25 showed me a video of the incident. The one suspect in the

1 dark jacket and light-colored pants definitely looks like
2 John Massey, a family member of mine. And the second
3 suspect, I don't really know."

4 So he says that person looks like. Then, the
5 statement I get from Mr. Callahan, who, based on the
6 summary of -- that -- that the solicitor just provided the
7 Court, says: Well, hold on, because he knows who he is
8 now; I know who he is too.

9 Second person doesn't write his own statement. A
10 Terry Callahan writes his statement. Says: "I had a four-
11 wheeler stolen January 12th, 2014, from my shop. The
12 cameras were running and were able to see the theft in
13 action. I showed the video to employees, and one of them
14 identified the person as John Massey. The other person was
15 not identified. The employee who identified John Massey
16 was Ronnie Mitchell. Kris watched the video and agreed it
17 could be John Massey."

18 So now we have one person saying looks like and one
19 said could and then the statements to come into court and,
20 I assume, have two people point to my client and say that's
21 it. I think they have been prejudiced by what they've --
22 how they've discussed and looked at this video and that the
23 ID should be suppressed.

24 THE COURT: Okay. Well, certainly, the statements
25 don't come in. It'd have to be their testimony.

1 MR. SMITH: Yes, Your Honor.

2 THE COURT: But I understand the context of the
3 statements is what you're concerned about.

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: All right, Mr. Hogge. Tell me ---

6 MR. HOGGE: Yes, Your Honor. We -- the -- the
7 witnesses' testimony would be limited to that effect: that
8 they watched the video and it looked like John Massey.
9 They're not going to get on the stand and say yes,
10 absolutely, it was John Massey in the video. They're going
11 to testify in accordance to their statements: that they
12 looked at the video; it looked like John Massey; and then
13 further events escalated when Mr. Massey was arrested.

14 I don't believe *Neil v. Biggers* is implicated because
15 there's no law enforcement involvement whatsoever. It's
16 just Mr. Callahan, Mr. Mitchell, totally separate from law
17 enforcement, watching the video, saying that this looks
18 like John Massey.

19 And if the Court's inclined, I can proffer both of
20 their statements. They're outside in the hallway.

21 THE COURT: You talking about the written ones or you
22 want ---

23 MR. HOGGE: Or not ---

24 THE COURT: --- to proffer their testimony?

25 MR. HOGGE: Proffer their testimony, Your Honor.

1 THE COURT: All right. Mr. Callahan, he's the
2 proprietor?

3 MR. HOGGE: He is, Your Honor.

4 THE COURT: And he didn't recognize -- it's two
5 people; didn't know who it was. He showed it to some
6 employees, and one thought it might be or could be Mr.
7 Massey?

8 MR. HOGGE: (Nodded head up and down.)

9 THE COURT: I think that the -- Mr. Callahan, the
10 proprietor, wouldn't be allowed to say that's who it is,
11 because he's been told. And that's -- that will be
12 prejudicial of him to say it was so-and-so if he didn't
13 know. If he doesn't know, he doesn't know.

14 So I have a video; here it is. I showed it to my
15 employees. One of my employees thought it might be someone
16 he knew and leave it at that. His testimony stops there.

17 Mr. Mitchell will testify: I thought it was. And
18 then, that's how I think you'd have to go, that it would
19 have to be restricted to that and not allow the -- Mr.
20 Callahan to say I wasn't sure but then upon -- then I
21 thought it might be -- that doesn't seem very appropriate
22 in my -- just from what I've heard thus far.

23 MR. HOGGE: Right, Your Honor. The state's evidence
24 that we were going to put up, we -- we allege that Mr.
25 Massey once worked for Mr. Callahan. So when he watched

1 that video, he realized that that person was familiar; he
2 couldn't quite place a name with it.

3 THE COURT: And why don't you stop there. He says, "I
4 knew he was familiar, but I don't know who it was." You
5 just stop there ---

6 MR. HOGGE: Yes, Your Honor.

7 THE COURT: --- and leave it. That way, he's not
8 pointing to -- he -- his testimony is not being bolstered
9 in any way other than exactly what he said: I wasn't
10 certain; he looked familiar. I couldn't identify him at
11 that time. And don't go any further.

12 MR. HOGGE: Yes, Your Honor.

13 THE COURT: Because if you ask the next question --
14 Well, after you talked to everybody and they pointed out to
15 you, didn't it -- no. Just he looked familiar; I couldn't
16 identify him when I saw the video. And stop.

17 Mr. Mitchell and then the statement of the defendant
18 to the detective identifies the defendant if -- assuming
19 the testimony comes that way. But restrict Mr. Callahan
20 stopping at he looked familiar; I didn't know who he was
21 when I saw the video.

22 MR. HOGGE: Yes, Your Honor.

23 THE COURT: That's where I'd encourage you to restrict
24 his testimony. We'd stop there. If he goes further, then
25 I think that would be suggested by some other people and

1 influenced by other people. All right. Let me write that
2 down.

3 All right. What else do we have?

4 MR. HOGGE: Those are all the pretrial matters that
5 the state has. There is some issues with the jail phone
6 calls and redactions. And I'll save that towards the end
7 of the day if we want to get in them -- into them today.
8 But I'll hold off on those, Your Honor.

9 THE COURT: You want to be able to listen to those
10 with your client this afternoon?

11 MR. SMITH: I do, Your Honor.

12 THE COURT: Okay. Anything else I need to do before
13 we adjourn for the day?

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: All right.

16 MR. SMITH: I would have a motion to quash the
17 burglary-first indictment.

18 THE COURT: Uh-huh.

19 (Whereupon, Mr. Smith and Mr. Hogge conferred.)

20 MR. HOGGE: Your Honor, I ask that we have Mr.
21 Callahan, my victim, come back into the courtroom. We had
22 earlier had them all leave out, but as the victim, I would
23 like to have him present in the courtroom.

24 THE COURT: Fair enough. All right. He can come back
25 in.

1 (Off the record briefly.)

2 (Whereupon, Defendant's Exhibits 1 through 5 were
3 marked for identification.)

4 THE COURT: All right.

5 MR. SMITH: Your Honor, if I can approach, I'm going
6 to hand up Defendant's ID No. 3, a photograph handed -- or
7 -- or turned over to me by the state in discovery. The
8 buildings depicted in that photograph, the red building is
9 the building in which the alleged burglary occurred.
10 You'll notice, over from that is a -- a residence, a home.

11 THE COURT: Uh-huh.

12 MR. SMITH: And that is the basis of the amended
13 burglary-first indictment, saying that the red building is
14 within 200 yards and appurtenant to the residence. Your
15 Honor, I'll also hand up Defense 1 and 2, also provided
16 from the state in discovery. And 2 is a zoomed-in version.
17 If you'll notice, the red building itself has a business
18 sign over it that operates as a building -- as -- as a
19 business. In fact, Your Honor heard some testimony from
20 the earlier witnesses talking about the business. And that
21 is the business in the red building that goes on with Mr.
22 Callahan's business.

23 And then, additionally, Your Honor, I want to hand up
24 what I pulled from the government property report, Defense
25 Exhibit 4 and 5. Defense Exhibit 4 shows the parcel that

1 the residence -- upon which the residence is located. Your
2 Honor -- Your Honor will notice the sort of bright-pink
3 line dividing that parcel from State's Exhibit 5, which is
4 a separate parcel of land upon which that red building or
5 that business is located.

6 Your Honor, the indictment that the state has provided
7 is correctly in line with the statute but I would argue is
8 faulty with regards to the facts of this case. I believe
9 it would be their requirement that they show it both be
10 within 200 yards and appurtenant to the residence.
11 Appurtenant to -- Your Honor, as --, as I've looked up
12 appurtenance, it's something that belongs to or is attached
13 -- would be the Black's Law Dictionary. Other dictionaries
14 -- Merriam-Webster would be constituting a legal
15 accompaniment or an auxiliary or accessory.

16 Your Honor, my point would be: (1) this does not look
17 appurtenant to; it is a separate business that operates
18 separately from the home itself. So there is no logical
19 appurtenance, as the definitions give us a right or a
20 privilege of property that -- that comes from the property
21 itself or appears pertaining thereto.

22 I -- I -- I don't think it does. It looks like
23 something separate. It's a business in one place and a
24 home in the other.

25 But there is a definition of appurtenance that does

1 say it would be that which comes with the land or a right
2 that comes with the parcel. Here, Your Honor, there is no
3 right from the residential parcel to the land upon which
4 the business exists. In fact, if someone were to purchase
5 that piece of property, they wouldn't get an easement or a
6 right or anything for that business.

7 That is a separate parcel. It is not appurtenant,
8 either in legal definition to the real property of the
9 separate parcel, nor an actual practicality that a business
10 runs somehow associated with the home. It is not. It's a
11 separate business, has a sign on it -- separate signage,
12 and it is not related to the house.

13 And therefore, burglary-first would not be an
14 appropriate charge for this case. We'd ask that that
15 indictment be quashed.

16 THE COURT: Am I to understand, on the property that
17 the business sits on is owned by someone else?

18 MR. SMITH: It is, Your Honor. At least what the
19 county records indicate.

20 THE COURT: All right.

21 MR. HOGGE: Your Honor, I'd like to proffer the
22 testimony of Kristopher Callahan.

23 THE COURT: Okay.

24 MR. HOGGE: Mr. Callahan, please come up to the bible
25 and be sworn.

1 (Whereupon, the witness came forward.)

2 KRISTOPHER CALLAHAN, having been first duly
3 sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HOGGE:

6 Q Mr. Callahan, could you enlighten us a little on the
7 lay of your land, the -- the garage? And -- and to help
8 you out, I'm going to go ahead and show him this screen --
9 a blow -- a blown-up copy of what the judge has. And I've
10 got this laser point for you, if that helps you out. Hold
11 on one second. It's in slide-show mode. What all do you
12 have in your red garage here?

13 A Four-wheelers, boats, tools. There's beds in there.
14 There's refrigerators in there, freezers, things of that
15 nature, just things for storage and ---

16 Q Can you tell us a little bit about your business?

17 A I operate a waterproofing and grading company. It's
18 just a small, little -- little deal. We meet there at the
19 -- at the land in the mornings. And from there we, you
20 know, go off to our jobs.

21 Q Okay. And so are all of the items that are stored in
22 your garage, are they -- are they used in connection with
23 your business?

24 A No, sir.

25 Q What items that are in your garage are not used in

1 your business?

2 A Four-wheelers, boats, beds, tools -- some tools are;
3 some tools aren't -- refrigerators, ice machines, work
4 benches. I mean, it -- they're just things that are in my
5 garage.

6 Q Okay. Now, you also use this as a personal garage,
7 then?

8 A Yes, I do.

9 Q And -- and what all items do you keep in there related
10 to your business?

11 A Related to my business, really, the only things that
12 are in there related to my business are my tools that --
13 that I work on stuff on. But they don't go out to jobs or
14 anything. They -- everything that's in that building stays
15 in that building.

16 Q Okay. What's the reason behind the sign on that
17 garage?

18 A The sign was from -- there's a girl that lives with us
19 who rides rodeos. And I sponsored her in a rodeo, and they
20 had that sign made to put on one of the bucking chutes.
21 And once I got it back, I hung it on my shop, because I'm
22 -- I want to just, you know, display my name. I mean ---

23 Q Okay.

24 A --- just, I mean, there's all kinds of signs in my
25 shop.

1 Q Did members of the public come out onto your land to
2 see that sign?

3 A No, sir.

4 Q Was that sign there just for you?

5 A It's just there for me. The -- it's not there for --
6 I don't even know that it's visible from the road.

7 Q Okay.

8 A Never really looked to see.

9 Q And in that white house right next to the garage, how
10 far is that white house from that red garage?

11 A I would say roughly 45/48 feet, something like that.

12 Q Okay. And where -- if you could use the laser pointer
13 -- just hit that red button on there -- can you point out
14 to us where you sleep in the house, where your bedroom is?

15 A My bedroom is right there.

16 Q Is that your window to your bedroom?

17 A That is my door.

18 Q Okay. What's the -- who lives in that house with you?

19 A My mother, my father; and, like I said, the -- a -- a
20 lady named Sam who is just a friend of the family.

21 Q Okay.

22 A She also lives there.

23 Q And what's the -- the -- the status of the ownership
24 of the land? All this land, who owns what?

25 A How this started, this was all my grandfather's land.

1 When my mother and father got married, my grandfather drew
2 a line -- I think it was 5 acres -- right here and give it
3 to them so that they could build the home. In that area
4 you have to have 5 acres in order to be able to build a
5 home. I guess that was the -- the rules at the time.

6 Once my grandfather died, all this land here became my
7 mother's. It never was put over -- it never was deeded
8 into her name because it -- it's just family land. There's
9 no need to change the land over. So we just left it in the
10 farm name, which is ---

11 Q Okay.

12 A --- my uncle, Bill, who lives on the other side of us.

13 Q So is that that name on that -- the plaque ---

14 A William ---

15 Q --- that the ---

16 A --- E. Russell.

17 Q And that's your uncle?

18 A Yes, sir.

19 Q Okay.

20 MR. HOGGE: Beg the Court's indulgence.

21 (Whereupon, Mr. Hogge and Ms. Holland conferred.)

22 Q And so who uses that shop primarily?

23 A Primarily, just me and my father.

24 Q Okay. And so that -- that sign there that -- you said
25 earlier that people will meet up there at the shop?

1 A Yes. We -- we -- my workers, you know, we just park
2 there. I park my equipment there. And from there we leave
3 and go to our jobs.

4 Q Okay. So is any business conducted in that building?

5 A There is no business conducted in that building. The

6 ---

7 Q Okay.

8 A --- business is ran out of the house.

9 Q Okay. All right. That's all the state has.

10 THE COURT: All right, Mr. Smith.

11 MR. SMITH: Thank you, Your Honor. May it please the
12 Court.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q Mr. Callahan, Parris Road that the home address is
16 listed on, where is that in the photograph?

17 A Right there.

18 Q Okay. And then, the road that would -- would -- would
19 run with where the left portion of the photograph would be,
20 what road would that be?

21 A That's Russell Road.

22 Q Russell Road? Okay.

23 And then, as we came on down, sort of out the bottom
24 of the photograph, what road would we get to down there?

25 A Highway 324.

1 Q Okay. And you indicate that the red structure is --
2 is where you meet up for business; is that right?

3 A That is where we meet in the mornings. Yes, sir.

4 Q Okay. And then ---

5 A We'd meet outside.

6 Q Outside? Okay.

7 And Callahan Waterproofing and -- and Grading, that --
8 that's an active company, correct?

9 A Yes, it is.

10 Q And -- and the sign that's hanging on the front of
11 that building has two numbers listed to it. Are those
12 active numbers?

13 A Yes, they are.

14 Q Okay. And they -- business numbers?

15 A Yes.

16 Q Okay. And the -- the structure -- the red structure,
17 is it part of the business? In other words, the -- well,
18 does the business have insurance and is it bonded?

19 A No, sir.

20 Q It's not?

21 A (No audible response.)

22 Q Does it have a separate tax account from your personal
23 account?

24 A It would just be taxed with the land ---

25 Q Taxed with ---

1 A --- I guess.

2 Q --- the land? Okay.

3 So the -- the business would be taxed with the land
4 that -- that it's parcel to. And then, the home is taxed
5 with the land that it's parceled to; is that correct?

6 A I -- I can't give you a -- an honest answer there.

7 Because I'm ---

8 Q Okay.

9 A --- not sure.

10 Q Okay.

11 A I don't pay the taxes for that dwelling, that area.

12 Q Okay. And what all type of work does the business do?

13 A We do lot-clearing, waterproof basements, crawlspaces,
14 grading, septic tanks, anything somebody will pay me to do
15 to make a dollar.

16 Q All right.

17 MR. SMITH: I have no further questions, Your Honor.

18 THE COURT: Okay.

19 MR. HOGGE: I have no further questions for Mr.

20 Callahan.

21 THE COURT: Okay.

22 (Whereupon, the witness exited the witness stand.)

23 MR. HOGGE: Your Honor, I'd like to hand up a few
24 cases. The first is *State v. Smalls*. And in *State v.*
25 *Smalls*, the Court addresses the definition of a dwelling.

1 And it basically lines up with the statute, which is
2 there's the dwelling, where someone actually lives and
3 resides. In Section 16-11-310, Subsection 2, dwelling
4 means its definition found in 16-11-10 and also means the
5 living quarters of a building which is used or normally
6 used for sleeping within the lodging by a person.

7 And then, when you go to that section, they reference
8 16-11-10. The statute reads: "Any house, outhouse,
9 apartment building, erection, shed, or box in which there
10 sleeps a proprietor, tenant, watchman, clerk, laborer, or
11 person who lodges there with a view to the protection of
12 property shall be the dwelling house and of such a dwelling
13 house or any other dwelling houses, all houses, outhouses,
14 buildings, sheds, and erections which are within 200 yards
15 of it and are appurtenant to it or the same establishment.

16 The word appurtenant -- excuse me -- appurtenant
17 really does not have a legal definition in South Carolina.
18 There's been no case law that has addressed what the word
19 appurtenant means. The closest that the Court has ever
20 come is in an 1882 case in which it -- the Court in *State*
21 *v. Evans* -- that's 18 S.C. 137 -- touches on what
22 appurtenant means.

23 In the dichotomy of the business, Your Honor, whether
24 this is a business, a house, or a combination, I would hand
25 out *State v. Steadman*. And in *State v. Steadman*, on page

1 -- page 5, in that case, at the South of the Border, the
2 victim in that case had a -- an apartment above a -- an
3 actual office building. And then, next to it were motel
4 rooms. In that case someone broke into the -- the business
5 portion of it on the first-floor level.

6 And in that case the trial judge, in defining burglary
7 -- I'm quoting the case -- instructed the jury that the
8 crime consisted of the breaking and entering in the
9 nighttime of a dwelling or home of another for the purpose
10 of committing a felony. He further instructed the jury
11 that it was not necessary that the entire building be
12 devoted to dwelling purposes, nor that the dwelling area
13 entered be constantly inhabited every day or night of the
14 year and that the dwelling area might be in the building, a
15 portion of which is devoted to business purposes.

16 Here, there's slightly different facts in that it's a
17 separate building. But in that separate building, which is
18 appurtenant to the dwelling in that it is used for the
19 dwelling. He keeps his personal possessions there. He's
20 not using his four-wheeler for business purposes. He's not
21 using his boat in his construction business.

22 And so while there might be some business activity
23 there, that doesn't rob this of being a building
24 appurtenant to within 200 yards of a dwelling.

25 The state would also hand up *State v. Singley*. And in

1 that case, Your Honor, on page 3 the first full paragraph
2 of the second column, the Court states: "We have
3 maintained consistently for well over 100 years that
4 burglary is a crime against possession and cohabitation,
5 not a crime against ownership."

6 And so in this case, while the building might actually
7 be in somebody else's land on -- on that area, it's
8 actually yet his uncle's land -- this isn't a question of
9 ownership, what land this is titled to. This is a property
10 law that we're talking about. It's criminal law.

11 And going back to *State v. Singley*, it's a crime
12 against possession and habitation, not against actual
13 ownership.

14 THE COURT: All right. Anything from you, Mr. Smith?

15 MR. SMITH: Thank you, Your Honor. May it please the
16 Court: Your Honor, with regards to the case that was just
17 handed up that I received, *Steadman* and *Singley*, if Mr.
18 Callahan were sleeping in the building, even though it's on
19 his uncle's property, then I would agree that both cases
20 could apply. *Steadman* could apply because there is a
21 structure within which someone dwells. But that's clearly
22 not what the testimony is.

23 This is not a dwelling-house structure. So the
24 apartment above a business, the -- all that structure
25 becoming a dwelling by definition practically, is what the

1 *Steadman* case talks about. Here, we have a separate
2 structure.

3 Also, if he -- if he slept in the structure, *Singley*
4 would apply. Because even though it's on his uncle's
5 property, if it's home, then it wouldn't be about legal
6 ownership but would be about who possesses the right to
7 those -- or -- or -- properties or -- or who acts as the
8 person in control of those properties and he would be the
9 appropriate victim.

10 That's not what we have here. We have a -- a separate
11 structure that is not on the same property and is not in
12 keeping with what the house is. It's not like it's an
13 outbuilding the -- for a well house for the house or
14 something that's connected to the house.

15 So I -- I would submit that both practically and under
16 legal definition, it does not meet the required elements of
17 the law and of the indictment that it be appurtenant to the
18 dwelling house.

19 THE COURT: All right. Will y'all give me the benefit
20 of reading over these opinions and letting you know in the
21 morning first thing? Because I -- I'd like to read them
22 thoroughly. I don't want to glance over them and miss
23 something.

24 MR. HOGGE: Yes, Your Honor.

25 THE COURT: But I understand y'all's -- y'all's

1 respective position. It's quite an interesting little
2 appurtenant definition. I mean, it's -- it's a matter of
3 whether it's a burglary-first or a burglary-second. If
4 you're right, it's second. If you're right, we go forward
5 with burglary-first. Okay.

6 MR. SMITH: Yes, Your Honor.

7 MR. HOGGE: Yes, Your Honor.

8 THE COURT: Does anybody suggest it's a factual
9 question?

10 MR. SMITH: I -- I would not, Your Honor.

11 THE COURT: Okay. I'll let you decide --

12 MR. SMITH: I -- I ---

13 THE COURT: --- tomorrow whether you think that too.

14 MR. SMITH: Unless I lose this ruling. Then I might.

15 THE COURT: Okay. I understand. All right.

16 MR. SMITH: Thank you, Your Honor.

17 THE COURT: I will read these tonight and let y'all
18 know in the morning. All right. What else we got?

19 MR. HOGGE: That's all the state has, Your Honor.

20 THE COURT: All right. I'll be here in the morning
21 early. I'd like to put this on the record before we get
22 the jury in here at 9:30. So I'll try to be here shortly
23 after 9, before 9:15. (To the court reporter) Can we
24 handle that?

25 THE COURT REPORTER: Sure.

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THE COURT: Okay.

THE COURT REPORTER: Yes, sir.

THE COURT: Good deal. All right. Stand adjourned till the morning.

MR. SMITH: Thank you.

(Whereupon, the proceeding was adjourned at 4:46 p.m.)

1 TRIAL DAY 2 - 01/27/15

2 (Whereupon, the proceeding was resumed at 9:33 a.m.)

3 THE COURT: All right, folks. Do y'all want to --
4 we'll go ahead and resolve the issue from yesterday on the
5 motion on the indictment. Y'all want to be heard any
6 further on it? Because I've -- I've read the cases and
7 read the statute. Anything else you want ---

8 MR. HOGGE: Your Honor, I would just go back to my
9 statement as to the statute: The statute's clear that if
10 it's a building appurtenant to within 200 yards of a
11 dwelling, it is in itself a dwelling. And *State v. Smalls*
12 says the same.

13 In *State v. Steadman*, it's -- there's a discussion
14 about the actual dwelling -- doesn't -- it doesn't resemble
15 the facts here in that there's no outbuilding appurtenant
16 to discussion. It's just that the building -- the -- the
17 actual dwelling was used as both a dwelling and as a
18 business. But that didn't really change anything.

19 And the other case, the *Singley* case, I presented to
20 Your Honor to show that burglary is a crime of habitation
21 and of possession, not of ownership. And so I do not
22 believe that it matters at all that this might've been in
23 somebody's name.

24 This garage was used by Mr. Callahan. It was used in
25 connection with his property. He stored items in that

1 garage that didn't have anything to do with his business.
2 His four-wheelers didn't have anything to do with his
3 business; his boat didn't have anything to do with his
4 business.

5 And so that garage was appurtenant to within 200 yards
6 of his house, used in connection with his house. So this
7 is a burglary-first under the definition of the statute.

8 THE COURT: All right. Well, I disagree with you. I
9 think it's -- the victim in this case doesn't have any
10 ownership in either parcel of property. He may one -- one
11 day, if it's family land. But he doesn't right now.

12 The building's titled in his grandfather's estate or
13 his uncle's name or something, but not his, not his
14 mother's. And so it is close by in proximity. But it's a
15 separate piece of property. It's titled by someone totally
16 different. There's no one ever -- no testimony of anybody
17 ever sleeping there.

18 I -- I -- I think it's a burglary-second. I don't
19 think it's a burglary-first. And -- and I asked y'all if
20 y'all thought it was a factual question, and I think it's a
21 legal issue.

22 And using all the -- all the ownership, separate
23 parcel taxed, different owner, and that the victim doesn't
24 have any ownership interest in either piece of property --
25 or even a -- he lives with his parents; I don't know that

1 there's any type of contract for him to stay there, whether
2 it be a lease or -- I don't think that affects my decision
3 either.

4 But that building is an outbuilding. It's a -- looks
5 like a butler building to me. And it has a sundry of
6 things in it. And I just don't believe it's appurtenant to
7 the residence owned by the victim's parents, factually.

8 And so the indictment on burglary-first would -- I
9 didn't see the one that wasn't amended. There was two
10 handed to me. I don't know what the first one was.

11 Was it burglary-second?

12 MS. HOLLAND: It was also burglary-first.

13 DEPUTY CLERK OF COURT: It was ---

14 THE COURT: All right.

15 DEPUTY CLERK OF COURT: --- burglary-first.

16 MR. HOGGE: It's also burglary-first. There was ---

17 THE COURT: Okay.

18 MR. HOGGE: --- just a small change in language ---

19 THE COURT: Okay.

20 MR. HOGGE: --- Your Honor.

21 (Whereupon, Mr. Hogge and Ms. Holland conferred.)

22 MR. HOGGE: And I understand your ruling, Your Honor.
23 It's the state's position that we can now not go forward.
24 In that case of *State v. Smalls*, there was talk that if the
25 burglary-first indictment were quashed, that the state

1 could not then go on and pursue a burglary-second violent.

2 And I understand your -- Your Honor's ruling. And the
3 state would just put on the record that burglary is not a
4 crime of ownership, and it does not matter who owns that
5 property, who owns plats of lands. It's about possession,
6 and the victim was in possession of the house, of the
7 garage.

8 I might have to go check with my boss about whether or
9 not we would seek an appeal in this case. But I do not
10 believe we can go forward, based on that case, *State v.*
11 *Smalls*.

12 THE COURT: Well, I've read -- did you give me *Smalls*,
13 or is that something else?

14 MR. HOGGE: That's -- that was one of the three I
15 handed ---

16 THE COURT: Okay.

17 MR. HOGGE: --- up to Your Honor. And my co-counsel
18 just informed me about the issue of going forward. I -- I
19 didn't catch that when I first looked at the case, so I
20 could be wrong about that.

21 THE COURT: Well, let's read it.

22 (Off the record briefly.)

23 THE COURT: All right, sir. Where are you -- where
24 are you looking at this where you can't go forward?
25 Because, I mean, I'm ---

1 MR. HOGGE: I ---

2 THE COURT: --- I -- I'm presuming you can go forward
3 on burglary-second ---

4 MR. HOGGE: I'm not ---

5 THE COURT: --- over ---

6 MR. HOGGE: I'm not catching that, Your Honor.

7 THE COURT: But that -- that's what I've presumed.
8 It's not burglary-first; it's burglary-second. That --
9 that's what -- it -- it's certainly facts y'all presented
10 to me that would support a burglary-second indictment.

11 Now, whether that needs to be presented to the grand jury
12 and then go forward or not, that may be a different issue.

13 But the -- the burglary doesn't go away. It's just --
14 it's my take that it's not a burglary-first. It's ---

15 MR. HOGGE: To reduce it down to a ---

16 THE COURT: It's a ---

17 MR. HOGGE: --- second.

18 THE COURT: --- burglary-second. That -- that's

19 ---

20 MR. HOGGE: I understand, Your Honor. And I -- I
21 don't catch that ---

22 THE COURT: I am ---

23 MR. HOGGE: --- in the ---

24 THE COURT: --- I am in no way suggesting that this is
25 not a burglary on the -- all the facts being presented thus

1 far. In that building something was taken, it was in the
2 nighttime, and it was not -- had no permission to be there.
3 Those -- those elements are there.

4 MR. HOGGE: Yes, Your Honor.

5 THE COURT: It -- without -- I mean, certainly, to be
6 a -- proof beyond a reasonable doubt at trial, but on its
7 face, before a grand jury, it seems to me there would be
8 factually plenty to support a burglary-second indictment.
9 How y'all will resolve that . . .

10 (Whereupon, Mr. Hogge and Ms. Holland conferred.)

11 THE COURT: I mean, who -- who -- Mr. Smith, your take
12 is this: You can waive presentment and go forward, or wait
13 and get a different jury.

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: I mean, that's kind of what you're looking
16 at.

17 MS. HOLLAND: Yeah.

18 THE COURT: I mean ---

19 MS. HOLLAND: He can waive. I think he can ---

20 THE COURT: You ---

21 MS. HOLLAND: --- waive.

22 THE COURT: --- you can waive and go forward. If you
23 like this jury and if you want to wait and take your chance
24 with a different jury, that's kind of the only -- because
25 the jury's not sworn; jeopardy is not attached. We're not

1 ---

2 MS. HOLLAND: Yeah.

3 (Whereupon, Mr. Smith and the defendant conferred.)

4 (Whereupon, Mr. Smith, Mr. Hogge, and Ms. Holland
5 conferred.)

6 MR. HOGGE: Judge, can we go ahead and take a short
7 recess to kind of ---

8 THE COURT: Sure.

9 MR. HOGGE: --- sort this out?

10 THE COURT: Sure. I mean, I ---

11 MS. HOLLAND: Okay.

12 THE COURT: --- we'll make the jury comfortable.

13 MS. HOLLAND: Okay.

14 THE COURT: Y'all figure out -- I mean, y'all may want
15 to do something. If y'all work it out, that's great too.
16 If you want to go forward, that's fine if you want. Y'all
17 let me know.

18 MS. HOLLAND: Okay.

19 MR. HOGGE: Yes, Your Honor.

20 MS. HOLLAND: Thank you so much.

21 (Whereupon, the proceeding was adjourned at 9:44 a.m.)

22 --- END OF TRANSCRIPT OF RECORD ---

23

24

25

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Eugene C. Griffith Jr., Circuit Court Judge

Indictment No. 2014-GS-46-00781

THE STATE OF SOUTH
CAROLINA,

Appellant,

v.

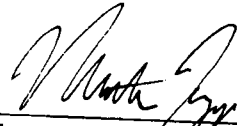
JOHN KENNETH MASSEY
JR.,

Respondent.

NOTICE OF APPEAL

The State of South Carolina appeals to the Court of Appeals the oral order of the Honorable Eugene C. Griffith Jr., made in open court on January 27, 2015, quashing the above-listed indictment. Appellant received notice of entry of the order on January 27, 2015. This order was not reduced to writing.

February 5, 2015



T. Matthew Hogge, Assistant Solicitor
Sixteenth Judicial Circuit Solicitor's Office
1675 1-A York Highway, York, SC 29745
Attorney for Appellant

Other Counsel of Record:

Philip Lee Smith
Sixteenth Circuit Public Defender's Office
1675-1E York Highway
York, SC 29745
Attorney for Respondent

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FEB 09 2015

SC Court of Appeals

RECEIVED
R. 58

NOV 13 2015

SC Court of Appeals

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

NOV 10 AM 9:32

FILED-RECEIVED

CERTIFIED TRUE COPY

2015 NOV 10 AM 9:38

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions

Eugene C. Griffith Jr., Circuit Court Judge

Indictment No. 2014-GS-46-00781

THE STATE OF SOUTH
CAROLINA,

Appellant,

v.


JOHN KENNETH MASSEY
JR.,

Respondent.

NOTICE OF APPEAL

The State of South Carolina appeals to the Court of Appeals the order of the Honorable Eugene C. Griffith Jr., signed October 30, 2015, and filed November 9, 2015, denying the State's Post Trial Motion of February 5, 2015. Appellant received notice of entry of the order on November 9, 2015.

November 10, 2015


T. Matthew Hogge, Assistant Solicitor
Sixteenth Judicial Circuit Solicitor's Office
1675 1-A York Highway, York, SC 29745
Attorney for Appellant

Other Counsel of Record:

Philip Lee Smith
Sixteenth Circuit Public Defender's Office
1675-1E York Highway
York, SC 29745
Attorney for Respondent



ALAN WILSON
ATTORNEY GENERAL

February 6, 2015

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: The State v. John Kenneth Massey, Jr.
Indictment No: 2014-GS-46-781

Dear Ms. Kitchings:

The State filed a notice of appeal on February 5, 2015 in referenced to the above matter. This letter is to advise the court that the State filed a post-trial motion on today and it is currently pending in the York County Court of General Sessions.

I am hereby requesting that all timelines are held in abeyance pending the circuit court's decision on the post-trial motion.

Sincerely,

Salley W. Elliott
Senior Assistant Deputy Attorney General
S.C. Bar No: 1871

SWE/ab

cc: Assistant Solicitor T. Matthew Hogge
Assistant Public Defender Philip Lee Smith
Robert M. Dudek, Esquire
Victim Services

WITNESSES

YCSO/ Benham

R. G.

tmh

ARREST WARRANT NUMBER

2014A4610100076

ACTION OF GRAND JURY

TRUE BILL

Ronnie B Sanders
Foreperson of Grand Jury

Date: *3/20/2014*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-46-00780

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

March 20, Term 2014

THE STATE

vs.

JOHN KENNETH MASSEY JR.

Indictment for
CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 0049

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

The Defendant, John Kenneth Massey Jr., did in York County, South Carolina, on or about January 12, 2014, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree, or have tacit understanding with Nathaniel Good and/or Michael Kennedy for the purpose of committing the crime of burglary, all in violation of Section 16-17-410, Code of Laws of South Carolina (2003).

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



ASSISTANT SOLICITOR

WITNESSES

YCSO/Brigham

R. G.

mh

ARREST WARRANT NUMBER

2014A4610100077

ACTION OF GRAND JURY

TRUE BILL

Ronnie B. Sadler

Foreperson of Grand Jury

Date: 3/20/2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-46-00781

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

March 20, Term 2014

THE STATE

vs.

JOHN KENNETH MASSEY JR.

Indictment for

BURGLARY IN THE FIRST DEGREE

SC Code: 16-11-311

CDR Code: 0079

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

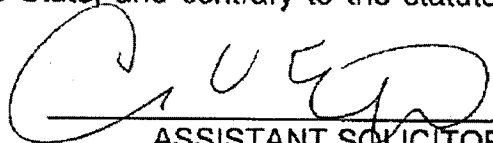
R. 63

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath:

BURGLARY IN THE FIRST DEGREE

The Defendant, John Kenneth Massey Jr., did in York County, South Carolina, on or about January 12, 2014, while acting in concert with another person, willfully and unlawfully enter the outbuilding appurtenant to and within 200 yards of the dwelling of Kristopher Callahan, all located at [REDACTED] Parris Road in Rock Hill, South Carolina, without consent and with the intent to commit the crime of larceny therein; said entering or remaining did occur during the nighttime hours, all in violation of Section 16-11-311, Code of Laws of South Carolina (2003 & Supp. 2013).

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



ASSISTANT SOLICITOR

WITNESSES

(CSO/Branham

R. 64

ARREST WARRANT NUMBER

2014A4610100077

ACTION OF GRAND JURY

s/ Ronnie B. Sanders, Foreperson

True Billed 3/20/2014

[Signature]
Foreperson of Grand Jury
Date:

TRUE BILL

VERDICT

Foreperson of Petit Jury

Date:

Amended
DOCKET NO. 2014-GS-46-00781

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

April 17, Term 2014

THE STATE

vs.

JOHN KENNETH MASSEY JR.

**Indictment for
BURGLARY 1ST DEGREE**

SC Code: 16-11-311
CDR Code: 079

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

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

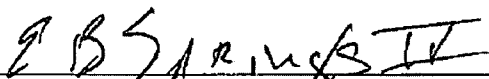
R. 65

At a Court of General Sessions, convened on April 17, 2014, the Grand Jurors of York County present upon their oath:

BURGLARY 1ST DEGREE

The Defendant, John Kenneth Massey Jr., did in York County, South Carolina, on or about January 12, 2014, while acting in concert with another person, willfully and unlawfully enter the dwelling of Kristopher Callahan, when he entered without consent the outbuilding appurtenant to and within 200 yards of the dwelling house establishment of Kristopher Callahan, all located at [REDACTED] Parris Road in Rock Hill, South Carolina, without consent and with the intent to commit the crime of larceny therein and said entering and remaining did occur during the nighttime hours, all in violation of Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

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


ASSISTANT SOLICITOR

DOCKET NO. 2014-GS-46-00782

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

WITNESSES

**The State of South Carolina
County of York**

Defendant

COURT OF GENERAL SESSIONS

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

March 20, Term 2014

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

JOHN KENNETH MASSEY JR.

ACTION OF GRAND JURY

TRUE BILL

Indictment for

**GRAND LARCENY, ENHANCED
AS THIRD OR SUBSEQUENT
PROPERTY CONVICTION**

SC Code: 16-13-30
SC Code: 16-1-57
CDR Code: 3587

VERDICT

YCSO/ Broham

R. G.

.mh

ARREST WARRANT NUMBER

2014A4610100078

Ronnie B. Sadeus
Foreperson of Grand Jury

Date: 3/20/2014

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on March 20, 2014, the Grand Jurors of York County present upon their oath:

GRAND LARCENY

The Defendant, John Kenneth Massey Jr., did in York County, South Carolina, on or about January 12, 2014, feloniously take and carry away items belonging to Kristopher Callahan, valued at or more than two thousand dollars, with the intent to deprive the owner permanently of such property; said Defendant has two or more prior convictions for which the term of imprisonment is contingent upon the value of the property involved, all in violation of Section 16-13-30 and Section 16-1-57, Code of Laws of South Carolina (2003 & Supp. 2013).

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


ASSISTANT SOLICITOR

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Search Setting E

Select Date

January, 2014

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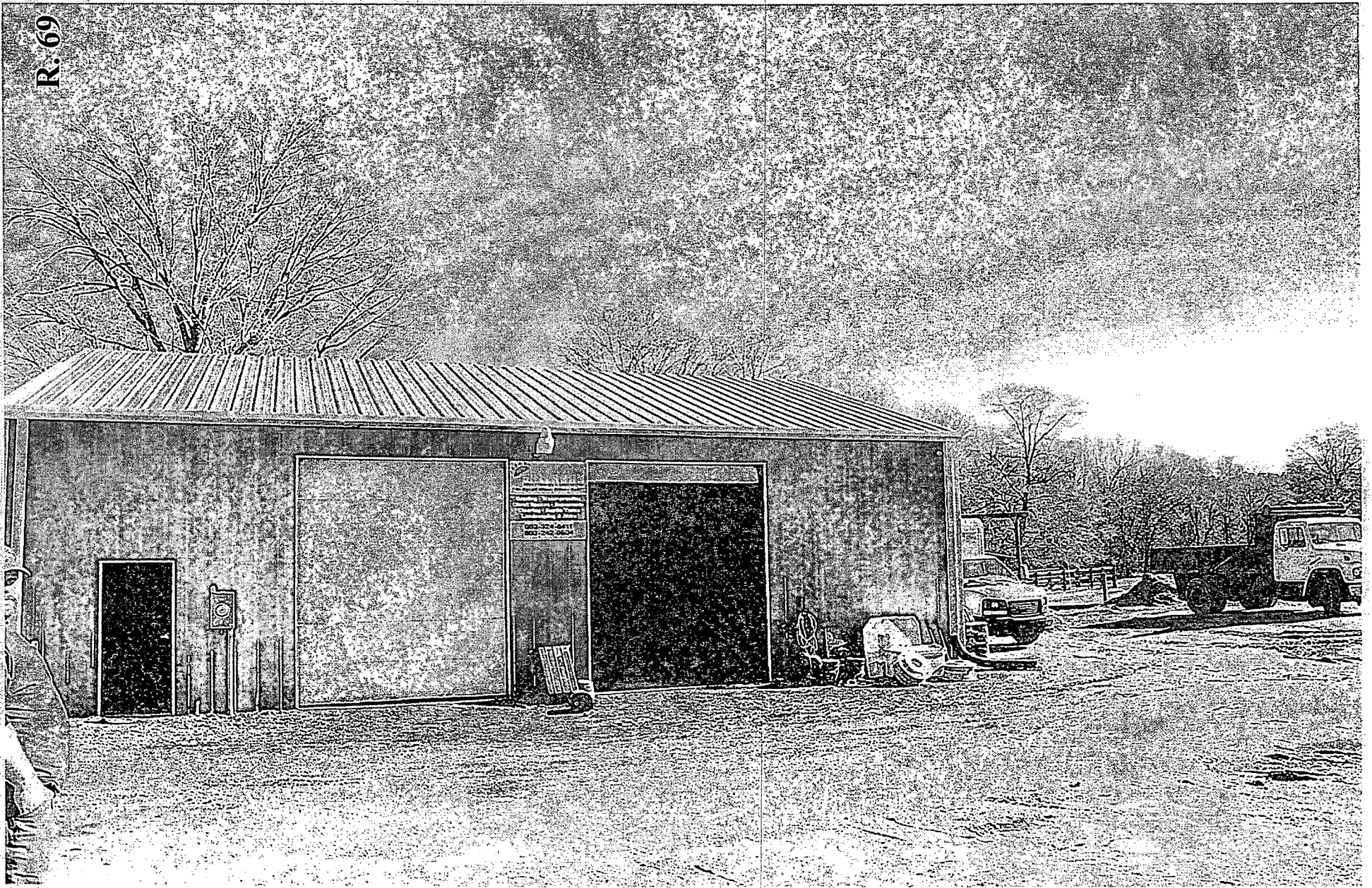
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2014-01-12 01:19:45

MSY COURT'S
 EXHIBIT NO. 1
 IDENTIFICATION/EVIDENCE
 DKT.#
 DATE: 01/26/15

FENG 800-631-6969

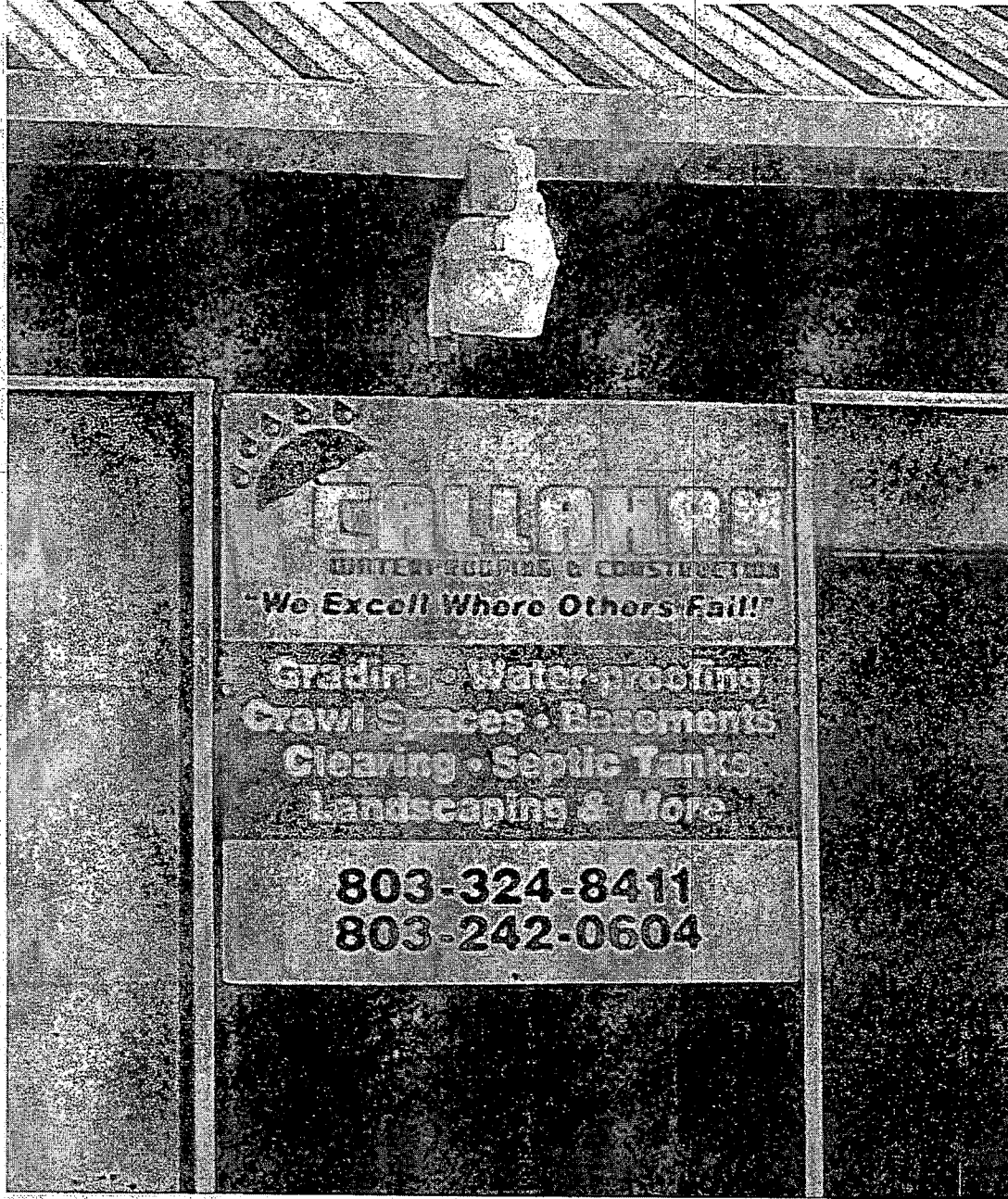
R. 69



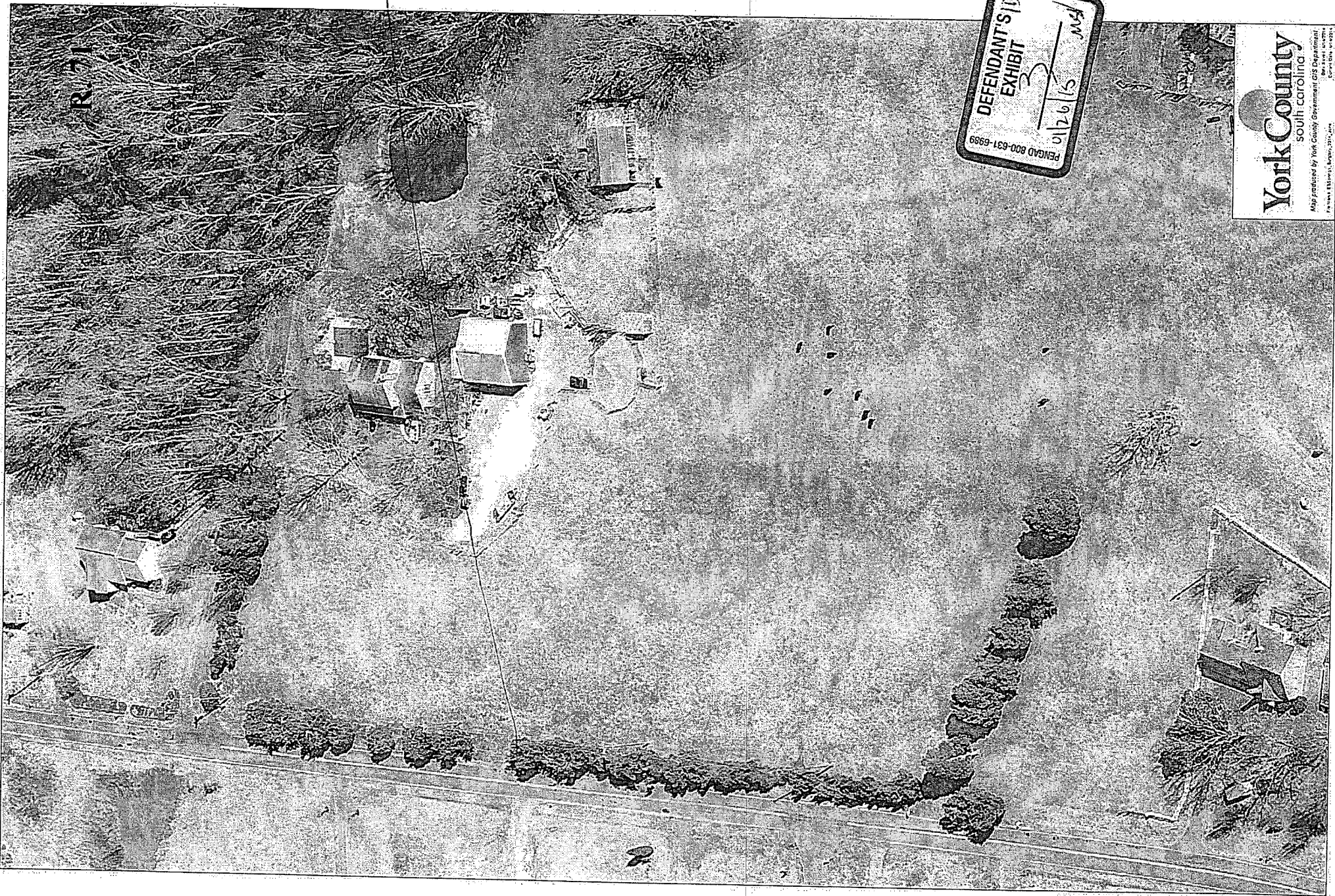
DEFENDANT'S
EXHIBIT 10
01/26/15 MSJ

PENGAID 800-631-8089

R. 70



DEFENDANT'S ID
EXHIBIT
2
2/26/15 MSJ
PENICAD 800-631-6989



R-1

DEFENDANT'S ID
EXHIBIT
01/26/15
msk

York County
South Carolina
Map produced by York County Government GIS Department
For more information, contact: GIS Department
301 West 1st Street
York, SC 29732
Phone: 803.381.2311
Fax: 803.381.2312

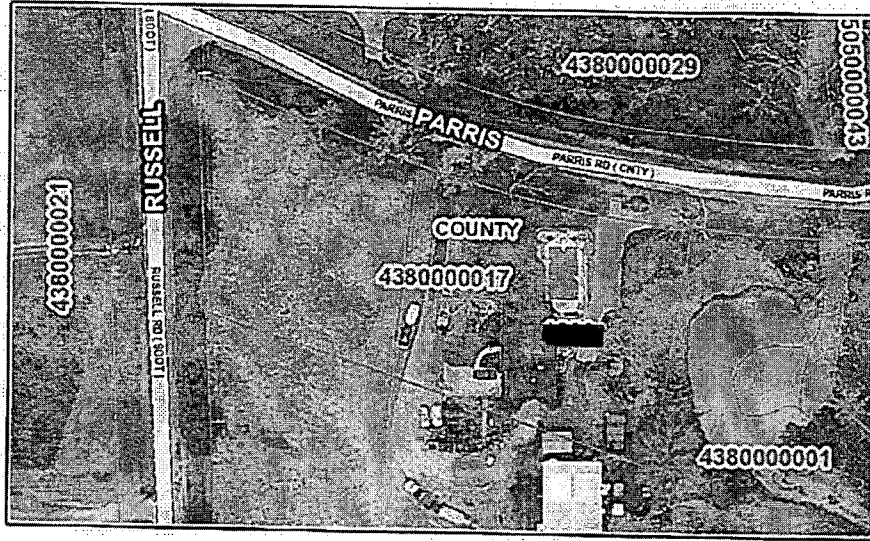
R. 72

Parcel Number: 4380000017

Lot #:

York County Government, SC
Property Report

Report generated 1/26/2015 1:23:13 PM



Taxlot in the center

Property Information

Parcel Number: 4380000017 Land Value: \$35,000
 Total Lots: 1 Sales Price: \$0
 Total Acres: 0 Sales Date: 07/07/9999
 Deed Book/Page: 494 / 508 School District: 3
 Plat Book/Page: 46 / 13 Municipality:
 Owner(s): CALLAHAN, ROGER D & THERESA R
 Mailing Address: [REDACTED] PARRIS RD, ROCK HILL, SC, 29730
 Previous Grantor:
 Property Location: HWY 46

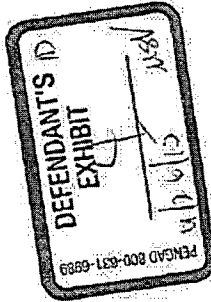
Assessment

Total Assessed Value: \$8,440 Total Market Value: \$211,000
 Total Tax Value: \$211,000 Building Value: \$176,000

Buildings Without Land

Site Address(es)

Tax ID	Owner	Mailing Address	Site Address	Type	Unit	Census Tract	County Council	School District	Water District	Electric District	Fire District	County Zoning	Road Owner
			[REDACTED] PARRIS RD			051403	4	3	ROCKHILL	York Electric		AGC	



Disclaimer: While every effort is made to keep information provided over the internet accurate and up-to-date, York County does not certify the authenticity or accuracy of such information. No warranties, express or implied, are provided for the records and/or mapping data herein, or for their use or interpretation by the User.

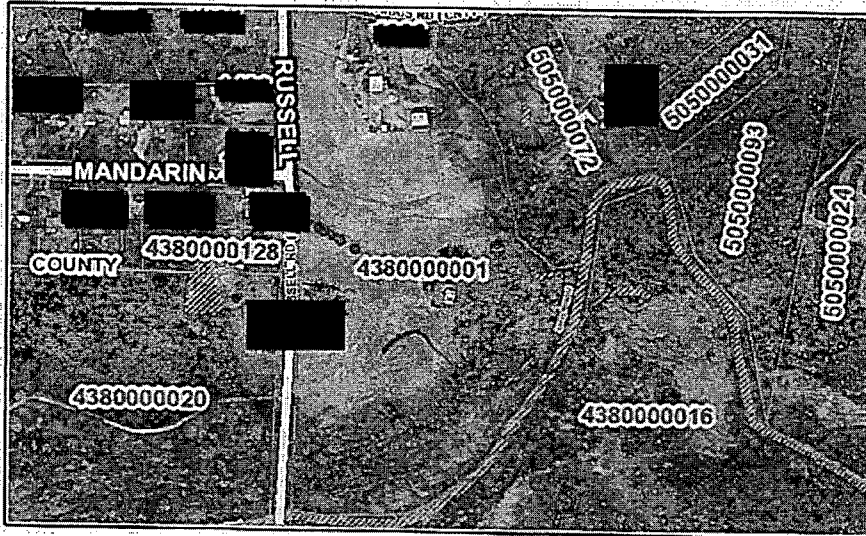
R. 73

Parcel Number: 4380000001

York County Government, SC
Property Report

Report generated: 1/26/2015 1:30:40 PM

Lot #:



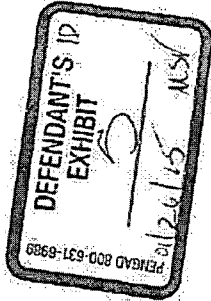
Taxlot in the center

Property Information

Parcel Number: 4380000001 Land Value: \$237,300
 Total Lots: 0 Sales Price: \$0
 Total Acres: 16.95 Sales Date: 12/30/1993
 Deed Book/Page: 900 / 323 School District: 3
 Plat Book/Page: 28 / 206 Municipality:
 Owner(s): RUSSELL WILLIAM E SR
 Mailing Address: RUSSELL RD, ROCK HILL SC, 29732
 Previous Grantor: RUSSELL E B
 Property Location: (18.60 LESS 1.65 AC)

Assessment

Total Assessed Value: \$3,221 Total Market Value: \$302,300
 Total Tax Value: \$80,514 Building Value: \$65,000



Buildings Without Land

Site Address(es)

Tax ID	Owner	Mailing Address	Site Address	Type	Unit	Census Tract	County Council	School District	Water District	Electric District	Fire District	County Zoning	Road Owner
			RUSSELL RD			061403	4	3	ROCKHILL	York Electric		AGC	

Disclaimer: While every effort is made to keep information provided over the internet accurate and up-to-date, York County does not certify the authenticity or accuracy of such information. No warranties, express or implied, are provided for the records and/or mapping data herein, or for their use or interpretation by the User.

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by the parties and not any other material and 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."

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General

BY: *Megan Harrigan Jameson*
Megan Harrigan Jameson

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

February 7, 2017

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FEB 07 2017

SC Court of Appeals