ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

Appellant,

vs.

JOHN KENNETH MASSEY, JR.,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the circuit court judge abuse his discretion and commit a reversible legal error by dismissing the indictment for first-degree burglary prior to trial when the grand jury issued a facially-valid indictment for first-degree burglary in Respondent's case, and Respondent's actions supported an indictment for first-degree burglary in violation of S.C. Code Ann. § 16-11-311?

STATEMENT OF THE CASE

On January 13, 2014, officers with the York County Sheriff's Office arrested Respondent John Kenneth Massey, Jr. following a burglary and robbery in Rock Hill, South Carolina, involving Respondent and two co-defendants. During its March 20, 2014 term, the York County Grand Jury indicted Respondent for criminal conspiracy, first-degree burglary, and grand larceny—third or subsequent property offense. On April 17, 2014, the York County Grand jury issued an amended indictment against Respondent for first-degree burglary.

The State called the case to trial on January 26, 2015, before the Honorable Eugene C. Griffith, Jr., circuit court judge. Following jury selection but prior to the swearing of the jury, Respondent moved to quash the first-degree burglary indictment, arguing the facts of the case did not give rise to an indictment for first-degree burglary. The circuit court judge heard proffered testimony from the victim and arguments from both parties. The following morning, the circuit court judge granted Respondent's motion and quashed the first-degree burglary indictment that had been issued by the grand jury. The circuit court judge then indicated the trial would proceed forward on a second-degree burglary indictment. The State objected and subsequently filed a "Post-Trial Motion" seeking to set aside the circuit court judge's quashing of the indictment. By written order filed November 9, 2015, the circuit court judge denied the State's motion. The State then timely filed a notice of appeal.

STATEMENT OF FACTS

During the evening of January 12, 2014, Respondent and two co-defendants entered a garage less than fifty feet from a residence on Paris Road in Rock Hill, South Carolina, and stole numerous items. (R. 9-10, 39, 60-67). Following an investigation into the incident, Detective Brian Schettler of the York County Sheriff's Department arrested Respondent during a traffic stop the next day. (R. 12-14). During Respondent's arrest, Detective Schettler advised Respondent of his rights. (R. 13-14).

The following day, January 13, 2015, Detective Schettler interviewed Respondent about the burglary on Paris Road. (R. 12-15). Detective Schettler again advised Respondent of his rights, and Respondent agreed to waive those rights and speak with him. (R. 15-16). After Detective Schettler presented Respondent with photographs taken from surveillance footage from inside the garage, Respondent implicated himself in the Paris Road burglary, as well as in a wider network of four-wheeler thefts in the area. (R. 16-19, 23-25, 68).

Thereafter, the York County Grand Jury indicted Respondent for criminal conspiracy, first-degree burglary, and grand larceny—third or subsequent property offense. The first-degree burglary indictment issued by the grand jury identified Respondent's offense as a violation of S.C. Code Ann. § 16-11-311 based on Respondent's action of "willfully and unlawfully enter[ing] the outbuilding appurtenant to and within 200 yards of the dwelling . . . located at . . . Parris Road in Rock Hill, South Carolina, without consent and with the intent to commit the crime of larceny therein . . . during the nighttime hours . . ." (R. 60-67). On April 17, 2014, the York County Grand Jury issued an amended indictment against Respondent for first-degree burglary, slightly modifying the language of the original indictment to include that Respondent "willfully and unlawfully enter[ed] the dwelling . . . when he entered without consent the

outbuilding appurtenant to and within 200 yards of the dwelling house establishment." (R. 64-65).

The State called the case to trial and after the jury was selected but prior to impaneling, the circuit court judge conducted a Jackson v. Denno[1] hearing to determine the admissibility of Respondent's statements to law enforcement following his arrest. (R. 11-27). The circuit court judge ruled Respondent's statements to law enforcement were admissible. (R. 27). Thereafter, Respondent moved to quash the first-degree burglary indictment based on the ground that the facts of the case did not comport with the requirements of S.C. Code Ann. § 16-11-311. (R. 33-36). Specifically, Respondent argued the building subject to the burglary was a place of business instead of a dwelling, was not appurtenant to the dwelling, and was owned by someone other than the victim listed on the indictment. (R. 33-36). In support of his argument, Respondent introduced five exhibits: Defendant's Ex. No. 1 (a photograph of the garage subject to the burglary); Defendant's Ex. No. 2 (a photograph of a sign on the garage for "Callahan Waterproofing & Construction"); Defendant's Ex. No. 3 (an aerial photograph of the garage and surrounding structures within a red line separating two different parcels of land between the garage and the dwelling); Defendant's Ex. No. 4 (a York County property report for the dwelling located on Parris Road listing Roger and Theresa Callahan as the owners); and Defendant's Ex. No. 5 (a York County property report for the parcel of land (including the garage) adjacent to the Paris Road dwelling located on Russell Road listing William Russell, Sr. as the owner). (R. 34-35). Respondent argued the first degree burglary indictment was "correctly in line with the statute but . . . [was] faulty with regards to the facts of this case. . . . And therefore, burglary-first would not be an appropriate charge for this case." (R. 35-36).

[1] 378 U.S. 368 (1964).

In response, the State proffered the testimony of Kristopher Callahan, the victim listed in the indictment. (R. 36). Callahan testified he lives at the Paris Road home with his parents (Roger and Theresa Callahan) and a family friend. (R. 39). He testified the garage subject to the indictment is "roughly 45/48 feet" from his house. (R. 39). He explained the land the home is on was originally owned by his grandfather along with the adjacent property on which the garage sits. (R. 39-40). He testified his grandfather parceled off five-acres of land when his parents got married to build a home, which is where the Paris Road home is located. (R. 39-40). He testified the land on which the garage sits was deeded to his uncle, William Russell, Sr., after his grandfather died, but the property is owned and used jointly by the family. (R. 40). Callahan testified he exclusively uses the garage for personal storage of various items, including his four-wheelers, boats, tools, appliances, and beds. (R. 37-38). He testified he owns a small waterproofing and grading company and the employees meet at the garage in the mornings, but stressed that the garage is for personal use—not business. (R. 37-38, 40-42). He testified the business sign on the garage was made when he sponsored his family friend in a rodeo, and after the rodeo, he hung the sign on the garage to "display his name." (R. 38-39, 42). He testified the sign is not visible from the road and the public does not enter onto the land to conduct business. (R. 38-39).

Following Callahan's proffered testimony, the State argued the garage was appurtenant to and within the required two hundred yards of Callahan's residence, thereby satisfying the "dwelling" requirement pursuant to S.C. Code Ann. § 16-11-311 and § 16-11-10. (R. 43-45). Additionally, the State argued that "burglary is a crime against possession and cohabitation, not a crime against ownership[,]" and therefore, it is irrelevant that the parcel of land on which the garage sits is owned by someone other than Callahan. (R. 45-46). In reply, Respondent reiterated

his previous arguments, asserting the garage was used for business purposes and was not appurtenant to Callahan's residence. (R. 46-47). The circuit court judge informed counsel he wanted to review law before ruling and recessed court for the evening. (R. 47-49).

The following morning, the State summarized its argument for the circuit court judge, again arguing the garage was appurtenant to the residence, thereby satisfying the "dwelling" requirement pursuant to S.C. Code Ann. § 16-11-311 and § 16-11-10. (R. 50-51). The circuit court judge responded:

> All right. Well, I disagree with you. I think it's— the victim in this case doesn't have any ownership in either parcel of property. He may one—one day, if it's family land. But he doesn't right now. The building's titled in his grandfather's estate or his uncle's name or something, but not his, not his mother's. And so it is close by in proximity. But it's a separate piece of property. It's titled by someone totally different. There's no one ever—no testimony of anybody ever sleeping there.
>
> I—I—I think it's a burglary-second. I don't think it's a burglary-first. And—and I asked y'all if y'all thought it was a factual question, and I think it's a legal issue.
>
> And using all the—all the ownership, separate parcel taxed, different owner, and that the victim doesn't have any ownership interest in either piece of property—or even a—he lives with his parents; I don't know that there's any type of contract for him to stay there, whether it be a lease or—I don't think that affects my decision either.
>
> But that building is an outbuilding. It's a—looks like a butler building to me. And it has a sundry of things in it. And I just don't believe it's appurtenant to the residence owned by the victim's parents, factually.

(R. 51-52). The State responded that it understood the circuit court judge's ruling, but wanted to place upon the record that "burglary is not a crime of ownership, and it does not matter who owns that property, who owns plats of lands. It's about possession, and the victim was in possession of the house, of the garage." (R. 53). The circuit court judge indicated his desire to

continue forward with the trial, with the State pursuing a second-degree burglary conviction against Respondent. (R. 53-55). The State objected to continuing forward and the matter concluded for the day. (R. 53-56).

On February 6, 2015, the State timely filed a "Post-Trial Motion" seeking to set aside the circuit court judge's quashing of the indictment, based in the fact the circuit court judge's grounds for quashing the indictment were legally and factually erroneous. By written order filed November 9, 2015, the circuit court judge denied the State's motion. The State then timely filed a notice of appeal.

ARGUMENT

Did the circuit court judge abuse his discretion and commit a reversible legal error by dismissing the indictment for first-degree burglary prior to trial when the grand jury issued a facially-valid indictment for first-degree burglary in Respondent's case, and Respondent's actions supported an indictment for first-degree burglary in violation of S.C. Code Ann. § 16-11-311?

Prior to trial, the circuit court judge abused his discretion and committed reversible error by dismissing the first-degree burglary indictment in response to defense counsel's contention that the evidence did not factually support the indictment. Critically, that ruling was legally erroneous because the first-degree burglary indictment issued in Respondent's case was facially valid and sufficient to bring the case to trial and Respondent's actions were sufficient to prove the offense of first-degree burglary. For those reasons, the circuit court judge did not have the power to dismiss the first-degree burglary indictment under the circumstances, and his decision to do so was controlled by a legal error. Accordingly, the circuit court judge's ruling dismissing the indictment should be reversed, the indictment should be reinstated, and Respondent's case should be remanded for trial.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "In appeals of pretrial rulings, [the appellate court] is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). Importantly, a trial judge's ruling on a matter "will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs

when the trial judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

ANALYSIS

The circuit court judge abused his discretion and committed a reversible legal error by dismissing the first-degree burglary indictment prior to trial, when the York County Grand Jury issued a facially valid indictment in Respondent's case. Furthermore, even if the circuit court judge had the legal authority to dismiss the first-degree burglary indictment, the circuit court judge committed reversible legal error by improperly dismissing the first-degree burglary indictment because the evidence in Respondent's case supported an indictment for first-degree burglary.

Pursuant to S.C Code Ann. § 16-11-311(A)(3), "[a] person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . the entering or remaining occurs in the nighttime." "With respect to the crime[] of burglary . . . and to all criminal offenses which are constituted or aggravated by being committed in a dwelling house, any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of property shall be deemed a dwelling house, and of such a dwelling house or of any other dwelling house **all houses, outhouses, buildings, sheds and erections which are within two hundred yards of it and are appurtenant to it** or to the same establishment of which it is an appurtenance shall be deemed parcels." S.C. Code Ann. § 16-11-10. See State v. Smalls, 336 S.C. 301, 305, 519 S.E.2d 793, 795 (Ct. App. 1999) (holding the State's proof showed the building actually broken into was a garage located approximately fifty-three feet behind the victim's dwelling satisfies the requirements of S.C. Code Ann. § 16-11-10).

Black's Law Dictionary defines "appurtenant" as "annexed to a more important thing." BLACK'S LAW DICTIONARY (10th ed. 2014). South Carolina courts have yet to provide an explicit definition of "appurtenant" in the context of "dwelling house" pursuant to S.C. Code Ann. § 16-11-10, but have suggested "that such a structure 'must be somehow connected with or contributory to it, [the dwelling house] such as a kitchen, smoke-house or such other as is usually considered as a necessary appendage of a dwelling-house. It cannot embrace a store, blacksmith shop, or any other building separate from it and appropriated to another and a distinct use.' " WILLIAM SHEPARD MCANINCH ET AL., THE CRIMINAL LAW OF SOUTH CAROLINA 407-08 (6th ed. 2013) (quoting State v. Evans, 18 S.C. 137, 140 (1882)). Our Court has previously ruled the following structures were "appurtenant" to a dwelling house for burglary purposes: a dog house, State v. Langford, 55 S.C. 322, 33 S.E. 370 (1899), a smokehouse, State v. Branham, 13 S.C. 389 (1880), and a hen house even though it was across a public road from the dwelling house, State v. Johnson, 45 S.C. 483, 23 S.E. 619 (1896). Other jurisdictions have defined "appurtenant" similarly. See Jones v. State, 690 S.W.2d 318, 319 (Tex. App. 1985) (finding an unattached garage structure was appurtenant to the residence, as it was connected with the use and enjoyment of and was secondary or incident to the principle building—the house).

Additionally, "[t]he law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime, when peace, solitude and safety are most desired and expected . . . . To preserve this security and this sanctity the law has created safeguards and imposed severe penalties on their infringement." State v. Singley, 392 S.C. 270, 276, 709 S.E.2d 603, 606 (2011) (quoting State v. Brooks, 277 S.C. 111, 112–13, 283 S.E.2d 830, 831 (1981)). Accordingly, South Carolina has "maintained consistently for well over one hundred years that burglary is a crime against possession and habitation, not a crime against ownership." Singley, 392 S.C. at

274, 709 S.E.2d at 605 (citing State v. Clamp, 225 S.C. 89, 102, 80 S.E.2d 918, 924 (1954); State v. Alford, 142 S.C. 43, 45, 140 S.E. 261, 262 (1927); State v. Trapp, 17 S.C. 467, 471 (1882)). Accordingly, "the victim listed in the indictment need not be the owner of the dwelling burglarized; it is sufficient that the alleged victim was the occupant and possessor of the dwelling." Singley, 392 S.C. at 274, 709 S.E.2d at 605 (citing Clamp, 225 S.C. at 102, 80 S.E.2d at 924; Alford, 142 S.C. at 45, 140 S.E. at 262; Trapp, 17 S.C. at 472). South Carolina burglary laws protect an interest separate and apart from ownership: the right to be safe and secure in one's home. Singley, 392 S.C. at 276, 709 S.E.2d at 606 (citing People v. Smith, 142 Cal.App.4th 923, 48 Cal.Rptr.3d 378, 384 (2006) (noting the difference between possessory right under the burglary statute and family law); State v. McMillan, 158 N.H. 753, 973 A.2d 287, 292 (2009) ("[W]hile the defendant had some proprietary interest in the apartment as a co-lessee, this fact did not automatically give him license to enter under [the burglary statute] . . . [T]he entry here interfered with the security and safety of the occupant, thus implicating the very interests the burglary statute was designed to protect."); State v. Lilly, 87 Ohio St.3d 97, 717 N.E.2d 322, 327 (1999) ("Because the purpose of burglary law is to protect the dweller, we hold that custody and control, rather than legal title, is dispositive. Thus, in Ohio, one can commit a trespass and burglary against property of which one is the legal owner if another has control or custody of that property.")).

In the present case, Respondent, as alleged in the first-degree burglary indictment, entered Callahan's garage within two hundred yards of his dwelling house during the nighttime hours with the intent to commit larceny. (R. 60-67). Significantly, the indictment contained the necessary elements of the offense of first-degree burglary and sufficiently apprised Respondent of what allegations he was facing. See State v. Crenshaw, 274 S.C. 475, 477, 266 S.E.2d 61, 62

(1980) (explaining an indictment is sufficient if "the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and acquittal or conviction to be placed in bar to any subsequent conviction"); Smalls, 336 S.C. at 307, 519 S.E.2d at796 ("[T]he true test of an indictment's validity is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet."); see also S.C. Code Ann. § 17-19-20 ("Every indictment shall be deemed and judged sufficient and good in law which, in addition to allegations as to time and place, as required by law, charges the crime substantially in the language of the common law or of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood and, if the offense be a statutory offense, that the offense be alleged to be contrary to the statute in such case made and provided."). Under those circumstances, the indictment issued by the grand jury was facially valid and sufficient, and the circuit court judge had no authority to dismiss the indictment prior to trial. See United States v. Mills, 995 F.2d 480, 487 (4th Cir. 1993) ("The longstanding rule of law that courts may not 'look behind' grand jury indictments if 'returned by a legally constituted and unbiased grand jury . . .' is the touchstone for any inquiry into the legality of indictments.") (quoting Costello v. United States, 350 U.S. 359, 363 (1956)); State v. Needs, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998) ("[A] trial court generally has **no power** to dismiss a properly drawn indictment issued by a properly constituted grand jury before trial unless a statute grants that power to the court." (emphasis added)); State v. Garrett, 305 S.C. 203, 206, 406 S.E.2d 910, 911 (Ct. App. 1991) ("A motion to quash an indictment addresses the sufficiency of the indictment, not the

sufficiency of the State's evidence."), overruled on other grounds by State v. Ramsey, 311 S.C. 555, 430 S.E.2d 511 (1993).

Despite the fact the indictment was facially valid and sufficient, the circuit court judge in Respondent's case agreed with defense counsel's argument, granted Respondent's motion, and dismissed the first-degree burglary indictment issued by the grand jury. Critically, that ruling constituted reversible error for a variety of different reasons. Initially, the circuit court judge's ruling was legally erroneous because he had **no** authority whatsoever to dismiss the facially-valid indictment issued by the grand jury in light of the fact a pre-trial challenge to an indictment cannot be used to challenge the sufficiency of the State's evidence. See Needs, 333 S.C. at 146, 508 S.E.2d at 863 (explaining a trial judge ordinarily has no power to dismiss a properly drawn indictment prior to trial absent some statutory authority permitting the trial judge to do so); State v. Sweat, 221 S.C. 270, 272, 70 S.E.2d 234, 235 (1952) (holding a motion to quash the indictment raised on the ground the victims identified in the indictment did not actually own the property stolen was properly denied because the indictment was facially valid and because the motion—if treated as a motion for a directed verdict since it went to the sufficiency of the evidence—was out of order and premature); see also United States v. Guerrier, 669 F.3d 1, 3-4 (1st Cir. 2011) ("[C]ourts routinely rebuff efforts to use a motion to dismiss as a way to test the sufficiency of the evidence behind an indictment's allegations[.] . . . [I]n the ordinary course of events, a technically sufficient indictment handed down by a duly empaneled grand jury 'is enough to call for trial of the charge on the merits.' " (citations omitted)); United States v. Redcorn, 528 F.3d 727, 733 (10th Cir. 2008) ("[A] challenge to the indictment is not a vehicle for testing the government's evidence."); Gibson v. United States, 244 F.2d 32, 34 (4th Cir. 1957) (holding a pre-trial challenge to an indictment can only be made in respect to the validity

of the indictment itself and not in respect to whether the facts of the case support the allegations in the indictment, which is an issue to be raised during trial).

Furthermore, even if the circuit court judge had the legal authority to dismiss the first-degree burglary indictment based on purported evidentiary flaws, the circuit court judge committed reversible legal error by improperly dismissing the first-degree burglary indictment because the evidence in Respondent's case supported an indictment for first-degree burglary. Based on the record before the circuit court judge, it is clear Respondent entered a garage used exclusively by Callahan for personal storage within fifty feet of Callahan's residence during nighttime hours with the intent to commit larceny, thereby satisfying the requirements of S.C. Code Ann. § 16-11-311. The circuit court judge's ruling is based on several clear errors of law. Initially, the circuit court judge's finding Callahan's lack of ownership of the parcel of land on which the garage sits warrants dismissal of the first-degree burglary indictment is clearly erroneous. See Singley, 392 S.C. at 276, 709 S.E.2d at 606 (holding South Carolina burglary laws protect an interest separate and apart from ownership: the right to be safe and secure in one's home). It is of no importance that Callahan was not the titled owner of the property or that the garage parcel was deeded to a separate owner from the dwelling, as the only evidence before the circuit court judge established Callahan was in possession of the garage and the home. Adopting the clearly erroneous approach of the circuit court judge would lead to an absurd result where residences and their adjoining buildings could be burglarized without significant consequence, so long as the possessor was not the titled owner.

Additionally, the circuit court judge's findings that the garage was not used for "sleeping" and that he "just [didn't] believe it's appurtenant to the residence," and therefore, not a dwelling, is also legally erroneous. (R. 51). Callahan's testimony established the garage was

less than fifty feet from the home where he and three others permanently resided. Furthermore, a review of the aerial photograph of the two parcels of land with the red demarcation line, introduced as Defendant's Ex. No. 3, shows that the only ingress to the garage from the two adjoining roads is from the driveway of Callahan's dwelling. Moreover, the evidence before the circuit court judge established that the garage was solely used by Callahan to store his personal property. Cf. State v. Stone, 350 S.C. 442, 446, 567 S.E.2d 244, 246 (2002) ("The porch leads into and out of the laundry room and is used primarily to store wood and paint cans. . . . We find the screened porch is appurtenant, and is used for the protection of Griffith's property (paint and in finding otherwise. wood) so as to come within the definition of a dwelling."). Based on our Court's previous rulings, the garage was "appurtenant to" the dwelling home as required pursuant to S.C. Code Ann. § 16-11-10. See Langford, 55 S.C. 322, 33 S.E. 370 (holding a dog house was appurtenant to a dwelling); Branham, 13 S.C. 389 (holding a smokehouse was appurtenant to a dwelling); Johnson, 45 S.C. 483, 23 S.E. 619 (1896) (holding a hen house was appurtenant even though it was across a public road from the dwelling house). Therefore, the "dwelling" element of S.C. Code Ann. § 16-11-311 was satisfied and the circuit court judge reversibly erred.

For the foregoing reasons, the circuit court judge abused his discretion and committed a clear error of law by dismissing the properly-drawn indictments issued in Respondent's case. See Sheldon, 344 S.C. at 342, 543 S.E.2d at 585-586 (instructing a trial judge's ruling should only be reversed if it is legally erroneous or constitutes an abuse of discretion); see also State ex rel. Davis v. State Bd. of Canvassers, 86 S.C. 451, 455, 68 S.E. 676, 678 (1910) (explaining an appellate court "will correct errors of law" committed by a lower court). As a result, the circuit

court judge's ruling should be reversed, the indictment should be reinstated, and Respondent's case should be remanded for trial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the ruling of the circuit court judge should be reversed, the indictment should be reinstated, and the case should be remanded for trial.

Respectfully submitted,

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CERTIFCATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

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February 7, 2017