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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRANDON LEE GOINS

APPELLANT

APPELLATE CASE NO. 2014-000762

RECORD ON APPEAL

SUSAN B. HACKETT
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

Attorneys for Respondent

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1 diamond earrings they are. Are they past,
2 present, future diamond earrings? Are they one
3 diamond? We don't know what they are. We just
4 know they are diamond hearings with no value
5 attached to them whatsoever. But the diamond
6 earrings that Mr. Smith described were valued at
7 \$1,500. He also described --

8 THE JUDGE: Interesting, this witness also
9 said they would be worth \$1,500, the diamond
10 earrings.

11 MR. WELLBORN: They might be.

12 THE JUDGE: That's what she said.

13 MR. WELLBORN: They also described there
14 were two round diamond earrings, yellow in
15 color, valued at \$500. We don't know which
16 earrings these are because there is no
17 description. There is not even a description
18 they are round. We don't know what the color
19 was. We don't know what the shape was. No
20 where did Mr. Smith describe yellow heart shaped
21 pendants or gold heart shaped pendants but yet
22 that's what's turning up here at the store. And
23 significantly, the pendants that were attached
24 to these necklaces did not contain -- we have no
25 evidence one way or other that they contained

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1 any diamonds. Mr. Smith was specific in that
2 the two necklaces with two round diamond
3 pendants were taken.

4 In this case, we have, in fact, two
5 pendants but only one necklace. So we don't
6 have a match. We have some things that are
7 somewhat similar in nature but no match. It
8 does not rebut my client's statement that he
9 only saw one gold necklace, what he thought was
10 gold.

11 Again, rebuttal testimony has to rebut
12 something the defense brought in not something
13 bolster something the prosecution didn't bring
14 in their case in chief.

15 THE JUDGE: I don't disagree with that.
16 If he testified that he saw some jewelry but he
17 never had possession of it and he didn't know
18 what happened to it after that, that the
19 codefendant took it and he never saw it again.

20 Whether he said he saw one necklace or he
21 saw three necklaces, it really doesn't matter
22 if, in fact, some possession of it could be tied
23 to him of any of this jewelry, or all of it for
24 that matter, that the State put in was taken
25 during the burglary then I would I think that

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1 would in rebuttal to his testimony. If he had,
2 in fact, possession of those things, obviously,
3 that rebuts his testimony in full.

4 MR. WELLBORN: Absolutely.

5 THE JUDGE: I am not concerned about one
6 necklace. I am not concerned about that.

7 MR. WELLBORN: Nothing rebuts my client's
8 testimony.

9 THE JUDGE: It does. It rebuts his whole
10 testimony.

11 MR. WELLBORN: Judge, none of the items
12 that were taken to this store and sold --

13 THE JUDGE: We are going to look at that.
14 I will look at that. I will look at that. But
15 get off this rebuttal and it is only one diamond
16 necklace. That's his testimony. That's not the
17 whole case. If he says he doesn't know anything
18 about this jewelry that was taken during this
19 burglary, he was there and present. This rebuts
20 his whole testimony, not just that one thing,
21 because if it is shown that he had any knowledge
22 about these possessions or anything involved in
23 any way in selling them, obviously, that rebuts
24 his whole statement.

25 MR. WELLBORN: Understood. And as I

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1 understand your Honor is going to come to this
2 point which is none of the items that have
3 recently been testified to were items described
4 by Mr. Smith in the State's case.

5 THE JUDGE: We will deal with that now. I
6 am just telling he is pitching the whole
7 argument on rebuttal. You are saying it doesn't
8 fit the description, fine, we will deal with
9 that. I will look at that now. But it does
10 rebut his testimony. I don't know why you can't
11 get that. We have had that discussion about
12 three or four times, and it rebuts his whole
13 testimony not just that had he no knowledge
14 about any jewelry being taken other than one
15 necklace and he never saw it and had anything to
16 do with it. It is established he did have some
17 connection to this jewelry being stolen. It
18 rebuts his whole testimony.

19 MR. WELLBORN: I agree that.

20 THE JUDGE: I don't want to hear that
21 argument anymore. I already responded to it
22 about four different times.

23 Let's talk about the specific items of
24 jewelry here.

25 MS. SHELTON: Your Honor, I would concede

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1 the fact that Mr. Smith described them as round
2 pendants, and the case that I was presenting, I
3 didn't see any need to clarify or call Ms. Smith
4 as a witness because it was irrelevant to the
5 case. Mr. Goins at that point was denying any
6 knowledge of any jewelry. We had no evidence
7 that any other jewelry had turned up that we
8 could possibly tie to Mr. Goins until last
9 night.

10 Mr. Smith is a man and a fisherman and has
11 no, I think, real interest in jewelry. Whereas,
12 his wife would describe the jewelry as heart
13 shaped pendants. They were her necklaces she
14 had them for some time. She is familiar with
15 what they looked like. It would be my positions
16 to call her as a witness in rebuttal based on
17 the fact that Mr. Goins denied any knowledge of
18 any jewelry being taken. He said the gold
19 necklace, but when questioned, well, did you
20 take anything? No, I didn't do anything. I
21 just stood there. When these items are missing
22 from their home and they can confirm these items
23 are missing from there home.

24 I will not say an exact match to the
25 description of the items that were taken turned

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1 up at this gold store, but the items I think
2 circumstantially can be tied. I think you can
3 say two heart shape pendants were taken, diamond
4 earrings were taken. When you put all those
5 things together, I think there is a strong
6 circumstantial evidence that these are the same
7 items that were taken, but we would need the
8 Court's leeway to call Sandy Smith as a witness
9 so she could give a further description of the
10 jewels.

11 MR. WELLBORN: Your Honor, I would object
12 to that because Mrs. Smith would be called for
13 purposes of rebutting Mr. Smith's testimony
14 saying he was wrong about the description. The
15 State can't rebut its own case by calling a
16 later witness and saying, gee, we got it wrong
17 the first time, we want to clarify. That's not
18 proper rebuttal. It is one thing to rebut what
19 we presented in the defense case. That is
20 proper rebuttal. But to rebut what they
21 presented in their case has never been allowed
22 because that's not rebuttal at all. That's
23 saying we want a second bite of the apple
24 because we didn't get it right the first time.
25 That would be completely improper and that would

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1 not be proper rebuttal. Given the authority
2 that we have, I would suggest that it would be
3 erroneous, and I would object strenuously to the
4 State rebutting its own witness by calling a
5 subsequent witness to clarify after the State
6 has rested.

7 THE JUDGE: The rule no longer is set
8 forth as I find it. I don't see anywhere it is
9 set forth in the Rules of Civil Procedure as far
10 as entry rules of conduct of the trial as far as
11 compliant testimony is concerned. So you have
12 to go back to case law, I think, to find that
13 out.

14 The cases we are looking at is, the
15 defense has a right to reply to anything raised
16 by the defense in its defense, but if whatever
17 is raised in their defense you can't allege
18 surprise if matters are raised to the defense
19 and the State wants to then introduce evidence
20 concerning that, that opens the door to
21 something they have not thought about and often
22 their case in chief, and that's the question.
23 You can't obviously go back and put something in
24 that they forgot to put in unless the Court
25 deems it essential that they be allowed to do

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1 so. The Court always has that discretion. But
2 they shouldn't be allowed to go back to
3 something they should have put in and didn't put
4 in. They can't just put it in unless the Court
5 finds there is some material and in fairness and
6 interest of justice it ought to be allowed in.

7 In this case, the question is what the
8 defense raised is that they put in character
9 evidence. Based on that character evidence
10 testimony, the State sought to be able to
11 impeach that testimony by checking with other
12 people out in the community who may have known
13 the defendant. In doing that, the State says,
14 the solicitor says, we found out from talking to
15 these witnesses who knew the defendant that he
16 was very close with his sister. So we put his
17 name and the sister's name -- put his sister's
18 name, really, the sister's name I guess, in the
19 Leads information that is available. And based
20 on that, they found out for the first time, and
21 they would not -- I think you could surmise they
22 would not have gone looking for some evidence by
23 people that knew the defendant with regard to
24 character, they would not have found out that he
25 was very close to his sister.

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1 In checking with his sister on the leads
2 where things are pawned and sold, the jewelry,
3 in particular, they found where the sister had
4 sold this jewelry the day after the robbery that
5 night, on or about the date of the robbery.
6 They found out she had pawned jewelry with a
7 similar description to some of it, not an exact
8 description. It wouldn't necessarily -- this is
9 a very short description. There is not a
10 lengthy description that is listed in the Lead
11 system. The reason for that might be obvious,
12 that requires extra work on their part to type
13 this into the computer, but it is fairly similar
14 jewelry. There might be a slight difference
15 here or there, but it is very similar.

16 So the question is -- it comes to their
17 attention, first of all, by the character issue
18 and in checking with people in the community who
19 know the defendant and find out that he is very
20 close to his sister, and then checking with her
21 and finding out that she had sold this jewelry
22 and the time she sold it. It is not a question
23 of whether it rebuts again his testimony he only
24 saw one gold necklace. It rebuts his whole
25 testimony that he didn't get any jewelry, didn't

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1 see any jewelry but one necklace, and he didn't
2 have any jewelry in his possession but somehow
3 that jewelry is tied to him through his sister.
4 Then that rebuts his entire testimony about what
5 he knew or whether he was involved or took into
6 possession the jewelry, obviously. So that's
7 where the Court is on this.

8 So in reply -- I am not worried about
9 that. I am worried -- I am concerned about
10 whether Mrs. Smith would be able to come back in
11 and testify because her husband has already
12 testified on that issue. So that is the
13 question.

14 MS. SHELTON: Your Honor, just in my
15 mindset, I understand the Court's concerns as we
16 talked in chambers and understand this is an
17 unusual position and will not argue with the
18 Court's ruling on whatever that is. My
19 standpoint in the way I am looking at it, the
20 shape of the necklaces did not become relevant
21 until after.

22 THE JUDGE: I will give you that. You
23 stated that on the record and I will state that
24 on the record. At the time you go to trial, you
25 have no information about the jewelry being sold

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1 by the defendant's sister, Heather Goins. You
2 have no information about that. You had no
3 information that he had possession of the
4 jewelry based on his own statement. He never
5 got possession of the jewelry. There was no
6 indication after two years that the jewelry
7 would ever be found or located, and so the
8 description of the jewelry, other than
9 establishing the value of the general
10 description, was not essential to the State.
11 The value was essential in some identification
12 of it, but the exact details of it were not that
13 important because you weren't identifying any
14 particular jewelry at that time. Now you are
15 talking about identifying some particular
16 jewelry that was sold so you have a different
17 situation.

18 MS. SHELTON: Our position on that is we
19 are not calling her to necessarily rebut
20 Mr. Smith that he lied. I think he would -- if
21 you ask him right now, he would say round
22 pendants, but we are rebutting the fact that
23 Mr. Goins claimed to receive nothing from this
24 burglary. He didn't know anything was being
25 stolen. He didn't know there was any burglary.

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1 He is claiming to be deaf, dumb, and blind
2 during this whole thing yet sometime very close
3 to the times these items are stolen, items that
4 are very closely matching the description are
5 sold by his older sister who is old enough to
6 sell items. That would not have become relevant
7 and was not an issue for the State's case in
8 chief until discovering that information, and
9 the only reason we discovered this information
10 is by talking to witnesses and looking on
11 Facebook, on Mr. Goins' Facebook account and Ms.
12 Goins' Facebook account. It was a shot in the
13 dark to try her name and see what came up. It
14 came up, and it makes it important for the jury
15 to hear that the owner of these items, the
16 female owner of these items, would describe them
17 differently. But in the State's case in chief,
18 not because there was nothing to present as far
19 as this individual knowing anything about
20 whether or not they were heart shaped or round,
21 he just said gold necklace, and I had nothing to
22 do with nothing. It didn't become relevant to
23 describe the shape of them until he made his
24 character an issue.

25 MR. WELLBORN: Your Honor, I will take an

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1 exception factually as to what was presented in
2 State's case. They did present in their own
3 case a description of the jewelry, that they
4 were round earrings, that they were round
5 diamond pendants. That was presented in the
6 State's case. So to bring Mrs. Smith in they
7 would be rebutting their own case. I'm talking
8 about Mrs. Smith, not the woman from the gold
9 shop, but just Mrs. Smith.

10 THE JUDGE: Tell me how you say this
11 description, it is a very, very brief
12 description. It just says one heart pendant 10
13 karat; one gold necklace, 14 karat; one heart
14 pendant, 14 karat; two earrings, it says E-A-R,
15 with diamonds with two ear backs to go with the
16 earrings I presume. It is the only description
17 you got in here. It doesn't say round. It
18 doesn't say anything. It doesn't give you a
19 description. One heart shape pendant and one
20 gold necklace, one heart pendant. It says heart
21 pendant, the shape of a heart, and one heart
22 pendant, 14 karat. So apparently, two heart
23 pendants one 10 karat and one 14 karat according
24 to this.

25 MR. WELLBORN: Yes, sir. According to

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1 what was testified to in the State's case in
2 chief, what was taken was two necklaces with
3 round diamond pendants and two round diamond
4 earrings and an additional pair of diamond
5 earrings, specifically past, present, and
6 future. What the State wants to do now is bring
7 somebody up to say, no, that's not what was
8 taken despite the fact that is what we said in
9 our case in chief, and despite the fact that the
10 defendant at no time did he identify or
11 challenge or go into any detail as to what was
12 taken. They would be contradicting something
13 from their own case in chief by bringing in
14 Mrs. Smith to say, well, these, in fact, were
15 not necklaces with two round diamond pendants,
16 these were necklaces with two heart shaped
17 pendants, which by the way was sold by Heather
18 Goins.

19 Whether my client had good character or
20 bad character is not contradicted by whether or
21 not the diamond pendants were round or heart
22 shaped. Whether my client knew or did not know
23 whether something was taken arguably might be,
24 but the problem is the State presented that
25 already. The only person they are contradicting

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1 by going into what these items actually looked
2 like, depending on whether you believe Mr. Smith
3 or Mrs. Smith, the only person they are
4 contradicting is Mr. Smith who was the State's
5 first witness and the only witness regarding a
6 description of these items. The State presented
7 testimony, detailed --

8 THE JUDGE: I have to stop you because you
9 will never stop talking. I get your objection.
10 Okay.

11 Let me ask, Madam Court Reporter, and we
12 can take break so you can do that. I would like
13 to hear back if I can or have you read back to
14 me, if you can, Mr. Smith's testimony about the
15 description of the jewelry.

16 (The requested testimony was read back by
17 the Court Reporter.)

18 THE JUDGE: I am trying to be sure what
19 description he gave Mr. Smith and how it might
20 correspond to these Leads Online proffer here,
21 and so I don't think the pendants -- apparently
22 there were no pendants stolen that he testified
23 to, correct?

24 MS. SHELTON: He just said necklaces, yes,
25 sir. He reported pendants. He reported round

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1 pendants or something, but just testified to the
2 necklaces.

3 THE JUDGE: Was the report admitted into
4 evidence?

5 MS. SHELTON: I typically don't. I
6 usually get an objection. Detective Branham
7 might have described them as round pendants.

8 THE JUDGE: It seems like to me there was
9 some reference, some testimony to heart shape
10 something, am I mistaken about that?

11 MS. SHELTON: We never had any testimony
12 of heart shaped. I believe Detective Branham
13 when he was going over his involvement in the
14 investigation, we did go through what Mr. Smith
15 reported to him stolen and the approximate
16 values. As I remember, the defense objected to
17 him testifying to the values. So when he was
18 going through it, he may have described them as
19 round pendants because off the top of my head I
20 think that's how they are described in the case
21 summary.

22 As I said, your Honor, the heart shape is
23 not news to me. Mrs. Smith had described them
24 as heart shaped to me in the past, but since it
25 was not relevant to the State's case, there was

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1 no items to match up to that, Detective Branham
2 never recovered the items, there was no reason
3 to make her come in and testify to get into
4 that.

5 THE JUDGE: I understand. The problem is
6 you presented that as your case in chief and you
7 are not allowed to go back and rebuild that
8 case. I don't care if you get some new
9 information or not. That's what I am looking
10 at. How does this differ?

11 I think he has testified, and I have
12 notes, they are not very good. I was interested
13 more in values primarily to determine whether
14 the amount in question reached the grand larceny
15 plateau. So I had written down \$1,000, \$500
16 each, that was earrings, diamond earrings, I
17 guess. Then I had -- I wrote \$2,250, which was
18 half the value of the \$4,500, and he described
19 that as a set, a set of what? So I wrote down
20 \$1,000. That's \$500 each. I think that was for
21 the necklaces that he talked about. So I am
22 assuming then the \$2,250 would have been -- he
23 said there were two sets of diamond earrings.
24 This would have been one set. He said I paid
25 \$4,500 for two sets, and two sets I paid \$4,500.

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1 So it would be half of that. So I wrote down
2 \$2,250 for one set. He would only have one set
3 according to his testimony, based on my
4 recollection, of diamond earrings and we've got
5 two earrings with diamonds, two earring backs.
6 We have a gold necklace which I think would fit
7 the description, but then you got two heart
8 shaped pendants, 10 karat, and 14 karat pendant.
9 What is meant by pendant, I am not sure. Is
10 that a necklace with a pendant on it? I don't
11 know.

12 MS. SHELTON: I think we would have to ask
13 Ms. Hedgepath. I think the pendant is this part
14 of the necklace. I think the pendant is the
15 part that hangs from the necklace.

16 THE JUDGE: I don't believe he described
17 it was a heart shaped pendant.

18 MS. SHELTON: He did not. I would concede
19 to that fact.

20 THE JUDGE: But he described them as
21 pendants.

22 MS. SHELTON: I believe Detective Branham
23 described them as round pendants.

24 THE JUDGE: I am not going to allow you to
25 clear that up with Mrs. Smith because then you

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1 are going back to reconstructing your case in
2 chief, and I realize that you were not
3 attempting to surprise anybody. This came out
4 of the attempting to comply with the character.
5 I understand that. Be that as it may, I think
6 you are pretty much stuck with his testimony
7 with regard to the evaluation and the
8 description of the jewelry.

9 So the question then is, I am not going to
10 be able to allow her to testify in reply because
11 all you are doing is reconstructing the
12 testimony, your case in chief, on the
13 identification of the jewelry and the values.
14 So I am not going to allow you to do that. I
15 can't do that.

16 Insofar as the other is concerned, what is
17 your objection on that, Counselor?

18 MR. WELLBORN: Well, your Honor, my
19 objection, again, is the fact that my client's
20 sister on some point, and we don't know exactly
21 when that point was because we have two
22 different times on these two different
23 documents, but at some point during a 24-hour
24 period of September 6th, sold some gold to a
25 place in Rock Hill does not contradict my

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1 client's statement. It does not contradict
2 anything that was presented in the State's case.

3 It has to contradict to be proper
4 rebuttal. I think at best it is 403. From our
5 perspective, it is unduly prejudicial because it
6 is potentially confusing the jury because and
7 saying, okay, it's possible that these items
8 were taken not on the 6th as we have been
9 presenting to the jury -- excuse me, on the 7th,
10 or sometime between the evening of the 6th and
11 the 7th as all of the testimony so far has been.

12 THE JUDGE: Your only objection is as to
13 the time?

14 MR. WELLBORN: No, sir.

15 THE JUDGE: You are going to lose that
16 one. What else do you have?

17 MR. WELLBORN: I don't think it
18 contradicts my client because we have to tie my
19 client to items that were taken from the house.
20 What we have in testimony are these items that
21 involve diamonds.

22 THE JUDGE: This is close enough. I am
23 not worried about that or any other objection.
24 That goes to the weight of the jury and
25 evidence, circumstantial evidence, weight they

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1 can give it. What other objection do you have?

2 MR. WELLBORN: Again, the fact that my
3 client's sister sold items does not tend to
4 prove or disprove my client ever saw them or
5 possessed them. If it is going to be rebuttal
6 evidence, it has to be relevant rebuttal
7 evidence. This does not tend to prove or
8 disprove my client not only possessed these
9 items or knew about the items or knew they were
10 being sold. It does not because these items are
11 not the same items. If they were the same exact
12 items, if they were even closely similar, maybe,
13 but we are not there.

14 THE JUDGE: I think they are close and
15 similar enough to present it to the jury if that
16 tie in can be made.

17 MR. WELLBORN: There is no tie in. That's
18 the problem. There is no tie in.

19 THE JUDGE: What is the tie in?

20 MS. SHELTON: Just to save everyone time,
21 if the Court's ruling is that the wife is not
22 going to be able to testify to clarify that
23 issue, I most likely not call her in rebuttal.
24 I want a couple of minutes to think about it. I
25 probably will not call her. I still think that

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1 there is a foundation to call her. I still
2 think it fits closely enough to the description
3 and closely enough to the timeframe.

4 THE JUDGE: I will allow it to come in. I
5 don't want to interrupt you. To make it clear,
6 the time issue, there two different times only.
7 They are the same ticket number and everything
8 on it. Obviously, the computer could have had a
9 wrong time. That happens. We have had other
10 testimony and other cases where the computer is
11 off time wise and they explain that, how it
12 works, that sort of thing, camera, video camera
13 has the wrong time. I am not concerned about
14 that because you have enough information on the
15 two of these that leave no question it was the
16 same transaction. I am not worried about the
17 time factor.

18 I am not worried about the fact that the
19 exact description given by Mr. Smith is not on
20 this. It sufficiently ties it in with the
21 description. It certainly could be, if not all,
22 some or all of it, some of it certainly could be
23 the jewelry stolen from the Smith's and it was
24 done on or about the same time it was stolen or
25 shortly thereafter. All of that ties in.

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1 Whether you have the exact same description or
2 not does not bother the Court or worry the
3 Court. The jury can decide whether they think
4 it applies and is sufficient or not.

5 What I am concerned about is his sister
6 goes in and does this. The tie in between him
7 and his sister. That's the problem. She could
8 have gotten this stuff somewhere else. There
9 might be other stuff. We don't know and you got
10 to tie it back to him.

11 MS. SHELTON: Which is why I would say we
12 may withdraw Ms. Hedgepath as a witness. I want
13 to think about it for a second. I know if I put
14 Ms. Hedgepath up as a witness, Mr. Wellborn is
15 going to produce family members of Mr. Goins to
16 testify that the items belonged to his mother
17 and that's why they were pawned, which I think
18 it will be overly confusing without having Ms.
19 Smith say her necklaces were heart shaped. I
20 don't think there is enough there to support
21 calling her and confusing the jury.

22 THE JUDGE: I don't think I can do that.
23 I don't think I can allow you to come back based
24 on this report and resurrect your case based on
25 that. That's not really the purpose of

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1 testimony. I don't think I can do that.

2 On the other hand, I have hard time
3 understanding why a successful business man with
4 plenty of money needs to hock jewelry and has to
5 sell it for half what it is worth, you might
6 have a hard time explaining that. I will give
7 you a couple minutes. We will take about five
8 minutes.

9 (Court in recess at 3:20 p.m.)

10 (Court resumes at 3:28 p.m.)

11 MS. SHELTON: Your Honor, after conferring
12 with Mr. Springs and calling Ms. Hedgepath as a
13 witness and Mr. Wellborn bringing witnesses in
14 saying the jewelry belonged to the family, the
15 State's concern is it would be overly confusing
16 the jury. Evidentiary, I think it is a wash. I
17 think it does give us something to argue, that
18 it is awfully coincidental that his sister
19 pawned these items that are very closely related
20 to the items that were stolen. I think
21 Mr. Wellborn will be able to argue if they have
22 an explanation of why and we can't tie him to
23 those items.

24 So evidentiary, it is a wash and confusing
25 to the jury so we are not going to call rebuttal

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1 witnesses and we are ready to go forward.

2 MR. WELLBORN: Your Honor, with all due
3 respect, I don't the State gets to argue that my
4 client's sister gets to pawn items that were
5 closely related.

6 THE JUDGE: We are not arguing this
7 anymore. They have withdrawn.

8 MR. WELLBORN: If they are going to argue
9 to the jury?

10 THE JUDGE: How are they going to argue?

11 MS. SHELTON: I have nothing to argue.

12 MR. WELLBORN: I misunderstood her. I
13 thought she said she was going to argue to the
14 jury that they were closely related. I took
15 exception to that. That's my misunderstanding.
16 I apologize.

17 THE JUDGE: If there is any way other we
18 can keep this trial going? Maybe we can stretch
19 it into tomorrow or Friday and keep arguing
20 about stuff. The case should have already been
21 over by now.

22 I will hear you on any motion you might
23 wish to make. The defense can rest when the
24 jury comes back, but I will hear your motion now
25 so I will not have to send them right back out.

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1 MR. WELLBORN: Thank you, your Honor. I
2 would move for, again, a directed acquittal on
3 the charge of conspiracy. Once again, there is
4 no testimony that my client had an agreement
5 with anyone for anything criminal in nature.
6 There is no testimony that my client observed or
7 saw anyone kick in a door. In fact, there is no
8 testimony --

9 THE JUDGE: You are just giving the same
10 argument as you gave before. We will
11 incorporate that into your argument now so I
12 don't have to listen to ten more minutes of this
13 stuff. You already put it on the record. It is
14 the same grounds you had before just renewing
15 your grounds?

16 MR. WELLBORN: Yes, sir, but there has
17 been additional testimony.

18 THE JUDGE: Well, there hasn't been
19 anything that changed anything that I know of
20 except he admits he was in the mobile home and
21 he did that in the statement.

22 MR. WELLBORN: With all due respect,
23 there has been additional testimony that wasn't
24 in before such as my client was on another side
25 of the trailer.

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1 THE JUDGE: That's his testimony. I
2 understand, but we have other testimony on
3 behalf of the State so for the same reason, you
4 know, I have to look at the evidence in the
5 light most favorable to the State. Looking to
6 the evidence most favorable to the State, I find
7 there is evidence that the State proved the
8 elements of the offenses beyond a reasonable
9 doubt including they believe what his statement
10 was and the other evidence that they got, that
11 they have established by substantial evidence,
12 evidence from which a jury could infer that the
13 State proved the offenses beyond a reasonable
14 doubt. That really hasn't changed by the
15 defense's evidence.

16 MR. WELLBORN: Again, I would make the
17 same argument regarding the charge of burglary
18 in the first degree. There is no evidence in
19 the record that my client had any intent at the
20 time he entered this residence to take anything
21 or commit any other crime.

22 The final one will be there is nothing in
23 the record that shows my client at any time took
24 possession of any of the stolen items which
25 would be a required element.

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1 THE JUDGE: Okay. I find there is
2 substantial evidence from which the jury could
3 infer each of those elements. It is up to the
4 jury to make whatever reference they are going
5 to make. It is up to them to weigh the
6 evidence. I don't weigh the evidence. I don't
7 make the determination whether it is sufficient
8 or not to find him guilty. That's not my
9 responsibility or my role. My role is to make
10 the determination whether it is substantial
11 evidence from which a jury can make that
12 inference, and I find there is such evidence.

13 It is more than just suspicion that's
14 raised by his actions and his statement and the
15 evidence offered by the State in this case.
16 There is more than just suspicion. There is
17 evidence that places him at the scene and being
18 inside the mobile home, evidence of the damage
19 to the mobile home and all of that. So it is up
20 to the jury whether they want to believe his
21 testimony today that he didn't hear any of this,
22 didn't see anything, didn't know anything,
23 didn't get anything. It is up to the jury to
24 make the determination through circumstantial
25 evidence and direct evidence whether the State

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1 has proven the elements of these offenses beyond
2 a reasonable doubt.

3 I am going to deny your motion for
4 directed verdict for the same reason I gave
5 earlier. Any other motions at this time?

6 MS. SHELTON: Are we going to cover any
7 charges?

8 THE JUDGE: Let me have the specific
9 charges you want?

10 MR. WELLBORN: I have a set, and
11 unfortunately, I am asking my secretary to bring
12 them right now. I had a full set already
13 printed out.

14 THE JUDGE: How long have we been in this
15 trial?

16 MR. WELLBORN: We have been in it quite a
17 while. I would request the same consideration
18 you gave the State of at least 15 minutes when
19 we were attempting to locate their rebuttal
20 witnesses.

21 THE JUDGE: You could have handed those up
22 Monday morning. I am not talking about rebuttal
23 witnesses. We are ready to go forward with the
24 trial and we have the jury sitting back there
25 since 2 o'clock and it is now 20 minutes to 4.

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1 Why couldn't we have had these charges here?
2 There was nothing to keep you from handing them
3 up to me on Monday, Tuesday or this morning.

4 MR. WELLBORN: In that case, I will be
5 glad to do it on the fly.

6 THE JUDGE: Let's do it on the fly.

7 MR. WELLBORN: Thank you. I would ask
8 for a charge on mere presence and mere
9 association both of which are part of the
10 standard conspiracy charge.

11 THE JUDGE: I am going to charge that. I
12 have the standard lengthy and conspiracy charge
13 of mere presence. I am going to charge it not
14 only with regard to hand of one hand of all,
15 which is another conspiracy charge, I am going
16 to charge that too. I will charge it
17 separately, but it is also included in hand of
18 one hand of all. That is not just there for
19 merely present.

20 MR. WELLBORN: I would also ask for a
21 charge on criminal intent.

22 THE JUDGE: I always give criminal intent
23 charges on specific intent crimes, and I will
24 give as to each of these three offenses.

25 MR. WELLBORN: I ask also in relation to

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1 the grand larceny charge that there be a charge
2 on mere presence as well.

3 THE JUDGE: Well, I am going to charge
4 mere presence once. I am not charging it on
5 all. I will charge that he can't just be
6 present when a crime is committed, he has to be
7 there, has take a role. I am not going to
8 charge it on all three offenses. I will charge
9 it once for all three offenses.

10 MR. WELLBORN: I would also ask for charge
11 on good character, that the jury can consider
12 that in and of itself as for --

13 THE JUDGE: I will give that charge. What
14 else?

15 MR. WELLBORN: I would ask for a charge
16 that the jury cannot hold against my client the
17 fact that he has multiple charges.

18 THE JUDGE: I will give that charge. I
19 already had this. I am giving them all anyway.

20 MR. WELLBORN: I apologize. I am doing
21 this on the fly. I am trying to do the best I
22 can here. I don't know what your Honor's
23 standard conspiracy charge is.

24 THE JUDGE: It is rather lengthy. It has
25 been given many times. If you want to look at

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1 it, I will let you look at it. It is almost
2 three pages long, if you want to look at it. I
3 will be glad for you to look at it.

4 MR. WELLBORN: Thank you, your Honor.

5 I would also ask for a charge on regarding
6 my client on a lesser included offense of petit
7 larceny because the evidence that the jury could
8 decide that my client did not take and carry
9 away a necklace, but they could decide that
10 ultimately he took or was part of taking and
11 carrying away two fishing rods at total value of
12 \$300, which would constitute the offense of
13 petit larceny as opposed to grand larceny. So
14 there is evidence in the record by which a jury
15 could find him guilty of petit larceny as
16 opposed to grand larceny.

17 THE JUDGE: What is your thoughts?

18 MS. SHELTON: Your Honor, we would leave
19 it up to the Court. For some reason in the back
20 of my mind, I feel like there is a case that if
21 the defense doesn't raise it as an issue, and
22 his defense is he didn't know anything, he is
23 not guilty of anything, he didn't take anything,
24 then he is not entitled to the lesser charge
25 because he has not made it an issue. I don't

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1 have that case off the top of my head, but for
2 some reason in the back of my mind there is one
3 I think from a drug case.

4 THE JUDGE: Here is the thing. If the
5 State puts up testimony and the only testimony
6 is property taken was \$3,000 and there might be
7 some question about that. The defense says, we
8 don't agree with that and they don't put up any
9 testimony of contrary value that it is worth
10 less than \$2,000, they are stuck with that value
11 and not entitled to lesser included offense.
12 That part is true.

13 The question is, what they are saying, I
14 think hand of one hand of all, whatever is taken
15 is taken. He doesn't have to get anything out
16 of it, really. If he was there and knew it was
17 taken and it was done as a two-person conspiracy
18 to do that, it doesn't matter. He doesn't have
19 to get a dime in order to be convicted of grand
20 larceny, burglary.

21 On the other hand, it is from his
22 statement that if the jury believed he was
23 really not part of this, but somehow this guy
24 gave him, the codefendant gave him rod and reels
25 and he took them, which you would have to infer

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1 from the statement that he was asked to keep
2 these rod and reels to the next day. Of course,
3 he says, well, the defense says, well, we didn't
4 have testimony he actually took them. The jury
5 could infer from that that he did take them to
6 his home, and if they believe that was his own
7 part in this, it could be petit larceny, I
8 guess. Like I say, hand of one hand of all, but
9 a jury will have to make that determination.

10 I think it is either grand larceny or
11 nothing. I will go ahead and charge petit
12 larceny, and again, the jury could find his only
13 involvement was taking these rod and reels.
14 Anyway, I will include it.

15 What else?

16 MR. WELLBORN: In that case, you Honor, I
17 would ask for an additional charge which would
18 be appropriate if the jury has some doubt
19 between --

20 THE JUDGE: I always charge that when
21 charging greater and lesser.

22 MR. WELLBORN: I think that's all I can
23 think of.

24 THE JUDGE: That pretty well covers it.
25 Anything from the State?

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1 MS. SHELTON: We have no specific
2 requests, your Honor.

3 THE JUDGE: Well, one request you might
4 assume that I would make but wouldn't
5 automatically make, I am going to charge on
6 voluntary intoxication. I am sure you want
7 that.

8 MS. SHELTON: Yes, sir.

9 MR. SPRINGS: Could I ask something. It
10 seems to me in the back of my mind, it would be
11 error for the defense not to ask the Court to
12 direct a verdict for the defendant based on his
13 good character evidence. Just to protect the
14 record PCR wise down the road, could I ask the
15 Court to consider whether this case should
16 directed not guilty because of the good
17 character evidence he presented?

18 THE JUDGE: I don't think it is question
19 for the Court. Your point is well taken. I
20 don't think it is a matter for the Court. It is
21 a matter for the jury. I think I will need to
22 instruct them on that, although, the testimony
23 and evidence on that is extremely questionable.
24 One person that doesn't really know him, doesn't
25 know his reputation or character is, but be it

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1 as it may, he testified. So I think I have to
2 give them that charge.

3 MR. SPRINGS: I agree.

4 THE JUDGE: But I don't have to direct a
5 verdict because it is an issue for the jury to
6 decide. If it makes you feel better, I find
7 that is not, based on that one character
8 witness' testimony or anything that he might
9 have testified to, or for that matter, what his
10 father testified to also, I find that he is not
11 entitled to a directed verdict on any of these
12 charges based on good character testimony in
13 evidence.

14 MR. SPRINGS: Thank you, your Honor.

15 MR. WELLBORN: Your Honor, I have nothing
16 further. Of course, I was not making such a
17 motion.

18 THE JUDGE: I understand. I think he is
19 trying to anticipate any possible review in the
20 future.

21 Everything you requested I am already
22 charging except petit larceny, I am still
23 considering that. I don't think you are really
24 entitled to it, but nevertheless, I will give
25 it.

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1 MR. WELLBORN: Thank you, your Honor.

2 THE JUDGE: Anything else?

3 MR. SPRINGS: No.

4 THE JUDGE: Let's do this: I am going to
5 give you about ten minutes or so to address your
6 final argument and go to the restroom, do
7 whatever you need to do, and in ten minutes come
8 back and get started.

9 (Court in recess at 3:42.)

10 (Court resumes at 4:06 p.m.)

11 MR. SPRINGS: I was looking at Professor
12 Malkovich's Book on burglary and intent. I did
13 find a good statement of law. I hate to ask for
14 a jury charge this late, but it is good law and
15 simple concept if I may pass it up.

16 THE JUDGE: You know I hate you to give it
17 to me this late.

18 MR. SPRINGS: I am sorry.

19 THE JUDGE: I don't like getting it this
20 late. I will tell you that right now.

21 MR. SPRINGS: I have given the defense a
22 copy.

23 THE JUDGE: I think that is good law. I
24 will tell you what my charge includes. It is
25 similar language as to what you have here, if

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1 that is satisfactory. The defendant must have
2 intent to commit a crime, enter into a dwelling
3 house of another without consent in violation of
4 the burglary statute. It is only when there is
5 intent to commit a crime, whether be a felony or
6 a misdemeanor, that a crime is complete. Proof
7 of intent necessarily rests on inference and
8 conduct. A person's actions after he entered a
9 dwelling may be considered as evidence of his
10 intent in entering the dwelling. It is
11 essential that felonious intent exists at the
12 time of the entry. It is not sufficient that
13 felonious and intent is after.

14 MR. SPRINGS: That would cover it.

15 MR. WELLBORN: Yes, sir.

16 THE JUDGE: All right. Are we ready to
17 proceed now?

18 MR. WELLBORN: The defense is ready.

19 MS. SHELTON: The State is ready, your
20 Honor.

21 THE JUDGE: The defense require the State
22 to open?

23 MR. WELLBORN: No, sir.

24 THE JUDGE: The defense will open and the
25 State will close.

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1 MR. SPRINGS: Your Honor, the defense will
2 rest in front of the jury?

3 THE JUDGE: He will need to do that.

4 Please bring the jury in.

5 (Whereupon; the jury came into open court
6 at 4:09 p.m.)

7 THE JUDGE: Counsel, are you ready to
8 proceed?

9 MR. WELLBORN: Yes, your Honor. The
10 defendant rests in this case.

11 THE JUDGE: Nothing in response?

12 MS. SHELTON: No, sir, your Honor.

13 THE JUDGE: Now, let me apologize again to
14 you. I spent this whole trial apologizing to
15 you. Sometimes there is a number of issues that
16 come up that we need to address, and we have had
17 some of that in this case. You need not be
18 concerned of that. Those are matters to make
19 sure the record is complete in this case. We
20 have completed all of the taking of testimony
21 and evidence in this case and we are to that
22 part of the trial where counsel will make their
23 final arguments to you all of which I will
24 instruct you upon the law that applies. So I
25 ask you to listen attentively now as counsel

CLOSING ARGUMENT BY MR. WELLBORN

1 addresses you in closing argument. Counsel.

2 MR. WELLBORN: Good afternoon. We began
3 this trial talking about people who trust other
4 people and people who abuse that trust. People
5 who mislead other people because of their
6 ability to do that and because of the ability
7 that other people don't have to pick up on what
8 is going on. Sometimes it is intelligence,
9 sometimes it is age, sometimes it is
10 sophistication, and sometimes it is a
11 combination of that plus being drunk and stoned,
12 but it can be all kinds of things.

13 There was, most definitely, a snake in
14 this case. The snake was not red and black and
15 friendly jack. It was red and yellow and he
16 could kill a fellow. We know who that snake
17 was.

18 Let's talk for a minute about what we do
19 know in this case. We do know that Hannah Smith
20 saw Jordon Canupp sometime around December with
21 fishing rods. We do know that Hannah Smith
22 asked Jordon Canupp where he got those fishing
23 rods. We do know that immediately after, or
24 shortly after asking him that question, the
25 fishing rods disappeared never to be seen again.

CLOSING ARGUMENT BY MR. WELLBORN

1 This was months after this break in occurred.
2 Jordon Canupp was in possession of fishing rods
3 that he didn't want anybody to know about. We
4 do know that.

5 We do know that Jordon Canupp had been in
6 the Smith's trailer before. We do know that
7 Jordon Canupp was familiar with that trailer.
8 We do know that Jordon Canupp was familiar with
9 the Smith's who were kind enough to try to help
10 him out, try to do a nice decent thing for
11 someone. They trusted the wrong person. We do
12 know that Jordon Canupp knew what the Smith's
13 drove. We do know that Jordon Canupp knew that
14 Mr. Smith was a captain and he was gone and how
15 long he would typically be gone. We do know
16 that Jordon Canupp had enough information to
17 know the whereabouts of the Smith's.

18 We do know that Jordon Canupp dated Hannah
19 Smith who was a member of the family and might
20 well know that Mrs. Smith was away sitting with
21 a sick relative. We do know that Hannah Smith
22 wasn't there that night so she couldn't witness
23 what Jordon Canupp was up to.

24 We do know some things about Brandon. We
25 know he had a job. We know he worked for his

CLOSING ARGUMENT BY MR. WELLBORN

1 dad, his dad's company. He was working there
2 for a long time and worked there afterwards and
3 was continuing to work there, and hopefully, be
4 able to go back to working there at the end of
5 this trial. We do know that.

6 We do know that Brandon is not the
7 sharpest knife in the drawer. You got to hear
8 him. You got to listen to him. You got to
9 evaluate of your own mind what Brandon Goins is
10 like. We do know that people who know Brandon
11 Goins who are older, who are smarter, who are
12 sharper, who are responsible, who are
13 respectable vouch for his character. We do know
14 that.

15 Let's take a minute and talk about what we
16 don't know. We don't know when that door was
17 damaged, what time. We have no idea. We don't
18 know whether a tool was used to damage the door.
19 We don't know whether the blood smear that
20 Mr. Smith found on the door or the blood spots,
21 dime size, that Deputy Yates found on the door,
22 we don't know where those came from. We don't
23 know where the cigarette butt that was found in
24 the living room floor next to the roller desk,
25 we don't know where that was from. We don't

CLOSING ARGUMENT BY MR. WELLBORN

1 know who left fingerprints in the bedroom when
2 they went into the bedroom and opened the
3 jewelry box presumably to steal jewelry. We
4 don't know whose fingerprints were left in the
5 bathroom when whoever went into the bathroom,
6 opened that bathroom cabinet and proceeded to
7 take out, I believe it was something like 15
8 bottles of various shapes of medicine, moving
9 some from the bottom shelf to the middle shelf.
10 We don't know who left their fingerprints there.

11 We don't know who left their fingerprints
12 in the kitchen when whomever went into the
13 kitchen and took these two fishing poles. We
14 don't know that.

15 We don't know who left their fingerprints
16 on the papers that were rifled around that
17 Mr. Smith found in his desk that had obviously
18 been messed with. We don't know who left their
19 fingerprints on the rolltop desk. We don't know
20 who left their fingerprints on the doorknobs
21 attempting to open doorknobs and opening
22 doorknobs from the other side to let Brandon
23 Goins in. We don't know who left there
24 fingerprints on the other door, the one that was
25 forced open. We don't know who left

CLOSING ARGUMENT BY MR. WELLBORN

1 fingerprints on the screens and we don't know
2 that because no one thought it was important.
3 No one thought it was important.

4 It is important. It is really important.
5 He is on trial, serious charges. No one
6 checked. No one took any photographs to
7 document the damage to the front door.
8 Mr. Smith told us about it. No one took any
9 photographs to document the blood stains on the
10 front door or blood smear. Mr. Smith told us
11 about it.

12 We have in evidence right now, we have a
13 cigarette butt partially smoked, which means it
14 had been in somebody's mouth that was found in
15 the living room floor, and the testimony
16 actually was it was found in a very specific
17 place next to the rolltop desk. It was
18 important enough that the deputy took it into
19 evidence. The deputy recognized its potential
20 value. DNA, pretty obvious. It was testified
21 you could get DNA from that.

22 We do know that the second deputy took
23 blood swabs. Those blood swabs are currently in
24 evidence. The deputy thought they were
25 important enough to take. We know why. Again,

CLOSING ARGUMENT BY MR. WELLBORN

1 obvious. DNA.

2 We do know these items could be tested.
3 We will back to that. What we don't know is
4 where is Jordon Canupp? Where is he? Why did
5 the prosecutor not bring Jordon Canupp in to
6 testify? You could infer he didn't like what he
7 was going to say. You could infer because they
8 don't trust him any more than anyone else
9 should. You could infer because unlike Brandon
10 Goins they recognize a snake when they see one.
11 We don't know what Jordon Canupp did after they
12 dropped Brandon off that night. Where did he
13 go. Did he go back to the trailer? Did he go
14 in and help himself to more stuff? We have no
15 idea. We don't know.

16 Now, there is no evidence in this case
17 that has been presented by anyone that there was
18 a plan between Jordon Canupp and Brandon Goins
19 to do anything other than going fishing the next
20 day, and it was not even a well formed fishing
21 plan at that. There is nobody who said this is
22 what we agree to do. We are going to go there,
23 we are going to take anything, we are going to
24 do anything wrong at all. In fact, the only
25 evidence that we have that Brandon Goins did

CLOSING ARGUMENT BY MR. WELLBORN

1 anything wrong at all that night was getting
2 drunk and getting stoned. But there doesn't
3 seem to be any plan, any criminal plot. What is
4 a conspiracy? What is a conspiracy?

5 Judge Alford is going to tell you what the
6 legal definition of conspiracy is, but at the
7 very least, it involves some kind of common
8 understanding for an agreement to do something
9 that is illegal at the very least. But there is
10 not that in this case. Nothing. There is no
11 evidence. No evidence of a plan or an
12 agreement. There is no evidence that Brandon
13 when he went up to Jordon's uncle's trailer had
14 any idea that Jordon was doing anything wrong.
15 Well, if he didn't think Jordon was going to do
16 anything wrong by going into his uncle's
17 trailer. He cannot be guilty of breaking and
18 entering a trailer with an intent to commit a
19 crime because he didn't know a crime was going
20 to take place. There is no evidence of that.
21 There simply is no evidence that Brandon knew a
22 crime was going to take place or a crime was
23 later committed.

24 Jordon let him in and at the time Brandon
25 walked in, he didn't know what was going on.

CLOSING ARGUMENT BY MR. WELLBORN

1 There is no evidence that he did. But there is
2 something very, very interesting that what was
3 said. At the end of Brandon's testimony when I
4 was asking him questions, I asked him, when
5 Jordon disappeared, when you were inside the
6 trailer waiting for what he described as a
7 pretty short time, and Jordon went around the
8 corner, wherever he went and disappeared, why
9 didn't you follow him?

10 Well, I didn't follow him because it
11 wasn't my house.

12 That's not the act of coconspirator.
13 That's not the act of a burglar. That's the act
14 of a doofus who is standing there in the front
15 hallway waiting for this guy to come back with
16 fishing pole so hopefully they can go fishing
17 the next day.

18 Let's talk about fishing for a second.
19 Let's talk about the fishing. The testimony was
20 they discussed going fishing the next day. It
21 is the only testimony about that. There is no
22 testimony to contradict that.

23 The testimony was that when they went up
24 to Jordon's house, Jordon came out with a couple
25 of fishing poles which would presumably be used

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1 for fishing, and they talked about going fishing
2 the next day.

3 The testimony was that Jordon put those
4 fishing poles in Jordon's car.

5 The testimony was that Jordon took Brandon
6 home to Brandon's house in Jordon's car.

7 The testimony was that somewhere on the
8 way home Jordon mentioned, hey, why don't you
9 keep the poles, I will pick them up tomorrow.
10 We don't know what Brandon said in response to
11 that, if anything. We do know when Jordon
12 dropped Brandon off, he kept fishing poles.
13 Brandon never got the fishing poles. How do we
14 know that? We know that from Hannah Smith who
15 testified about asking Jordon where did you get
16 those poles, and after he asked him the poles
17 disappeared. We know what happened to those
18 poles. That's the one thing we do know in the
19 case.

20 Let's talk about the fairness of an
21 investigation and the fairness of a prosecution
22 because you as jurors you have a right to have
23 evidence presented to you. You have a right to
24 have people attempt if they are going to
25 prosecute people and attempt to punish them to

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1 bring you the truth. You should ask that. You
2 should demand that. That's only fair. That's
3 what our system is supposed to be about is
4 fairness, fairness to both sides.

5 We now know, we didn't know before the
6 trial, but we now know the Sheriff's Department
7 has a policy when people tell their story, when
8 people are asked questions about what happened,
9 they don't record. They could record. It is
10 easy enough to record. They have audio
11 equipment, they have video equipment, they have
12 all of the stuff in the world to record, but
13 they don't, and they don't because it is their
14 policy.

15 You recall when Detective Brandon was
16 asked what legitimate reason would you have for
17 not recording this. His answer was, I don't
18 have any. There is no legitimate reason why
19 they would not want to bring that in. Why would
20 they want to hide that? But that's their
21 policy.

22 We do know that the DNA -- these items
23 were not tested for DNA because the prosecutor
24 made a decision not to test. Even though if the
25 prosecutor made a decision I do want them

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1 tested, they could have been submitted to a lab.
2 Somebody could have said, hey, we found some
3 material. And from there they could have said,
4 well, can we compare that material to anybody?
5 Brandon Goins, will you submit your DNA so we
6 can compare it? That could have been done, but
7 the prosecutor made a decision not to do it.

8 We do know in this case that Detective
9 Branham was sent a letter by us saying, hey,
10 this is in evidence. I have received as of
11 today, March 25, 2014 evidence and inventory
12 sheets, copies of which are attached indicating
13 that on September 7th, 2012, a year and a half
14 earlier, Deputy Doty took into evidence a
15 partially smoked cigarette from the victim's
16 living room. It appears that this partially
17 smoked cigarette was placed in the evidence drop
18 on September 8th, 2012, the next day. It
19 furthermore appears that this was received by
20 somebody working from your department on
21 September 10, 2012, three days later. It also
22 appears that blood swabs were taken into
23 evidence from the front door by Deputy Yates.

24 I received an e-mail from the Assistant
25 Solicitor Misti Shelton indicating that neither

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1 of these items have ever been tested and a
2 decision was made not to test these items by Ms.
3 Shelton.

4 Please accept this letter as our formal
5 request that these items be sent to S.L.E.D or
6 some other qualified entity for purposes of DNA
7 testing.

8 We had asked finding out a week ago that
9 they had these items and they hadn't been tested
10 and the prosecutor had said, hey, my decision, I
11 am not testing them. We had asked that they be
12 tested. What's the rush? The prosecutor didn't
13 have to try this case this week. They could
14 have waited. They could have said, you know
15 what, good point. Maybe we ought to test for
16 DNA. Guess what, if that turns out to be Jordon
17 Canupp's blood on the front door, it would
18 suggest he went through the front door. If that
19 turns out to be Jordon Canupp's DNA on that
20 cigarette butt, guess what, probably he was the
21 one going through the rolodex. If it is not
22 Brandon Goins' stuff, it might well verify that
23 he did not, in fact, go through that front door
24 or whatever door.

25 We have heard testimony about what Brandon

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1 Goins thought the front door was. He thought
2 the front door was the other door, and why,
3 because that's the first one we mentioned.

4 All right. That's where we are. That's
5 where we are. Under what system is it fair for
6 the prosecutor to have evidence that could
7 exonerate somebody and make a conscious
8 decision. We are not going to do it. We are
9 simply not going to do it. It would be one
10 thing if they didn't know about it, but surely
11 they knew about it because, heck, we sent them a
12 letter reminding them they have this stuff.
13 They didn't do it. They didn't do it.

14 What would we have done in Brandon Goins'
15 situation? We might have asked some questions,
16 hey, wait a minute, is this really your uncle's
17 house? Is that really your stuff? It is
18 probably what any of us would have done. But
19 Brandon didn't. Why didn't he? He testified.
20 You got to see him, pretty much get the idea of
21 who he is.

22 Not asking a question is not a crime.
23 Trusting someone is not a crime. Being conned
24 is not a crime. Being 17 years old, which is
25 how old Brandon Goins was then, with a ninth

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1 grade education and being drunk and stoned.
2 Accept for being drunk and stoned, it is not a
3 crime. It is not a conspiracy. It is not a
4 burglary. It is not a grand larceny. We don't
5 punish people for being young and dumb. We
6 punish them if they commit crimes. Therein lies
7 the difference. Stupidity is not a crime.

8 Brandon told us the truth in his
9 statement. He said on September 6th, 2012, of
10 course he got that the date from the detective
11 and went with it because he had no reason to
12 distrust the detective anymore than he had a
13 reason to distrust Jordon Canupp. Me and Jordon
14 was intoxicated. Got to talking about money.
15 Okay. They also talked about a lot of other
16 stuff. They talked about money. They talked
17 about their jobs. Afterwards, Jordon said he
18 had a few things at his uncle's house. We then
19 walked down and went to the front door. It was
20 locked.

21 Now, did Brandon know which one was the
22 front door? No. But he went to the door and it
23 was locked. Jordon went in from the back and
24 let me in the front. He got a few things.
25 Excuse me, I misstate that. I apologize. He

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1 began to get a few fishing rods and a gold
2 necklace and said this should be good. Then we
3 got in his car and he took me home. He told me
4 to hold the fishing rods until tomorrow. I
5 never saw him again. It was the middle of the
6 night.

7 All of that is true. It just leaves out a
8 few details. It just leaves out few details.
9 It wasn't important to the police to say what
10 else did you guys talk about besides money? Why
11 did you follow Jordon Canupp up there? Were you
12 planning on doing anything with him the next
13 day? Well, the police weren't interested in
14 that. They were interested in tying in a
15 burglary and a robbery.

16 Based on this, and only based on this
17 because there is no other evidence in the case,
18 based on this alone, they say Brandon Goins
19 entered a conspiracy with Jordon Canupp that he
20 broke in and entered someone else's house with
21 the intent to commit a crime, specifically, to
22 steal, and that Brandon Goins stole items in
23 excess of \$1,000. There is no evidence of that.
24 Absolutely none.

25 At what point do we say, hey, we actually

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1 mean what we say in this country when we say we
2 don't convict people unless it has been proven
3 that they are guilty beyond a reasonable doubt
4 because that's the standard.

5 Do we say, yes, well, you know, that's
6 what the judge says but I have kind of a hunch,
7 I have a gut feeling, sounds kind of suspicious
8 to me. I wouldn't act like that. That's not
9 the standard. That's not the standard. It
10 shouldn't be the standard. Because when we say
11 I would never do that, that's good for you but
12 you are not Brandon Goins, which is why you are
13 there, which is why you were selected as jurors.
14 That's the difference. It can't under any
15 possible sense of fairness, under any possible
16 sense of what is right or what is wrong, under
17 any possible logical reason, even if you don't
18 care about fairness. If you don't care about
19 what is right or wrong. I am just going
20 straight by the facts, going straight by the
21 facts. There is absolutely no possible
22 legitimate reason to convict Brandon Goins of
23 burglary, grand larceny or conspiracy. He is
24 who he is. As Popeye said, I am what I am.
25 Brandon Goins is who he is, but he sure as heck

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1 is not what he is not.

2 Thank you for your time.

3 MS. SHELTON: Ladies and gentlemen, I am
4 going to talk to you about this case a little
5 bit, State versus Brandon Goins. First thing I
6 want to talk to you about, I am going to do it
7 really quickly. It is just the law, the
8 elements of the offense that we have to prove to
9 you.

10 I will not dwell on it for a long time
11 because Mr. Wellborn didn't argue that we
12 haven't met the elements, if you believe that
13 Brandon Goins was involved and did it. He has
14 not made any kind of argument that we have not
15 met the elements of these crimes.

16 He did not argue to you that we did not
17 prove the burglary first was committed. He did
18 not argue to you that we did not prove a grand
19 larceny was committed. He did not argue to you
20 that we did not prove a criminal conspiracy was
21 committed, if you believe that Brandon Goins
22 knew what was going on. That's the only issue
23 here is did Brandon Goins know what was going
24 on. If you believe that, then there is no
25 argument about the crimes.

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1 I am going to go through them very
2 quickly. He is charged first with burglary in
3 the first degree. Burglary in the first degree
4 is entering a dwelling, someone's home, without
5 consent, with an intent to commit a crime. That
6 crime could be larceny. That crime could be a
7 rape. That crime could be a murder. But when
8 you enter the home, you to have an intent to
9 commit the crime with some sort of aggravating
10 circumstance. In this case we have the
11 aggravating circumstance of in the nighttime.
12 That is the first charge that will be presented
13 to you.

14 The second charge you have is grand
15 larceny. Grand larceny is the taking or
16 carrying away of goods of another without the
17 owner's consent, with the intent to deprive that
18 owner of the property permanently. For grand
19 larceny, we have to prove the value of those are
20 over \$2,000.

21 I am going to talk to you a little bit
22 about those two crimes first and I am going to
23 talk to you a little bit about Brandon Goins'
24 statement and how using your common sense in
25 looking at his statement, how does his statement

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1 support that he knew and committed these crimes?
2 There is his statement. He admits to freely and
3 voluntarily giving it. No one threatened him.
4 No one coerced him. When he was being direct
5 examined by Mr. Wellborn, he said yes, that's my
6 signature. That's my statement.

7 The first part I want to focus on is, "we
8 went down to the front door and it was locked so
9 Jordon went in from the back and let me in the
10 front." So his statement is, "we went to the
11 front door and it was locked and Jordon went
12 around and let me in. He began to get a few
13 fishing rods, gold necklace, and said this
14 should be good." Fishing rods and a gold
15 necklace. "This should be good. It was in the
16 middle of the night." His own statement gives
17 us that it was in the middle of the night.

18 Criminal conspiracy, an agreement between
19 two or more people for the purposes of
20 accomplishing an unlawful act. The unlawful act
21 in this case would be burglary and grand
22 larceny. It does not have to be a well thought
23 out plan. The State does not have to present
24 some evidence that two people sat down and drew
25 diagrams and came up with a scheme. It can be

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1 an immediate. It can be, hey, let's go do this
2 without any kind of plan. Just that there is a
3 meeting of the minds where two people, let's go
4 do this. That can be shown through
5 circumstantial evidence. It does not take
6 direct evidence. We don't have to have anyone
7 say this was our plan. You can use your common
8 sense to look at all of the evidence that has
9 been presented to you to support the conviction
10 for criminal conspiracy.

11 Going back to his statement, and I am
12 going to tie this all in later but I want to
13 look at this statement. This first part, me and
14 Jordon, that's your two people. We are
15 intoxicated. We are talking. We are talking
16 about money. Not about fishing. We are talking
17 about money. Why is that important? Because
18 the next thing is, "Jordon said we could go get
19 a few things at his uncle's house." Why would
20 talking about money lead immediately to Jordon
21 saying we could go get a few things at his
22 uncle's house? Because they needed to steal a
23 few things from his uncle's house so they could
24 get money.

25 I am going to briefly talk to you about

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1 Darryl Smith's testimony, that is the testimony
2 of what evidence we have of the break in, where
3 that evidence was of the break in and the things
4 that were stolen. Darryl Smith testified to you
5 that he has experience with construction and
6 that the front door trapper was broken. I
7 didn't know what a trapper was so I had to ask
8 him when talking to him and he explained it was
9 the part of the door -- when you shut the door,
10 it would catch the door and keep it shut and
11 locked. He testified that trapper was broken.
12 He testified that the reason they didn't realize
13 it is because whoever had broken the trapper had
14 pieced it back together so that the door would
15 close, that he did not notice it was broken when
16 he came in at 6 o'clock in the morning because
17 he was tired, but when he gave it a closer look
18 he noticed it was broken. That was the front
19 door, what he considers to be the front door.

20 Screens were cut and windows with pry
21 marks that he didn't notice at 6 o'clock in the
22 morning but a few hours later he did notice.
23 There are missing items. It took him a while to
24 figure out what was missing. Some of it was his
25 wife's jewelry. Mr. Smith didn't know a lot

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1 about his wife's jewelry, but his wife's jewelry
2 and a couple fishing rods were missing. That
3 was reported within the week. He testified the
4 officer said take your time, go through
5 everything, make sure that you know what is
6 missing. He said his initial concern about
7 things was paperwork because he was more
8 thinking about greater financial, social
9 security numbers, checkbooks, that sort of
10 thing, because he was going through office stuff
11 before he looked in other areas. It was a week
12 before he started reporting the items missing.

13 He testified that no one kept fishing rods
14 in his home. There was no one with permission
15 to come in the home to get fishing rods. No one
16 had permission to be there. No one had an extra
17 key to his home. That was his testimony, that
18 someone, he didn't know who, he didn't know
19 Brandon Goins, that someone broke into his front
20 door and stole multiple items from his home.

21 He testified that the jewelry from his
22 memory, the things that he bought, earrings, I
23 think he estimated between \$1,500 and \$2,000,
24 necklaces he estimated between \$500. Fishing
25 rod he estimated \$200. You have to rely on your

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1 memory of what his testimony was. Ladies and
2 gentlemen, I submit to you that in total it was
3 over \$2,000.

4 Let's talk to you a little bit about the
5 defense argument because this is where the case
6 is led. We are not arguing about were these
7 crimes committed, just who did it. That's going
8 to be the defense's argument. Goins' statement,
9 you will have it. You can read how many words.
10 107 words. Nothing is misspelled. He wrote it
11 himself. That's the testimony. He wrote it.
12 Nothing is misspelled. This simpleton, that's
13 how his attorney assumed or however he described
14 him, not smart, 107 words and nothing
15 misspelled.

16 Where is the evidence Mr. Wellborn
17 promised you in opening statement about his poor
18 naive, gullible client, this boy that was taken
19 in by the snake, where was that evidence? No
20 one testified that Mr. Goins was gullible and
21 naive and easily manipulated. You had Marshall
22 Smith testify that he was a good person, but no
23 one testified that he was this easily led astray
24 person that was going to get taken in by the
25 snake. You didn't hear that, and that was

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1 promised in the opening statement.

2 The snake, you heard a story in the
3 beginning about the snake. Who is the snake in
4 this case? Jordon Canupp. This would be one of
5 the things that Mr. Wellborn will say we don't
6 know. What you do know was testified to, Jordon
7 Canupp's case is closed.

8 We went through all of the things we don't
9 know. I am going to address those things. All
10 of the things we don't know. That was his
11 argument, all of the things we don't know. So
12 what did he rely on in his case? Testimony,
13 first two witnesses, Hannah Smith and Richard
14 Goins. Hannah Smith is Jordon's ex-girlfriend.
15 They are no longer together. People break up.
16 There is usually bad blood. They are not
17 currently together.

18 She was asked, did she meet with the
19 solicitor's office? Did she keep those
20 appointments? No. She did not want to talk to
21 the solicitor's office.

22 The fishing rod was pulled out of the
23 closet in December, several months after this
24 burglary. She saw them. She asked Jordon about
25 them. If you remember Mr. Wellborn's opening

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1 statement, he said the only evidence that was
2 ever identified, recovered, whatever word, you
3 have to use your own memory, that was recovered
4 was linked to Jordon Canupp. Hannah Smith
5 doesn't know anything about those fishing rods.
6 She didn't bother to tell her uncle. She didn't
7 bother to tell her dad. She didn't bother to
8 say, hey, Jordon has this fishing rod. Uncle
9 Darryl, it may be yours. We don't know if that
10 fishing rod could be tied to that burglary
11 because Hannah Smith did not bother to report it
12 to anybody. There is no evidence that it has
13 been recovered in this case. The fishing rod was
14 never identified, never returned. She never
15 told her uncle. She never told her father.

16 The other interesting thing she told us,
17 because Mr. Wellborn made a big point about how
18 Jordon Canupp was familiar with the house and
19 how you need to be familiar before you commit a
20 burglary, but he contradicted that by saying
21 burglary is a crime of opportunity. Brandon
22 Goins had been there before. Hannah Smith told
23 you that, he had been to her house. When he was
24 asked about that he said, no, I have never been
25 there, but when followed up, well, maybe for a

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1 party. Her testimony was that he had been to
2 that house before. Maybe only once, but he had
3 been there before.

4 Richard Goins, that's the defendant's
5 father. Think about it. What exactly did he
6 add to this case? Did he add anything to the
7 case? He testified that his son worked for him.
8 He also testified that they were paid through
9 payroll and that records were kept, that he just
10 testified that his son worked there. He said he
11 rode with him most days. I don't know why that
12 matters. Why does it matter that he rode with
13 him most days because the only day any of us
14 should be interested in is not really daytime,
15 it is at night. Mr. Goins clearly did not work
16 at night, but he testified to it. He could not
17 say where his son was on September 6th. He
18 could not say if he rode with him that day. He
19 could not say if his son worked with him that
20 day. He knew nothing about that day. So
21 basically, his testimony added nothing other
22 than to let you all know that Brandon Goins has
23 a job.

24 Marshall Smith, the good character
25 witness. You are going to be given some

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1 instruction by Judge Alford about how you can
2 consider good character. We have Marshall Smith
3 who is the good character witness. What did Mr.
4 Smith say. He said that Mr. Goins -- he had
5 known him for a few years. He was a friend of
6 his son's, that his son, I believe, was 17 years
7 old and that he and Mr. Goins were very good
8 friends. He was a good kid and he has a good
9 character in the community. He is a good
10 person. He is known through the community as
11 being a good person. Well, when asked a little
12 bit further about that. What community? Had he
13 talked to anybody other than his wife? Could he
14 name a single neighbor who he had asked, hey,
15 what do you think about Brandon Goins? What do
16 you know? He could not name a single person.
17 He admitted that he had not talked to anyone
18 when pressed on it, other than his wife, because
19 he wouldn't let his son hang around a bad
20 person. That's not a community. Husband and
21 wife agreeing that somebody is an okay kid is
22 not a community. He also said he volunteered to
23 help. Help out in any way.

24 So I would say that would be three of the
25 defense witnesses that really don't add anything

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1 to this case. They have no bearing whatsoever
2 on this case. None of them knew anything about
3 the night of September 6th, 2012.

4 Let's talk about Mr. Goins, and this is
5 where well talk a little more about his
6 statement. First, I asked him about the picture
7 that were taken. He told you all that they were
8 taken this year back in January or February by
9 his attorney's investigator and that Mr. Goins
10 was there at the time. They were not from back
11 in September. These were very recent pictures.

12 He testified that he was not high at the
13 time he gave his statement. So he knew what he
14 was saying. He was not under the influence of
15 anything. He knew very well what he was saying.
16 He testified that it was so dark in that house
17 that when he came through that door he had no
18 idea where he was. The front door in that house
19 leads into a living room, which is very common
20 of a house, to lead into a foyer, into a living
21 room, into the living area of the home. The
22 back doors, particularly in mobile homes, lead
23 into a hallway. Darryl Smith told you his back
24 door led into a hallway, which would probably
25 clue even a simpleton in that you were not

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1 entering through a front door. But it was so
2 dark he couldn't see. He couldn't tell where he
3 was. Later he said he could see Jordon Canupp
4 with a necklace. So if it is bright enough for
5 him to see a necklace in somebody's hand, it was
6 bright enough to see the hallway. He didn't
7 want you to know he could not see the hallway
8 because then that makes his story of it was a
9 back door not make any sense -- or it was the
10 front door he thought but it really was the back
11 door.

12 Did he already have the fishing poles or
13 did he start getting fishing poles. When he
14 testified on direct, he originally said that
15 Jordon Canupp let him in and started getting
16 fishing poles. Then his attorney goes, did he
17 start or did he have them? He already had them
18 in his hand. If he already had them in his
19 hand, it makes Brandon Goins innocent of not
20 knowing what is going on in the house.

21 If you go back to the statement, he
22 started to get a few fishing poles, not that he
23 had them in his hand when he showed up at the
24 door. If he had them in his hand, why would he
25 let him in the trailer to start with, why not

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1 just get them and go if that's why they were
2 going over there?

3 Where did the poles go? Well, Mr. Goins
4 put in his own statement that Jordon Canupp
5 asked him to hold onto the poles. He didn't say
6 I didn't keep them. He said Jordon Canupp asked
7 me to hold on to them and I never saw him again.

8 He later told Detective Branham that he
9 may find the poles at his house. He didn't
10 know. To be clear, the poles were never
11 recovered from anywhere including Jordon Canupp,
12 but Brandon Goins, until he hit this stand,
13 never denied having those poles. Because if he
14 actually took possession of the poles, how to
15 make the story not make sense. I submit to you,
16 he took those poles that night. He had them and
17 he was worried he was going to get caught with
18 them, which is why he told Detective Branham
19 that he might find them.

20 Does any of that make sense? I thought I
21 was going through a front door, but really, it
22 was the back door, that I never ended up with
23 the fishing poles, that it was so dark I had no
24 idea what was going on. I didn't know that he
25 was cutting the screens. I didn't know he was

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1 prying open the windows. Does any of that make
2 sense to you? He would have to be, hear no
3 evil, speak no evil, see no evil for that to
4 make sense. I didn't see nothing. I didn't do
5 nothing. I don't know nothing. That's not what
6 happened.

7 So what should you believe? I am going to
8 have you contrast Brandon Goins' version with
9 what I think doesn't make sense in reality. He
10 went to the back door but was confused and
11 thought it was the front door. He thought they
12 had permission to be there. He didn't take
13 anything. They were just going over there in
14 the night for no reason to get fishing rods. It
15 was nighttime. Why would anyone go into
16 someone's house without permission, without them
17 being there, to get fishing rods in the middle
18 of the night when you are drunk, when you are
19 high, to go fishing the next day.

20 This fishing trip that they planned the
21 next day that was so urgent that they had to go
22 get those fishing rods that night when they
23 hadn't planned where they were going, what time
24 they were going to meet up, how they were going
25 to get there, what kind of bait they were going

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1 to use, tackle, what kind of fish they were
2 going to go fishing for. So they had to go get
3 those fishing rods that night because they were
4 planning this fishing trip. That is the dumbest
5 excuse I ever heard, that you need to go into
6 someone's house in the middle of the night. By
7 his own statement, "this is in the middle of the
8 night." That makes no sense.

9 He also did not put in his statement we
10 were talking about fishing. It would make a
11 little bit more sense if he put in statement we
12 were talking about fishing so then we went over
13 and got fishing rods. He said, "we were talking
14 about money." Not fishing. Of all of the
15 things he could put in his statement they were
16 talking about, money. He didn't say they were
17 talking about fishing until he hit the stand
18 after talking about his case with his attorney.

19 How do you mistake the front door for the
20 back door. Even if he was drunk or high at the
21 time when he gave his statement, he was neither
22 of those things. It was light enough where he
23 could see. He may say it was so dark I didn't
24 know where I was. That's just not true because
25 if it was he would not be able to see the other

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1 things he saw.

2 This is the trailer (indicating). This is
3 the door (indicating) that Mr. Goins wants you
4 to believe he thought was the front door that he
5 went through. The driveway doesn't even go
6 there. There is no path there. There is no
7 walkway there. There is these cone things
8 there. The driveway clearly goes toward the
9 front of the house. There is nothing there.
10 There is no reason for him to believe this was a
11 front door.

12 This is a wide shot (indicating). Back
13 here is the trailer Mr. Goins testified --
14 actually, I think Darryl Smith testified was
15 Jordon Canupp's trailer. It is a straight shot
16 from their front door to the front door of
17 Jordon Canupp's trailer. To get around back,
18 which is why we call it around back, you would
19 have to walk around the trailer and go around
20 back.

21 It would make no sense that he would say
22 he went through the back door. But for his
23 story, to make him innocent, to make him not
24 guilty, he would have to get you to believe that
25 he thought this was the front door because the

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1 only door where there was any signs of a break
2 in was the front door. If you believe his
3 statement that he gave before talking to a
4 lawyer, that he went in through the front door,
5 then he knew that the building was being broken
6 into because that's where the evidence of the
7 break in was, the door up front was where they
8 broke in, whoever did it, whether it Jordon
9 Canupp or Brandon Goins, or whoever. It was
10 broken from the front. This door was not messed
11 with at all (indicating). So that's why he
12 wants you all to believe now that he is so
13 simple that he thinks you go past the front
14 entrance, around the driveway, through homes,
15 into a backyard where there is no path and this
16 is the front door. That's not believable.

17 That's also why he wants you to think it
18 was so dark that he didn't know he was in a
19 hallway because none of his story supports that
20 he believes that he was going through the back
21 door. He knew he was at the front because he
22 was at the front. He was there witnessing what
23 was going on, being part of it.

24 He ended up with the fishing rods and he
25 never saw Canupp again. Pretty much what his

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1 statements said. Now, it changed on the stand
2 because if he didn't know what was going on and
3 Jordon Canupp needed to get these rods for
4 whatever reason, because Jordon Canupp needed
5 money, or planned on going fishing the next day,
6 or whatever, why would he end up with them and
7 never see Jordon Canupp again? Because they
8 weren't talking about going fishing as he tried
9 to say today. They were talking about money,
10 both of them, and he needed items from the
11 burglary as well.

12 I already talked about the front doors and
13 one pried open and that's why his story does not
14 make sense. The areas of the home that were
15 disturbed, the stuff is taken from various areas
16 of the home. He doesn't want you to think he
17 went through the front door because that puts
18 him in the home when all this stuff is going on
19 and him knowing. The story about the back door
20 does not make sense. It is not the story that
21 he told when he first gave his statement.

22 You are going to get jury charges from
23 Judge Alford and he will tell you, and I am
24 going to go through all of them. He is going to
25 tell you a lot about the law that you are

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1 required to follow by your oath. Part of it is
2 going to be criminal offenses that Mr. Goins is
3 charged with. It is going to be the law for you
4 to apply to the case. One of those things he is
5 going to talk to you about is reasonable doubt.
6 He is going to say that reasonable doubt would
7 cause a reasonable person to hesitate to act.
8 But what it is also going to tell you is it is
9 not beyond all doubt. You can never be
10 convinced of anything beyond all doubt.

11 Reasonable doubt does not mean you can't
12 get back there and deliberate, that you can't
13 get back there and talk about things, that you
14 can't be completely unconvinced until you think
15 it through and weigh everything that you have
16 heard and think about what makes sense and what
17 doesn't make sense. It doesn't mean you get
18 back there and automatically all 12 of you stick
19 up your hands and say guilty. You are going to
20 have doubts. It is natural for people to have
21 doubts. It has to cause a reasonable person to
22 hesitate to act. It doesn't have to be beyond
23 all doubt.

24 He will talk to you about circumstantial
25 evidence. In this case, there is some direct

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1 evidence of a break in. There is testimony from
2 Darryl Smith of things that he actually observed
3 of things that were stolen. That is direct
4 evidence.

5 There is also circumstantial evidence of
6 Brandon Goins' involvement. There is direct
7 evidence by his own statement, he puts himself
8 there. He puts himself there in the middle of
9 the night. That's direct evidence. The
10 circumstantial evidence is the other things that
11 you have to kind of clue into of the things that
12 don't make sense, that if you compare what he
13 said versus what we know, it doesn't make sense.

14 Hand of one hand of all, Judge Alford will
15 explain to you. If you have two people who are
16 charged with a crime together, and in this case,
17 if Jordon Canupp committed these crimes and
18 Brandon Goins knew what was going on, even if he
19 is not the one that pried the door open, even if
20 he is not the one that rifled through the papers
21 and went through the jewelry box, but knew what
22 was going on, ladies and gentlemen, I submit to
23 you that it doesn't make sense to believe that
24 he didn't know what was going on.

25 If you believe these crimes were committed

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1 and he knew what was going on then he is guilty
2 because in the state of South Carolina the hand
3 of one is the hand of all. Judge Alford is
4 going to talk to you about being merely present.
5 He was not merely present. He knew what was
6 going on. He ended up with the fishing poles.
7 He ended up with goods stolen from this home so
8 even if we don't know how actively he was
9 involved with the break in, the things that were
10 taken, by his own admission he ended up with the
11 fishing rod. That means he was not merely
12 present. By his own admission, they were
13 talking about money beforehand. Whenever they
14 are together, that is not merely present. He
15 knew what was going on. Under the hand of one
16 hand of all, he is just as guilty.

17 The mystery. Where is the mystery in this
18 case? It is hard as a prosecutor to try a case
19 where you don't have a lot of evidence, where
20 you don't have a lot of exhibits, where you
21 don't have physical things to hand the jury. It
22 is very difficult. But there is just not a
23 mystery here. Evidence was not sent to S.L.E.D,
24 yes, that's true, evidence was not sent to
25 S.L.E.D. There are no fingerprints, true.

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1 There is no DNA, true. No pictures, true.

2 Mr. Wellborn's letter that on March 25th
3 he requested these items that were collected,
4 the cigarette butt and the blood swab, be sent
5 to DNA, and he read that letter to you all. I
6 think it says -- this is what he has chosen to
7 present to you. "I have received as of today,
8 March 25, 2014, evidence and inventory sheets,
9 copies of which are attached indicating that on
10 September 7th, 2012, Deputy C.J. Doty took into
11 evidence a partially smoked cigarette." I am
12 not going to read it all. But he has received
13 as of today. So if you just read that letter,
14 like that, you think that's the first time he
15 heard of cigarette butts and blood swabs and he
16 didn't know so he couldn't have requested months
17 ago as opposed to less than a week before the
18 case is scheduled to go to trial to have
19 anything tested. But then Detective Branham
20 said, no, all of that was in his incident report
21 and that incident report was provided to
22 Mr. Wellborn long before the trial and that
23 there was no issue about that in dispute during
24 pre-trial, that there was no issue that he did
25 not receive notice of that discovery. So for

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1 him to give you that letter for in evidence
2 where it seems like he just got this evidence on
3 March 25th is just not true.

4 MR. WELLBORN: Your Honor, I have object
5 at that point as a misstatement of fact that the
6 solicitor is keenly aware of, has personal
7 knowledge, has sent me e-mails verifying, and
8 that is a misstatement of fact, and I would like
9 to take this outside the presence of the jury at
10 this time.

11 THE JUDGE: Overruled. Proceed.

12 MS. SHELTON: Thank you, your Honor.
13 Detective Branham was also asked was Mr. Goins,
14 Mr. Wellborn's client, in addition to this
15 letter presented to give his DNA. Because
16 Detective Branham testified that when you have
17 a known suspect, before S.L.E.D will test your
18 DNA, they have to have a sample from the known
19 suspect. Mr. Wellborn is demanding as of March
20 25th that those items be tested. He didn't
21 bring his client up here. He didn't volunteer
22 his client to say, hey, here get his DNA.

23 Where is the mystery? If we have
24 fingerprints, if we had DNA, would that make
25 Brandon Goins' statement disappear, the fact

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1 that he puts himself there? By the time this
2 case got to me -- as Mr. Wellborn told you, I
3 made the decision not to send the items to
4 S.L.E.D. By the time this case got to me, I
5 had Mr. Goins putting himself there at the
6 burglary. I had him putting himself there in
7 the nighttime. I had him putting himself
8 talking about money just before going into the
9 trailer. I had him putting himself in
10 possession of stolen items for the trailer.

11 There is no mystery. It may or may not be
12 his fingerprints. It may or may not be his DNA.
13 It may or may not be Jordon Canupp's. If it
14 Jordon Canupp's fingerprints, if it is Jordon
15 Canupp's DNA, we are still sitting here. We are
16 still arguing the same case, we are still
17 arguing about this statement because Mr. Goins
18 puts himself there at the scene of this crime.
19 The reasons why he didn't know what was going on
20 doesn't make sense. So there is no mystery.

21 I am going to talk to you about deputy
22 Doty and Deputy Yates. It is a shame that in
23 life we all have our jobs to do. Right now your
24 job is to be a juror and to listen to everything
25 that has been presented to you and make a

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1 decision about this case. My job is being the
2 prosecutor. Mr. Wellborn's job is to be the
3 best advocate for his client that he can be.
4 Back on September 6, 2012, September 7, 2012,
5 Deputy Doty had a job. The reality is Mr. Smith
6 lives in a very humble home. It was reported as
7 an attempted break in and Deputy Doty just flat
8 out did not do his job. Detective Branham would
9 have liked for forensic services to be called
10 in.

11 The reality is, could Deputy Doty have
12 taken pictures? Yes. Could he have called
13 forensic services in to collect evidence? Yes.
14 He did not care enough about this case. He did
15 not care enough about Mr. Smith enough about
16 this home being broken into to do those things,
17 and I freely admit that. I wish I had more
18 things to present to you. He did not do his job
19 for this man.

20 Because he didn't take pictures, because
21 he didn't bother to write in his report whether
22 or not he actually observed the evidence of the
23 break in, because he didn't actually write in
24 his report that he saw evidence of screens being
25 cut, that he didn't take any pictures of those,

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1 that we didn't get fingerprints, does that mean
2 this man's home was not burglarized? Does that
3 mean his things were not taken? Do not punish
4 this victim because Deputy Doty did not do his
5 job.

6 I submit to you the evidence clearly shows
7 that that the home was broken into. If nothing
8 else than Darryl Smith's own testimony his door
9 was broken into, there was other evidence of a
10 burglary. Things were taken. That's what his
11 testimony shows. Do not deny him his justice
12 because of Deputy Doty. He deserved better on
13 September 7th. He deserves better today than to
14 hold that against this case.

15 Your jobs as the jurors is to consider all
16 of the evidence and testimony that was presented
17 to you. You should not consider things that are
18 part of the record. That's not your job. You
19 are only to consider things that are presented
20 to you through the witnesses. You should not
21 make your decisions based on sympathy,
22 prejudice, or passion, because Mr. Wellborn has
23 painted his client to be this not smart person
24 and it should not play on your sympathy. There
25 has been no reason to consider that as a reason

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1 why he is not guilty just because he is not
2 smart. He took an oath to try this case, to
3 deliberate about this case, and to judge him no
4 matter if it is difficult, no matter if you
5 disagree, but you have taken an oath to do your
6 job.

7 I wanted to go back to a comment that
8 Mr. Wellborn made with Detective Brandon when he
9 was talking to him about burglaries. He was
10 asking him about burglaries. Burglaries are
11 this, burglaries are this. Burglaries are a
12 crime of opportunity is what he asked.
13 Detective Branham said some of the times, yes,
14 burglaries are a crime of opportunity.
15 Sometimes burglaries are a crime of opportunity.
16 They don't require prior planning. They don't
17 require knowing whose home. Anybody can look at
18 a driveway, anybody, whether they are familiar
19 with the home or not and see there is no cars
20 there. Anybody can look inside a home, whether
21 they are familiar with the home or not, and see
22 that there are no lights on. Jordon Canupp
23 didn't have any special knowledge about -- you
24 don't have to know what type of cars people
25 drive to know the driveway is empty. You don't

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1 have to know whether or not people leave the
2 front living room light on and sometimes that
3 there are no lights on in the house.

4 From testimony that Mr. Wellborn elicited,
5 burglary can be a crime of opportunity. I
6 suggest to you, ladies and gentlemen, submit to
7 you, that that's exactly what happened in this
8 case. That on that night Mr. Goins is talking
9 about money, needing money. There is an empty
10 trailer right next door, no cars in the
11 driveway, lights are off. You don't need any
12 special knowledge to know that. There is the
13 opportunity to go there in the middle of the
14 night. Committing the burglary and the other
15 crimes are being part of it, knowing what is
16 going on. That Mr. Goins did that and that the
17 rest -- the things that he has said to get out
18 of it make no sense.

19 I have a son who will be four on Saturday,
20 and I will make this very brief. He is very
21 articulate. He talks all of the time. As he
22 has gotten older, when he is caught in something
23 he is trying to figure out now how much do I
24 need to tell her to be telling her the truth but
25 without telling her what is really going to get

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1 me in trouble. That's the game Mr. Goins was
2 playing back into June of 2013, playing the same
3 game my son plays. How much do I tell mom so
4 she doesn't say that's not true but keeps me
5 from like saying the big things that are going
6 to get me in trouble. That's the game he was
7 playing. He didn't know not to say it was in
8 the nighttime. He didn't know not to say that
9 he went through the front door. He didn't know
10 not to say that he ended up with the fishing
11 rods. He knew to say that he thought he had
12 permission to be there. That every way that his
13 story has changed since then, that he went
14 through the back door, that he didn't have the
15 fishing rods, makes no sense. It is because he
16 has since learned that those are the things that
17 can get him in trouble. That's why his story
18 changed. That's why he is guilty. Thank you.

19 THE JUDGE: Mr. Foreman, ladies and
20 gentlemen of the jury panel, that concludes
21 final arguments of counsel. It is now time for
22 me to charge you, that is to instruct you, with
23 regard to the law that applies to the issues in
24 this case.

25 In this case the State charges the

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1 defendant, Brandon Goins, with three offenses.
2 They charge him with burglary first degree.
3 They charge him with grand larceny in an amount
4 over \$2,000, and they charge him with criminal
5 conspiracy.

6 Now, to these charges, the defendant has
7 pled not guilty. I charge you a person charged
8 with committing a criminal offense in South
9 Carolina is never required to prove himself
10 innocent. I charge you that it is a vibrant
11 court rule of law that a defendant in a criminal
12 trial no matter how great or serious may be the
13 offense of which he is charged must always be
14 presumed innocent until his guilt has been
15 proved beyond a reasonable doubt. This
16 presumption of innocence remains with the
17 defendant at all times throughout the trial and
18 is only removed when and if the State has proved
19 guilt beyond a reasonable doubt.

20 Ladies and gentlemen, if you are not
21 clearly convinced of guilt beyond every
22 reasonable doubt to the contrary, to find the
23 defendant not guilty.

24 The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt.

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1 What is a reasonable doubt? Some of you may
2 have served as jurors in civil cases where you
3 were told it is only necessary to prove the fact
4 is more likely true than not; such as, by the
5 greater weight of preponderance of the evidence.
6 However, in criminal cases, the State's proof
7 must be more powerful than that. It must be
8 beyond a reasonable doubt.

9 Ladies and gentlemen, proof beyond a
10 reasonable doubt is proof that leads you firmly
11 convinced of the defendant's guilt. There are
12 very few things in this world that we know with
13 absolute certainty. In criminal cases, the law
14 does not require proof that overcomes every
15 possible doubt.

16 A reasonable doubt may also as I describe
17 is the kind of doubt that would cause a
18 reasonable person to hesitate to act. If you
19 have such a doubt as to the guilt of the
20 defendant then he would be entitled to a verdict
21 of not guilty. Reasonable doubt may arise from
22 evidence which is in the case or from the
23 absence or lack of evidence in the case. If,
24 based on your consideration of the evidence,
25 you're firmly convinced that the defendant is

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1 guilty of the crimes charged, you must find him
2 guilty.

3 On the other hand, if you think there is a
4 real possibility that he is not guilty, you must
5 give him the benefit of the doubt and find him
6 not guilty.

7 You alone must make the determination on
8 whether or not reasonable doubt exists as to the
9 guilt of the defendant.

10 Mr. Foreman, ladies and gentlemen, there
11 are two types of evidence which are generally
12 presented during the trial. There is direct
13 evidence and circumstantial evidence.

14 Direct evidence directly proves the
15 existence of fact and does not require
16 introduction.

17 Circumstantial evidence is proof of a
18 chain facts and circumstances indicating the
19 existence of the fact. Crimes may be proven by
20 circumstantial evidence. The law makes no
21 distinction between the weight or value to be
22 given to either direct or circumstantial
23 evidence. However, to the extent the State
24 relies on circumstantial evidence, all the
25 circumstances must be consistent with each

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1 other, taken together, and point conclusively to
2 the guilt of the accused beyond a reasonable
3 doubt. If these circumstances merely portray
4 the defendant's behavior as suspicious, the
5 proof has failed.

6 The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt.
8 This burden rests with the State regardless of
9 whether the State relies on direct evidence,
10 circumstantial evidence, or some combination of
11 the two.

12 Mr. Foreman, ladies and gentlemen of the
13 jury panel, under the constitution of South
14 Carolina, you are the finders of facts in this
15 case. I do not have the right to pass upon the
16 facts or even to express any opinion I might
17 have as to the facts, nor may I suggest in any
18 way what I may think about the guilt or
19 innocence of the defendant. You should form no
20 opinion in that regard from anything I may have
21 said or any ruling I made during the course
22 course of the trial.

23 Mr. Foreman, ladies and gentlemen of the
24 jury panel, I charge you that when a person is
25 charged with a crime, the law permits the proof

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1 of his good character and reputation because
2 under some circumstances a person might be
3 entitled to a verdict of not guilty in taking
4 into consideration his good character and
5 reputation, and without it, a verdict of guilty
6 might be authorized.

7 Evidence of good character and good
8 reputation may in and of itself create a doubt
9 as to the guilt and should be considered by the
10 jury along with all of the other evidence in
11 determining the guilt or the innocence of the
12 defendant. The weight you should give to that
13 testimony like all other testimony in the case
14 is for you to determine and decide in your own
15 good judgment.

16 Mr. Foreman, ladies and gentlemen, as the
17 sole judges of the facts in this case, you are
18 also necessarily the sole judges of the
19 credibility or believability of each of the
20 witnesses that have testified during the course
21 of the trial. Now, there are a number of
22 factors which you may consider in arriving at
23 your assessment as to a particular witnesses
24 credibility or believability. Some factors I am
25 going to list for you, and should you think of

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1 other factors that you believe also ought to be
2 considered when you go back into your jury room
3 on the question of credibility then you should
4 consider those factors as well. You may
5 consider the demeanor of the witness from the
6 witness stand. What was that witness' manner of
7 appearance? Was the witness straight forward in
8 answering questions or hesitant in responding to
9 questions? Simply put, do you believe the
10 witness is telling the truth or not telling the
11 truth? Do you believe the witness knew of what
12 that witness testified or did not know of what
13 that witness testified?

14 You may consider whether or not the
15 testimony of a witness is consistent or
16 inconsistent with that witness' own testimony or
17 with other testimony or evidence presented
18 during the course of the trial.

19 You may also consider how the witness came
20 to know the facts to which he or she testified.
21 You may consider the opportunity the witness had
22 to observe or hear, that is to perceive the
23 existence of a fact by means of their senses.
24 You may also consider whether or not a witness
25 is biased or prejudiced. That simply means, do

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1 you find that a particular witness had some
2 reason to come into court and testify one way or
3 another to help or hurt one side or the other.
4 You may also consider whether or not the
5 testimony of the witness was strengthened or
6 weakened by other testimony or other evidence
7 presented during the course of the trial.

8 Now, you as the finders of facts in this
9 case, or you as the judges of the credibility or
10 believability of each of witnesses that have
11 testified, may believe as much or as little of
12 what a witness testifies to as you deem
13 appropriate. You may believe all of what a
14 witness says or you may believe none of what a
15 witness says or you may believe only part of
16 what a witness says. You may believe one
17 witness against several, several against one.
18 Whatever your good judgment and common sense
19 tells you is the most believable testimony is
20 the testimony that you should accept and reject
21 that testimony which you find not to be credible
22 or believable.

23 Mr. Foreman, ladies and gentlemen of the
24 jury panel, the same constitution that makes you
25 the finders of the facts makes me the sole and

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1 only instructor in the law. You must accept as
2 correct the law that I charge and apply to the
3 law the evidence as you find it and reach your
4 verdict. Put aside any conceptions you may have
5 had as to the law before coming here today and
6 accept the law as I instruct it to be now in
7 this state.

8 You, for purposes of the duty as jurors
9 today, should not be concerned of what the law
10 ought to be but what I charge you of what the
11 law is in this state.

12 Mr. Foreman, ladies and gentlemen of the
13 jury panel, I charge you with regard to criminal
14 intent. This applies to all of the charges
15 against the defendant in this case.

16 Criminal intent is a necessary element of
17 each crime that must be proved by the State
18 beyond a reasonable doubt. Criminal intent is
19 always a matter that must be determined by the
20 jury from the circumstances surrounding the
21 situation. There is no way to prove intent to a
22 mathematical certainty. There is no way medical
23 science can dissect a person's brain and
24 determine what he had in mind. So the law says
25 that criminal intent may be inferred from the

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1 circumstances shown to be existing. This is how
2 the jury makes the determination whether or not
3 the element requiring intent was present.

4 Criminal intent is a state of mind which
5 operated jointly with an act is the commission
6 of a crime. Criminal intent is a mental state,
7 a conscious wrongdoing. So it is up to you, the
8 jury, to determine what the defendant intended
9 to do based on the circumstances shown to have
10 existed.

11 I tell you that the State must prove
12 criminal intent beyond a reasonable doubt just
13 as the State must prove every element beyond a
14 reasonable doubt. It is not necessary to
15 establish intent by direct and positive
16 evidence, but intent may be established by the
17 inference in the same way as any other fact by
18 taking into consideration the acts of the
19 parties on all of facts and circumstances of the
20 case.

21 While the State may prove motive, it is
22 unnecessary that the State do so, however, the
23 State must prove intent.

24 Mr. Foreman, ladies and gentlemen of the
25 jury panel, I am going to charge you now

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1 specifically with the law with regard to the
2 elements of the offenses of which the defendant
3 is charged in here and in this case. You are
4 not going to have these charges written down for
5 you back in the jury room so you are going to
6 have to call on your collective memories on what
7 I instruct you the law is. Once you begin your
8 deliberations, if you are still not sure about
9 the law or these offenses and you want to be
10 reinstructed on one or more of these charges, I
11 will be glad to bring you back out on your
12 request and give you additional instructions and
13 go back over it with you.

14 What I will ask you to do at this time is
15 listen carefully as I go through these
16 instructions. First, as to burglary in the
17 first degree, under Section 16-11-311 of the
18 Code of Laws of the state of South Carolina,
19 burglary in the first degree is defined as the
20 entering of the dwelling house of another
21 without consent with the intent to commit a
22 crime therein, and as I will define for you,
23 accompanied by one of the following
24 circumstances -- and the only circumstance to be
25 presented to you in this case is that the

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1 defendant entered or remained in the house at
2 night. At common law, the nighttime is that
3 period between the sunset and sunrise during
4 which the face of the person cannot be discerned
5 by the light of the sun.

6 There are four essential elements to the
7 requirement that the defendant did enter into
8 the dwelling house of another without consent
9 with the intent to commit a crime. They are as
10 follows: First, there must be an entering. The
11 State must prove that there was an entering,
12 that is, the defendant actually went inside the
13 house or some part of it. It is not necessary,
14 however, that the entire body enter the house.
15 The smallest entry is sufficient and it may be
16 any part of the body as a hand or foot or even
17 an implement such as a hook or other instrument.
18 No force may be used to gain entry. Therefore,
19 no proof of breaking into the dwelling is
20 required. The entry must be without consent.

21 Aside from the usual and normal
22 understanding of the phrase without consent, the
23 term entry also means to enter a building by
24 using deception, artifice, trick or
25 misrepresentation to gain consent to enter from

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1 the person in lawful possession.

2 Third, the place entered must be a
3 dwelling house. The term dwelling house means
4 any building inhabited by a person or persons in
5 which they customarily sleep. Temporary absence
6 of the inhabitant or inhabitants does not affect
7 the building's character as such, that is, as a
8 dwelling.

9 Fourth, the defendant must have intent to
10 commit a crime. The mere entry into a dwelling
11 house without consent is not a violation of this
12 burglary statute. It is only where there is
13 intent to commit a crime, whether be a felony or
14 misdemeanor, that the crime is complete.

15 Proof of intent necessarily rests on
16 inferences from conduct. A person's actions
17 after he entered the dwelling house may be
18 considered as evidence of his intent in entering
19 the dwelling. It is essential that the
20 felonious intent existed at the time of the
21 entry. It is not sufficient that the felonious
22 intent was formed afterwards.

23 To recap the elements: First element, a
24 person must enter a dwelling. Second, without
25 consent. Third, with intent to commit a crime

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1 therein. And fourth, in this case, the State
2 must prove beyond a reasonable doubt the
3 entering or remaining therein occurs in the
4 nighttime.

5 Let me go back over that because I
6 hesitated there. First element, a person must
7 enter dwelling. Second element, without
8 consent. Third element, with intent to commit
9 crime therein. And fourth, the entering or the
10 remaining therein in the dwelling occurs in the
11 nighttime.

12 Now, Mr. Foreman, ladies and gentlemen of
13 the jury panel, I will instruct you with the
14 offense of grand larceny. Under the theory that
15 the greater offense also includes the lesser
16 offense, I am going to also charge you with
17 regard to petit larceny which is the lesser
18 included offense of grand larceny. I will go
19 over grand larceny first and then petit larceny.

20 Grand larceny is the felonious taking and
21 carrying away by any person of the personal
22 goods or things of another valued at more than
23 \$2,000 with the intent to appropriate them to
24 one's own use and to deprive the owner
25 permanently of this property. There are five

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1 elements that must be present and established
2 beyond a reasonable doubt to constitute or make
3 that the crime of grand larceny. They are as
4 follows:

5 One, there must be a taking. Take to
6 obtain actual custody or control.

7 Two, the taking must be of personal
8 property of another valued at more than \$2,000.

9 Third, after being taken, the property
10 must be carried away and must be asportation,
11 that is a taking away. The asportation of
12 stolen property, which is indispensable element
13 of the offense of larceny, is orderly
14 established by the slightest removal of the
15 property with felonious intent. The taking and
16 carrying away must be accomplished against the
17 will and without the consent of the owner.

18 Finally, fifth, the taking and carrying
19 away of the property must be done with intent to
20 steal. The intent to steal is intent to deprive
21 the true owner of his property in converting it
22 to his own use. Intent is a material element of
23 the offense that must be proved beyond a
24 reasonable doubt.

25 What is petit larceny? I defined grand

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1 larceny. What is petit larceny? Petit larceny
2 is the felonious taking and carrying away by any
3 person of the personal goods or things of
4 another valued at \$2,000 or less with the intent
5 to appropriate them to one's own use and to
6 deprive the owner permanently of his property.

7 I am going to charge you, Mr. Foreman
8 ladies and gentlemen of jury panel, with regard
9 to criminal conspiracy. The crime of conspiracy
10 or criminal conspiracy is a combination between
11 two or more persons for the purpose of
12 accomplishing either a criminal or unlawful
13 object by whatever means, or an object which is
14 neither criminal nor unlawful, by criminal or
15 unlawful means.

16 If two or more persons agree to unite in a
17 common purpose to commit a criminal act, they
18 conspire. A conspiracy is a combination between
19 two or more persons to do an unlawful act or to
20 do a lawful act by criminal or unlawful means.

21 I charge you that there could be no
22 conspiracy when one individual acts by and for
23 himself only. To become a party to a
24 conspiracy, a person must combine with someone
25 else to effect the object of conspiracy by the

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1 means agreed upon. A common design or plan is
2 essential to the charge of conspiracy. To
3 establish conspiracy, it is necessary, first,
4 that an agreement to commit the offense alleged
5 in the indictment be established.

6 What is required for an agreement is a
7 shared, single criminal objective, not just
8 similar or parallel objectives between similarly
9 situated people. What is needed is proof they
10 intended to act together of their shared mutual
11 benefit within the scope of the conspiracy
12 charge.

13 The State must prove further that one or
14 more of the parties engaged in the agreement,
15 committed some act to effect the object of the
16 conspiracy as alleged in the indictment. In
17 this case, it is burglary first degree and grand
18 larceny.

19 Although, the offense of conspiracy may be
20 complete without proof of an overt act, such
21 acts may, nevertheless, be shown since from them
22 an inference may be drawn as to the existence
23 and object of the conspiracy.

24 To constitute conspiracy it is not
25 necessary that two or more persons meet and

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1 enter into an expressed or formal agreement to
2 do an unlawful act, or that they should
3 directly, by words or in writing, unite between
4 themselves as what the unlawful object is to be,
5 or what the details of the plan are, or by what
6 means the unlawful combination is to be made
7 effective. It is sufficient if two or more
8 persons in any manner or through any contrive
9 positively or passively come to a mutual
10 understanding to accomplish a common and
11 unlawful design.

12 In other words, when an unlawful end is
13 sought to be effected and two or more persons
14 get together for the common purpose of
15 accomplishing that end and work together in any
16 way in furtherance of the unlawful scheme, each
17 of those persons become a member of the
18 conspiracy.

19 The success or failure of conspiracy is
20 immaterial. Before any person can be found
21 guilty of the charge of conspiracy, it must
22 appear beyond a reasonable doubt that the
23 conspiracy was formed and that the particular
24 person was an active party to it.

25 Although, the offense of conspiracy may be

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1 committed without proof of overt acts, such acts
2 may, nevertheless, be shown. Here the
3 conspiracy itself constitutes the offense. It
4 must appear from the evidence beyond a
5 reasonable doubt before the defendant may be
6 convicted that he was a party to the conspiracy.

7 The mere fact that the defendant may be
8 engaged in the performance of any the acts
9 charged in the indictment, such as overt acts,
10 is not sufficient evidence to convict him of
11 conspiracy. You may not convict the defendant
12 of conspiracy on that fact alone, but it is
13 necessary to show the defendant was a party to
14 the conspiracy, an unlawful agreement, before he
15 is guilty of conspiracy.

16 The evidence and proof of the conspiracy
17 may be circumstantial. The term overt acts as I
18 have used it means an act committed by one or
19 more of the conspirators as alleged in the
20 indictment.

21 I charge you, ladies and gentlemen, that
22 South Carolina is required to prove all of the
23 material and essential allegations of this
24 charge beyond a reasonable doubt before you can
25 find the defendant guilty of conspiracy.

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1 Mr. Foreman, ladies and gentlemen of the
2 jury panel, I charge you with regard to the
3 legal premise of the hand of one is the hand of
4 all. If a crime is committed by two or more
5 people who are acting together in committing a
6 crime, the act of one is the act of all. A
7 person who joins with another to accomplish an
8 illegal purpose is criminally responsible for
9 everything done by the other person which occurs
10 as a natural consequence of the acts done in
11 carrying out the common plan of purpose. For
12 example, two people can be guilty of killing
13 another person but only one of the two had a
14 gun, there was only one bullet, and only one of
15 the two fired the shot that caused the death.
16 If two or more people are together, acting
17 together, assisting each other in committing the
18 offense, the act of one is the act of all or is
19 sometimes said the hand of one is the hand of
20 all.

21 Prior knowledge that a crime is going to
22 be committed without more is not sufficient to
23 make a person guilty of that crime. Mere
24 knowledge that another person is going to commit
25 a crime, even if the defendant is present when

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1 the crime is committed, is not sufficient to
2 convict the defendant as a principal.

3 Guilt as a principal is shown by actual or
4 constructive presence at the scene as a result
5 of a prior arrangement. Therefore, a finding of
6 a prior arranged plan or common scheme is
7 necessary for the finding of guilt as a
8 principal.

9 The State must prove beyond a reasonable
10 doubt by competent evidence the theory of the
11 hand of one is the hand of all.

12 A principal in a crime is one who either
13 actually commits the crime or who is present,
14 aiding, abetting, or assisting in committing the
15 crime. When a person doesn't act in the
16 presence of or with the assistance of the other,
17 the act is done by both. Where two or more
18 acting with a common plan or intent are present
19 at the commission of the crime, it does not
20 matter who actually commits the crime, all are
21 guilty. The hand of one is the hand of all.

22 Presence at the commission of the crime
23 needs to be sufficient to aid and abet and
24 assist in the commission of crime. However,
25 mere presence at the scene of the crime is not

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1 sufficient to convict one as a principal in the
2 theory of aiding and abetting.

3 Intent is also a necessary element because
4 there must have been a common design or intent
5 to commit the crime and the crime must have been
6 committed pursuant thereto with the person
7 aiding and abetting by some overt act. Intent
8 means intending the result which actually
9 occurs, not accidentally or involuntarily.
10 Intent may be shown by acts and conduct of the
11 defendant and other circumstances from which you
12 may naturally and reasonably infer intent. The
13 State must prove these elements beyond a
14 reasonable doubt.

15 Mr. Foreman, ladies and gentlemen of the
16 jury panel, I charge you with regard to each of
17 these offenses, mere presence is not enough.
18 The defendant cannot be found guilty on any
19 charge solely because he was merely present at
20 the scene of the crime. To be found guilty, a
21 person must personally commit the crime or be
22 present at the scene and intentionally take a
23 role in the commission of the crime.

24 Mr. Foreman, ladies and gentlemen of the
25 panel, I charge you that voluntary intoxication

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1 is never an excuse or a defense to a crime
2 regardless of whether the crime is one involving
3 general or specific intent. A person who
4 voluntarily renders himself intoxicated is no
5 less responsible for his acts while in such
6 condition. If one voluntarily drinks
7 intoxicated liquor or wine or beer or is under
8 the influence of drugs and becomes intoxicated
9 of whatever degree, and if while in that
10 condition commits an act which would be a crime
11 if it had been committed by a sober person, the
12 fact of drunkenness would not relieve the
13 intoxicated person from responsibility.

14 Mr. Foreman, ladies and gentlemen of the
15 jury panel, in this case, as you know, there are
16 three offenses charged against the defendant,
17 burglary first degree, grand larceny, and
18 criminal conspiracy. I charge you that you are
19 to consider the defendant is not be prejudiced
20 by the fact he has three charges against him.
21 You are to consider each charge separately and
22 consider the evidence separately for each
23 offense. Therefore, if the evidence warrants
24 it, you may convict the defendant on all counts
25 or one and not the other, or you can find the

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1 defendant not guilty on all counts. You are to
2 write a verdict of guilty or not guilty to each
3 charge alleged in the indictment. I will go over
4 the verdict forms with you momentarily and
5 explain that a little further.

6 On one of these charges the defendant is
7 charged with grand larceny. The State must
8 prove the elements of grand larceny and they
9 must prove that the amount involved in the
10 larceny was more than \$2,000. If the State
11 should prove the defendant guilty of larceny,
12 but you find the amount involved would be less
13 than \$2,000 then you would consider the lesser
14 included offense of petit larceny which is an
15 amount of \$2,000 or less. So if you have a
16 reasonable doubt as to whether the defendant is
17 guilty of the lesser offense or the greater
18 offense, it is your duty to resolve that doubt
19 in the defendant's favor and find him guilty of
20 the lesser offense. Of course, you would not
21 find him guilty of either the greater or the
22 lesser offense unless you found the State proved
23 the elements of that particular offense beyond a
24 reasonable doubt.

25 Mr. Foreman, ladies and gentlemen of the

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1 jury panel, nothing I may have said or done
2 during the course of this trial has been in any
3 way intended to express or suggest a view of the
4 case or an opinion as to the facts, the weight
5 of the evidence, or the credibility of the
6 witnesses. If any of my actions or words have
7 seemed to so indicate, you are to disregard
8 such, form your own opinion as to these matters.

9 You have been selected as fair and
10 impartial jurors, sworn to impartially try and
11 determine the facts of this case, and when you
12 comply with your oath to do so then no one will
13 have a right to criticize your verdict and you
14 will fully discharge your duties as jurors.

15 You will decide this case according to the
16 testimony you heard from the lips of the sworn
17 witnesses along with other evidence introduced
18 during the course of the trial. I charge you
19 that as jurors you must decide the issue in this
20 proceeding without bias, without prejudice to
21 any party. You cannot allow yourself to be
22 governed by sympathy, by prejudice by passion,
23 by public opinion, or any other arbitrary
24 factor. Both the State and the defendant have
25 the right to expect that each of you will

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1 carefully and impartially consider all of the
2 evidence in the case and you will follow the law
3 as I have explained it to you.

4 Mr. Foreman, ladies and gentlemen of the
5 jury, whatever your verdict in this case, it
6 must be your unanimous verdict. All 12 jurors
7 must agree on the verdict which the foreperson
8 will be authorized to write on behalf of the
9 jury.

10 Mr. Foreman, I charge you that once you
11 begin your deliberations, that you maintain some
12 order in those deliberations, that all who wish
13 to be heard and participate in the deliberations
14 be allowed to do so. If for any reason any
15 members of the jury panel should take a break
16 from deliberating, all should take a break. By
17 that I mean all 12 jurors should be present and
18 deliberating when deliberations are going on.

19 Mr. Foreman, I have prepared for your use
20 in the jury room three verdict forms, a verdict
21 form for each of the charges against the
22 defendant. I am going to go over those with you
23 now.

24 The first one on the verdict form as to
25 larceny. The possible verdicts which appear on

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1 this verdict form reads as follows: First, we
2 the jury find the defendant, Brandon Goins,
3 guilty of grand larceny.

4 The second possible verdict is: We, the
5 jury, find the defendant, Brandon Goins, guilty
6 of the lesser included offense of petit larceny.

7 The third possible verdict which appears
8 on the verdict form reads: We, the jury, find
9 the defendant, Brandon Goins, not guilty.

10 As to criminal conspiracy, there are two
11 possible verdicts: We, the jury, find the
12 defendant, Brandon Goins, guilty of criminal
13 conspiracy. Or, we, the jury, find the
14 defendant, Brandon Goins, not guilty.

15 As to first degree burglary, the possible
16 verdicts are: We, the jury, find the defendant,
17 Brandon Goins, guilty of first degree burglary.
18 Or, we, the jury, find the defendant, Brandon
19 Goins, not guilty.

20 Now, in preparing the verdict forms,
21 Mr. Foreman, ladies and gentlemen, I have to put
22 the possible verdicts on the form in some order.
23 I do it the same way every time. The order in
24 which the possible verdicts appear on the forms
25 means absolutely nothing. You should infer

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1 nothing from it. What you should do,
2 Mr. Foreman, the jury should deliberate and
3 secondly consider each of the offenses against
4 the defendant in this case. Having considered
5 that each of these charges -- as to each charge,
6 when the jury has reached a unanimous verdict,
7 you will go to the verdict form as to that
8 particular charge, put a check mark in the blank
9 by the verdict, unanimous verdict reached by the
10 jury, sign your name on the line above the word
11 foreperson's signature and date it. Once you
12 have done that on all three forms, on all three
13 of these charges, then you will knock on the
14 door and let the bailiff know you have reached a
15 verdict. The bailiff will let me know and I
16 will bring you back out into the courtroom to
17 receive those verdicts.

18 Now, I have to give counsel an opportunity
19 to request additional instructions on the law,
20 and if I deem the additional instructions
21 necessary, I will bring you back out and give
22 you those additional instructions. If no
23 additional instructions are necessary, I will
24 send you by means of the bailiff any exhibits
25 that have been admitted into the record and the

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1 verdict forms and instructions to begin
2 deliberating.

3 Please to do not begin deliberating until
4 you get that instruction. Please retire to the
5 jury room all except the alternate. Ma'am, I
6 would ask you not to go into the jury room but
7 to wait outside the courtroom door for further
8 instructions.

9 (Whereupon, the jury exited the courtroom
10 at 5:48 p.m.)

11 THE JUDGE: Exceptions or additions to the
12 charge?

13 MS. SHELTON: None from the State.

14 THE JUDGE: From the defense?

15 MR. WELLBORN: Yes, your Honor. As part
16 of the conspiracy charge, I request you charge
17 mere fact that the defendant may have associated
18 with another person or met with another person
19 and discussed common names and interest does not
20 establish proof of the existence of the
21 conspiracy.

22 There was no charge in any of your charges
23 regarding mere association, but that is a
24 correct statement of law --

25 THE JUDGE: Let me see what you have.

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1 MR. WELLBORN: I will be glad to bring it
2 up. This actually printed right off the
3 Charleston County Bar --

4 THE JUDGE: I am not interested in taking
5 your computer.

6 MR. WELLBORN: This is what I have. I
7 can show it to you or I can read it, whatever
8 you prefer.

9 THE JUDGE: Counsel, I would like for you
10 to hand me up a charge that you request, and I
11 would like you to do it at the appropriate time,
12 not after I send jury out after I fully
13 instructed them.

14 MR. WELLBORN: Well, your Honor, to be
15 clear, I did request that you charge mere
16 association in reference --

17 THE JUDGE: You asked me to charge
18 conspiracy, and I did. I told you I would
19 charge that.

20 MR. WELLBORN: I did also request a charge
21 on mere association.

22 THE JUDGE: No, you didn't, but I will
23 consider it, nevertheless. That's the advantage
24 of doing it when you are supposed to do it so I
25 can consider it.

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1 MR. WELLBORN: I believe I did. That was
2 the first charge I mentioned.

3 THE JUDGE: Well, I don't think you did.
4 You wanted to know if I was going to charge
5 criminal conspiracy. I said I would do all
6 that. If you can hand it up to me with specific
7 language.

8 MR. WELLBORN: Would you like for me to
9 write that down for you?

10 THE JUDGE: If you don't mind.

11 MR. WELLBORN: Yes, sir. Your Honor, I
12 will show this to opposing counsel.

13 THE JUDGE: Please.

14 MR. WELLBORN: Your Honor, may I approach?

15 THE JUDGE: You may.

16 MR. SPRINGS: We are going to object to
17 part of that. If I may approach, I have
18 Professor Malkovich's book. I will show it to
19 Mr. Wellborn. It has a statement of law in here
20 on mere association. It doesn't get into
21 discussion of common angles and so forth. We
22 ask that you refer to that. That's law. That
23 the case. It is not something somebody dreamed
24 up.

25 THE JUDGE: Did you see this language?

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1 Mere association with another who committed a
2 crime does not make the defendant an accomplice
3 or a coconspirator to the guilty perpetrator.

4 MR. WELLBORN: And that's true, but I
5 would also ask -- I request that we charge the
6 fact that somebody associated with another
7 person --

8 THE JUDGE: Give me the case. Let me see
9 it. All you did was written down a paragraph.
10 I don't know if it was taken out of context or
11 there is more to it.

12 MR. WELLBORN: The case cite I have --

13 THE JUDGE: Give me a copy of the case.

14 MR. WELLBORN: Well, I don't have a copy
15 but I will be glad to bring one up online to
16 show it to you, your Honor. I don't have a copy
17 on hand.

18 THE JUDGE: I am not going to hold your
19 computer up here and charge the jury. Give me
20 the cite. We will have to pull it up ourselves.

21 MR. WELLBORN: Thank you. The cites that
22 are listed on the website of the Charleston
23 County Bar which has this standard jury
24 instruction are State vs. Horn -- H-O-R-N-E,
25 found at 478 S.E.2d 289, Court of Appeals case

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1 in 1196. State vs. Kelsey -- K-E-L-S-E-Y --

2 THE JUDGE: That's the same language he is
3 asking me to charge, State vs. Kelsey.

4 MR. WELLBORN: I will be glad to actually
5 look up the cases because there may be other
6 stuff in there which includes language I am
7 requesting.

8 The State vs. Follin -- F-O-L-L-I-N, 572
9 S.E.2d, Court of Appeals 2002. I will go on
10 Westlaw right now and try to look these up, if
11 you Honor let's me pull these up and print them
12 out.

13 THE JUDGE: Let's pull these up.
14 Meanwhile, we can keep the jury sitting back
15 there just a little longer. They have only been
16 sitting back there five or six hours during this
17 trial while you are trying to get your stuff
18 together.

19 To tell you the truth, I am looking back
20 at this now. This looks like a charge on facts
21 to me. This looks like a charge on facts to me.

22 MR. WELLBORN: Well, arguably the overt
23 acts part of the charge would also be the
24 alleged --

25 THE JUDGE: You charge that every time

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1 there is criminal conspiracy. Overt acts
2 converts to all criminal conspiracy, but that's
3 the legitimate part of it. If you talk about
4 people met, discussed common names and
5 interests, that's what you elicited testimony
6 about your defendant from, that's a fact the
7 jury has to consider in the case. It is not --
8 is that not a charge on the facts?

9 MR. WELLBORN: No, sir, your Honor, not
10 in this case?

11 THE JUDGE: Why not?

12 MR. WELLBORN: Because it is no more a
13 charge on the fact than the fact that the hand
14 of one is the hand of all.

15 THE JUDGE: That's just a general charge.
16 You are talking about here -- you are talking
17 about specific things that your client alleges
18 they carried on conversation about fishing and
19 that sort of thing. That's charge on facts.

20 MR. WELLBORN: My charge is the mere fact
21 that two people associate and discuss common
22 names and interests.

23 THE JUDGE: Yes, common names and
24 interests like fishing and that.

25 MR. WELLBORN: Your Honor, I am not seeing

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1 any expressed language in any of the three cases
2 that were cited on the Charleston County Bar.

3 THE JUDGE: Neither am I.

4 MR. WELLBORN: I want to inform the Court,
5 I would have no objection to the Malkovich
6 language which would clearly be correct.

7 THE JUDGE: That's why I require lawyers
8 when they cite the cases to look at the cases
9 themselves and make sure it applies.
10 Frequently, when you request a charge, unless it
11 comes Anderson's charge book, don't say what
12 cases say --

13 MR. WELLBORN: I apologize.

14 THE JUDGE: We have to look them up to try
15 to make that determination, and I prefer the
16 lawyer to look it up before he hands this up to
17 me. We run into this problem frequently.

18 MR. WELLBORN: That's why I had an entire
19 file on charges which I mentioned I left at the
20 office and requested --

21 THE JUDGE: As I say, you hand me up these
22 charges, if you are going to do it based on case
23 law then you need to look at the case and make
24 sure they say what somebody else thinks they
25 said.

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1 MR. WELLBORN: I would ask for the mere
2 association charge Mr. Springs handed up so the
3 jury panel understands that proposition, which
4 is the proposition in South Carolina Law.

5 THE JUDGE: All right. Bring them back,
6 please.

7 (Whereupon, the jury came into open court
8 at 6:04 p.m.)

9 THE JUDGE: Mr. Foreman, ladies and
10 gentlemen the jury panel, there is one
11 additional request to charge with regard to
12 criminal conspiracy, and I want to give you that
13 additional charge. Remembering the criminal
14 conspiracy charge I gave you, I ask you to also
15 consider this additional instruction: That to
16 convict a person of conspiracy, the State must
17 prove the existence of the conspiracy involving
18 that person. Mere association with another who
19 committed the crime does not make the defendant
20 an accomplice or coconspirator to the guilty
21 perpetrator.

22 Keep that in mind along with the other
23 charge I gave you on criminal conspiracy and you
24 can consider all of it together when you begin
25 your deliberations.

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1 If you will again retire to the jury room
2 and do not begin deliberating until I send you
3 instructions. The alternate, again, please
4 don't go into the jury room.

5 (Whereupon, the jury exited the courtroom
6 at 6:06 p.m.)

7 THE JUDGE: Exception or additional charge
8 from the State?

9 MS. SHELTON: No, sir, your Honor.

10 THE JUDGE: From defense?

11 MR. WELLBORN: No, sir, your Honor.

12 THE JUDGE: Counsel, would you check the
13 exhibits and make sure only those that were
14 actually admitted into evidence go back to the
15 jury and look at the verdict form.

16 (Counsel reviewing exhibits and verdict
17 form.)

18 THE JUDGE: Give that and the exhibits to
19 the bailiff.

20 Also, they have requested a smoke break so
21 you can take them down for a smoke break before
22 they get started, but you can tell them once
23 they get back in from the smoke break to start
24 deliberating.

25 MR. WELLBORN: Your Honor, can my client

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1 remain in the courtroom?

2 THE JUDGE: No, sir.

3 (Whereupon, the jury begins to deliberate
4 at 6:10 p.m.)

5 (Alternate juror entering courtroom at
6 6:10 p.m.)

7 THE JUDGE: Ma'am, I am sorry, as it turns
8 out we made it through the trial with no
9 emergency. It will not be necessary for you to
10 participate in the deliberations. I will excuse
11 you at this time and thank you for your services
12 and sacrifices you made this week and apologize
13 for the delays and inconvenience. Nevertheless,
14 I thank you for your service.

15 I am afraid I will have to ask to you call
16 into the voicemail number tonight at any time
17 after 7 o'clock. You can call later than that,
18 of course. We appreciate your service this
19 week. We are going to order some food for the
20 other jurors. I think they wanted us to. If
21 you want to hang around, you can.

22 ALTERNATE JUROR: I am fine. Thank you.

23 THE JUDGE: You are free to go.

24 (Court in recess at 6:12 p.m.)

25 (Whereupon, Court Exhibit 3 was marked for

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1 identification and received into evidence, this
2 date.)

3 (Court resumes at 8:05 p.m.)

4 THE JUDGE: The jury requested a
5 re-instruction on burglary first degree. So I
6 will bring them back in and go back through the
7 same charge. Please bring the jury in.

8 (Whereupon, the jury came into open court
9 at 8:06 p.m.)

10 THE JUDGE: Mr. Foreman, ladies and
11 gentlemen of the jury panel, I had your note
12 indicating you would like to be re-instructed on
13 the offense of burglary in the first degree so I
14 will recharge it as I did before with regard to
15 that offense.

16 I charge to you that as to burglary first
17 degree, Section 16-11-311 of the Code of Laws of
18 the state of South Carolina, burglary in the
19 first degree is defined as the entering of the
20 dwelling house of another without consent with
21 intent to commit a crime therein, as I already
22 defined for you, accompanied by that defendant
23 entered or remained in the house at night. At
24 common law, the nighttime is that period between
25 sunset and sunrise during which the face of a

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1 person cannot be discerned by the light of the
2 sun.

3 There are four essential elements to the
4 requirement that the defendant did enter into
5 the dwelling house of another without consent
6 with the intent to commit a crime. They are as
7 follows: One, there must be an entering. The
8 State must prove that there was an entering.
9 That is, the defendant actually went inside the
10 house or some part of it. It is not necessary,
11 however, that the entire body enter the house.
12 The smallest entry is sufficient, and it may be
13 any part of the body such as a hand or a foot or
14 even an implement such as hook or other
15 instrument. No force needs to be used to gain
16 entry. Therefore, no proof of breaking into the
17 dwelling is required. The entry must be without
18 consent.

19 Aside from the usual and normal
20 understanding of the phrase without consent, the
21 term entry also means to enter a building by
22 using deception, artifice, trick, or
23 misrepresentation to gain consent to enter from
24 the person in lawful possession.

25 The place entered must be a dwelling

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1 house. The term dwelling house means any
2 building inhabited by a person or persons in
3 which they customarily sleep. Temporary absence
4 of the inhabitant or inhabitants does not affect
5 the building's character as such.

6 The term dwelling also means the living
7 quarters of a building -- I don't know if I
8 charged that to you before so it doesn't apply
9 to this case.

10 The defendant must have an intent to
11 commit a crime. The mere entry into a dwelling
12 house without consent is not a violation of this
13 burglary statute. It is only where there is an
14 intent to commit a crime, whether it be a felony
15 or a misdemeanor, that the crime is complete.

16 Proof of intent necessarily rests on
17 inference from conduct. A person's actions
18 after he entered a dwelling maybe considered as
19 evidence of his intent in entering the dwelling.
20 It is essential that the felonious intent
21 existed at the time of the entry. It is not
22 sufficient that the felonious intent is formed
23 afterwards.

24 To recap the elements, there must be four
25 elements. The first element the person must

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1 enter a dwelling. Two, the second element,
2 without consent. Three, the third element, with
3 intent to commit a crime therein. And the
4 fourth element, the entering or remaining
5 therein occurs in the nighttime. Those are the
6 elements.

7 Is that satisfactory or do you want me
8 read back through it again? That's
9 satisfactory. Ok. Please resume your
10 deliberations.

11 (Whereupon, the jury exits the courtroom
12 at 8:11 p.m.)

13 THE JUDGE: Exceptions?

14 MS. SHELTON: Nothing from the State, your
15 Honor.

16 THE JUDGE: Defense?

17 MR. WELLBORN: No, sir.

18 THE JUDGE: We will be at ease.

19 (Court in recess at 6:23 p.m.)

20 (Whereupon, Court's Exhibit 4 was marked
21 for identification and received into evidence,
22 this date.)

23 (Court resumes at 9:17 p.m.)

24 THE JUDGE: Bring the jury in.

25 (Whereupon, the jury came into open court

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1 at 9:18 p.m.)

2 THE JUDGE: Mr. Foreman, ladies and
3 gentlemen of the jury panel, I have your note
4 asking for re-instruction on the offense of
5 criminal conspiracy. I am going to read and
6 instruct you on that charge now. If you would
7 listen carefully, it is not easy to understand.
8 Please listen carefully as I go through this.

9 The crime of conspiracy is a combination
10 between two or more persons for the purpose of
11 accomplishing either a criminal or unlawful
12 object by whatever means or an object which is
13 neither criminal nor unlawful by criminal or
14 unlawful means.

15 If two or more persons agree to unite in a
16 common purpose to commit a criminal act, they
17 conspire. A conspiracy is a combination between
18 two or more persons to do an unlawful act or to
19 do a lawful act by criminal or unlawful means.

20 I charge you that there can be no
21 conspiracy when one individual acts by and for
22 himself only. To convict a person of
23 conspiracy, the State must prove the existence
24 of the conspiracy involving that person. Mere
25 association with another who committed a crime

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1 does not make the defendant an accomplice or a
2 coconspirator to the guilty perpetrator.

3 To become a party to a conspiracy, a
4 person must combine with someone else to effect
5 the object of conspiracy by the means agreed
6 upon. A common design or plan is essential to
7 the charge of conspiracy. To establish
8 conspiracy, it is necessary, first, that an
9 agreement to commit the offense alleged in the
10 indictment be established.

11 What is required for an agreement is a
12 shared, single criminal objective, not just a
13 similar or parallel objectives between similarly
14 situated people. What is needed is proof they
15 intended to act together for their shared mutual
16 benefit within the scope of the conspiracy
17 charge.

18 The State must prove further that one or
19 more parties engaged in the agreement, committed
20 some act to effect the object of the conspiracy
21 as alleged in the indictment. In this case,
22 burglary first degree and grand larceny.

23 Although, the offense of conspiracy may be
24 complete without proof of overt act, such acts
25 may, nevertheless, be shown. Since from them an

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1 inference may be drawn as to the existence and
2 object of the conspiracy.

3 To constitute a conspiracy, it is not
4 necessary that two or more persons meet and
5 enter into an expressed or formal agreement to
6 do an unlawful act, but if they should directly,
7 by words or in writing, unite between themselves
8 as to what the unlawful object is to be or what
9 the details of the plan are, or by what means
10 the unlawful combination is to be made
11 effective. It is sufficient if two or more
12 persons in any manner or through any contrive
13 positively or passively come to a mutual
14 understanding to accomplish a common unlawful
15 design.

16 In other words, when an unlawful end is
17 sought to be effected and two or more persons
18 get together for a common purpose of
19 accomplishing that end and work together in any
20 way in furtherance of the unlawful scheme, each
21 of those persons becomes a member of the
22 conspiracy.

23 The success or failure of conspiracy is
24 immaterial. Before any person can be found
25 guilty of the charge of conspiracy, it must

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1 appear beyond a reasonable doubt that the
2 conspiracy was formed and that the particular
3 person was an active party to it.

4 Although, the offense of conspiracy may be
5 committed without proof of overt acts, such acts
6 may, nevertheless, be shown. Here, the
7 conspiracy itself constitutes the offense and it
8 must appear from the evidence beyond a
9 reasonable doubt before the defendant may be
10 convicted that he was a party to the conspiracy.

11 The mere fact that the defendant named may
12 be engaged in the performance of any of the acts
13 charged in the indictment, such as overt acts,
14 is not sufficient evidence to convict him of
15 conspiracy. You may not convict the defendant
16 of conspiracy on that fact alone, but it is
17 necessary to show that the defendant was a party
18 to the conspiracy, an unlawful agreement, before
19 he is guilty conspiracy.

20 The evidence and proof of the conspiracy
21 may be circumstantial. The term overt acts as I
22 have used means an act knew by one or more of
23 the conspirators as alleged in the indictment.

24 I charge, you ladies and gentlemen, that
25 the state of South Carolina is required to prove

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1 all of the material and essential allegations of
2 this charge beyond a reasonable doubt before you
3 can find the defendant guilty of conspiracy.

4 I also charge you that mere presence is
5 not enough. The defendant cannot be found
6 guilty on any charge solely because he was
7 merely present at the scene of the crime. To be
8 found guilty, a person must personally commit
9 the crime or be present at the scene and
10 intentionally take a role in the commission of
11 the crime.

12 All right. Mr. Foreman, ladies and
13 gentlemen of the jury, please resume your
14 deliberations.

15 (Whereupon, the jury exited the courtroom
16 at 9:25 p.m.).

17 THE JUDGE: Exception from the State?

18 MS. SHELTON: None from the State.

19 THE JUDGE: Defense?

20 MR. WELLBORN: No, sir.

21 THE JUDGE: At ease.

22 (Court in recess at 9:36 p.m.)

23 (Whereupon, court's Exhibits 5 and 6 were
24 marked for identification and received into
25 evidence.)

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1 (Court resumes at 10:38 p.m.)

2 THE JUDGE: Please bring the jury in.

3 Mr. Foreman, ladies and gentlemen of the
4 jury panel. I had a couple of notes from you.
5 One I responded back to you. I asked that you
6 keep that note. We need that as part of the
7 record at the end. Make sure you hang onto the
8 note and give that to bailiff at the end. We
9 will save that as part of the record. I have
10 your most recent note out indicating you are
11 hung up and not able to get a unanimous verdict.
12 The previous note indicated you reached a
13 verdict on one of the charges but not the other
14 two. Is that still your situation?

15 MR. FOREMAN: Yes, your Honor.

16 THE JUDGE: You indicated you cannot get a
17 verdict on the other two. I need to give you
18 this additional instruction with regard to
19 deliberating on it. I ask you to listen
20 carefully as I go through it.

21 When any matter is in dispute, it is not
22 always easy for even two persons to agree.
23 Therefore, I understand when 12 persons must
24 agree, it becomes much more difficult, but it is
25 important that this case be ended, if it can be

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1 ended, without a single one of you doing
2 violence to your conscience.

3 It is your duty as jurors to consult with
4 one another and to deliberate with a view toward
5 reaching an agreement. If you can do so without
6 violence to your individual judgment, each of
7 you must decide the case for himself or herself
8 but do so only after an impartial consideration
9 of the evidence in the case with your fellow
10 jurors.

11 In the course of your deliberations, do
12 not hesitate to re-examine your own views and
13 change your opinion if convinced that your
14 opinion is not correct. No juror is expected to
15 give up his or her opinion based on reasoning
16 satisfactory to yourself merely for the purpose
17 of being in agreement. I want you to understand
18 that. Do not surrender your honest convictions
19 as to the weight of the effect of the evidence
20 solely because of the opinions of your fellow
21 jurors is contrary to your own opinion or for
22 the mere purpose of returning your verdict. It
23 has never been intended that the verdict of the
24 jury should be the verdict of any one person.
25 On the other hand, the verdict of the jury is

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1 the collective reasoning of all persons put
2 together.

3 The reason we have a jury is that so we
4 might have the benefit of the collective thought
5 and collective reasoning of the jury. It may
6 help to tell the other jurors how you feel about
7 the case and why you think as you do, and I am
8 sure you have been doing that.

9 On the other hand, it may help if the
10 other jurors exchange views with you. I ask
11 that you listen to each other and give the
12 others' thoughts such meanings as you think they
13 should have.

14 A mistrial of a case is a very unfortunate
15 thing. If you as a jury do not agree on a
16 verdict it doesn't mean that the case is over.
17 It just means that at some future time in
18 another term of court before me or some other
19 judge that some other jury will sit where you
20 are. In the trial of that case, the same
21 participants will come, the same lawyers will
22 probably come, and they will basically ask the
23 same questions, and presumably, will probably
24 get the same answers. We will go through the
25 entire process again. I have no reason to

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1 believe that any other 12 jurors from York
2 County will represent more of the cross section
3 of the county to be more intelligent or to be
4 more capable of deciding this matter than you
5 are, and one day this matter will have to be
6 decided.

7 I am now going to ask you, again, to
8 retire to the jury room to make one further
9 attempt to deliberate and see if you can reach a
10 unanimous verdict in this case.

11 Let me close by reminding you, again, that
12 while it is important that this case be ended,
13 it should be ended in a form of verdict without
14 any juror doing violence to his or her own
15 conscience. No juror is to expected to give up
16 an opinion based on a reasoning satisfactory to
17 himself or herself merely for the purpose of
18 being in an agreement.

19 With these added instructions, I am going
20 to ask you to retire back to the jury room and
21 make another attempt at deliberations and see if
22 you can reach a verdict. You might try just
23 kind of starting over from fresh and discussing
24 it and see if you can reach an unanimous
25 verdict.

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1 If you fully decide that you are not going
2 to be able to reach a verdict after you make a
3 sincere effort to try to reach an unanimous
4 verdict and you cannot do that, and you are
5 satisfied that no more progress can be made and
6 you are not going to be able to get a verdict,
7 you can send me another note.

8 Thank you. Please retire to the jury room
9 and resume your deliberations.

10 (Whereupon, the jury exited the courtroom
11 at 10:45 p.m.)

12 THE JUDGE: Exceptions from the State?

13 MS. SHELTON: Not from the State.

14 THE JUDGE: From the defendant?

15 MR. WELLBORN: No, sir.

16 (Court in recess at 10:46 p.m.)

17 (Whereupon, Court's Exhibit 7 was marked
18 for identification and received into evidence.)

19 (Court resumes at 11:47 p.m.)

20 THE JUDGE: I have a note from the jury
21 that indicates they have reached a verdict now
22 on two of the charges and they need to be
23 recharged on the other charge of first degree
24 burglary. I will bring them back and recharge
25 them on that. I will tell you that the note

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1 says: "On the charge of first degree burglary,
2 can you further explain intent and permission."
3 So what I am going to do is charge them on
4 burglary first degree again and then I will see
5 if they want any more than that after I charge
6 them.

7 Please bring them in.

8 (Whereupon, the jury came into open court
9 at 11:49 p.m.)

10 THE JUDGE: Mr. Foreman, ladies and
11 gentlemen of the jury panel, I have your note
12 indicating you have made some progress in
13 deliberations and you are requesting that I
14 instruct you again with regard to first degree
15 burglary and explain intent and permission.

16 I am not sure exactly what you mean on
17 that so let me do this: I am going to recharge
18 you on burglary first degree. I know I did that
19 before. I am going to do that again. Sometimes
20 hearing it the second or third time makes a
21 difference. If you would listen carefully to
22 that. Then if you want me to go back over
23 criminal intent charge, I can do that, but I
24 will charge you this and then I will then
25 inquire of you, and then you asked about

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1 permission. If you will listen to the charge
2 then if you have any question about it, may be
3 you can ask me at that point. I will see if I
4 can make sure of what you are asking. Listen
5 now carefully as I go through the charge again
6 of burglary first degree.

7 Under Section 16-11-311 of the Code of
8 Laws of the state of South Carolina, burglary in
9 the first degree is defined as the entering of
10 the dwelling house of another without consent
11 with the intent to commit a crime therein. As I
12 will define for you at this time -- let me start
13 over. That would only confuse you.

14 Burglary in the first degree is defined as
15 the entering of a dwelling house of another
16 without consent with the intent to commit a
17 crime therein and the defendant entered or
18 remained in the house at night. At common law,
19 the nighttime is that period between sunset and
20 sunrise during which the face of a person cannot
21 be discerned by the light of the sun.

22 There are four essential elements to the
23 requirement that the defendant did enter into
24 the dwelling house of another without consent
25 with the intent to commit a crime. They are as

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1 follows: There must be an entering. The State
2 must prove there was an entering. That is, the
3 defendant actually went inside the house or some
4 part of it. It is not necessary, however, that
5 the entire body enter the house. The smallest
6 entry is sufficient, and it may be any part of
7 the body as a hand, a foot, or even an implement
8 such as a hook or other instrument. No force
9 needs to be used to gain entry. Therefore, no
10 proof of breaking into the dwelling is required.
11 The entry must be without consent.

12 Aside from the usual and normal
13 understanding of the phrase without consent, the
14 term entry also means, and I don't know that it
15 applies in the case at all and I hope this
16 doesn't confuse you, but the term entry also
17 means to enter a building by using deception,
18 artifice, trick or misrepresentation to gain
19 consent to enter from the person in lawful
20 possession. In other words, if the person in
21 lawful possession gives consent and they are
22 tricked through some artifice or deception to
23 let somebody in, that would still be without
24 consent.

25 The place entered must be a dwelling

1 house. The term dwelling house means any
2 building inhabited by a person or persons in
3 which they customarily sleep. Temporary absence
4 of the inhabitant or inhabitants does not affect
5 the building's character as such. That is a
6 dwelling house.

7 The defendant must have an intent to
8 commit a crime. The mere entry into a dwelling
9 house without consent is not a violation of the
10 burglary statute. It is only where there is an
11 intent to commit a crime, whether it be a felony
12 or a misdemeanor, that the crime is complete.

13 Proof of intent necessarily rests on
14 inference from conduct. A person's actions
15 after he entered the dwelling may be considered
16 as evidence of his intent in entering the
17 dwelling. It is essential that the felonious
18 intent exist at the time of the entry. It is
19 not sufficient that the felonious intent is
20 formed afterwards.

21 To recap the elements, there must be
22 four elements. The first, the person must enter
23 a dwelling. Second, without consent. Third,
24 with intent to commit a crime therein. And
25 fourth, the entering of the remaining therein

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1 must occur in the nighttime.

2 Does that meet what you are requesting or
3 is there something else you want me to charge
4 you? I am not sure based on your note. You
5 indicate, explain intent and permission.

6 MR. FOREMAN: I believe you covered it,
7 your Honor. I think we needed to hear it again.

8 THE JUDGE: All right, sir. Well, please
9 return back to the jury room and deliberate and
10 see if you can reach a verdict.

11 (Whereupon, the jury exited the courtroom
12 at 11:57 p.m.)

13 THE JUDGE: Any exception to the charges
14 from the State?

15 MS. SHELTON: No, sir, your Honor.

16 THE JUDGE: From the defense?

17 MR. WELLBORN: No, sir.

18 THE JUDGE: All right. Be at ease.

19 (Court in recess at 11:58 p.m.)

20 (Whereupon, Court Exhibit 8 was marked for
21 identification and received into evidence.)

22 (Court resumes at 12:54 a.m.)

23 THE JUDGE: Counsel, I have a note from
24 the jury. They have a verdict on two of the
25 charges, the larceny, we don't know whether it

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1 is grand or petit larceny, and the criminal
2 conspiracy charge. They are not able to reach a
3 verdict on the burglary first degree charge. As
4 far as that one goes, if they are not able to
5 get a verdict on that, there will be a mistrial
6 on that charge and you will have to retry that
7 one.

8 Please bring the jury in.

9 (Whereupon, the jury came into court at
10 12:56 a.m.)

11 THE JUDGE: Mr. Foreman, ladies and
12 gentlemen of the jury panel, I have your last
13 note that you just sent out in which you
14 indicate you were able to reach an unanimous
15 verdict on two of the charges being the criminal
16 conspiracy and the larceny charge, but you were
17 unable and absolutely sure you are not able to
18 get a verdict on the burglary first degree
19 charge; is that correct?

20 MR. FOREMAN: Yes, your Honor.

21 THE JUDGE: If you would hand up the
22 verdict forms to the bailiff. If the Clerk will
23 please publish these.

24 THE CLERK: On Indictment 2014-GS-46-0434,
25 the State of South Carolina vs. Brandon Goins,

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1 for criminal conspiracy we, the jury, find the
2 defendant, Brandon Goins, guilty of criminal
3 conspiracy. Signed by the foreperson, this
4 date.

5 On 2014-GS-46-00433, larceny, we, the
6 jury, find the defendant, Brandon Goins, guilty
7 of the lesser included offense of petit larceny,
8 signed by the foreperson this day.

9 If this so be your verdict so say you all
10 by raising your right hand.

11 Let the record show all replied.

12 THE JUDGE: Any questions of the jury
13 panel from the State?

14 MS. SHELTON: No, sir, your Honor.

15 THE JUDGE: From the defense?

16 MR. WELLBORN: No, sir. Thank you.

17 THE JUDGE: Mr. Foreman, ladies and
18 gentlemen of the jury panel, this will conclude
19 your service on this particular case.

20 Do we know what to tell them about the
21 rest of the week? We are going to ask you to
22 please call into your voicemail number tomorrow
23 at 1 o'clock, around 1 o'clock, and some
24 decision will be made. I know there is another
25 trial planned, at least one other trial planned.

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1 I am not sure when that is going to start and I
2 am not sure you will be needed for that. If you
3 will call in at 1 o'clock you will get
4 instructions as to when you need to come back or
5 if you need to come back.

6 Thank you for your service thus far this
7 week. I appreciate your hard work on this case.
8 I know you did deliberate for quite a while on
9 this. These are not easy things to make
10 decisions on. I instructed the jury when I
11 qualified you downstairs that you will see how
12 important the jury is to our justice system once
13 you serve as a juror. I think you will
14 understand what a difficult job it is and what
15 an important job it is that you do. We
16 appreciate your service and sacrifices you made
17 this week. We don't take that for granted. You
18 are free to go at this time. We will get
19 somebody to go to the parking lot, to be out
20 there the parking lot, when you go down because
21 it is about 1 o'clock in the morning. It is
22 dark out there. Somebody will go down and
23 accompany you.

24 We need the foreperson, if you would,
25 please. The rest of you are free to go at this

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1 time.

2 (Whereupon, the jury exited at 1:01 a.m.)

3 THE JUDGE: If you would come and sign the
4 back of the two indictments.

5 (Whereupon, the foreperson exited at 1:02
6 a.m.)

7 MS. SHELTON: Your Honor, the State
8 doesn't intend to retry the burglary first
9 charge. I don't know where that leads us as far
10 as a bond. I think at this point, the bond has
11 been satisfied. I think we need to set a new
12 bond. I think he would need to be held until
13 that bond is met.

14 MR. WELLBORN: Your Honor, I request that,
15 obviously, the first order of business would be
16 sentencing.

17 THE JUDGE: I am considering perhaps
18 deferring sentencing at this point. I think
19 what I would like to do is maybe defer
20 sentencing perhaps until say Friday morning, if
21 you will be available Friday morning. Maybe, in
22 the meantime, you can work something out on
23 this. If not, then we could take up sentencing
24 then. I think that is what I would like to do.

25 I think you are quite right, we are going

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1 to have to do the bond. The bond is up. The
2 case has been tried and sober. He has no bond.
3 That charge is still pending and we are not able
4 to get a verdict on it. What bond was he in on
5 before.

6 MR. WELLBORN: \$65,000 for all of the
7 charges.

8 THE JUDGE: How much was on the burglary
9 charge.

10 MS. SHELTON: I didn't bring my trial
11 notes.

12 THE JUDGE: It had to be broken down.
13 That way it will give you a chance, if you are
14 inclined to do so, try to work something out.
15 If you can't do that, I would like to have a
16 resolution of the burglary charge.

17 MR. WELLBORN: Understood. That might
18 take a while depending on how the State wants to
19 present the burglary charge. There is going to
20 be a legal question of whether they can use the
21 convictions of these charges to impeach, and
22 that's going to be to some extent, perhaps,
23 answerable, and it may create a real mess if we
24 cannot work it out and he appeals the conviction
25 on these two charges because hypothetically --

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1 THE JUDGE: I think they can still impeach
2 him even if he files an appeal.

3 MR. WELLBORN: Understood. Then should
4 he win the appeal and those were used to
5 impeach, that would create a later problem in
6 the burglary charge should he be convicted of
7 that.

8 THE JUDGE: We have to go by the laws. I
9 know the case law says that once he is
10 convicted, even on appeal you can use that to
11 impeach.

12 MR. WELLBORN: Understood. In terms of
13 down the road, it may create a mess. Probably
14 both the State and Mr. Goins will have a very
15 good reason to see if we can come to terms at
16 this point and come to an agreement on the
17 charges.

18 THE JUDGE: I think there are a lot of
19 reasons -- not a lot of reasons, but I think
20 there are two or three good reasons on both
21 sides why you might want to try to work
22 something out. I can make some suggestions, if
23 you want me to, and get together and talk about
24 that, what you might consider. It is not up to
25 me. None of it is up to me. But if you want to

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1 talk about it and talk to me about it, you can.

2 THE CLERK: It was 50 on that charge
3 alone.

4 MR. WELLBORN: I would ask your Honor to
5 consider something less than 50. Clearly, he is
6 not a flight risk. He has been here for the
7 trial and on all previous appearances. I can't
8 count how many times he and his parents met with
9 me in my office.

10 THE JUDGE: I think I can take that into
11 consideration in setting bond today. He has
12 been here when he is supposed to be here. The
13 fact that you represent him makes a big
14 difference because I know you are going to get
15 him here. I will set the bond at \$25,000. I
16 think that's adequate under the circumstances
17 and he can get out when he posts that bond.

18 Meanwhile, we will do the first sentencing
19 on Friday. If you can work anything out, we can
20 do that with the sentencing on Friday. If it is
21 possible, I would like to do it all at once
22 instead of doing it piecemeal.

23 If you want to talk to me about it, have
24 suggestions of how to work it out, any
25 suggestions, but the total decision is up to the

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1 two of you, you and your client.

2 MR. WELLBORN: I don't know how much
3 leeway, to be fair to Ms. Shelton, she has in
4 terms of office policy.

5 MS. SHELTON: At this point, the case is
6 tried so we are not in the position to make plea
7 offers. Based on my position, on the case from
8 the beginning and how strong the victim felt
9 about the case, I was never in a position where
10 I feel probation is an offer. I will still feel
11 that way. I would do something to plead
12 straight up and leave it up to the Court's
13 discretion, but I will not offer probation.

14 THE JUDGE: I would not expect you to
15 offer probation when he has turned down
16 something better than that before, in my
17 opinion. But in any event, there is still some
18 room that it appears to me because he is 19 and
19 the possibility of expungement down the road,
20 you know. You do whatever you want to. I will
21 let you work on it. If you want to talk to me
22 about it, but I would encourage you to do that.
23 On Friday morning, if we cannot get the thing
24 resolved, we can go ahead with the sentencing.

25 MS. SHELTON: Your Honor, I know what my

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1 position would be. The Court, I think, is
2 quietly suggesting a YOA and I would not be
3 opposed to that. The counter offer -- and my
4 second offer to Drug Court was a six year offer,
5 which he would have had to serve three years on
6 the YOA, and he would have to serve three years
7 because of the burglary charge. I am not
8 opposed to that. I want it to be clear,
9 Mr. Wellborn asked for probation earlier this
10 week, and I was not in a position at that time
11 for probation and will not offer probation.

12 THE JUDGE: If I can understand what you
13 are saying about the YOA, serve three years?

14 MS. SHELTON: If it is the burglary second
15 plea, he has to do the three years.

16 THE JUDGE: Burglary second. Okay. We
17 will see what you can do. I will talk to you on
18 Friday. I will go ahead and have sentencing
19 Friday morning. Thank you.

20 (Whereupon, the above-titled case was
21 concluded at 1:26 a.m.)
22
23
24
25

C E R T I F I C A T I O N

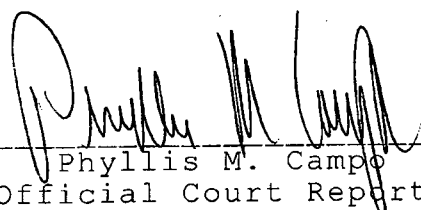
STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

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

September 23, 2014



Phyllis M. Campo
Official Court Reporter

1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF YORK

3 _____
4 State of South Carolina, Transcript of Record

5 vs.

2014-GS-46-00432-00434

6 Brandon Goins,

Volume IV

7 Defendant.
8 _____

9 Date: April 4, 2014

10
11 BEFORE: The Honorable Lee Alford

12
13
14 APPEARANCES:

15 Misti Shelton, Esq.,
16 Assistant Solicitor.

17 Christopher Wellborn, Esq.,
18 Attorney for Defendant

19
20 Phyllis M. Campo, RPR
21 Court Reporter.
22
23
24
25

INDEX

(NO WITNESSES)

(NO EXHIBITS INTRODUCED)

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SC VS. BRANDON GOINS - SENTENCING

1 THE JUDGE: Solicitor.

2 MS. SHELTON: May it please the Court,
3 your Honor. This is the State versus Brandon
4 Goins. He was before your Honor this week in a
5 trial where the jury returned a verdict of
6 guilty on criminal conspiracy. That conspiracy
7 was based on the burglary per the indictment.
8 They also found him guilty of petit larceny.

9 He is pleading guilty today of a burglary
10 second, violent. The recommendation from the
11 State is for youthful offender sentence. We
12 also ask the Court to order restitution in the
13 amount provided in the restitution order of over
14 \$5,000.

15 The victim is here and present in the
16 courtroom and they wish to address the Court.

17 THE JUDGE: Approach please.

18 (Whereupon, an off the record discussion
19 was held off the record at the bench.)

20 THE JUDGE: For the record, you are
21 Brandon Lee Goins; is that right?

22 THE DEFENDANT: Yes, sir.

23 THE JUDGE: How old are you, Mr. Goins?

24 THE DEFENDANT: Nineteen.

25 THE JUDGE: How far did you go in school?

SC VS. BRANDON GOINS - SENTENCING

1 THE DEFENDANT: Ninth grade, sir.

2 THE JUDGE: What do you do for job or
3 occupation?

4 THE DEFENDANT: Welding.

5 THE JUDGE: Are you married, sir?

6 THE DEFENDANT: No, sir.

7 THE JUDGE: Do you have any children?

8 THE DEFENDANT: No, sir.

9 THE JUDGE: Did you serve any time in jail
10 on these charges?

11 THE DEFENDANT: Six months, sir.

12 THE JUDGE: Mr. Goins, you are charged
13 today with burglary in the second degree,
14 violent, which offense is classified as a
15 felony. It carries a maximum punishment of 15
16 years. It is classified as a violent offense.

17 It is also classified as a serious
18 offense. The importance of the serious offense
19 classification is should you get three serious
20 offenses on your record or a combination of
21 three serious and most serious offenses on your
22 record, upon receiving the third such offense,
23 you could get a sentence of life without parole,
24 the so-called three strike rule. This offense
25 would classify as one of those three strikes.

SC VS. BRANDON GOINS - SENTENCING

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE JUDGE: Understanding that, how do you
4 wish to plead to this charge today, guilty or
5 not guilty?

6 THE DEFENDANT: Guilty.

7 THE JUDGE: Do you understand by pleading
8 guilty, you give up your right to right to
9 remain silent?

10 THE DEFENDANT: Yes, sir.

11 THE JUDGE: Do you understand by pleading
12 guilty, you give up your right to trial by jury?

13 THE DEFENDANT: Yes, sir.

14 THE JUDGE: If you give up your right to
15 trial by jury, you also give up your right to
16 assert any legal defenses you might have in a
17 jury trial.

18 THE DEFENDANT: Yes, sir.

19 THE JUDGE: Now, I know we have gone
20 through a jury trial on this, and as to the
21 burglary charge, we had a hung jury on that.
22 You have seen it. Nevertheless, I will advise
23 you about it. At a trial, you have the right
24 confront and cross examine all witnesses against
25 you. You have the right to present any

SC VS. BRANDON GOINS - SENTENCING

1 witnesses or evidence in your own defense. You
2 have the right to testify in your own defense if
3 you wished to do so, and no one can make you
4 testify in your own trial. If you decide to go
5 to trial and not testify, the judge will tell
6 the jury they can not hold your failure to
7 testify against you. In fact, the jury couldn't
8 even consider your failure to testify in their
9 deliberations of your guilt or innocence.

10 You are presumed innocent throughout your
11 trial and the State would have to prove your
12 guilt beyond a reasonable doubt to a jury of 12
13 people. All 12 people would have to unanimously
14 agree you were guilty in order to be convicted.
15 Even if you were convicted, you would have the
16 right to appeal that conviction.

17 Do you understand your rights with regard
18 to trial by jury?

19 THE DEFENDANT: Yes, sir.

20 THE JUDGE: Understanding that, do you
21 still want to plead guilty, or do you want me to
22 set your case for trial?

23 THE DEFENDANT: Guilty, sir.

24 THE JUDGE: The State is recommending a
25 Youthful Offender Act sentence on this charge.

SC VS. BRANDON GOINS - SENTENCING

1 Of course, they have agreed to reduce the
2 burglary first to a burglary second, violent,
3 and they are recommending Youthful Offender Act
4 sentence which would include restitution in the
5 amount of \$5,172.63. That will be joint and
6 several with the codefendant.

7 Is that your understanding of the
8 agreement you have with the solicitor's office
9 in order to plead guilty to this charge?

10 THE DEFENDANT: Yes, sir.

11 THE JUDGE: Has anyone promised you
12 anything other than that in order to get to you
13 plead guilty?

14 THE DEFENDANT: Say what, sir?

15 THE JUDGE: Did anyone promise you
16 anything other than that in order to get you to
17 plead guilty?

18 THE DEFENDANT: No, sir.

19 THE JUDGE: Are you satisfied with the
20 manner in which your attorney has advised and
21 represented you in this case?

22 THE DEFENDANT: Say what?

23 THE JUDGE: Are you satisfied with the
24 manner in which your attorney has advised and
25 represented you in this case?

SC VS. BRANDON GOINS - SENTENCING

1 THE DEFENDANT: Yes, sir.

2 THE JUDGE: Are you today under the
3 influence of any mind-altering substance such as
4 alcohol, drugs, prescription medications, which
5 would interfere with your judgment or ability to
6 understand what you are doing in court?

7 THE DEFENDANT: No, sir.

8 THE JUDGE: Do you any mental, emotional,
9 or nervous condition that interferes with your
10 judgment or ability to understand what you are
11 doing in court?

12 THE DEFENDANT: No, sir.

13 THE JUDGE: Are you pleading guilty today
14 of your own free will?

15 THE DEFENDANT: Yes, sir.

16 THE JUDGE: Are you, in fact, guilty of
17 this charge?

18 THE DEFENDANT: Yes, sir.

19 THE JUDGE: I know the facts, but because
20 we are on the plea, you might want to put it on
21 the record.

22 MS. SHELTON: Very briefly, your Honor.
23 The burglary occurred in the evening hours of
24 September 6th of 2012. The facts state that
25 Mr. Goins was present when Jordon Canupp pried

SC VS. BRANDON GOINS - SENTENCING

1 open the front door of Daryl Smith's trailer
2 located in York County at [REDACTED]
3 in Rock Hill. Mr. Goins was present and was
4 aware that they were going to break into the
5 trailer, and once inside, Mr. Goins was part of
6 stealing several items from inside and committed
7 the burglary there.

8 THE JUDGE: Mr. Goins, you heard the facts
9 recited to the Court by the solicitor's office,
10 do you disagree in anyway with what they say
11 happened?

12 THE DEFENDANT: No, sir.

13 THE JUDGE: I find the decision of the
14 defendant, Brandon Lee Goins, to plead guilty to
15 this charge be made freely, voluntarily, and
16 intelligently. He has the representation of
17 competent attorney with whom he says he is
18 satisfied. I find the facts presented to the
19 Court by the solicitor's office concurred in by
20 the defendant fully support the guilty plea in
21 this case. I accept the plea as freely and
22 voluntarily made.

23 Mr. Goins, if you disagree with the
24 proceeding in which you are currently involved,
25 you have ten days from today's date from then

SC. VS. BRANDON GOINS - SENTENCING

1 which to file a notice of intent to appeal. Do
2 you understand your right to appeal today's
3 proceeding?

4 THE DEFENDANT: Yes, sir.

5 THE JUDGE: Counselor.

6 MR. WELLBORN: Thank you, your Honor. I
7 know your Honor paid careful attention
8 throughout the three days of trial. You heard
9 extensive testimony from my client. There was
10 testimony regarding his background where he
11 lives, where he works, and all of that. So I
12 will not go into that again. I would ask -- a
13 couple things I would point out. When this
14 event took place, Brandon was 17 years old. He
15 is now 19. So two years have passed already.

16 I would ask your Honor to run the
17 sentences on the conspiracy charge and the petit
18 larceny as concurrent YOA sentences because at
19 some point Brandon is going to be 30 or 40 or
20 50, and hopefully, will have a chance at a
21 future to be productive.

22 One thing in support of that is I would
23 say since September 6th, 2012, there is no
24 indication that Brandon has done anything that
25 would create a problem to society. He seems to

SC VS. BRANDON GOINS - SENTENCING

1 be productive. He is working his dad and living
2 with family so there is no reason to believe
3 that after serving the YOA sentence that would
4 also not be the case.

5 For all of those reasons, I would request
6 the conspiracy charge and the petit larceny
7 charge that he is yet to be sentenced be
8 concurrent YOA sentences along with the YOA
9 burglary second charge.

10 THE JUDGE: Thank you. Let me hear from
11 the victim.

12 MS. SHELTON: Yes, your Honor. Before we
13 do that, for the record, it is the State's
14 understanding pursuant to current law on this
15 youthful offender sentence, Mr. Goins would have
16 to serve three years. That was what was
17 discussed with the victim and that is a
18 recommendation that he feels comfortable with.

19 Let me see if he wants to speak, your
20 Honor.

21 Your Honor, he wanted the Court to know he
22 is present in the courtroom.

23 THE JUDGE: All right. We heard from him
24 during the trial as well so I am aware.

25 Mr. Goins, is there anything you wish to

SC VS. BRANDON GOINS - SENTENCING

1 say to the Court?

2 THE DEFENDANT: No, sir. What is
3 Mr. Smith's first name?

4 MS. SHELTON: Darryl.

5 THE JUDGE: On Case Number
6 2014-GS-46-432, Brandon Lee Goins having pled
7 guilty to burglary second degree, violent. The
8 sentence of the Court is to be committed under
9 the Youthful Offender Act for a period not to
10 exceed six years. His sentence is concurrent.
11 He is given credit for jail time served.
12 Special conditions of his YOA parole, he has to
13 make restitution in the amount of \$5,172.63,
14 again, while he is on YOA parole, to Darryl
15 Smith and this would be joint and several with
16 the codefendant. So whatever the codefendant
17 pays, he will get credit for that as well.

18 In Case Number 2014-GS-46-434, Brandon Lee
19 Goins, having been found guilty by a jury of
20 criminal conspiracy, the sentence of the Court
21 is that he be committed under Youthful Offender
22 Act for a period not to exceed five years. His
23 sentence is concurrent. Again, credit for time
24 served.

25 Case Number 2014-GS-46-433, Brandon Lee

SC VS. BRANDON GOINS - SENTENCING

1 Goins, having been found guilty by jury trial of
2 petit larceny, the sentence of the Court is to
3 be committed under the Youthful Offender Act for
4 a period not to exceed 30 days concurrent,
5 credit for time served.

6 MR. WELLBORN: Thank you, your Honor.

7 (Whereupon, the above-entitled matter was
8 concluded.)
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C E R T I F I C A T I O N

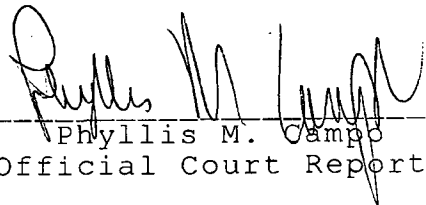
STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Phyllis M. Campo, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings at the time and place herein in the above-entitled matter.

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

September 23, 2014



Phyllis M. Campo
Official Court Reporter

Name: HAARUUT, SUTU

DCE:

Phong //

Address:

Phone #

City: Rock Hill

Statē:

Zip:

YORK COUNTY SHERIFF'S OFFICE

Incident Report No: 2013-30453

Voluntary Statement:

VOLUNTARY STATEMENT

I, Brandon Goins, know and understand my rights. Having decided to answer questions at this time, I now make the following statement.

- 1) on Sept, 2012 me and Jordan was intoxicated
2) and got to talking about money, after ~~said~~^{more by} Jordan
3) said he had a few things at his uncles house.
4) we then walked down and went to the front
5) door it was locked, so Jordan went in from the
6) back and let me in the front he began to get
7) a few fishing rods and a gold necklace, and
8) said "This should be good" and we then got
9) in his car and took me home. he told me
10) to hold the fishing rods until tomorrow,
11) and I never saw him again, after that night.

13) It was in the middle of the night.

The statement above, consisting of 1 page(s), is made of my own free will. No one has threatened me in any way or promised me special treatment to cause me to make this statement. I am signing my name in the space below to show that it is my statement and it is the truth.

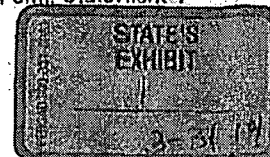
Signed:

Date:

Time:

Witness:

Page



YORK COUNTY SHERIFF'S OFFICE Office of Public Affairs	Incident Report No. <u>2013-364</u>
---	-------------------------------------

YOUR RIGHTS

BEFORE I ASK YOU ANY QUESTIONS, I WANT TO ADVISE YOU OF YOUR RIGHTS.

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a Court of Law.
3. You have the right to talk to an attorney and have him/her present with you while you are being questioned.
4. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you wish.
5. You can decide at any time to exercise these rights and not answer any questions or make any statements.

Do you understand each of these rights I have explained to you?

Yes: ✓ No:

Brian Gavin
Signature

10/10/13
Date

WAIVER OF RIGHTS

I am willing to talk to police and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure of any kind has been placed upon me.

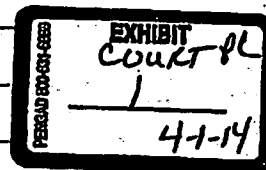
[Signature]
Witness
6/10/13
Date

Brian Gavin
Signature
10/10/13
Date

Interviewee: <u>Brandon Lee Gault</u>	Date of Birth: <u> </u>	Age: <u>18</u>	
Education Level: <u>11th</u>	Read: <u>Yes</u> / No (Circle one)	Write: <u>Yes</u> / No (Circle one)	<u> </u>
Place of Interview: <u>YCOC - Interview Room</u>	Time: <u>9:24am</u>		
Interviewer: <u>Brian / satellite</u>	Date: <u>6/10/13</u>		

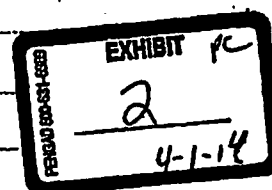
~~MEAS~~

- WHEN WAS THE PHOTO TAKEN?
- HOW DOES MR. SMITH KEEP HIS GUINOS BEFORE THE BREAK IN?
- WHICH MEAS WERE TAKEN?
- WHERE WAS THE DOG DURING THE BREAK IN?
- DID MRS. SMITH COME BACK HOME AFTER TAKING CARE OF MR. SMITH'S MOTHER?



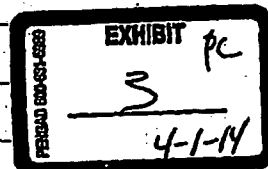
FOREMAN 196 LEO RODRIGUEZ GUYCO

MAY WE SEE THE VOLUNTARY STATEMENT?



#196 FOREMAN

PLEASE REPEAT THE DEFINITION OF
1ST DEGREE BURGLARY



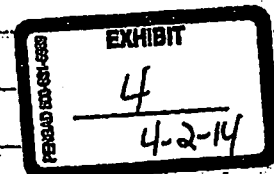
~~THE~~ ~~FOREMAN~~

~~THE~~ ~~FOREMAN~~

~~THE~~ ~~FOREMAN~~

#110 FOREMAN

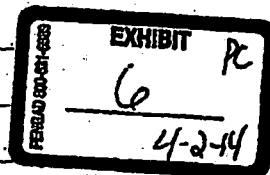
WE WOULD LIKE TO HEAR THE DEFINITION
OF CRIMINAL CONSPIRACY,



#910 FOREMAN LEO RODRIGUEZ-GONZALEZ

YASE HANDE,

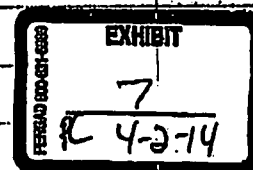
WE HAVE CASE OVER ALL THE EVIDENCE AND
 DELIBERATED ON THE CHARGES OF 1ST DEGREE
 BURGLARY AND CRIMINAL CONSPIRACY. BUT THE
 JURY IS UNABLE TO DECIDE ON THOSE TWO ^{CHARGES.} ~~CHARGES.~~
 I DO NOT BELIEVE WE WILL BE ABLE TO
 CHANGE THE MINDS OF ALL JURORS TOWARD
 A UNANIMOUS VERDICT ON ALL CHARGES.
 THIS JURY IS A HUNG JURY.



#196 FOREMAN LEO ROOPEL GUYCO

ON THE CHARGE OF 1ST DEGREE BURGLARY
CAN YOU FURTHER EXPLAIN INTENT AND
PERMISSION?

WE HAVE COME TO A VERDICT ~~CRIMINAL~~ CONSPIRACY
AND LARCENY.



#196 Foreman

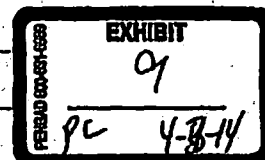
IN THE EVENT THAT JURORS CAN NOT OR
WILL NOT COME TO A UNANIMOUS ^{DECISION} ~~VERDICT~~
WHAT IS THE TIMEFRAME OR PROCESS FOR THIS OUTCOME.

WE HAVE COME TO AGREEMENT ON ONE
CHARGE BUT ~~WE~~ ARE HAVING DIFFICULTY DECIDING
ON THE OTHER TWO CHARGES.

YOU SHOULD CONTINUE TO
DELIBERATE AND SEE IF YOU CAN
REACH A UNANIMOUS VERDICT ON
THE OTHER TWO CHARGES.

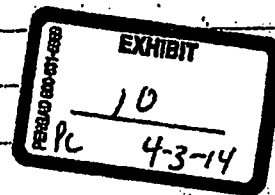
THERE IS NO TIME FRAME FOR
DELIBERATION BUT IF YOU BELIEVE
NO PROGRESS IS BEING MADE,
YOU CAN LET THE COURT KNOW
BY NOTE.

Judge Lee B. [Signature]



#96 FOREMAN

WE ARE 100% A HUNG JURY ON THE
FIRST DEGREE BURGLARY CHARGE. WE ARE
SPLIT ON THE INTENT ELEMENT. WE WILL
NOT BE ABLE TO MAKE A VERDICT ON
THIS CHARGE.



WITNESSES

YCSO/Branham

vk

ARREST WARRANT NUMBER

N-280069

ACTION OF GRAND JURY

TRUE BILL

Rebecca M. Mearns
Foreperson of Grand Jury

Date: 2/20/14

VERDICT

Guilty Petit Larceny

Foreperson of Petit Jury

Date: 4-2-14

DOCKET NO. 2014-GS-46-00433

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 20, Term 2014

THE STATE

vs.

BRANDON LEE GOINS

Indictment for

GRAND LARCENY

SC Code: 16-13-30

CDR Code: 3420

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)

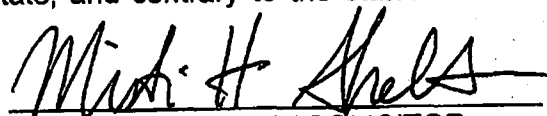
INDICTMENT

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

GRAND LARCENY

The Defendant, Brandon Lee Goins, did in York County, South Carolina, on or about September 6, 2012, feloniously take and carry away property belonging to the victim, to wit: jewelry, fishing rods and medication, valued at or more than Two Thousand Dollars, intent to deprive the owner permanently of such property. All in violation of Section 16-13-30, Code of Laws of South Carolina, (1976, as amended). The incident occurred at [REDACTED] Rock Hill, South Carolina.

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


ASSISTANT SOLICITOR

678
STATE OF SOUTH CAROLINACOUNTY OF
STATE

York

VS.

Brandon Lee Goins

AKA:

Race: WHITE Sex: M Age: 19

DOB: SS#:

Address:

City, State, Zip: Rock Hill, SC 29732

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Larceny / Petit or Simple Larceny - \$2,000 or less

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS4600433

A/W#: N280069

Date of Offense: 9/6/2012

S.C. Code § : 16-13-0030(B)

CDR Code #: 3420

SENTENCE SHEET

ORIGINAL

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030(A) of the S.C. Code of Laws, bearing CDR Code # 3419

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

ATTEST:

Sheldon, Mist H

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of _____ days/months/years or ☒ under the Youthful Offender Act not to exceed 30 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 Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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-
§ 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-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5-
3% to County (if paid in installments)		\$
TOTAL		\$130-

_____ 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.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 0113

Sentence Date: 4-4-14

679

WITNESSES

YCSO/Branham

vk

ARREST WARRANT NUMBER

N-280070

ACTION OF GRAND JURY

TRUE BILL

Rebecca W. Means
Foreperson of Grand Jury
Date: *2/20/14*

VERDICT

Guilty
[Signature]

Foreperson of Petit Jury

Date: *4-2-14*

DOCKET NO. 2014-GS-46-00434

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

February 20, Term 2014

THE STATE

vs.

BRANDON LEE GOINS

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 049

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)

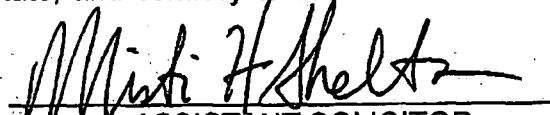
INDICTMENT

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

CRIMINAL CONSPIRACY

The Defendant, Brandon Lee Goins, did in York County, South Carolina, on or about September 6, 2012, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with another(Jordan Canupp), for the purpose of committing the crime of Burglary 1st. Degree. All in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

✓ STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

681

COUNTY OF York
STATE VS.
Brandon Lee Goins

INDICTMENT/CASE#: 2014GS4600434
A/W#: N280070
Date of Offense: 9/6/2012
S.C. Code §: 16-17-0410
CDR Code #: 0049

AKA:
Race: WHITE Sex: M Age: 19
DOB: SS#:
Address:
City, State, Zip: Rock Hill, SC 29732
DL#: SID#:

ORIGINAL

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined

✓ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Shelton, Misti R 67393 Defendant Attorney for Defendant 11/9/14 SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of _____ days/months/years or ☒ under the Youthful Offender Act not to exceed 5 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 Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
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-
§ 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-
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5-
3% to County (if paid in installments)		\$
TOTAL		\$130-

_____ 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.

Clerk of Court/ Deputy Clerk David Hamilton
Court Reporter: Phyllis Campo
SCCA/217 (03/2011)

Presiding Judge Jacob [Signature]
Judge Code: 313
Sentence Date: 4-4-14

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."

This 2nd day of April, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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

RECEIVED

APR 02 2015

SC Court of Appeals

ATTORNEY FOR APPELLANT

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SC Court of Appeals