

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

RECEIVED

APR 26 2013

Opinion No. 5053 (S.C. Ct. App. filed 11/28/2012)

S.C. Supreme Court

10-GS-23-4939-40.

THE STATE,

RESPONDENT,

V.

THOMAS E. GILLILAND,

PETITIONER

Appellate Case No. 2013-000396

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

Attorney for Petitioner

JULIE KATE KEENEY
Staff Attorney
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185
(864) 467-8282
Attorneys for Respondent

- INDEX

INDEX.....	i
PUBLISHED OPINION NO. 5053, FILED NOVEMBER 28, 2012	1
PETITION FOR REHEARING DATED DECEMBER 13, 2012	10
ORDER DENYING PETITION FOR REHEARING	18

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Thomas Gilliland, Appellant.

Appellate Case No. 2011-185606

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 5053

Heard October 29, 2012 – Filed November 28, 2012

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, and Assistant
Attorney General Julie Kate Keeney, all of Columbia;
and Solicitor William Walter Wilkins, III, of Greenville,
for Respondent.

CURETON, A.J.: Thomas E. Gilliland appeals his conviction for first-degree burglary. He argues the trial court erred in declining to direct a verdict of acquittal or, in the alternative, by refusing to give a jury charge on trespass as a lesser included offense of burglary. We affirm.

FACTS

I. Background

Gilliland and Pamela Morgan (Victim) met as co-workers. After they dated for a few months, Gilliland moved in with Victim. Following an incident in January 2010, Victim ended the relationship. Gilliland departed from the home, leaving his personal property behind. On February 16, 2010, the family court issued an order of protection forbidding Gilliland "to communicate or attempt to communicate with [Victim] in any way or to enter or attempt to enter [her] place of residence" for a period of six months.¹

On March 15, 2010, Victim worked until 11:00 p.m. Arriving home at 12:40 a.m. on March 16, 2010, she unlocked her door, entered, and found Gilliland waiting for her inside. According to Victim, Gilliland told her he had come to talk and make up with her; he loved her; and he, not the family court, knew what was best for her. When Victim asked how he had entered her home, Gilliland would only say, "I'm a cat burglar. Doors can be jimmied, windows can be opened." According to Victim, she did not run because she did not believe she could get away, and she did not tell him to leave because she believed he would not listen to her.

When Victim tried to leave by taking her dog for a walk, Gilliland followed closely behind her. Back inside the house, Victim tried to dial 911 from her two home phones, but they had been disconnected. After more than two hours of alternately sitting and walking from room to room while Gilliland talked, Victim succeeded in going into the bathroom alone, where she dialed 911 from her cell phone. Police officers arrived soon afterward, interviewed Gilliland and Victim separately, and arrested Gilliland. He was charged with violation of a protective order and first-degree burglary.

II. Trial

At trial, Gilliland admitted to violating the protective order. However, he defended against the burglary charge by claiming he was present at the home with Victim's consent. According to Gilliland, Victim invited him to the home to collect his belongings and personally let him inside.

¹ The family court issued the order of protection pursuant to the Protection from Domestic Abuse Act (the Act), S.C. Code Ann. §§ 20-4-10 to -395 (1985 & Supp. 2011).

Deputy Ryan Flood recalled responding to Victim's domestic disturbance call at approximately 3:00 a.m. When Victim answered the deputy's knock at the back door, she quivered and appeared frightened. The officer interviewed Victim and Gilliland separately and took a statement from Victim. He recalled transcribing her account because she was shaking too much to write it herself. Next, Deputy Flood Mirandized and interviewed Gilliland, who explained he intended to reconcile with Victim and had entered the house through the bathroom window.² Gilliland did not mention any invitation to retrieve his belongings.

Victim also testified at trial. She recalled obtaining the order of protection but subsequently telephoning Gilliland's son. In that call, she offered to allow a member of Gilliland's family to retrieve his belongings from her home. However, the son handed the telephone to Gilliland, so Victim relayed the message to him. She denied inviting Gilliland to her home. Although no one ever collected his belongings, Gilliland continued to telephone Victim and send her love letters.

Gilliland testified in his defense. He acknowledged knowing the protective order barred him from contacting Victim, but he stated he "just loved her so much that [he] wanted to write her a letter." According to him, Victim telephoned his son several times in one day, asked for Gilliland, and invited him to come to her house "after she got off work" to pick up his belongings.

Gilliland recalled that, on the night of the incident, he walked eight miles to Victim's home, and Victim let him in. According to Gilliland, after Victim drank a glass of wine, the couple walked her dog, then went into the bedroom and made love. Gilliland stated he showered afterward, then Victim went into the bathroom on the pretense of showering and, while in the bathroom, called 911. He described Victim returning to the living room, kissing him, lighting a cigarette, and finishing her wine. Gilliland testified Victim asked if he would like to walk the dog with her again, and he said yes. However, when she opened the door and stepped outside, "the deputy was standing there."

Gilliland recollected waiting in the patrol car while the deputy talked with Victim, then explaining to the officer that Victim had let him into her house when he knocked on the door. According to Gilliland, he told the officer he had gone to the house to reconcile with Victim and retrieve his belongings.

² Victim also testified the latch to her bathroom window had been tampered with or broken.

When shown photographs of the damage to Victim's bathroom window, Gilliland denied causing it. On cross-examination, he noted he knew when Victim would be working and when she would likely return home. He admitted writing her several letters in April, May, June, July, August, September, and October 2010. He confirmed writing in another letter, dated just two weeks before the incident, that he understood the family court "think[s] they know how to protect you, but they don't. I must concentrate on what's good for us, and not what's right for the system." Although Gilliland claimed he received one letter in return from Victim, he did not produce it.

At the close of the State's case, Gilliland moved for a directed verdict, arguing the State had failed to prove the elements of first-degree burglary. The trial court denied his motion. At the close of testimony, he renewed his motion, which the trial court again denied. In addition, anticipating the State intended to assert his violation of the protective order satisfied the "intent to commit a crime" element of first-degree burglary, Gilliland requested a jury instruction on trespass as a lesser included offense. The trial court also denied this motion.

The jury found Gilliland guilty of both offenses, and he received concurrent sentences totaling fifteen years' imprisonment. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. *State v. Wilson*, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001).

LAW/ANALYSIS

I. Directed Verdict

Gilliland asserts the trial court erred in declining to direct a verdict of acquittal on the first-degree burglary charge when the only evidence supporting the element of intent to commit a crime was his violation of a protective order. We disagree.

A court interpreting a statute looks first to the statute's plain language:

The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably

discovered in the language used, and that language must be construed in light of the intended purpose of the statute. Absent an ambiguity, the court will look to the plain meaning of the words used to determine their effect.

State v. Whitner, Op. No. 27142 (S.C. Sup. Ct. filed Jul. 11, 2012) (Shearouse Adv. Sh. No. 23 at 46, 49) (citations and quotation marks omitted).

An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the State. *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [an appellate court] must find the case was properly submitted to the jury." *Id.* at 292-93, 625 S.E.2d at 648. The trial court may not consider the weight of the evidence. *Id.* at 292, 625 S.E.2d at 648. However, "when the [circumstantial] evidence presented merely raises a suspicion of guilt," the trial court should direct a verdict in favor of the accused. *State v. Bostick*, 392 S.C. 134, 142, 708 S.E.2d 774, 778 (2011) (citing *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)). A mere suspicion is a belief that is inspired by "facts or circumstances which do not amount to proof." *State v. Lollis*, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001).

A person is guilty of first-degree burglary if he "enters a dwelling without consent and with intent to commit a crime in the dwelling" and either enters or remains in the dwelling during the nighttime. S.C. Code Ann. § 16-11-311(A) (2003).

Although the intent to commit a crime must exist at the time the accused enters the dwelling, the jury may base its determination of that intent upon evidence of the accused's actions once inside the dwelling. *State v. Pinckney*, 339 S.C. 346, 349-50, 529 S.E.2d 526, 527-28 (2000). First-degree burglary is a felony punishable by imprisonment of a term between fifteen years and life. S.C. Code Ann. § 16-11-311(B) (2003).

Pursuant to section 16-25-20(D) of the South Carolina Code (Supp. 2011):

A person who violates the terms and conditions of an order of protection issued in this State under . . . [the Act] . . . is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days and fined not more than five hundred dollars.

For the purposes of section 16-25-20(D), an order of protection is one that is "issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard." S.C. Code Ann. § 20-4-20(f) (Supp. 2011).

We see no error. Our standard of review requires that we view the evidence in the record in the light most favorable to the State. *Weston*, 367 S.C. at 292, 625 S.E.2d at 648. In the case at bar, that evidence reflects Gilliland entered Victim's home against her wishes at some point before 12:10 a.m. and remained there for nearly three nighttime hours. Accordingly, the State established Gilliland (1) entered Victim's dwelling (2) without her consent and (3) remained there during the nighttime. See § 16-11-311(A) (setting forth elements of first-degree burglary).

Thus, the issue on appeal centers on the accused's intent to commit a crime within the dwelling, which the State contends it established through Gilliland's violation of the order of protection. See *id.*; see also § 16-25-20(D) (providing violation of a protective order issued under the Act is a misdemeanor). The question whether the violation of such an order is a crime sufficient to support first-degree burglary is novel in South Carolina.

We find the plain language of sections 16-11-311(A) and 16-25-20(D) is unambiguous. Accordingly, we may not impose a different interpretation on that language. See *Whitner*, Op. No. 27142 at 49 (holding a court must look to the plain meaning of unambiguous statutory language). First-degree burglary requires that, at the time the offender entered the dwelling, he intended to commit a crime once inside. § 16-11-311(A). Violating the terms and conditions of an order of protection is a crime. See § 16-25-20(D) ("A person who violates the terms and conditions of an order of protection issued . . . under . . . [the Act] . . . is guilty of a misdemeanor."). Gilliland argues unpersuasively that the good intentions with which he unlawfully entered Victim's home prevented his entry from rising to the level of a burglary; therefore, he is entitled to a directed verdict. Under his interpretation, section 16-25-20(D) would criminalize only abusive communications with the victim. Although an extensive search of our case law revealed a paucity of burglaries committed with benevolent intent, we find the plain language of sections 16-25-20(D) and 16-11-311(A) makes no allowance for good intentions. Neither statute purports to exclude a misdemeanor under section 16-25-20(D) from supporting a conviction of first-degree burglary. Neither statute requires a particular mental state for the violation of a protective order to become a criminal act. Neither statute establishes any exceptions or identifies violations that

are not of a criminal nature. Accordingly, neither the trial court nor this court has the authority to impose such a limitation or exception.

Even ignoring the fact Gilliland violated the protective order by breaking into Victim's home, ample direct and circumstantial evidence existed from which the jury could conclude he intended to commit a crime once inside. *See Weston*, 367 S.C. at 292-93, 625 S.E.2d at 648 (requiring an appellate court to find a case was properly submitted to the jury upon the presence in the record of "any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused"). The order of protection forbade Gilliland "to communicate or attempt to communicate with [Victim] in any way or to enter or attempt to enter [her] place of residence." Deputy Flood, Victim, and Gilliland himself testified he went to the home with the intent of talking to Victim. Moreover, Gilliland repeatedly admitted knowing the protective order barred him from communicating or attempting to communicate with Victim "in any way" or entering or attempting to enter her home. In spite of the protective order, he entered Victim's home and talked to her for hours. Consequently, sufficient evidence existed for this question to be submitted to the jury, and the trial court did not err in declining to direct a verdict in Gilliland's favor.

II. Jury Instruction

Gilliland also asserts the trial court erred by refusing a jury instruction on the charge of trespass as a lesser included offense of first-degree burglary. We disagree.

Generally, "the trial court is required to charge only the current and correct law of South Carolina." *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004). To warrant reversal, a trial court's refusal to give a requested jury instruction "must be both erroneous and prejudicial to the defendant." *State v. Brown*, 362 S.C. 258, 262, 607 S.E.2d 93, 95 (Ct. App. 2004). The evidence presented at trial determines the law to be charged to the jury. *Id.* at 261-62, 607 S.E.2d at 95.

"A trial [court] is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." *State v. Drafts*, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986). The test for determining whether one offense is a lesser included offense of another "is whether the greater of the two offenses includes all the elements of the lesser offense. If the lesser offense includes an element not

included in the greater offense, then the lesser offense is not included in the greater." *Hope v. State*, 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997) (quoting *State v. Bland*, 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995)).

Finding Gilliland has failed to demonstrate error, we affirm. Absent error, we need not look for prejudice. See *Brown*, 362 S.C. at 262, 607 S.E.2d at 95 (requiring both error and prejudice for reversal of a trial court's refusal to give a requested jury instruction).

In determining trespass is not a lesser included offense of first-degree burglary, the trial court correctly relied on *State v. Cross*, 323 S.C. 41, 448 S.E.2d 569 (Ct. App. 1994), which is on point and has never been overruled. In that case, the victim's former boyfriend entered her home twice, sexually assaulted her at knifepoint once, took some of her belongings, and forced her to accompany him to Myrtle Beach. *Id.* at 43, 448 S.E.2d at 569-70. Although the jury acquitted the defendant of several other charges, it found him guilty of two counts of first-degree burglary. *Id.* at 43, 448 S.E.2d at 569. The court of appeals affirmed. *Id.* at 44-45, 448 S.E.2d at 570. Gilliland contends our opinion in that case is inapplicable here because the State failed to prove all elements of trespass in *Cross*. However, the *Cross* court did not base its determinations concerning the relationship between trespass and burglary on the facts presented at Cross's trial. *Id.* Instead, it found neither statutory trespass nor common law criminal trespass was a lesser included offense of first-degree burglary, because each type of trespass requires the State to prove at least one element not present in first-degree burglary. *Id.* at 44, 448 S.E.2d at 570. Because the *Cross* court based its conclusion upon a properly conducted comparison of the elements of each offense and did not limit its holding to the facts of the case before it, the trial court in this matter did not err in relying on *Cross*.

CONCLUSION

We find the plain language of sections 16-25-20(D) and 16-11-311(A) is unambiguous and sets forth no exception, exclusion, or requirement precluding an intent to violate an order of protection from qualifying, for the purposes of first-degree burglary, as an intent to commit a crime. Therefore, we affirm the trial court's denial of Gilliland's motion for a directed verdict.

Moreover, we find the trial court properly applied the elements test and this court's opinion in *Cross* when it determined trespass was not a lesser included offense of

first-degree burglary. Accordingly, the trial court did not err in declining to charge the jury on trespass.

For these reasons, the decision of the trial court is

AFFIRMED.

SHORT and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

THOMAS E. GILLILAND,

APPELLANT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

Opinion No. 5053

Appellate Case No. 2011-185606

PETITION FOR REHEARING

In a published opinion filed on November 28, 2012, this Court affirmed Appellant's conviction for burglary in the first degree. State v. Gilliland, Op. No. 5053 (Ct. App. filed Nov. 28, 2012). Appellant respectfully requests this Court to rehear the matter concerning both issues presented in his brief.

The first issue raised by Appellant was whether the trial court erred in failing to direct a verdict of acquittal on the charge of burglary in the first degree where the only evidence that Appellant intended to commit a crime in the dwelling was his violation of the order of protection. This Court reasoned that because violation of an order of protection is a crime pursuant to section

16-25-20(D) of the South Carolina Code, then such satisfied the predicate crime requirement of the burglary statute. In its analysis, this Court neglected to give the order of protection statute its intended effect and meaning. See Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998); Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993).

An order of protection is issued to protect a person who has suffered abuse from further harm. S.C. Code Ann. § 20-4-60. The protection order includes both a no contact provision that makes any communication or contact with the abused person an act of contempt; and, most importantly, a provision that criminalizes any further abusive or malicious communication or physical act against the abused person. Id. The statute outlining violations of a protection order illustrates the legislative intent to protect persons who have been the victim of domestic violence and to categorize any violations as either contempt or trespass. See S.C. Code Ann. § 20-4-60. The first provision of the statute states that the order of protection is “to protect the petitioner or the abused person” by enjoining a particular person from “abusing, threatening to abuse, or molesting” by way of communication or actual contact with the protected person. Id.

Although the issue presented was one of first impression in South Carolina, other jurisdictions have examined whether a violation of an order of protection may serve as the predicate crime for burglary. The Supreme Court of Delaware concluded that a defendant’s unlawful entry into his own home, in violation of a Family Court order, could not serve as the predicate offense for burglary. Buchanan v. Delaware, 981 A.2d 1098, 1099 (Del. 2009). The defendant had been ordered to vacate the premises pursuant to a Family Court order following his divorce. Id. However, the defendant returned to the home where he was discovered by police. Id. The court held that the predicate crime element of burglary “may be satisfied by a defendant’s intent to

engage in conduct prohibited by an order of protection while on the banned premises” but “is not satisfied solely by a [appellant’s] intent to violate an order of protection by entering the [banned] dwelling.” *Id.* at 1101. The court also stated that the appellant’s violation of the order was not a “continuing crime” that encompassed both unlawful entry and intent to commit criminal contempt because “absent the order, [the defendant] had every legal right to enter and remain on his own property.” *Id.* at 1102. The court also noted that there is “no clear definition for what constitutes a continual disregard of a court order.” *Id.* (emphasis in original).

Taking a more nuanced approach, the Supreme Court of Minnesota ultimately held that a violation of an order for protection was insufficient to establish first-degree burglary based on the facts presented. *Minnesota v. Colvin*, 645 N.W.2d 449, 456 (Minn. 2002). The order for protection provided that the defendant must not enter his ex-wife’s residence or stay at the residence for any reason, even if invited. *Id.* at 451. One evening, ex-wife’s roommate found the defendant in the home watching television and drinking a beer. When the roommate requested he leave, the defendant complied. Subsequently, the defendant was charged with burglary in the first degree and violation of the order for protection. *Id.* Ultimately, the defendant was convicted. *Id.* The Minnesota Court recognized that a violation of an order of protection can be committed in many ways, and the nature of the violation will determine whether the violation constitutes an independent crime under the burglary statute. *Id.* at 452. The prosecution argued on appeal that the defendant violated the protective order in two ways: (1) attempting to contact the victim; and (2) entering the victim’s residence. *Id.* However, the appellate court determined the stipulated facts did not support the prosecution’s contention that the defendant attempted to contact the victim. *Id.* at 453. As a result, the court concluded the defendant violated the protective order solely by entering the victim’s

residence. Id. The court concluded that a violation of a no-entry provision of a protective order, like trespass, could not be used as the basis for the independent crime of burglary. Id. at 454.

Although Washington State concluded that a violation of an order of protection may satisfy its burglary statute's requirement that the offender intend to commit a crime therein, Washington v. Stinton, 89 P.3d 717, 721 (Wash. Ct. App. 2004), this case actually supports Appellant's position. In Stinton, 89 P.3d at 718, the order of protection not only prohibited the defendant from entering the victim's residence, it also prohibited him from harassing and threatening the victim. The state's theory was that the defendant's violation of the protective order provision against harassing the victim, not the unlawful entry, served as the predicate crime for burglary. Id. Appellant's case is distinguished easily because the prosecutor did not offer any evidence that Appellant engaged in unlawful conduct toward the victim while in the residence or that he had the intent to do so while in the residence. The conduct in Stinton involved harassment, which is a crime independent of the violation of the protective order. The victim testified that Appellant did nothing more than talk. Although, the protective order forbade Appellant from communicating with the victim, such conduct was not criminal except as a violation of the order of protection.

On the other hand, the Maine Supreme Court determined a defendant was properly charged with burglary for entering the victim's home with intent to commit assault and to violate a protective order. Maine v. Robinson, 656 A.2d 744, 747 (Me. 1995). However, the Maine Court did not express if the opinion would be the same had the defendant not also intended to commit an assault against the victim.

Simply put, Appellant's unlawful entry cannot establish both elements of burglary in the first degree – entry without consent and intent to commit a crime in the dwelling. In his closing arguments, the solicitor even stated that they were “not contending that [the appellant] was there

to hurt [his girlfriend], to assault her, to do anything in the sense of physically hurting her.” R. 148 lines 11-13. It is evident from the record that Appellant only wanted to get back together with his girlfriend and entry into her apartment was in pursuit of this. Therefore, without any contrary intent to harass or molest her, Appellant’s entry into her home should not be legally sufficient to constitute the predicate crime element of first degree burglary.

Concerning Appellant’s second issue, this Court held Appellant was not entitled to a jury instruction on trespass because trespass is not a lesser-included offense of burglary relying upon State v. Cross, 323 S.C. 41, 448 S.E.2d 569 (Ct. App 1994). Because the facts of this case are so different from those in Cross, the court should look at this issue and determine whether trespass can be a lesser included of first degree burglary where the basis of the charge is a violation of the “no contact” provision of a protective order.

The question presented is whether trespass is a lesser included offense of burglary in the first degree. One of the tests used to determine if an offense is a lesser included of a charged offense is the elements test. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). Using the elements test, an offense is a lesser included of a greater offense if the greater offense includes all the elements of the lesser offense. State v. McFadden, 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Therefore, it is necessary to review the elements of the offense of burglary in the first degree and trespass. The elements of first degree burglary are as follows:

[A] person enters a dwelling without consent and with intent to commit a crime in the dwelling and either: (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or (2) the burglary is committed by a person with a prior

record of two or more convictions for burglary or housebreaking or a combination of both; or (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311(A). The elements of trespass are as follows:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative.

S.C. Code Ann. § 16-11-620.

At first blush, trespass does not appear to be a lesser-included offense of burglary in the first degree. In fact, this Court held as such in Cross, supra based upon the facts presented. This Court noted that burglary in the first degree applied only to dwellings and that statutory trespass required a prior warning against entry or a request to leave, which were not elements of burglary. Cross, 323 S.C. at 44, 448 S.E.2d at 570. Concerning common law trespass, this Court held that burglary did include the elements of a willful malicious injury or entry after notice. Id. Appellant's case is easily distinguishable and the facts of his case present a situation in which trespass is a lesser included offense of burglary in the first degree.

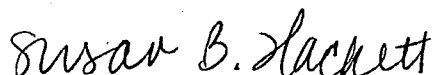
In Cross, this Court correctly noted that statutory trespass requires a prior warning against entry or a request to leave, which is not a stated element of burglary. However, in Appellant's case, it was such an element. The evidence presented by the state to satisfy the element of burglary that the person intended to commit a crime in the dwelling was that Appellant intended to violate the order of protection, which amounted to a prior warning to Appellant not to enter the dwelling. Appellant had notice of the order or protection and had an opportunity to be heard prior to its issuance. The protective order specifically forbade Appellant from entering or attempting to enter the victim's place of residence. Here, Appellant had been warned not to enter, but did so anyway.

In closing argument, the state conceded that Appellant was not there "to hurt her, assault her, to do anything in the sense of physically hurting her." R. 148 lines 11-13. The only evidence of any crime to be committed in the dwelling was a violation of the order of protection. The prosecutor concluded her argument with the following: "[Appellant] thinks that it's okay to break the law, a judge's order. And he thought that he could do that by entering her home. ... He violated two laws when he went over there." R. 155 lines 5-8.

Therefore, because a violation of a "no contact" provision of a protection order amounts to a trespass, the elements of trespass can be reasonably inferred in the elements of burglary, and there is enough evidence in the record to support a trespass charge, the court should allow for trespass as a lesser included offense in these limited circumstances.

Appellant respectfully requests this Court rehear the matter.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

This 13th day of December, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS E. GILLILAND,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Thomas E. Gilliland, # 344711, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210 this 13th day of Decemberr, 2012.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 13th day
of December, 2012.

Emily Bryson
Notary Public for South Carolina
My Commission Expires: November 16, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

Thomas Gilliland, Appellant.

Appellate Case No. 2011-185606

JAN 25 2013

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Shott, Jr.

J.

[Signature]

J.

Asquith C. Curren

A.J.

Columbia, South Carolina

cc:

Julie Kate Keeney

Susan Barber Hackett

FILED

January 25, 2013

STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APR 26 2013

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

THOMAS E. GILLILAND,

APPELLANT

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JULIE KATE KEENEY
Staff Attorney
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit
Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185
(864) 467-8282

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
TESTIMONY	
RYAN BRENT FLOOD	
Direct Examination by Solicitor Tessitore	3
Cross Examination by Ms. Manigault	16
PAMELA ANN MORGAN	
Direct Examination by Solicitor Tessitore	21
Cross Examination by Ms. Manigault	56
Redirect Examination by Solicitor Tessitore	73
REBECCA DEVORE-SNOW	
Direct Examination by Solicitor Tessitore	75
KENNETH POSEY	
Direct Examination by Solicitor Tessitore	76
MOTION TO DISMISS BURGLARY FIRST CHARGE	78
TESTIMONY	
THOMAS EDWARD GILLILAND, JR	
Direct Examination by Ms. Manigault	80
Cross Examination by Solicitor Tessitore	108
RENEW MOTION TO DISMISS BURGLARY FIRST CHARGE	137
CHARGE CONFERENCE	138
CLOSING ARGUMENT BY MS. MANIGAULT	142
CLOSING ARGUMENT BY SOLICITOR TESSITORE	144
CHARGE ON THE LAW	155
QUESTIONS FROM THE JURY REGARDING EVIDENCE AND A RE-CHARGE ON THE LAW OF FIRST DEGREE BURGLARY	156

VERDICT	160
MOTION FOR NEW TRIAL	161
SENTENCING	162
STATE'S EXHIBIT #1 (ORDER OF PROTECTION)	164
INDICTMENTS	168
CERTIFICATE OF COUNSEL	172

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2010-GS-23-4939

2010-GS-23-4940

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

THOMAS E. GILLILAND,)
 DEFENDANT.)

ORIGINAL

February 1 and 2, 2011
 Greenville, South Carolina

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE; and a jury.

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

JENNIFER A.R. TESSITORE, ESQ.
 Assistant Solicitor

DOROTHY A. MANIGAULT, ESQ.
 Attorney for the Defendant

HOLLIE M. JENKINS
 Circuit Court Reporter

P R O C E E D I N G S

1
2 THE COURT: All right. We have the case of State v.
3 Thomas Gilliland on burglary first degree and violation of
4 protection -- order of protection.

5 Is the State ready to proceed on that case?

6 MS. TESSITORE: Yes, Your Honor.

7 THE COURT: And is the Defense ready?

8 MS. MANIGAULT: Yes, sir.

9 THE COURT: You can tell Ms. Olson to send our jurors
10 up.

11 MS. TESSITORE: Judge, one quick matter I'd rather
12 take up before, just in case this one individual juror
13 comes up here. There was -- Juror #81, Joenel Gant, and
14 our -- we ran an NCIC. And it indicates that he was
15 convicted of voluntary manslaughter in 1982. I don't --

16 THE COURT: Was he excused?

17 There were two excused downstairs. Mr. Manley was
18 excused. And there's another gentleman that came up, and
19 I excused him. If that comes up, we'll address it at the
20 bench, if his name is called.

21 But there were two jurors downstairs that I excused
22 because of --

23 MS. TESSITORE: Yes, sir.

24 I think that was #3, Addleman --

25 THE COURT: Mr. Manley was one -- well, then the

1 But we ask that you listen very carefully to the
2 testimony and the evidence. And we believe that, at the
3 end of this case, you will come back with a verdict that
4 speaks the truth regarding the Defendant.

5 Thank you.

6 THE COURT: You may call your first witness,
7 Solicitor.

8 MS. TESSITORE: Thank you, Your Honor.

9 The State calls Deputy Flood.

10 THE CLERK: Sir, please, pause at the end of the
11 bench. Place your left hand on the Bible and raise your
12 right hand.

13 WHEREUPON,

14 RYAN BRENT FLOOD,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 Please be seated.

18 Please state your full name for the record.

19 THE WITNESS: Ryan Brent Flood.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MS. TESSITORE:

23 Q Deputy Flood, where do you work?

24 A The Greenville County Sheriff's Office.

25 Q And in what position?

1 A In uniform patrol.

2 Q How long have you been in that position?

3 A Roughly, four years.

4 Q And what are your duties in that position?

5 A I'm a first responder. I respond to 911 calls, calls
6 given into dispatch.

7 Q Okay. And how long have you been in law enforcement?

8 A Roughly, four years.

9 Q Was it part of your duties to respond to a 911 call
10 at at approximately 3:00 a.m. on March
11 16th, 2010?

12 A Yes.

13 Q Is that in Greenville County?

14 A Yes.

15 Q What was the nature of the call you received?

16 A It was a domestic disturbance.

17 Q And were you working alone that night?

18 A No.

19 Q Who were you working with?

20 A Deputy Lackey responded to the call with me.

21 Q Okay. Who -- were you driving together?

22 A No. We were in two different cars, but we arrived at
23 the same time.

24 Q Now, when you got the call, where were you? Do you
25 recall?

1 A I can't recall where I was. We were roughly four
2 minutes away.

3 Q Did you respond with lights and sirens?

4 A No.

5 Q Okay. And why is that?

6 A Policy. That's not a typical call. The call didn't
7 come in that she was being attacked at the time. It
8 didn't justify running lights and sirens.

9 Q Did -- from the time that the -- strike that. I'm
10 sorry.

11 Describe the home when you arrived. What kind of
12 home was it?

13 A It's a white, single-story dwelling.

14 Q Okay. And was -- were there other homes around it?

15 A Yes. It was in a residential neighborhood.

16 Q And describe what you did when you got there.

17 A I pulled up in the alley street behind the house,
18 which is the typical area where the residents on the
19 street park their cars or gain access to their homes is
20 through this alley street. I got out of my car
21 immediately, ran up to the house to the back door and
22 knocked on the door.

23 Q And what happened when you knocked on the door?

24 A The victim opened the back door to her house.

25 Q And what did you observe when she opened the door?

1 A I observed she was standing there. She appeared
2 frightened. Her eyes, you know, were kind of wide, and
3 she appeared like she was quivering. I observed the
4 Defendant inside her house standing behind her, roughly,
5 three feet or so behind her.

6 I asked her what was going on, what happened. She
7 kind of gave me a nod indicating that -- in the direction
8 behind her indicating that the issue -- she was having an
9 issue with the subject standing behind her. And, at that
10 time, I separated her from him.

11 Q Okay. And was there anybody else in the house?

12 A No.

13 Q When you say you separated them, how did you
14 accomplish that?

15 A I kept her inside of the home. Deputy Lackey took
16 him outside and spoke with him outside.

17 Q And where did you speak with her in the house?

18 A I believe it was in the kitchen area.

19 Q After you -- well, when Deputy Lackey took the
20 Defendant outside, you're referring to the Defendant here?

21 A Yes.

22 Q Okay. Mr. Gilliland. So he was outside with Deputy
23 Lackey?

24 A Yes.

25 Q And did they stay there?

1 A Yes.

2 Q Okay. And when -- do you know where he stayed while
3 you were in the house?

4 A Where they stayed?

5 Q Yes. Where the Defendant was -- while you were
6 talking to the victim, what was the Defendant doing?

7 A I believe he was just standing outside with Deputy
8 Lackey.

9 Q Now, you said you spoke with the victim?

10 A Yes.

11 Q And did she appear to have any kind of physical
12 injuries?

13 A None that I could observe at the time.

14 Q And you -- how would you describe her demeanor as you
15 spoke to her?

16 A She appeared very frightened. Her voice was
17 quivering. I could tell it in her eyes, the frightened
18 look. She was very scared.

19 Q Did she appear to be under the influence of anything
20 at that time?

21 A No.

22 Q Did the Defendant appear to be under the influence of
23 anything?

24 A No.

25 Q And what did you do after speaking with the victim,

1 Ms. Morgan? What did you do?

2 A It was brought to my attention that there was an
3 order of protection against the Defendant. At that time,
4 I advised Deputy Lackey. And we placed him in
5 investigative detention, and escorted him to the back seat
6 of my patrol car.

7 Q And, after you did that, did you speak with
8 Ms. Morgan any more?

9 A Yes. I went back inside the house. And that's when
10 I proceeded to gather a statement from her.

11 Q Okay. And was she able to write the statement
12 herself?

13 A No. She -- I wrote it for her and she advised me as
14 to what happened, what went on. And I wrote the statement
15 for her, and she did sign it.

16 Q Okay. What did you do after you got the statement
17 from the victim?

18 A After I obtained the statement and gave her all the
19 proper paperwork, I went back outside to my patrol car, at
20 which time, I spoke with the Defendant.

21 Q Okay. Before we talk about that, did you notice
22 anything when you were in the home as far as anything out
23 of the ordinary?

24 A No, I did not.

25 Q Okay. When you got outside, did -- describe what

1 happened as you went outside to speak to the Defendant.

2 A Like I said, he was in the back seat of my patrol
3 car. I pulled out my Miranda card, advised him of his
4 Miranda rights.

5 Q Let's just back up a little bit. When you say he's
6 in the back seat of your car, where were you in relation
7 to the back seat of your car?

8 A I was standing up on the outside of my car right next
9 to him with the door open.

10 Q So the door is open?

11 A Correct.

12 Q Is there a light that comes on when the doors open?

13 A The light does come on in the car, yes.

14 Q Were -- did you have any trouble seeing him, or
15 seeing what you were looking at?

16 A No.

17 Q And you said you pulled out a card. What kind of
18 card was that?

19 A It's a Miranda card that we keep in our pockets.

20 Q And do you use that card every time you arrest
21 somebody or Mirandize them?

22 A Yes.

23 Q Do you have that card with you today?

24 A Yes.

25 Q Okay. Can you pull that out, please?

1 A (Witness complied.)

2 Q And could you read the rights that you read to the
3 Defendant at that time?

4 A Yes. You have the right to remain silent. Anything
5 you say can and will be used against you in a court of
6 law. You have the right to talk to an attorney and have
7 him or her present with you while you are being
8 questioned. If you cannot afford to hire an attorney, one
9 will be appointed to represent you before any questioning,
10 if you wish. You can decide at any time to exercise these
11 rights and not answer any questions or make any
12 statements. Do you understand these rights that I have
13 explained to you? And having these rights in mind, do you
14 wish to speak with me?

15 Q Okay. So the last two lines are questions?

16 A Correct.

17 Q After the advisement of the rights?

18 A Yes.

19 Q And, with respect to that first question, could you
20 state that question again?

21 A Do you understand these rights I have explained to
22 you?

23 Q How did he respond to that?

24 A He responded, Yes.

25 Q And then what was the next question?

1 A Having these rights in mind, do you wish to speak
2 with me?

3 Q And what did he say to that?

4 A Yes.

5 Q And what did you do in response to his stating, yes,
6 he wanted to talk to you?

7 A I proceeded to ask him a couple of questions.

8 Q Okay. Do you recall what you asked him?

9 A Yes.

10 Q Actually, before we do that, let me just ask you, did
11 he -- did -- as best you could tell, did he appear to
12 understand what you told him?

13 A Yes.

14 Q Did he have any trouble with the English language?

15 A No.

16 Q Did he have any type of impairment that would prevent
17 him from understanding what you were talking about?

18 A No.

19 Q So there were no language barriers?

20 A No.

21 Q Did he appear to be in any kind of physical distress
22 when he was sitting there?

23 A No.

24 Q Did he ask you about any of the rights that you told
25 him about?

1 A No.

2 Q Did he ask about -- well, strike that.

3 Did he -- as he spoke to you, could you tell if there
4 was any type of impairment in his speech?

5 A None that I could tell.

6 Q And let's talk about the questions you asked him.

7 What -- tell the jury how this conversation ensued.

8 A I asked him how he got there. He stated he walked
9 and, specifically, told me he walked eight miles from an
10 address on Sumter Street. I asked him if he was aware
11 that there was an order of protection against him. He
12 told me, Yes.

13 And he proceeded to say that he continued to go there
14 because he wanted to try to reconcile the differences
15 between himself and the victim. And then I asked him, How
16 did you get in the house? And he told me he got in
17 through the bathroom window. He didn't advise me of
18 anything else.

19 Q Did he -- I'm sorry, one moment.

20 Okay. So he admitted that he knew about the order of
21 protection?

22 A Yes.

23 Q Did he mention anything about clothes?

24 A No.

25 Q Did he mention anything about a truck?

1 A No.

2 Q Did he appear -- do you recall, was he in night
3 clothes or normal plain clothes?

4 A I can't recall what he was wearing.

5 Q Okay.

6 A If I remember correctly, he was not in pajamas or
7 clothes that you would typically wear to bed, no.

8 Q Let's see. Did you -- at any point, after he made
9 these statements to you, did you go back into the house
10 and talk to the victim at all?

11 A Yes.

12 Q Okay. And did you tell her what the Defendant had
13 told you?

14 A I can't recall.

15 Q Okay. So after -- well, what was your purpose in
16 going back in the house to talk to her after you spoke
17 with the Defendant?

18 A Just to advise her what was going on, that, you know,
19 he was going to be transported down to the detention
20 center. I asked her if she had any further questions, and
21 made sure she had all the paperwork she needed.

22 Q And did you prepare a report?

23 A I did.

24 Q And did you indicate in that report the conversation
25 you had with the Defendant?

1 A Yes.

2 Q Okay. And did you contact any other officers to come
3 to the house?

4 A No.

5 Q Did you look around the house at all?

6 A Other than the areas that I was in, no.

7 Q Did you look in the bathroom?

8 A No.

9 Q Okay. Did you call forensics out that night?

10 A No, not that night.

11 Q Okay. Why didn't you call forensics out that night?

12 A Well, there wasn't any need to try to obtain a point
13 of entry, or any kind of latent prints. When I got there,
14 I saw him visibly with my own eyes inside of that house.
15 And from that order of protection, I knew he was not
16 granted -- allowed to be in that house.

17 Q Did a forensics officer go out there, at some point,
18 in the daylight?

19 A It was brought to my attention that he was.

20 Q And who was that that went out?

21 A I believe it was Ronnie Brown.

22 Q And is he still with forensics?

23 A No, he's not.

24 Q Do you know what he's doing?

25 A He left to obtain his Masters Degree.

1 Q What did you do after you left the victim and went
2 back out to your car? Where did you go from there?

3 A The second time after I had already Mirandized him
4 and spoke with the Defendant?

5 Q Yes.

6 A We transported the Defendant to the detention center
7 and filled out a warrant request, because there was no
8 judge available.

9 Q Okay. And those warrants were obtained?

10 A They were.

11 Q Just one moment.

12 So based on what the Defendant told you himself, did
13 you have any question about the actual point of entry?

14 A No.

15 Q Okay. And what did you understand it to be?

16 A The bathroom window.

17 Q And was there any question as far as who had entered
18 the home?

19 A No.

20 Q Okay. So there was no other suspects to pursue,
21 essentially?

22 A No one else in the house, correct.

23 Q Did you have any other involvement after preparing
24 your report and the warrants were obtained?

25 A No.

1 MS. TESSITORE: Please answer any questions the
2 Defense may have.

3 Thank you.

4 CROSS-EXAMINATION

5 BY MS. MANIGAULT:

6 Q Officer Flood, the complaining witness reported an
7 incident on March 16th, 2010, that's when you responded;
8 is that correct?

9 A Correct.

10 Q And when you responded to -- you said
11 ?

12 A Yes.

13 Q Okay. And that's where Pam Morgan lived; is that
14 correct?

15 A Yes.

16 Q And when you responded, you said you went up a back
17 alley or an alley street?

18 A Correct.

19 Q Now, when you went up the alley street, did you see a
20 truck parked in the yard?

21 A I can't recall.

22 Q How big was the yard at that house? Do you recall?

23 A I can't recall.

24 Q Were there any other cars parked there besides your
25 car when you pulled up and the other deputy?

1 A I can't recall.

2 Q Now, on March 16th, you responded, you said, about
3 four minutes after you got the call. So you would have
4 arrived there about 3:00 a.m.?

5 A On or about 3:00 a.m., yes.

6 Q Around about 3:00 a.m. Now, you testified that
7 Deputy Brown was with forensics, and he did respond to the
8 address in the daylight hours?

9 A Yes.

10 Q Do you know what day he responded?

11 A No.

12 Q Okay. I'm going to show you a copy of a report --

13 MS. MANIGAULT: Your Honor, may we approach?

14 THE COURT: Yes, ma'am.

15 (WHEREUPON, a bench conference was held.)

16 BY MS. MANIGAULT:

17 Q Officer Flood, I gave you two incident reports with
18 Forensic Officer R. Brown's name on it.

19 A Yes.

20 Q What is the response date to by R.
21 Brown, forensics?

22 A It looks like April 2nd, 2010.

23 Q And what is the second response date?

24 A April 13th of 2010.

25 Q And your response date was?

1 A March the 16th, 2010.

2 Q All right. Thank you.

3 Now, you testified you don't recall seeing a truck in
4 the yard; is that correct?

5 A Yeah. I don't recall.

6 Q Do you recall that the Defendant said he came to pick
7 up his truck and clothing from the house?

8 A No.

9 Q Do you recall whether the Defendant told you that
10 Ms. Pam Morgan called him and invited him over to come get
11 his stuff?

12 A Can you repeat that, please?

13 Q Do you recall the Defendant telling you that Ms. Pam
14 Morgan, the complaining witness in this case, called him
15 and invited him over to the house to pick up his truck and
16 his clothing?

17 A No.

18 Q All right. Now, you do recall he said that he walked
19 eight miles; is that correct, to get there?

20 A Yes.

21 Q And you do recall -- or do you recall what time he
22 said he got there?

23 A No.

24 Q Do you recall -- did he say he got there around
25 12:15, or earlier, or later?

1 A I can't recall.

2 Q Do you recall testifying in a hearing on May 20th,
3 2010, that you saw no evidence of forced entry?

4 A That's correct.

5 Q All right. And I believe you testified that you
6 talked to Thomas Gilliland outside while he was in your
7 patrol car by yourself?

8 A Yes.

9 Q Okay. The other deputy was not in proximity?

10 A I can't recall where his proximity was. He was on
11 the scene, though.

12 Q And Pam Morgan was still inside of the house?

13 A Correct.

14 Q And when you arrived at the home at
15 Thomas Gilliland was inside the house; is that correct?

16 A Yes.

17 Q And I believe you testified that he was -- he stepped
18 to the door, and he was about three feet behind Pam Morgan
19 when you knocked on the door?

20 A Correct.

21 Q Did you do -- did you check any of the rooms in the
22 residence, besides the area where you were standing and
23 could visually see?

24 A No.

25 Q Do you recall whether any of the other -- the deputy

1 that was with you, Deputy Lackey, did he come inside and
2 check any of the other rooms?

3 A I can't recall. I do not believe so, though.

4 Q And you do recall that Mr. Thomas Gilliland did tell
5 you that he was aware of the order of protection?

6 A Yes.

7 Q Do you recall any information when Ms. Pam Morgan --
8 or did she offer you any information as to the time that
9 Thomas Gilliland was at her house before you arrived?

10 A No.

11 Q I think in response to a question from the
12 Solicitor's Office, you said that there was no
13 justification to use the sirens, because there was no
14 report of any attacks through the dispatch on 911; is that
15 correct?

16 A Right.

17 Q About how old would you say this house is, a guess?

18 A I can't. I don't know.

19 Q Is it an old house?

20 A It's not a new house.

21 MS. MANIGAULT: It's not a new house.

22 Thank you.

23 THE COURT: Any redirect?

24 MS. TESSITORE: Briefly, Your Honor.

25 Thank you.

1 The State calls Pam Morgan

2 THE CLERK: Ms. Morgan, if you'll pause at the end of
3 the bench. Place your left hand on the Bible and raise
4 your right hand.

5 WHEREUPON,

6 PAMELA ANN MORGAN,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 Please be seated.

10 Please state your full name for the record.

11 THE WITNESS: My name is Pamela Ann Morgan.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MS. TESSITORE:

15 Q Ms. Morgan, you're going to have to speak up nice and
16 loud and clear so everybody can hear you back here.

17 Ms. Morgan, where do you work?

18 A I work at Wal-Mart on Woodruff Road.

19 Q And how long have you worked there?

20 A Since September of 2001 -- no, I'm sorry, 2007.

21 Q So about four years?

22 A Yes, ma'am.

23 Q And what's your position there?

24 A Customer service in cosmetics and health and beauty
25 sections.

1 Q And what do you do in your position there?

2 A I assist customers, help them choose products
3 appropriate for them. I stock shelves. I unload freight,
4 a variety of things.

5 Q Okay. And how many -- approximately, how many hours
6 do you, typically, work in a week?

7 A I work up to 40 hours.

8 Q Has that been that way since you've worked there?

9 A That's exactly the way it was when I started working
10 there. Periodically, they cut hours, but -- after
11 Christmas when the business is slow, but normally, yes.

12 Q Okay. And is that your only job?

13 A Yes.

14 Q How long have you lived in Greenville County?

15 A Since 1977.

16 Q So you're fairly a long-time resident?

17 A Yes, ma'am.

18 Q Let's talk about your living arrangements. Now, the
19 incident that brings us here today occurred at

20 ?

21 A Yes.

22 Q And is that in Greenville County?

23 A Yes, it is.

24 Q And when did you start living there?

25 A September of 2001.

1 Q Okay. And did you begin living there by yourself, or
2 with anyone else?

3 A By myself.

4 Q And did you own or lease that home there at
5 ?

6 A Lease.

7 Q So was anyone else on the lease?

8 A No one else was on the lease.

9 Q And describe, generally, the layout of the home there
10 where you are renting. How many bedrooms and just
11 generally --

12 A There's one bedroom, living room, kitchen, and
13 bathroom.

14 Q Okay. So just four rooms in the house?

15 A Yes.

16 Q Would you describe it -- and is it one story?

17 A It's one story.

18 Q And were you living there last year in 2010?

19 A Yes.

20 Q In January of 2010?

21 A Yes.

22 Q Okay. And are you still there?

23 A I've relocated.

24 Q Okay. Did -- the Defendant, Mr. Gilliland, did he
25 live with you in that house for some period of time?

1 A Yes.

2 Q When did he begin living there?

3 A In February of 2009.

4 Q Okay. And did that change in January of 2010?

5 A Yes.

6 Q And why did that change?

7 A An incident occurred that I realized that I -- we
8 could not live together..

9 Q Okay. And, as a result of that incident, what did
10 you do to follow through on that decision that you made?

11 A I got an order of protection.

12 Q Okay. And how did you learn about the order of
13 protection?

14 A I believe I called the Solicitor's Office, and I was
15 told about Safe Harbor.

16 MS. MANIGAULT: Your Honor, I'm going to object to
17 anything she was told by --

18 THE COURT: I sustain the objection.

19 BY MS. TESSITORE:

20 Q Well, based on the information that you got, how did
21 you go about applying for the order of protection?

22 A I went to Safe Harbor. And one of the ladies there,
23 her name was Rita, helped me fill out the paperwork. And
24 then a court date was established.

25 Q Okay. And so, at that point, you had made the

1 decision clear that you were no longer -- you no longer
2 wanted to have contact with the Defendant?

3 A Exactly.

4 Q And did he agree with that decision?

5 A No.

6 Q Have you ever changed your mind about that decision?

7 A No.

8 Q All right. So let's focus on the Defendant. How
9 long have you known him?

10 A Since, I would say, the spring of 2008.

11 Q And how did you meet him?

12 A At work, at Wal-Mart.

13 Q What was his position there?

14 A He worked in freight, unloading the trucks and
15 bringing the merchandise to the floor.

16 Q Okay. Was -- did you -- were y'all -- did y'all
17 start dating, or how did the relationship progress?

18 A At first, we started talking. And then we went for
19 coffee, and we went out to dinner.

20 Q Okay. Well, we don't need all the details, just
21 generally.

22 A Basically, that's how it progressed.

23 Q And did you begin dating?

24 A Yes.

25 Q Okay. Did that become exclusive?

1 A Yes.

2 Q And was he -- let's see. When you say he worked at
3 Wal-Mart, it at the same one you worked at; right?

4 A Yes.

5 Q Did y'all have similar hours or different shifts?

6 A Most of the time, the hours were similar.

7 Q And approximately -- well, when did he start living
8 with you?

9 A February of 2009.

10 Q Okay. So when he was living with you, he was, also,
11 working at Wal-Mart?

12 A Yes.

13 Q And approximately -- so that means you lived together
14 for about eight months; correct?

15 A Yes.

16 Q In that period of time, did y'all ever decide to get
17 married?

18 A We did talk about it. We did not get married.

19 Q And focusing on the decision not to pursue the
20 relationship, to end the relationship, how did he deal
21 with that decision?

22 A He wouldn't accept it.

23 Q Now, was he living there with you after January --
24 let's see. When did he stop living with you?

25 A January of 2010.

1 Q Okay. And did you file for an order of protection?

2 A Yes, I did.

3 Q Okay. As you stated, Ms. Wellborn helped you?

4 A Yes.

5 Q Okay. I'm going to show you what's been marked as
6 State's Exhibit No. 1. And I want you to take a look at
7 that.

8 A (Witness complied.)

9 Q Do you recognize that?

10 A Yes, I do.

11 Q Okay. And what is that?

12 A That's the order of protection that Judge Jenkins
13 approved.

14 Q Okay. Now, you say Judge Jenkins. Was there --

15 A At Family Court.

16 Q Okay. The first thing, did you have to make an
17 application for that?

18 A Yes.

19 Q Okay. And was it immediately that day, or did you
20 have to wait for the hearing?

21 A I had to wait for the hearing.

22 Q Okay. And so there was -- there was a hearing?

23 A Yes. The application was made on February the 5th.
24 And the Court date to see Judge Jenkins to get the
25 approval for it was February 16th.

1 Q Okay. So that was the date that you saw Judge
2 Jenkins, on February 16th?

3 A Yes, ma'am.

4 Q Okay. And, at that hearing, what was, generally, why
5 you sought that order?

6 A An incident that had happened in early January made
7 me realize that I needed protection.

8 Q Okay. And so did you attend the hearing before Judge
9 Jenkins?

10 A Yes, I was there.

11 Q And I'm going to ask you a little bit about that.
12 Did you have a lawyer at that hearing?

13 A No. I had a victim's advocate.

14 Q Okay. And did you testify to the Judge?

15 A Briefly, yes.

16 Q Did the Court issue its ruling while you were at the
17 hearing?

18 A Yes.

19 Q Were the Judge's rulings clear to you?

20 A Yes.

21 Q And how long was the order in effect for?

22 A Six months.

23 Q So it was not a permanent order?

24 A No.

25 MS. TESSITORE: Your Honor, at this time, I would

1 move State's Exhibit No. 1 into evidence.

2 THE COURT: Without objection?

3 MS. MANIGAULT: Without objection, Your Honor, as
4 agreed upon previously.

5 THE COURT: State's Exhibit No. 1 is admitted into
6 evidence.

7 MS. TESSITORE: Thank you, Your Honor.

8 (WHEREUPON, State's Exhibit No. 1 was admitted into
9 evidence.)

10 BY MS. TESSITORE:

11 Q Now, was the Judge's order effective immediately?

12 A I had the papers effective before I left the
13 courthouse, yes.

14 Q Okay. And did you initiate any contact with the
15 Defendant at all between the date the order was issued on
16 February 16th, and the date of this incident in March?

17 A Yes.

18 Q What was that?

19 A A phone call.

20 Q Okay. Did you make that phone call?

21 A Yes, I did.

22 Q All right. And who did you call?

23 A I called Mr. Gilliland's son.

24 Q Okay. So you called -- initiated contact with his
25 son?

1 A Yes.

2 Q And what was the purpose to call his son?

3 A I wanted to let Mr. Gilliland know that one of his
4 family could come over -- one or more of his family could
5 come over and get his belongings while I was at home.

6 Q Okay. So you were giving permission to the son or
7 another family member?

8 A Yes.

9 Q Okay. Did you give permission to Mr. Gilliland?

10 A Absolutely not.

11 Q And did you have that conversation with his son?

12 A No. Actually, his son put Tommy on the line.

13 Q Okay.

14 A So I ended up telling Tommy. But that was the
15 purpose of the contact was to let him know that family
16 could come and get his belongings.

17 Q And did you make it very clear?

18 A Yes, I did.

19 Q How clear did you make it?

20 A I made it very clear.

21 Q So that was the arrangements for him to get his
22 belongings?

23 A That was the offer.

24 Q Okay. And did any family member come and get his
25 belongings?

1 A No one ever showed up.

2 Q So -- now, between the time of the -- again, the
3 order was issued on February 16, and the night of this
4 incident, did he ever come over to your house?

5 A Not to my knowledge.

6 Q Okay. So let's focus on the date of this incident
7 that brings us here today. Okay. On -- let's talk about
8 the evening of March the 15th. Okay. What were you doing
9 that evening?

10 A I was at work. I went to work at 7:00. Sometimes, I
11 have a short shift at night. I went to work at 7:00. I
12 was to get off at 11:00. I got off between 11:00 and
13 11:15. And then I drove home and got home around -- by 10
14 after 12:00.

15 Q Okay. And did you -- during the time you were on
16 your shift, were you contacted at all by the Defendant or
17 by any of his family members?

18 A No.

19 Q Okay. So were you planning on seeing anybody there?

20 A No.

21 Q And had you made any arrangements for that evening to
22 see anybody at your house after you got off work?

23 A No.

24 Q So when you did arrive at home -- first of all, did
25 you travel home from work by yourself?

1 A Yes.

2 Q And how do you travel back and forth to work?

3 A I drive.

4 Q So when you arrived home, when you pulled in, where
5 do you, typically, park?

6 A Close to the back, the walkway to the back door.

7 Q Okay. And did you notice anything unusual outside
8 before you went in the house?

9 A No, I didn't.

10 Q Were there any vehicles that had not been there when
11 you left for work that were there?

12 A No.

13 Q Did -- and which door did you go in?

14 A My back door.

15 Q Did you have to unlock the door, or was it locked?

16 A Yes, I did. It was locked.

17 Q And when you walked in that door, in the back door,
18 what room do you enter?

19 A The kitchen.

20 Q And, in the kitchen, did you notice anything?

21 A Nothing unusual. My little dog ran up to greet me as
22 is normal.

23 Q Were there any lights on or off that hadn't been on
24 or off?

25 A No.

1 Q And what happened after -- did you move through the
2 kitchen?

3 A I went into the living room.

4 Q Okay.

5 A And I looked down, and I noticed that the space
6 heater was on. And I had turned it off before I left for
7 work. And then I looked up and I turned around and
8 Mr. Gilliland was walking out of my bedroom into the
9 living room.

10 Q What was your reaction?

11 A I screamed. I said, What are you doing here? I
12 said, How did you get in?

13 Q Okay. Did he answer those questions?

14 A No.

15 Q At that point, no?

16 A He did answer to what are you doing here. And he
17 said that he wanted to come and talk and try to make up
18 and straighten things out.

19 Q Okay. Did he say anything about Family Court or the
20 court order?

21 A He said that he loved me and that the Court did not
22 know what was best for me, but he did.

23 Q Did he say how he got in?

24 A No. I asked him several times, and he never would
25 tell me. The only thing he said was, Pam, I'm a cat

1 burglar. Doors can be jimmied, windows can be opened.

2 Q So that's all he would say about how he got in?

3 A Right.

4 Q Did you -- well, what did you do -- how would you
5 describe his demeanor when you first saw him and the time
6 that we're talking about?

7 A I would say he was making an effort to not upset the
8 atmosphere, to not create a scene.

9 Q Okay. And how did you -- what was your reaction
10 after he explained how he got in and why he was there?
11 Did he say why he was there?

12 A He never explained how he got in.

13 Q Okay. So --

14 A My first reaction when he started talking, I started
15 shaking violently and --

16 Q Did you tell him to leave at that point?

17 A No.

18 Q Why not?

19 A Because I knew it wouldn't do any good.

20 Q Okay. So did you -- so what did you do while he was
21 there in the house?

22 A I went from one room to another. I was trying to
23 find a phone that I could use. He was following me very,
24 very closely everywhere I went. I was going to take the
25 dog out, and he followed me. And I just -- hoping I could

1 like run or something. And I realized he was right behind
2 me and I couldn't do that. So I came back into the house
3 and sat on the couch.

4 Q And did he ever attempt to hurt you physically while
5 you were in there -- while he was in there?

6 A No, no.

7 Q And what was your -- did you let him know that you
8 were scared?

9 A Yes.

10 Q Did you make any effort -- or did you call out to a
11 neighbor or --

12 A No.

13 Q -- try to run out the door?

14 A No. I knew I couldn't get away.

15 Q Okay. Did -- at some point, were you able to call
16 for help?

17 A After about an hour -- two and a half hours.

18 Q Okay. And how did you accomplish that?

19 A I went into the bathroom. And I had acquired a
20 little cell phone, and I had it in my pocket. I never
21 took my light jacket off, and the cell phone was in my
22 pocket. And I went to the bathroom and shut the door and
23 held the cell phone down like this at my side. And I
24 turned it on and dialed 911.

25 Q Now, you said you closed the door?

1 A Yes.

2 Q Is that door able to be locked?

3 A No.

4 Q Are any of the doors on any of the rooms in the house
5 able to be locked on the inside?

6 A From room to room, no.

7 Q Bedroom door? Bathroom door?

8 A No.

9 Q Okay. And when you shut the door -- what happened
10 after you shut the door? You said you were able to call
11 911?

12 A Yes.

13 Q Okay. And how -- did the door stay closed the whole
14 time?

15 A No.

16 Q Okay. Approximately, how long did it take for the
17 police to get there?

18 A Within five minutes. It was a very quick response.

19 Q Okay. Now, I'm showing you what's been marked as
20 State's Exhibit No. 2, and just take a look at that. Do
21 you recognize that?

22 A Yes, I do.

23 Q What is that?

24 A It's a recording of the 911 call.

25 Q And have you had an opportunity to review that?

1 A Yes, I have.

2 Q Okay. And is it a fair and accurate recording of the
3 911 call that you made?

4 A Absolutely.

5 Q Okay. And you recognize the voices?

6 A Yes, I do.

7 Q Whose voices are on this?

8 A Mine, Mr. Gilliland's. There is -- I don't recall
9 the TV being on, but it sounds like it was. It was in my
10 pocket still on, so there's crackling noises and such as
11 that. And there's my voice again, his voice again. And
12 then officers -- when I went to the door, the officers
13 coming in. They are on that, also, at the end of it.

14 MS. TESSITORE: Okay. And, at this point, the State
15 would move State's Exhibit No. 2 into evidence.

16 THE COURT: Any objection?

17 MS. MANIGAULT: Your Honor, may we approach briefly?

18 THE COURT: Yes, ma'am.

19 (WHEREUPON, a bench conference was held.)

20 THE COURT: Over the Defense's objection, State's
21 Exhibit No. 2 is admitted into evidence subject to their
22 objection.

23 (WHEREUPON, State's Exhibit No. 2 was admitted into
24 evidence.)

25 THE COURT: It may be published.

1 MS. TESSITORE: Thank you, Your Honor.

2 (WHEREUPON, State's Exhibit No. 2 was played in open
3 court.)

4 BY MS. TESSITORE:

5 Q Is that when the officer arrived at the end?

6 A Yes.

7 Q Now, there's a lot of quiet time, if you will, where
8 no one is saying anything. What's going on during that
9 time?

10 A I'm getting the dog's leash. I told him that I had
11 to take Lily out one more time.

12 Q And so were you in the bathroom the whole time you
13 were calling 911?

14 A The whole time that the phone was on, no. I was in
15 the bathroom the whole time that I was speaking to the
16 dispatcher. The rest of the time, I was -- I had the
17 phone back in my pocket on. So a lot of the noises,
18 rustling and -- were because of that.

19 Q And why weren't you talking to the dispatcher? Why
20 did you have the phone in your pocket?

21 A I had tried -- Tommy went to the restroom twice. The
22 first time he went, I checked the phone in the bedroom.
23 It wasn't working. The second time he went, I checked the
24 phone in the living room. It wasn't working.

25 Q But when you had the cell phone, my question is --

1 A If I had it out while he was following me everywhere,
2 I couldn't make the call. He would have gotten the cell
3 phone.

4 Q Okay. So you were afraid he was going to take the
5 cell phone away?

6 A Yes, yes.

7 Q And so let me just understand this. So while --
8 well, let me ask you this, while you were waiting for
9 911 -- waiting for a response to the 911 call, how were
10 you feeling during that period of time?

11 A How was I feeling?

12 Q Yeah. What were you thinking during that time?

13 A They'll be here any second. They'll be here any
14 second. And I was waiting for the knock at the door.
15 Then I said I had to take my dog out. That was an excuse
16 to go to the door.

17 Q And did the police arrive while you were on the
18 phone?

19 A The phone was still on when they arrived, yes.

20 Q Okay. So that's --

21 A The phone was in my pocket, but it was on.

22 Q Okay. So when they arrived, where did they come
23 from?

24 A They were on the back porch. I could see -- as I was
25 going to unlock the door, I could see the first face of

1 one of the deputies. And I went ahead and opened the door
2 and let them in.

3 Q Okay. After the officers arrived and you say you let
4 them in, what happened there?

5 A One of the officers took Mr. Gilliland outside. And
6 the other stayed in with me and took my statement.

7 Q Okay. Did you -- so you told him what happened?

8 A Yes.

9 Q And did the officer walk around inside your house at
10 all that night?

11 A Not really, basically, just the kitchen.

12 Q Were you able to write your own statement?

13 A I was shaking too violently.

14 Q And so how did it get written?

15 A The officer wrote it.

16 Q Okay. Did you review it?

17 A Yes, I did.

18 Q Okay. Did you -- now, after he took your statement,
19 what happened?

20 A Well, I signed it. He went out. And then he came
21 back and said that they were taking Mr. Gilliland to the
22 law enforcement center.

23 Q Okay.

24 A And I had all my paperwork and everything that I
25 needed to have.

1 Q Okay. Did you notice any damage in or around your
2 home after they left?

3 A Not that night.

4 Q Okay. When -- did you notice any damage after that
5 night?

6 A Several days later.

7 Q Okay. And what did you notice?

8 A That the aluminum that was holding the storm window
9 and screen in place at the bathroom window had been peeled
10 back.

11 Q Okay.

12 A And the screen was just flapping there.

13 Q Okay. Did you notice any damage -- and that's --
14 which window is that?

15 A The bathroom window.

16 Q Okay.

17 A I first noticed something on the inside of the house,
18 though.

19 Q Okay. Well, what did you notice? Let's talk about
20 the inside first.

21 A Okay.

22 Q What did you notice on the inside?

23 A I was in the bathroom putting my makeup on. I
24 happened to glance down and I saw a little brass screw in
25 between the toilet seat and the tank. And I wondered how

1 that got there. I looked up further and the blinds that I
2 have on the window -- had on the window normally were
3 straight, and they were crooked.

4 So I lifted them. And I found the latch -- it
5 appeared to be locked. I touched it and it wasn't
6 attached. It was just sitting there appearing -- you
7 know, giving the appearance of being a locked window. And
8 so I got the latch and the screw and I put them in a
9 plastic bag thinking that forensics might want them.

10 Q Okay. Had anyone else been in your house after this
11 incident?

12 A Just me.

13 Q Okay. And just one moment.

14 I'm showing you State's Exhibit No. 4, and ask you to
15 look at that. And what is that?

16 A That's the little latch and the screw that I found
17 detached from the window.

18 Q Okay. And how is it contained?

19 A It's in the plastic bag I put it in.

20 Q Okay. And is that in substantially the same
21 condition as when you put it in the bag? Is that a fair
22 and accurate depiction of that item that you put in the
23 bag?

24 A Exactly, that's it, yes.

25 Q And where was that picture taken?

1 A On a mat on my kitchen table.

2 Q And that was -- and you found that -- well, first of
3 all, let's see. How did you -- you said you thought
4 forensics might need it. Did you make contact to make
5 sure that they were going to come out?

6 A Yes. I can't remember exactly how all of that went,
7 though.

8 Q Okay. Did you call forensics directly?

9 A No.

10 Q Okay. So you -- did you -- you let somebody know
11 about this?

12 A Yes.

13 Q And then forensics, did they come out?

14 A Yes.

15 Q An officer?

16 A Yes.

17 Q Okay. And that's the -- so who took that photograph?

18 A It was Officer -- I believe his name was Brown.

19 Q Okay. And were you there when he took the picture?

20 A Yes, I was.

21 MS. TESSITORE: The State moves State's Exhibit No. 4
22 into evidence.

23 THE COURT: Any objection?

24 MS. MANIGAULT: No objection, Your Honor.

25 THE COURT: Without objection, State's Exhibit No. 4

1 is in evidence.

2 (WHEREUPON, State's Exhibit No. 4 was admitted into
3 evidence.)

4 BY MS. TESSITORE:

5 Q I'm going to show you State's Exhibit No. 5. What
6 does that show -- well, first of all, do you recognize it?

7 A Yes, I do.

8 Q And what is that?

9 A That's where the two windows come together where it
10 would have latched had the lock been in place. This was
11 where the lock was sitting on the window.

12 Q Okay. And, just for clarification, where is this
13 window?

14 A This is the bathroom window.

15 Q Okay. And that's a fair and accurate depiction of
16 how it appeared when you discovered this missing piece?

17 A Exactly.

18 MS. TESSITORE: At this point, the State would move
19 State's Exhibit No. 5 into evidence.

20 THE COURT: Any objection to State's Exhibit No. 5?

21 MS. MANIGAULT: There's none, Your Honor.

22 THE COURT: Without objection, State's Exhibit No. 5
23 is in evidence.

24 (WHEREUPON, State's Exhibit No. 5 was admitted into
25 evidence.)

1 BY MS. TESSITORE:

2 Q I'm showing you State's Exhibit No. 6. Do you
3 recognize this?

4 A Yes.

5 Q What is that?

6 A The bathroom window with that latch section off.

7 Q And, that window, is that window operable as far as
8 being opened?

9 A Oh, yes.

10 Q Okay. Did --

11 MS. TESSITORE: I'm sorry. The State would move
12 State's Exhibit No. 6 into evidence.

13 THE COURT: Any objection to State's Exhibit No. 6?

14 MS. MANIGAULT: No objection, Your Honor.

15 THE COURT: Without objection, State's Exhibit No. 6
16 is in evidence.

17 (WHEREUPON, State's Exhibit No. 6 was admitted into
18 evidence.)

19 BY MS. TESSITORE:

20 Q Now, I'm showing you what's marked as State's Exhibit
21 Nos. 7 and 8. If you would, just take a look at those.
22 Do you recognize those?

23 A This is a shot from the side of the back of my house.
24 Directly in the middle is the bathroom window.

25 Q Okay. And that's in State's Exhibit No. 7?

1 A That's it.

2 Q Okay. So that would be the window with the pipe next
3 to it here?

4 A Yes. This window is my bedroom window. This is my
5 back door.

6 Q Okay. And is that a fair and accurate depiction of
7 the way it appeared when you went out there?

8 A Yes. When the forensics man came, yes.

9 Q Okay. And when you talked about the -- well, let me
10 back up. In State's Exhibit No. 8, you had talked about
11 the outside of the window, the damage. And I'm showing
12 you -- if you look at State's Exhibit No. 8, is that
13 a fair and accurate depiction of what you were
14 describing?

15 A Exactly what I found.

16 MS. TESSITORE: The State would move State's Exhibit
17 Nos. 7 and 8 into evidence.

18 THE COURT: Any objection?

19 MS. MANIGAULT: If I could see them.

20 (Pause.)

21 MS. MANIGAULT: No objection, Your Honor.

22 THE COURT: Without objection, those are, also,
23 admitted into evidence.

24 (WHEREUPON, State's Exhibit Nos. 7 and 8 were
25 admitted into evidence.)

1 BY MS. TESSITORE:

2 Q And there's only one -- well, how many windows are in
3 that bathroom?

4 A One.

5 Q Okay. Finally, I'm going to show you State's Exhibit
6 No. 3. And do you recognize that?

7 A That's the front of my house.

8 Q Okay. And is that a fair and accurate representation
9 of the way it appeared after this incident?

10 A Yes.

11 MS. TESSITORE: The State would move State's Exhibit
12 No. 3 into evidence.

13 MS. MANIGAULT: No objection.

14 THE COURT: Without objection, State's Exhibit No. 3
15 is admitted into evidence.

16 (WHEREUPON, State's Exhibit No. 3 was admitted into
17 evidence.)

18 BY MS. TESSITORE:

19 Q Now, were there any other latches missing on any
20 other window in the home?

21 A Not that I could find.

22 Q And --

23 A I looked at all the windows.

24 Q Now, let's talk about after the order of protection
25 was issued on February 16th, but prior to the burglary

1 incident on March 15th and 16th. Did the Defendant
2 contact you in writing?

3 A Yes.

4 Q And what I'm going to do is ask you -- first of all,
5 how long -- you lived together for how long?

6 A Actually, under the same roof from February of 2009,
7 to January of 2010.

8 Q Okay. So, during that period of time, did you become
9 familiar with his handwriting?

10 A Yes.

11 Q And how -- let me show you State's Exhibit No. 9, and
12 ask you if you recognize that? Can you take a look at it
13 and tell me if you recognize it?

14 A I recognize it.

15 Q Okay. What is that?

16 A That's a letter from him. It's his handwriting,
17 Mr. Gilliland's.

18 Q Okay. And when did you receive that letter?

19 A That was a couple of days after --

20 Q Approximately?

21 A -- approximately -- it's dated the 1st of March,
22 2010, so it was a couple of days later.

23 MS. TESSITORE: At this point, the State would move
24 that into evidence, State's Exhibit No. 9.

25 MS. MANIGAULT: Without objection, Your Honor.

1 THE COURT: Without objection, State's Exhibit No. 9
2 is in evidence.

3 (WHEREUPON, State's Exhibit No. 9 was admitted into
4 evidence.)

5 BY MS. TESSITORE:

6 Q Who is the letter addressed to?

7 A It's addressed to me, Ms. Pam Morgan.

8 Q Okay. What I'm going to ask you to do --

9 MS. TESSITORE: The State would request permission to
10 publish it to the jury, Your Honor.

11 THE COURT: Excuse me?

12 MS. TESSITORE: I'm sorry. The State would request
13 that the exhibit be -- excuse me, let me just make it --
14 State's Exhibit No. 9 to be published to the jury at this
15 time.

16 THE COURT: You may publish it. State's Exhibit
17 No. 9 is in evidence. You may publish it.

18 BY MS. TESSITORE:

19 Q Ma'am, if you could, go ahead and read the letter,
20 all three pages that are attached right there. And read
21 it nice and loud so the jury can hear you.

22 A To my dearest darling Pam, I surrender all my love to
23 you, Darling. I will do anything to please you, Angel. I
24 have fought as long as I can, Baby. Please tell me what I
25 can do to please and keep you happy, Darling. It's all I

1 want to hear from you, Girl. I only want to please you
2 and keep you for my own. Nothing in this cold world will
3 ever make me as happy as the time I spent with you and all
4 of your love and passion. I will never be still or happy
5 without your sweet touch and loving kindness and your
6 sweet love. Life holds no peace for me without you, Baby.
7 Not one minute will I ever spend without your love. This
8 I pledge forever, Tommy Boy.

9 Q Okay. And where was he living at the time that he
10 sent that letter to you?

11 A Not at my house.

12 Q Okay. One second.

13 Now, did you respond to this letter?

14 A No.

15 Q In any way, either by writing or responding to him
16 letting him know that you were -- anything about the
17 relationship, or cultivating the relationship, or
18 anything?

19 A Nothing.

20 Q Okay. And this is after the order of protection was
21 issued; correct?

22 A Yes.

23 Q Okay. Now, I'm going to show you what's been marked
24 as State's Exhibit No. 10, and ask you if you recognize
25 that?

1 A It's a copy of an envelope addressed to me.

2 Q Okay. Look at the whole State's Exhibit No. 10.

3 There's -- and look at the excerpt there that's attached.

4 What is that?

5 A This?

6 Q Well, let me back up. Do you recognize -- on the
7 front of State's Exhibit No. 10, what does that appear to
8 be?

9 A Well, it's a copy of an envelope dated the 20th of
10 April of 2010, and it's addressed to me.

11 Q Okay. And did it contain a letter?

12 A Yes, it did.

13 Q And do you recall receiving that?

14 A Yes.

15 Q Is that -- also, do you recognize the handwriting in
16 that letter?

17 A Yes.

18 Q Whose handwriting is that?

19 A That's Mr. Gilliland's.

20 MS. TESSITORE: At this point, the State would move
21 State's Exhibit No. 10 into evidence.

22 THE COURT: Without objection?

23 MS. MANIGAULT: Without objection.

24 THE COURT: State's Exhibit No. 10 is in evidence,
25 and may be published to the jury.

1 (WHEREUPON, State's Exhibit No. 10 was admitted into
2 evidence.)

3 MS. TESSITORE: And I'm going to, also, request that
4 this be published to the jury, Your Honor.

5 THE COURT: You may do so.

6 BY MS. TESSITORE:

7 Q Go ahead. If you could, just publish it to the jury
8 as well.

9 A Dear my darling Pam, I was sitting here thinking
10 about all I've been through and it dawned on me why.
11 Well, it's because I love you. People have done crazy for
12 love before and will do worse again. You know how much I
13 love you and what I'll do to be near you. I think it's
14 time for you to show a little mercy on me. It's time for
15 you to show a little Christian forgiveness. I have begged
16 you time and time again. I have prayed about things I
17 have done and God has promised me his forgiveness. You
18 should do the same. I have made changes in my life and
19 tried to make things right. I want to be the right man
20 for you, Darling, because you deserve a good one. We had
21 some wonderful plans that I want to keep. Please write me
22 a letter and tell how you are. I need to know that you
23 still love and want me. It keeps me hanging on, Baby.
24 After talking to my doctor, Dr. Martin, who -- I can't
25 make it out -- he said I had --

1 Read the whole letter?

2 Q Yep.

3 A He said I had a terrible childhood and my parents
4 should be ashamed of theirselves [sic]. No child deserved
5 to be slapped and knocked around like I was. He said that
6 I would be fine, because I was a survivor and would come
7 back from my problems with ease and comfort. It will take
8 a little time and patience. I will tell you about my
9 medicine in the next letter. I love you. I want you. I
10 need you, Tommy. P.S., please write or let me call.

11 Q Thank you.

12 And, finally, State's Exhibit No. 11, do you
13 recognize that?

14 A Yes. It's the same. It's a copy of an envelope
15 addressed to me.

16 Q Approximately, when did you receive that?

17 A I'm having trouble making out the date. The first --
18 I can see "2010."

19 Q Okay. Do you remember what month it was?

20 A Honestly, I can't make out the month, specifically.

21 Q Okay.

22 A But it's "10" something, "2010."

23 Q Okay. And do you recognize that as -- whose
24 handwriting that is?

25 A It's Mr. Gilliland's.

1 Q Okay. And just reference back here --

2 MS. TESSITORE: The State would move State's Exhibit
3 No. 11 into evidence, and request that it be published to
4 the jury.

5 THE COURT: Without objection?

6 MS. MANIGAULT: Yes, sir.

7 (WHEREUPON, State's Exhibit No. 11 was admitted into
8 evidence.)

9 THE COURT: The letter may be published.

10 BY MS. TESSITORE:

11 Q If you can go ahead and read that final one.

12 A Dear Pam, I hope this letter finds you well and warm.
13 I said warm because I know how cold-natured you are. I
14 wish I could hold you in my arms for hours and hours. I
15 really miss you, Darling. I only see you in my dreams.

16 Last night, I dreamed we were in the garden and
17 everything was green and beautiful. I could see you
18 smiling with your wonderful hair and beautiful eyes.
19 Isaiah, Give comfort to my son says your God. Speak
20 tenderly to him and proclaim to him that his service is at
21 an end, his guilt is exploited. Indeed, he has received
22 from the hand of the Lord double for all of his sins.
23 Please forgive me. You are always on my mind and in my
24 heart. I have never met anyone that made me feel the way
25 you do. I have shed so many tears over you. What I would

1 give for just one chance to show you how much you mean to
2 me, Darling.

3 This is all such a bad dream and I want it all to
4 disappear from my mind. This is not the way it was
5 supposed to be. Everything was supposed to be beautiful
6 and warm and loving. I don't want this to go down this
7 way. Please let me show you the right way for it to be
8 with us. We still have the opportunity to set this love
9 affair right. So we had a bad time of it and I was wrong
10 in the way I handled myself. I beg you to forgive me and
11 allow me the chance to correct my mistakes. Everybody is
12 a fool sometimes. I got carried away and acted a damn
13 fool. Please give me the chance to show you that I'm the
14 nice guy you thought of me in the beginning. I will treat
15 you so good, Baby. We could have so many great times,
16 Darling.

17 I miss your warm, sweet love and your beautiful
18 smile, Darling. Things will be a lot better, I swear. I
19 will work so hard to keep you happy and cared for. I'm in
20 good shape and have many miles of health left on this
21 body, Princess. This time has been good for my health. I
22 have an excellent fitness program and work out daily. God
23 has blessed me in many ways. One I hope will be to allow
24 me to be back in your life forever more. I love you. I
25 need you. I want you.

1 Q And did you respond to the letter?

2 A No.

3 Q So you made it pretty clear that there was no
4 returning the love?

5 A Exactly.

6 MS. TESSITORE: All right. Please answer any
7 questions Ms. Manigault may have.

8 THE COURT: You may cross-examine the witness.

9 MS. MANIGAULT: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. MANIGAULT:

12 Q Ms. Morgan, I present to you State's Exhibit No. 10
13 that you read briefly to the Court.

14 A Yes, ma'am.

15 Q I want you to look on Page 3 of that exhibit.

16 A Yes, ma'am.

17 Q And Line 10 -- Line 9 and 10, just count down from
18 the top. What does Line 9 say, 9 and 10?

19 A After talking to my doctor -- it looks like doctor.

20 Q And the next line?

21 A Martin who knows Dr. Mullen.

22 Q Okay. Who's Dr. Mullen?

23 A Dr. Mullen is my doctor.

24 Q And Dr. Mullen is a psychiatrist?

25 A Yes, ma'am, he is.

1 Q All right. Now, I think you testified that
2 Mr. Gilliland started living with you in February of 2009?

3 A Yes, ma'am.

4 Q Until January -- some point in January of 2010?

5 A Yes, ma'am.

6 Q So one of the letters you read was from January of
7 2010; is that correct, State's Exhibit No. 11, or is that
8 the one you could not make out the address -- I mean, the
9 date, State's Exhibit No. 11?

10 A Yes. This is the one I couldn't make out the month.

11 Q Okay. But it's 2010?

12 A But it's the 10th, 2010.

13 Q All right. You invited Mr. Gilliland to live with
14 you; is that correct?

15 A Yes, ma'am. We talked about it and we decided to do
16 it.

17 Q And that was after you -- I believe you testified
18 that after you had met at Wal-Mart working together there?

19 A Yes, after months of knowing each other.

20 Q Okay. And you invited him to come stay at your house
21 and leave his apartment where he was; is that correct?

22 A He had a trailer.

23 Q Trailer, excuse me.

24 A Yes, ma'am.

25 Q Now, was Mr. Gilliland helping you with the bills or

1 anything?

2 A He was helping me with groceries and, occasionally,
3 would help with the utilities.

4 Q And was there a time you went through a bout of
5 sickness or illness that he helped you with?

6 A Yes, ma'am. I was diagnosed with breast cancer. I
7 had surgery and radiation, and he did help me through that
8 period.

9 Q He attended the therapy -- excuse me, treatments with
10 radiation and chemo?

11 A Many of them, yes.

12 Q Was he considering himself kin to a caregiver for you
13 at that point?

14 A Yes, he did.

15 Q And you said you've lived at since
16 2001; is that correct?

17 A September of 2001, yes, ma'am.

18 Q And your house depicted on these pictures is a
19 three-room house with a bathroom; is that correct?

20 A That's right.

21 Q And about how old is this house? Do you have any
22 idea?

23 A It was probably built around 1918. It's in the
24 Dunearn community, and they're all almost 100-year-old
25 houses, the whole community.

1 Q Now, you and Mr. Gilliland were doing some repairs
2 and painting the home, at one point, while he was living
3 there?

4 A No, ma'am.

5 Q Did you do any repairs to any part of the house?

6 A No, ma'am. We were planning to, but it didn't ever
7 happen.

8 Q It didn't happen. All right. And was Mr. Gilliland
9 the person that was supposed to be doing the work? What
10 kind of work was he supposed to be doing?

11 A He did plant a garden.

12 Q To the house. What kind of work were you planning to
13 do to the house?

14 A Painting.

15 Q Painting. Were you planning on doing anything to the
16 outside of the house?

17 A Cleaning it up and touching up painting there, too.

18 Q Okay. So Mr. Gilliland writing you these letters, no
19 matter what they say, whether they were dripping with love
20 or oozing with affection, was considered a violation of
21 the order of protection; is that right?

22 A That is right.

23 Q So no matter what -- he could have wrote 1,000 times
24 on all these pages, I love you, I love you, I love you, it
25 was still a violation of the order; is that right?

1 A Yes, it was.

2 Q I believe you testified earlier that you had gotten
3 home from work at about 12:10?

4 A About that.

5 Q All right. And so that would have been the early
6 morning of March 16th?

7 A Exactly.

8 Q And I believe you testified you went to work at?

9 A I had to be at work at 7:00.

10 Q So you left home around what time?

11 A Between 6:15 and 6:30.

12 Q What day did you call to offer to Mr. Gilliland's
13 family members that he could come to your house -- or they
14 could come to your house and pick up his belongings?

15 A It would have probably been a Tuesday or a Wednesday.
16 It would not have been a Sunday, because I have to work on
17 Sunday.

18 Q You have to work on Sundays?

19 A Every Sunday, yes, ma'am, Saturday and Sunday.

20 Q What time do you go to work on Sundays?

21 A I go from 2:00 to 11:00.

22 Q 2:00 p.m. to 11:00 p.m.

23 A Yes, ma'am.

24 Q Okay.

25 A And I don't make phone calls while I'm getting ready

1 for work.

2 Q All right. And you say you talked to Tommy, who did
3 you talk to, his son?

4 A I called his son. I talked to his son.

5 Q You knew Mr. Gilliland was staying there; right?

6 A Yes, I did.

7 Q Okay. And you talked to his son; is that correct?

8 A Yes. And then his son gave the phone to Tommy.

9 Q All right. What properties or belongings did
10 Mr. Gilliland have at your house?

11 A A truck, and clothes, and a picture, and some
12 paperwork. I don't know all of it. That was his
13 business.

14 Q Okay. So his truck was parked at your house?

15 A Yes, ma'am.

16 Q Was it parked in the back drive alley?

17 A At the back of the house, yes, ma'am, off of the
18 alley.

19 Q And you testified to the Court that the phone call to
20 his son was the only initiation of any contact you would
21 have with his family member regarding Mr. Gilliland?

22 A Yes. He made numerous phone calls to my phone, and
23 my answering machine, and --

24 Q Did you provide those to the Solicitor's Office?

25 A The information? Yes.

1 Q The phone calls or the answering machine?

2 A We got some of them.

3 Q Did you provide them to the Solicitor's Office?

4 A I did.

5 Q All right. Now --

6 A My cell phone, we couldn't get it taped. It was my
7 answering machine --

8 Q Ma'am, you're responding to a question I didn't ask.

9 A I'm sorry.

10 Q Now, did you -- on the night or the early morning of
11 March 16, 2010, you stated you came in the house and
12 everything looked normal, or as usual?

13 A Until I saw the heater.

14 Q Until you saw the heater. And when you opened the
15 door, I think you testified that your dog ran to you?

16 A Yes.

17 Q And that was normal or usual?

18 A That's normal.

19 Q And when you saw the heater on, did you leave that
20 area?

21 A No. I stood there staring at the heater. And then I
22 looked up, and then I turned around. And that's when I
23 saw Tommy coming out of the bedroom.

24 Q All right. Now, you said you got home around
25 12:10 a.m.; right?

1 A Yes, ma'am.

2 Q And you walked from room to room -- this is a
3 three-room house?

4 A Yes, ma'am.

5 Q For two and a half hours?

6 A No, ma'am.

7 Q Okay. What happened?

8 A I walked from room to room. He kept following. I,
9 finally, sat down on the couch. He sat in the rocking
10 chair.

11 Q All right.

12 A And he started talking.

13 Q All right.

14 A And I sat there trying to calm down.

15 Q Okay. And y'all sat there talking for how long?

16 A He talked. After a point -- I don't know what he was
17 talking about. I was trying to figure out how to get out
18 of that situation. It took a while for me to be able to
19 get into a place where I could use my cell phone. I sat
20 there. It was over two hours waiting to get an
21 opportunity.

22 Q So you sat there about two hours?

23 A That or more.

24 Q Or more. Okay. At what point did you say you went
25 out to walk the dog?

1 A When I first got in, I attempted to.

2 Q Right.

3 A He was following me.

4 Q Okay.

5 A I got about less than 10 feet from the steps and he
6 was right behind me. So I picked the dog up and went back
7 into the house.

8 Q So you never went outside with the dog the first
9 time?

10 A I got about 10 feet from the steps.

11 Q So are you outside the house on the back porch?

12 A I was outside of the house.

13 Q Okay. And, the second time you said you were trying
14 to walk the dog, you had already made the call to the
15 police?

16 A Yes.

17 Q And you were trying to use that as an excuse or a
18 reason to get to the door?

19 A Yes.

20 Q All right. Now, I think it's your testimony that you
21 asked Mr. Gilliland how did he get in the house?

22 A Yes.

23 Q Did he ever answer you?

24 A The only answer he gave was, Pam, I'm a cat burglar.
25 Doors can be jimmied, windows can be opened. He never

1. told me how he got in.

2. Q Okay. So when you were in the bathroom putting on
3. your makeup several days after the March 16th date, how
4. many days after that did you notice something strange
5. about your bathroom window, or saw a screw on the floor?
6. How many days after March 16th?

7. A I don't remember exactly how many days. But the
8. screw wasn't on the floor. I saw -- I noticed a glint and
9. I looked down. Because the toilet is right -- the sink
10. and the mirror are right here, and the toilet is right
11. here. I saw the glint from the sun shining through the
12. blinds. And there was the little brass screw in between
13. the seat and the tank.

14. Q Okay.

15. A And I thought that was very curious, especially since
16. the screw had a little bend in it.

17. Q Okay. Were you at home when Mr. Brown came out from
18. forensics?

19. A Yes, ma'am.

20. Q Were you home -- he came out twice?

21. A Yes, ma'am.

22. Q So were you home on April the 2nd, when he came out?

23. A Yes.

24. Q And were you home on April the 13th, when he came
25. out?

1 A Yes.

2 Q So how many days after you called, not necessarily
3 Mr. Brown, but called to report what you had discovered
4 did somebody respond to come out?

5 A I couldn't tell you exactly.

6 Q Are you talking about the same day? The next day?

7 A No, not the same day, and not the next day, no.

8 After I was informed they were coming, I would say the
9 next day.

10 Q Okay. So when were you informed they were coming?

11 A That's the part I can't tell you exactly from the
12 time of the incident and the discoveries.

13 Q So the first forensic visit to your home after the
14 March 16th incident that you reported was April the 2nd,
15 the first time forensics came out was April the 2nd?

16 A Yes.

17 Q And you were there?

18 A Yes.

19 Q And you showed them what you found?

20 A He took pictures of the outside of the house.

21 Q Did you show them what you found?

22 A What I had found on the inside, I hadn't found yet,
23 the screw and the latch broken.

24 Q Wait. You hadn't found that yet?

25 A No, ma'am.

1 Q So that was found after forensics got there?

2 A That was -- yes.

3 Q Okay. It wasn't your testimony earlier that you put
4 all that in a plastic bag that's State's Exhibit No. 4,
5 that you put it in a plastic bag for forensics?

6 A Yes, ma'am.

7 Q Because you thought they'd need it?

8 A Because he was coming the second time to take
9 pictures of the inside of the house. I don't know why
10 pictures weren't taken of the inside of the house when he
11 came the first time.

12 Q Okay. I'm not dealing with the picture. I'm dealing
13 with that latch.

14 A Okay.

15 Q I'm trying to figure out when you say you found it?

16 A After he took the pictures of the outside. The date,
17 I couldn't tell you.

18 Q So the first time he came, he took pictures of the
19 inside or outside?

20 A Outside.

21 Q And then you called them again for them to come back?

22 A I got a phone call asking if pictures were taken from
23 the inside of the house from the Solicitor's Office. And
24 I said, No, they were not.

25 Q Thank you.

1 And it's your testimony today that you did not call
2 Mr. Gilliland and invite him to come over to pick up his
3 items?

4 A Not him, his family.

5 Q And it's your testimony that the Sunday before March
6 16th, that you did not call Mr. Gilliland several times
7 and told him that he could come to your house after you
8 got off work to pick his stuff up?

9 A Absolutely not.

10 Q I think you testified that you were shaking
11 violently?

12 A Yes, ma'am.

13 Q When the officer arrived?

14 A Like this.

15 Q And you were shaking violently when you saw
16 Mr. Gilliland?

17 A Yes.

18 Q And on the -- had you calmed down by the time you
19 made the 911 phone call?

20 A Somewhat. I was able to focus.

21 Q Okay. How long would you say you stayed in the
22 bathroom?

23 A A couple of minutes.

24 Q A couple of minutes. I think you testified that
25 Mr. Gilliland never attempted to hurt you physically?

1 A No.

2 Q And that you were not screaming or anything?

3 A I screamed when I first saw him.

4 Q Okay. I think you, also, testified that you didn't
5 ask him to leave; is that correct?

6 A That's right.

7 Q All right. You said there were phones in the living
8 room and in your bedroom?

9 A I have a phone in my living room, and a phone in my
10 bedroom.

11 Q Okay. Did they work before March 16th?

12 A Yes, they did.

13 Q Okay. And when you picked them up on March 16th,
14 after you called 911, they weren't working?

15 A They weren't working before I called 911.

16 Q Okay. At what point did you pick them up before you
17 called 911?

18 A Two occasions. Tommy excused himself to go to the
19 bathroom. The first time, I went into the bedroom. I was
20 going to pick up the phone and dial 911 and just put the
21 receiver down. The phone wasn't working. It had been
22 unplugged.

23 Q Okay.

24 A The second time he went to the bathroom, I checked
25 the phone in the living room. I turned it on and it was

1 not working.

2 Q Okay. How long did he stay in the bathroom?

3 A 45 seconds to a minute, maybe, not long.

4 Q Okay. The second time, about the same time?

5 A Yes, ma'am.

6 Q All right. How big would you say your kitchen was --
7 is -- was?

8 A It's a large kitchen.

9 Q Did you always come in through the back door?

10 A Yes, ma'am. Because that's where our parking is --
11 was.

12 Q Okay. Was there any reason that you were trying to
13 use the living room phone and the bedroom phone when you
14 have a cell phone in your pocket?

15 A Because, as I first explained, I was simply going to
16 take the phone off the hook and hit 911, and quickly go
17 back and sit back down on the couch.

18 Q Okay. Was there any reason why while Mr. Gilliland,
19 according to you, was in the restroom twice that you
20 didn't head to the back door? This is a three-room house;
21 correct?

22 A Uh-huh.

23 Q Okay.

24 A I thought about it. I didn't feel I could get away.

25 Q Okay. Do you have neighbors?

1 A Yes, I do.

2 Q Did you tell the police when they were there,
3 whatever officer talked with you, that you had noticed no
4 forced entry?

5 A To the door, to the back door. That was the only
6 thing I was looking at.

7 Q Okay. So you -- but you didn't, specifically, tell
8 them to the back door, you just told them you didn't
9 notice forced entry?

10 A All I knew was that he had broken in. And there was
11 a dead bolt on my back door and he didn't have a key.

12 Q All right. And you were in the bathroom, you said,
13 on the 911 call for a couple of minutes, at least?

14 A Until I could get the call through and get my
15 information out to the dispatcher, yes, ma'am.

16 Q And how big is your bathroom?

17 A It's quite small.

18 Q All right. Did you always keep your blinds down in
19 the restroom?

20 A In the bathroom, except in the summer, I'll raise
21 them about four inches and raise the window to let fresh
22 air in.

23 Q State's Exhibit No. 5, this is a picture of a latch?

24 A Yes, ma'am. Half of a latch.

25 Q Half of a latch. Could you describe that area around

1 that latch for me?

2 A The blank area is where the mechanism that you would
3 turn and lock the window.

4 Q No. Describe the area around the latch. What do you
5 see on that pictures?

6 A I see half a latch.

7 Q And, at the bottom of that, what do you see?

8 A The white spot?

9 Q Yeah.

10 A That's where the other half of the latch would have
11 been. It's just a blank white spot.

12 Q So that spot looks a little whiter and cleaner than
13 the rest of the window?

14 A Yes, ma'am. And --

15 Q Now -- I'm sorry.

16 A I was going to say indicating that there were -- over
17 time, the other area had darkened, that had not.

18 Q And that latch is on the inside of the bathroom
19 window; correct?

20 A Yes, ma'am.

21 Q And this is State's Exhibit No. 6. Is that a picture
22 of the window, the bathroom window?

23 A Yes, ma'am.

24 Q And that was taken on?

25 A That was taken the second time.

1 Q The second time?

2 A Yes, ma'am.

3 Q All right. And that shows just the area where the
4 latch is existing now at that time?

5 A It was at that time in this condition.

6 Q Okay. Now, the latch and screw that's in State's
7 Exhibit No. 4 --

8 A Yes, ma'am.

9 Q -- when did you present this to the police?

10 A When Mr. Brown came out to take the pictures of the
11 inside of the house.

12 Q Okay. That was the second time?

13 A Yes, ma'am. In between times, I had found it and put
14 it in a baggy.

15 MS. MANIGAULT: No further questions.

16 THE COURT: Anything in redirect?

17 MS. TESSITORE: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MS. TESSITORE:

20 Q Ms. Morgan, Ms. Manigault asked you about a
21 psychiatrist?

22 A Yes, ma'am.

23 Q What conditions do you have that you see a
24 psychiatrist for?

25 A Anxiety disorder and depression.

1 Q Okay. And how long have you been dealing with both
2 of those?

3 A The anxiety disorder first appeared when I was 19.

4 Q How old are you now?

5 A I'm 59.

6 Q So you've been dealing with it for a while?

7 A Yes. I was officially diagnosed in 1987.

8 Q Okay. Do you take prescribed medication for that?

9 A Yes, I do.

10 Q And does that help you with those problems?

11 A Absolutely.

12 Q Okay. Does it keep you from working at Wal-Mart in a
13 regular way?

14 A No. It allows me to work.

15 Q Okay. And you take prescribed medications for
16 those --

17 A For -- yes.

18 Q For both?

19 A Yes.

20 MS. TESSITORE: No further questions.

21 THE COURT: All right. Thank you, ma'am.

22 You may step down.

23 Could I see the attorneys up here for just a minute,
24 please?

25 (WHEREUPON, a bench conference was held.)

1 was seeking could be granted in his absence.

2 Q Okay. And I'm showing you what's been marked as
3 State's Exhibit No. 13. Do you recognize that?

4 A Yes.

5 Q And what is that?

6 A That's the affidavit of service on the Defendant.

7 Q And does your signature appear on there?

8 A Yes.

9 Q And is that a certified copy?

10 A Yes.

11 MS. TESSITORE: At this point, the State moves
12 State's Exhibit No. 13 into evidence.

13 MS. MANIGAULT: Without objection.

14 THE COURT: Without objection, State's Exhibit No. 13
15 is in evidence.

16 (WHEREUPON, State's Exhibit No. 13 was admitted into
17 evidence.)

18 BY MS. TESSITORE:

19 Q So, according to your affidavit, would you have
20 filled that out if you had not personally served this
21 Defendant right here?

22 A No.

23 Q And when did you, actually, serve the summons on him?

24 A On the 10th of February, 2010.

25 Q Okay. The 10th of February, 2010?

1 Defendant, Thomas Gilliland, with this important court
2 document?

3 A Yes, I did.

4 Q And that was an order of protection?

5 A Yes.

6 Q Okay. And how do you know -- well, me let me show
7 you what's been marked as State's Exhibit No. 14, and ask
8 you if you recognize that?

9 A I do.

10 Q Okay. What is that?

11 A That's an affidavit of service.

12 Q And does your signature appear on there?

13 A Yes, it does.

14 Q And has that been certified from the Clerk's Office?

15 A Yes, it has.

16 MS. TESSITORE: The State would move such exhibit
17 into evidence at this time.

18 MS. MANIGAULT: No objection, Your Honor.

19 THE COURT: Without objection, State's Exhibit No. 14
20 is admitted into evidence.

21 (WHEREUPON, State's Exhibit No. 14 was admitted into
22 evidence.)

23 BY MS. TESSITORE:

24 Q Now, looking at that affidavit of service, when did
25 you serve the order of protection on this Defendant?

1 A It was served on the 23rd of February, 2010, at
2 10:48 a.m.

3 Q Okay. So that was prior to the incident that brings
4 us here today. And how did you recognize him?

5 A By the photo that I had with me.

6 Q Do you recall what he was doing when you saw him?

7 A As I recall, he was standing out in the driveway at
8 the location. I was trying to locate the trailer and he
9 was standing outside. I believe he may have been smoking
10 a cigarette or something, but he was outside.

11 Q And did you speak with him?

12 A Briefly. I recognized him and I asked him was he
13 Thomas Gilliland. And he gave me the affirmative that he
14 was. And I said, I have a paper from Family Court for
15 you. And I gave it to him.

16 Q Did you tell him anything else?

17 A No, ma'am.

18 Q Did he seem coherent?

19 A He appeared to be.

20 Q Was there anything out of the ordinary with the
21 service on him?

22 A No.

23 Q And did you have any other involvement in this case?

24 A No, I didn't.

25 MS. TESSITORE: Okay. Thank you.

1 time. Have a good evening, ladies and gentlemen. You're
2 dismissed at this time.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 4:08 p.m.)

5 THE COURT: All right. Are there any matters that we
6 need to take care of before I have an opportunity to talk
7 with Mr. Gilliland about his right to testify?

8 MOTIONS

9 MS. MANIGAULT: Your Honor, the Defense would move
10 that the charges of burglary first -- charge of burglary
11 first be dismissed in that the State has not proved the
12 elements of the crime.

13 THE COURT: All right. At this stage, obviously,
14 I've got to view all the evidence in the light most
15 favorable to the State. I find that, based upon the
16 evidence that I've heard, there is sufficient evidence
17 that the jury could fairly and logically deduce guilt from
18 that, if they choose to believe the testimony. I find
19 there's not a total failure of evidence, it's not just a
20 mere suspicion, but there's evidence sufficient for the
21 jury to make the ultimate decision on the facts.

22 I respectfully deny your motion, Ms. Manigault.

23 Is there any prior record on the Defendant that the
24 State would have to impeach Mr. Gilliland, if he were to
25 choose to testify? Have y'all gone over that?

1 WEDNESDAY, FEBRUARY 2, 2011

2 (WHEREUPON, Defendant's Exhibit Nos. 1, 2, 3, and 4
3 were marked for identification only.)

4 THE COURT: Are we ready to proceed, Solicitor?

5 MS. TESSITORE: Yes, sir.

6 THE COURT: Ms. Manigault, are you ready to proceed?

7 MS. MANIGAULT: Yes, sir.

8 THE COURT: Do you intend to put up a defense in this
9 case? Are you going to testify?

10 MS. MANIGAULT: Yes, sir.

11 THE COURT: Do you have any other witnesses, other
12 than the Defendant?

13 MS. MANIGAULT: No, sir.

14 THE COURT: Okay. If the jury is ready, we'll have
15 them come in.

16 (WHEREUPON, the jury came into open court at
17 approximately 10:11 a.m.)

18 THE COURT: Ladies and gentlemen, thank you for being
19 patient with us. We're now ready to proceed.

20 The Defense may call its first witness,
21 Ms. Manigault.

22 MS. MANIGAULT: Thank you, Your Honor.

23 Your Honor, we would call Thomas Gilliland.

24 THE CLERK: Sir, please, pause at the bench. Please
25 place your left hand on the Bible and raise your right

1 hand.

2 WHEREUPON,

3 THOMAS EDWARD GILLILAND, JR.,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Please be seated.

7 Please state your full name for the record.

8 THE WITNESS: Thomas Edward Gilliland, Jr.

9 DIRECT EXAMINATION

10 BY MS. MANIGAULT:

11 Q Mr. Gilliland, how old are you?

12 A I'm 60.

13 Q All right. And were you employed?

14 A Yes, ma'am, I was.

15 Q Where were you working?

16 A Wal-Mart.

17 Q And how long had you worked at Wal-Mart?

18 A Approximately a year and eight months.

19 Q And which Wal-Mart was that?

20 A Woodruff Road.

21 Q And did you know Pam Morgan?

22 A Yes, ma'am. I met her at Wal-Mart.

23 Q All right. Did y'all work together?

24 A Well, she worked in a different department than me.

25 But, yes, ma'am, we had the same hours.

1 Q You worked at the same store?

2 A Yes, ma'am.

3 Q Did you start dating Pam Morgan?

4 A Yes, ma'am. We started casually dating.

5 Q All right. And how long after you met her did you
6 start dating?

7 A Probably three months, off and on, that we went out
8 together.

9 Q What, you went to dinner?

10 A Yes, ma'am, mostly to dinner and to town. We walked
11 in the park, talked. We both had a lot in common.

12 Q Okay. Now, did you move in with Pam Morgan?

13 A Yes, ma'am. She invited me to move in with her. We
14 both were renting. So we decided financially that it
15 would be a good thing for us to pool our money together,
16 you know, and just have one residence. So, yes, ma'am.

17 Q Was that your idea, or was that her idea?

18 A Well, she asked me about it several times. And we
19 both had been divorced for like 15 years. So we had
20 decided unanimously to move in together.

21 Q So you moved in at with Pam Morgan?

22 A Yes, ma'am.

23 Q How long after you had met her did you move in?

24 A It was approximately six months.

25 Q How long did you stay at

1 A Around a year, yes, ma'am, altogether.

2 Q All right. When did you move out of

3 A I think it was December of 2010, yes, ma'am.

4 Q Did you receive a copy -- there was testimony
5 yesterday that you were served a copy of an action in
6 Family Court. Did you receive a copy of that action?

7 A Yes, ma'am, I did.

8 Q Okay. And did you go to the hearing at Family Court?

9 A No, ma'am, I didn't attend. I didn't have a way to
10 travel at the time, so. And it was said on there that if
11 I failed to appear, the trial would go forward without me.
12 So I failed to attend it.

13 Q All right. That was because you didn't have
14 transportation?

15 A Yes, ma'am. I didn't have transportation.

16 Q All right. Did you get a copy of the court order of
17 protection after the hearing was completed?

18 A Yes, ma'am, I did.

19 Q And the deputy that testified yesterday is the deputy
20 that served that copy on you?

21 A Yes, ma'am, he was.

22 Q And you were living where at the time?

23 A With my son.

24 Q Did that deputy explain to you anything about the
25 order, or did he just serve it?

1 A Well, he just made sure that I was who he was looking
2 for and it was at the address he had been given. So it
3 kind of matched up my picture and everything, so, yes,
4 ma'am.

5 Q All right. Did you read that order?

6 A Yes, ma'am.

7 Q Did you know that the order said no contact with Pam
8 Morgan?

9 A Yes, ma'am, I did.

10 Q All right. Do you realize that writing letters is
11 considered contact?

12 A I do now, yes, ma'am.

13 Q You do now?

14 A Yes, ma'am.

15 Q When you were writing the letters to Ms. Morgan, you
16 didn't realize that was contact?

17 A Well, I guess, really, I did. But I just loved her
18 so much that I wanted to write her a letter.

19 Q So the letter, State's Exhibit No. 9, that's
20 postmarked March the 1st, 2010, you wrote that letter to
21 Ms. Morgan; is that correct?

22 A Yes, ma'am, I did.

23 Q All right. And State's Exhibit No. 10 that's
24 postmarked April the 20th, 2010, you wrote that letter; is
25 that right?

1 A Yes, ma'am, I did.

2 Q And State's Exhibit No. 11, which is a letter
3 postmarked January the 10th, 2010, did you write that
4 letter to Ms. Morgan?

5 A Yes, ma'am, I did.

6 Q All right. Did you get any response from any of
7 those letters from Ms. Morgan? Did you get any response
8 to the letters?

9 A Yes, ma'am. I got one letter in response.

10 Q From Ms. Morgan?

11 A Yes, ma'am, I did.

12 Q All right. Now, according to the order of
13 protection -- according to Ms. Morgan's testimony, she
14 made an application or a petition to the Court on February
15 the 5th, I believe she said. And, according to the order
16 of protection, the hearing was held on February 16, 2010.
17 That's State's Exhibit No. 1. Do you recall that?

18 A Yes, ma'am.

19 Q According to the testimony from the officer
20 yesterday, on February the 23rd, which is after the
21 hearing, is when he served you a copy of this order of
22 protection; is that true?

23 A Yes, ma'am. That's true.

24 Q All right. So when you wrote the letter on March --
25 that's postmarked March the 1st, 2010, State's Exhibit

1 No. 9, that was a violation of the order of protection; is
2 that right?

3 A Yes, ma'am, it was.

4 Q And when you wrote the letter that's postmarked April
5 the 20th, 2010, State's Exhibit No. 10, that was a
6 violation of the order of protection; is that right?

7 A Yes, ma'am, it was.

8 Q What was the reason you wrote the letters to
9 Ms. Morgan?

10 A Well, actually, I was hoping that there was a chance
11 that we could reconcile our differences and move on with
12 our life, you know.

13 Q Did you go to Pam's house on March 16, 2010?

14 A Yes, ma'am, I did.

15 Q Why did you go to Pam's house?

16 A Well, on Sunday beforehand, she called my son four or
17 five times. I was out walking. And, when I came back, he
18 told me that she had called. And so when the phone rang
19 again, he gave the phone to me. It was his personal
20 phone.

21 So we talked and she asked me, she said, Are you
22 cold?

23 And I said, Well, no, I'm warm, you know. I'm
24 inside, you know.

25 And she said, Are you hungry?

1 And I said, No, I'm getting something to eat, you
2 know.

3 And she said, Well, do you want to get some of your
4 clothes or your truck?

5 And I said, I surely would like to have some of my
6 clothes, because I was in short sleeves, you know. And it
7 was March, early March. It was still fairly cold.

8 And she said, Well, on my day off, you know, when I'm
9 off of work, when I get home, she said, you can come over
10 and get your truck and your clothes. And she said that
11 we -- I would be able to go about looking for getting back
12 to work and kind of get my life back together. I had been
13 away from all of my possessions.

14 So I said, Well -- you know, it was raining on that
15 Sunday, I remember. I told her, I said, Let me wait until
16 the weather dries up, a day or so.

17 So on Tuesday, I believe it was the 16th or the 15th,
18 I decided -- it was a beautiful day and warm. So I
19 decided to walk over to her house, you know, and be there
20 kind of about the time she got off.

21 Q Now, did she tell you that you could -- she would
22 allow you to come to her house?

23 A Yes, ma'am, she did.

24 Q All right. Now, you said she had called while you
25 were out walking on that Sunday?

1 A Yes, ma'am.

2 Q And this was your son's cell phone number --

3 A Yes, ma'am.

4 Q -- that she had?

5 A Yes, ma'am.

6 Q Was she calling to speak to your son, or was she
7 calling to speak to you?

8 A Well, she asked for me. He said, Daddy, she's done
9 called three or four times trying to get in touch with
10 you, and I told her you would be back in a few minutes.
11 You went to the store, you wanted to walk to the store.

12 Q So she called, specifically, to speak to you?

13 A Yes, ma'am, she did.

14 Q Did she tell you a specific time that you could come
15 over to her house to pick up your belongings, your clothes
16 and your truck?

17 A Well, she said she would prefer that I came over
18 after she got off work. Because usually, in the mornings,
19 she's getting ready to go to work right after lunch. She
20 usually doesn't get up until around 11:00 or 12:00.

21 So she really wanted me to come over after she got
22 off work, you know, which is -- by the time she gets
23 home -- she gets off at 11:00 at night. So, by the time
24 she gets home, it's almost 12:00 from Wal-Mart.

25 Q So the reason you're saying you didn't go to her

1 house during the daylight hours is because she said to
2 come over after she got off work?

3 A Yes, she preferred that.

4 Q Even though that might be after midnight?

5 A Yes. That's the way we operate. See, we was on that
6 shift, and you kind of get your life set up to kind of
7 like stay up until 3:00 in the morning eating, and taking
8 your shower, getting ready for the next day. And when
9 you're on a different shift, you kind of get your hours
10 shifted, regardless of what time the sun is up or not. We
11 didn't do it for any specific reason. That's just our
12 time off, you know, when you get home from work.

13 Q How did you get to Pam's house?

14 A I walked.

15 Q And how far was that from your son's house?

16 A It's approximately eight, eight and a half miles.

17 Q And when you got to Pam's house, what happened?

18 A Well, I stopped at the Sphinx station, which is right
19 there on the street, and had a cup of coffee and checked
20 the time. And it was about five minutes after 12:00. And
21 she normally would get home about 12:00.

22 So then I walked about two blocks to her house. And
23 her car was there, so I knocked on the door.

24 Q Which door did you knock on, the front or the back?

25 A The back door. She keeps the light on there at the

1 back door all the time.

2 Q Was there any reason you didn't go to the front door?

3 A No, ma'am, not other than we always go in the back.

4 Because that's where the driveway is and the back door
5 stays -- the light stays on at the back. So I went up to
6 that door and knocked.

7 Q And, when you knocked on the door, what happened?

8 A Well, she come to the door and she opened the screen.
9 And she said, Come in. I know you're freezing to death.

10 And I said, Well, you know, it's a little bit cool.
11 The sun had been warm that day, but it started cooling
12 down as it got dark.

13 So I come in. And I remember she touched me on the
14 nose. And she said, Your nose is frozen. Come on in,
15 I've got the heater on, you know, in the living room.

16 So then we proceeded into the living room.

17 Q So when she invited you into the house, what did
18 y'all do at that point? Where did you go?

19 A Into the living room where the little space heater --
20 she had it on in addition to the heat, because it was
21 pretty cold outside, like maybe in the 30's. And I sat
22 down kind of next to the heater there and got warmed up a
23 little bit. And then we talked for a few minutes.

24 Q Now, when you knocked on the door and she opened the
25 door, did she scream?

1 A No, ma'am. She didn't scream.

2 Q All right. Now, when you sat in there, you got warm
3 and y'all talked a little bit. Then what happened? What
4 time did you get there?

5 A It was approximately 15 after 12:00.

6 Q Okay.

7 A I remember looking at the clock. And I thought,
8 well, that's about right when she normally gets home.

9 Q Okay. So you arrived at about 12:15?

10 A Yes, ma'am.

11 Q Ms. Morgan opened the door and allowed you to come
12 in. Did she tell you not to come in her house?

13 A No, ma'am.

14 Q Did she tell you to go away, go home?

15 A No, ma'am.

16 Q Get away from me?

17 A No, ma'am.

18 Q You went in the house. Y'all went in the living room
19 and you warmed yourself. Then what happened?

20 A Well, she had a glass of wine. And then we went into
21 the bedroom. I remember the dog was jumping around. The
22 dog wanted to go outside.

23 So then we took the dog outside. And I walked out on
24 the back porch with her. And she was only out there a
25 couple of minutes, because it was so cold. The dog was

1 shivering.

2 So she brought the dog back inside. And then we went
3 into the bedroom and sat down on the bed. And like she
4 finished drinking her wine and then we made love.

5 Q All right. Now, you said you took -- she took the
6 dog outside and you stood on the back porch. When
7 Ms. Morgan took the dog outside, how far did she go? Did
8 she just stay on the back porch and let the dog run
9 around, or did she go in the yard?

10 A Well, she always lets the dog run around. She's got
11 a pretty good-sized backyard, so maybe 20 or 30 feet. And
12 the dog was running around in the yard taking care of its
13 business. And then the dog came right back to the porch,
14 because it was cold. She's a little small dog.

15 Q Well, did Ms. Morgan stay on the porch with you, or
16 was she in the yard?

17 A No. She was out in the yard with the dog, you know,
18 to keep a good eye on her. She's a real small dog, you
19 know.

20 Q The dog came back to the porch. Did y'all go back
21 inside at that point?

22 A Yes, ma'am.

23 Q All right. Now, you say you went to the bedroom.
24 Was that your first time in the bedroom that evening?

25 A Yes, ma'am, that was my first time in the bedroom.

1 Q Okay. And you said you sat on the bed, y'all made
2 love. What did you do after -- you made love with Pam
3 Morgan?

4 A Yes, ma'am, I did.

5 Q What did you do after you and Pam Morgan made love?

6 A Well, I took a shower. And then I put my clothes
7 back on, because I really hadn't been invited to spend the
8 night. So I was kind of, you know, wondering if she was
9 going to ask me to leave, or ask me to spend the night, or
10 give me a ride home, you know. I kind of thought maybe
11 she would give me a ride home. So I put my clothes back
12 on. And she went to the bathroom.

13 Q When you put your clothes back on, where did you go?

14 A I went in the living room and sat down watching
15 television. She had the television on.

16 Q And when you were in the bathroom, was Ms. Morgan
17 still in the bedroom, or somewhere else?

18 A She was still in the bedroom, yes, she was. As a
19 matter of fact, she was sitting on the edge of the bed
20 when I came out. And she said she was going to take a
21 shower and we would talk.

22 Q Okay. So Ms. Morgan went into the bathroom?

23 A Yes, ma'am.

24 Q And how long did she stay in the bathroom?

25 A I would say 20 minutes, 25 --

1 Q Did she take a shower?

2 A I really don't know. Like I say, I was listening to
3 the TV in the living room. But I know she was in there
4 for approximately 20, 25 minutes.

5 Q Okay. While she was in the bathroom, could you hear
6 her talking?

7 A I did overhear her. And it really didn't dawn on me
8 what she was doing. But I went to the bathroom and I
9 said, Pam, are you all right?

10 And she said, Yeah. I have an upset stomach.

11 And I said, Well, I heard you hollering. If you need
12 anything, I mean, you know -- I thought maybe she got sick
13 or something.

14 And she said, I'm going to be all right.

15 So I went back and sat down.

16 Q In the living room?

17 A Yes, ma'am.

18 Q And the bathroom door was closed?

19 A Yes, ma'am. The bathroom door was closed.

20 Q How large is that bathroom?

21 A It's relatively small. It's approximately, counting
22 the shower, 4 X 6.

23 Q All right. Now, when you went into the house after
24 Ms. Morgan opened the door and let you in, did you go to
25 the bedroom and unplug a telephone?

1 A No, ma'am.

2 Q Did you unplug a telephone in the living room?

3 A No, ma'am, I didn't do that.

4 Q Was there a telephone in the living room?

5 A Yes, ma'am. There was a phone in the bedroom and the
6 living room. As a matter of fact, I installed them. They
7 were brand new.

8 Q All right. When Ms. Morgan came out of the bathroom,
9 you were still in the living room; is that correct?

10 A Yes, ma'am.

11 Q And did she say anything to you at that point?

12 A Well, no. She came into the living room and kissed
13 me and sat down and finished her -- or started drinking
14 her -- she lit a cigarette and finished her wine and, you
15 know, just watching television.

16 Q If she had just got home, where did she get the wine
17 from?

18 A I think she brought it with her from Wal-Mart.

19 Q Did you drink wine with her?

20 A No, ma'am. I've been quit like drinking for a couple
21 of months. It wasn't suiting my character. So I decided
22 to just stop drinking.

23 Q Was that a part of y'all's problem, the drinking?

24 A Sometimes, it could be. But I've been a social
25 drinker for years and controlled myself at all times. But

1 there was times that I felt like I could be better in
2 control if I wasn't drinking at all.

3 Q All right. Now, where were you when the deputies
4 arrived?

5 A I was sitting in the living room. And Pam was going
6 to carry the dog out again. And so she asked me did I
7 want to go with her. And I said, Well, yeah, I can.
8 Being late at night and everything, you know, any
9 neighborhood, it's worth watching to make sure nothing
10 happened to her.

11 So when I went to the back door, she opened the door
12 and the screen. And she stepped out, and the deputy was
13 standing there. And so then he asked me who I was, and I
14 told him.

15 Q Okay. Now, did the deputy escort both of you -- both
16 you and Ms. Morgan back into the house?

17 A No. She was on the back patio with one deputy,
18 Officer Lackey. And the other officer was talking to me
19 on the back steps. He had me to sit down on the back
20 steps and he was talking to me.

21 Q All right. And did the officer ever put you in his
22 patrol car at any point?

23 A Yes, ma'am. He got me up and he told me that he was
24 going to have to put me in the patrol car while he talked
25 to Ms. Morgan. And he walked me to the patrol car and put

1 me in the back.

2 Q And you were handcuffed; right?

3 A Yes, ma'am.

4 Q And he did give you your Miranda warnings at some
5 point?

6 A At some point, yes, later.

7 Q That's fine. Did that same officer go back and talk
8 with Ms. Morgan?

9 A Yes, ma'am. They were both inside the house together
10 talking to Ms. Morgan.

11 MS. TESSITORE: Objection, Your Honor. He can't
12 testify about what happened in the house. He wasn't
13 inside the house.

14 THE COURT: I sustain the objection.

15 BY MS. MANIGAULT:

16 Q So that officer did talk to Ms. Morgan? Yes or no?

17 A Yes. They talked to her.

18 Q And the officer came back. How long did they stay in
19 the house before he came back to talk with you in the
20 patrol car?

21 A I would say probably between 20 and 30 minutes.

22 Q All right. And you were sitting in the patrol car
23 the entire time?

24 A Yes, ma'am.

25 Q Now, when the officer came back, is that the point he

1 gave you your Miranda warnings?

2 A Well, he opened the door and questioned me about how
3 did I get into the house. And I said, Well, I knocked on
4 the door and she let me in.

5 And he said, That's not what she says. And he said,
6 Somehow you broke in.

7 And I said, No, sir, I didn't break in.

8 He said, Did you have a key?

9 I said, No, sir. I don't have any key.

10 And he said, Well -- and then he took out his card
11 and began to read me my rights and told me that he was
12 going to have to arrest me, and that I broke an order of
13 protection. And that he was going to talk with her, but
14 that he thought he was going to charge me with burglary.

15 And I said, But, sir, there was no burglary. I never
16 broke into the house. I only knocked on the door.

17 Q Did you tell the officer you had walked eight miles
18 there?

19 A Yes, sir -- yes, ma'am.

20 Q And you told the officer -- what else did you tell
21 the officer why you came there?

22 A Well, I told him that was my truck that he -- it was
23 right behind sitting there. And that I had no clothes,
24 that I needed some of my clothes, you know. And, even at
25 that point, I still had on a short-sleeved shirt. And I

1 was freezing to death. But he said, Well, I'll talk to
2 you again, and he slammed the door, you know, so.

3 Q Okay. Now, you said your truck was there. Where was
4 the officer's car parked in relation to your truck?

5 A My truck was parked this way, and the officer was
6 parked behind it in such a manner. So he was right behind
7 my truck. It was sitting there. And I asked him, I said,
8 If you'll just let me have my truck and a few of my
9 clothes. That's really all I came over here for.

10 Q You told the officer you came over for your clothes
11 and your truck?

12 A Yes, ma'am.

13 Q Did you tell him you wanted to reconcile with
14 Ms. Morgan?

15 A Yes, I did. I said, Well, I was hoping that we could
16 work out our problems, you know, and continue our
17 relationship.

18 Q Okay. I'm going to show you a group of pictures
19 that's been marked as Defendant's Exhibit Nos. 1, 2, 3,
20 and 4, and ask you to review them and see whether you can
21 identify what's in the picture. Just review all of them,
22 and then I'll ask you a question.

23 A (Witness complied.)

24 Q Can you identify Defendant's Exhibit Nos. 1
25 through 4?

1 A Yes, ma'am.

2 Q And what are they pictures of?

3 A Okay. Here's --

4 Q Just in general, what are they pictures of?

5 A The interior of the house, the kitchen, bathroom, the
6 exterior of the house, front, side, and back.

7 Q And all of these pictures are an accurate depiction
8 of the house and area at

9 A Yes, ma'am.

10 Q Where you went on March 16th, 2010?

11 A Yes, ma'am.

12 MS. MANIGAULT: Your Honor, we'd offer Defendant's
13 Exhibit Nos. 1 through 4 into evidence.

14 THE COURT: Any objection?

15 MS. TESSITORE: No objection, Your Honor.

16 THE COURT: Without objection, these exhibits are in
17 evidence and may be published.

18 (WHEREUPON, Defendant's Exhibit Nos. 1, 2, 3, and 4
19 were admitted into evidence.)

20 BY MS. MANIGAULT:

21 Q That is Defendant's Exhibit No. 1. Tell me what this
22 is.

23 A This is a front shot of the house, a side view of the
24 house, then a view of the back up to the bathroom. And
25 then there's one of the car and truck in the backyard.

1 Q Your truck is in this picture?

2 A Yes, ma'am. It's right here in front of the next
3 house.

4 Q Now, on Defendant's Exhibit No. 1, are the other
5 houses visible in that picture besides

6 A Yes, ma'am.

7 Q Were there neighbors to

8 A Yes, ma'am, there were. It's an elderly community.
9 So a lot of people that live there are retired.

10 Q Okay. State's Exhibit -- excuse me, Defendant's
11 Exhibit No. 2, would you look at that and tell us what
12 that depicts?

13 A Okay. This is the front porch with a few leftover
14 Christmas decorations. And this is a side view of one of
15 the bushes and the back view of Ms. Morgan's car and,
16 also, my truck in the backyard. And then a side shot of
17 the bathroom, which is attached to the back of the house.

18 Q All right. In Defendant's Exhibit No. 2, are there
19 other houses near in that picture?

20 A Yes, ma'am. They are like -- each of those lots are
21 approximately the same size. So you've got a house about
22 50 to 75 feet apart all the way around, even across the
23 street.

24 Q Most of those houses that were shown in Defendant's
25 Exhibit No. 2, did people live in them?

1 A The one next door was owned, but not rented at the
2 time.

3 Q What about the other ones?

4 A The rest of the neighborhood was, you know, fully
5 resident.

6 Q All right. Defendant's Exhibit No. 3, tell me what
7 that shows.

8 A This is a kitchen table with a little serving tray
9 made out of wicker. And on the serving tray is a lock
10 that's been removed from one of the windows in a plastic
11 bag. And then there's a living room picture taken there.

12 Q So at the top of the page of Defendant's Exhibit
13 No. 3 is the kitchen area?

14 A Yes, ma'am.

15 Q And at the bottom of the page of Defendant's Exhibit
16 No. 3 is the living room?

17 A Yes, ma'am.

18 Q Now, tell me what's on Defendant's Exhibit No. 4.

19 A This is a picture of the bathroom. The shower is in
20 the top left corner, the window, the bathroom window with
21 part of the lock removed from the inside, taken apart.
22 And it looks like there's been some beating or banging on
23 the board across the bottom of the window like somebody
24 was trying to raise it. These houses are 100 years old,
25 some of the windows don't move very easily.

1 Q All right. In State's [sic] Exhibit No. 4, the top
2 picture to the left is a picture of the bathroom.

3 A The shower, yes, ma'am, bathroom.

4 Q And you said the bathroom is quite small?

5 A It is. It's maybe 4 X 6, a very small bathroom.

6 Q And is there a picture of a blind hanging on the
7 window in that picture?

8 A Yes, ma'am, to the right.

9 Q Of the shower?

10 A Yes, ma'am, of the shower. There was a blind mounted
11 over it.

12 Q All right. Now, I'm going to show you State's
13 Exhibit No. 4, which your testimony has been is a plastic
14 bag with a portion of a lock in that bag?

15 A Yes, ma'am, it is.

16 Q All right. Did you remove that lock from anywhere in
17 the house, that latch?

18 A No, ma'am.

19 Q Did you remove that latch from the bathroom window?

20 A No, ma'am.

21 Q All right. Did you come into Ms. Morgan's house on
22 March 16th through the bathroom window?

23 A No, ma'am.

24 Q Could you get through the bathroom window?

25 A No, ma'am, not without extensive work. You had to

1 make quite a bit of noise banging on the windows to try to
2 get them to raise. But, see, if this lock is in place on
3 that window and Ms. Morgan said that house was locked and
4 secured, that she had checked the doors and windows, if
5 this lock was in place, there's no way to raise the
6 window.

7 Q Could the window raise even if the lock was not in
8 place?

9 A I don't think more than maybe four or five inches,
10 because of the fact that many coats of paint had been put
11 on. But a lot of times with those older houses, no one
12 ever raises the windows, so they're really stuck. I had
13 worked on one in the living room before, because she
14 wanted fresh air in the summertime when it would be so
15 hot. And I barely could get that window up four or five
16 inches without damaging it because they were so painted
17 up.

18 Q I'm going to show you State's Exhibit No. 6.

19 A Yes, ma'am.

20 Q And I'll ask you what is that a picture of?

21 A That's the bathroom window.

22 Q Okay. And what does that picture show at the bottom
23 of the bathroom window?

24 A It shows probably a screwdriver and hammer like
25 someone is trying to pry a window open.

1 MS. TESSITORE: Your Honor, I object. It calls for
2 speculation.

3 THE COURT: I sustain the objection.

4 You can answer the question as asked as to what it
5 shows, but state what's in the picture.

6 THE WITNESS: Yes, sir.

7 There's some damage to the window sill.

8 BY MS. MANIGAULT:

9 Q All right. And that's State's Exhibit No. 6.
10 State's Exhibit No. 5, what is that?

11 A That appears to be the bathroom window with part of
12 the lock removed, which would be on the inside, and quite
13 a bit of wood chips laying around on the window baseboard.

14 Q All right. I'm going to show you State's Exhibit
15 No. 8. And does it show a portion of the window in
16 that?

17 A Yes, ma'am, it does.

18 Q All right. Now, there was some testimony that
19 something was pulled from the bottom of the window or
20 moved?

21 A Yes, ma'am. And what that is, that is a storm window
22 installation kit. All of the windows around the house
23 have storm windows on them with screens and glass that
24 slides up and down and locks for -- you know, to better
25 insulate the house.

1 And the only window in the house that did not have a
2 storm window on it was this bathroom window. It was
3 installed, but, somehow, over time, it became damaged and
4 it was no longer there. I mean, the window and the
5 screen slide up and down, lock, and -- everything was
6 missing.

7 Q The pulling away from the bottom of the window, did
8 you do that?

9 A No.

10 Q Was that always like that?

11 A Yes, ma'am.

12 Q When you lived there for approximately eight months
13 to a year, that window was in the same condition?

14 A Yes, ma'am.

15 Q And this is outside of the window?

16 A Yes, ma'am, it is.

17 Q All right. And this little flap that's laying down
18 there, your testimony is it was like that when you lived
19 there?

20 A Yes, ma'am. It's an aluminum housing that holds the
21 storm window in place. It's missing, all the parts are
22 missing.

23 Q So you did not remove that to go through the bathroom
24 and get in the house on March 16, 2010?

25 A No, ma'am.

1 Q All right, sir. Now, --

2 A If you notice, it's about seven foot from the ground
3 to the window sill, which, I mean, if you don't have a
4 ladder or some way to get up there, and if you're working
5 on a window that's locked from the inside, you've got to
6 break a window or something to get in. You can't just
7 push the window up.

8 Q So your testimony is you didn't go through the
9 window?

10 A No.

11 Q You didn't move the latch?

12 A No.

13 Q And there was no way you could move the latch from
14 the inside while you were outside?

15 A No, ma'am, there's no way.

16 Q Did Ms. Morgan ever ask you to leave the house?

17 A No.

18 Q After you got there?

19 A Oh, on the 16th?

20 Q On the 16th.

21 A No, ma'am, she did not.

22 Q All right. Did y'all have any arguments or anything?

23 A No, ma'am. As a matter of fact, she came into the
24 living room and she asked me did I want some wine to
25 drink. And I said, No, I didn't want any wine. But she

1 gave me some cranberry juice. She had some in the
2 refrigerator.

3 Q And this was a relaxing time for the two of you?

4 A Yes, ma'am. I thought that -- well, she came over
5 and sat down on the couch and looked at the dog and said,
6 Do you want to go back out? And the dog was really
7 excited, and loves to go outside.

8 Q Did you realize at the time you went to her house on
9 March 16th, 2010, that even if she invited you, it would
10 have been a violation of the order of protection?

11 A Yes, ma'am, I did.

12 Q Okay. But you went there because of an invitation?

13 A Yes, ma'am, I did.

14 Q And you went in with her permission?

15 A I did.

16 Q And you stayed as long as you stayed with her
17 permission?

18 A Yes, I did.

19 Q And you stayed there approximately two and a half
20 hours, or more?

21 A Yes, ma'am. It was, at least, that long.

22 MS. MANIGAULT: Thank you.

23 THE COURT: You may cross-examine the witness,
24 Solicitor.

25 MS. TESSITORE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. TESSITORE:

Q Mr. Gilliland, you agree that you had met Ms. Morgan back in 2008; correct?

A Yes, ma'am.

Q And things were going pretty well for a while there?

A Yes, ma'am.

Q And you said that you moved in because she invited you to live there?

A Yes, ma'am, I did.

Q Now, you testified that this was -- you pooled your money together and thought it was a good financial decision?

A Yes, ma'am. Two people can -- both working can, actually, have more, do more than one living separately in separate conditions. Because if you're keeping up two households not being used all the time -- you know, it's like, financially, it was a sound decision. And we were getting along very well.

Q Okay. But somehow she'd been able to live there by herself and have one source of income, and she'd been getting by; right?

A Yes, she had.

Q So it wasn't just a financial decision about moving in together?

1 A No, ma'am. I considered us to be in love.

2 Q Okay. And so you moved into the place where she had
3 lived from 2001 until the time that you moved in in 2009?

4 A Yes, ma'am.

5 Q Okay. And you used to work at Wal-Mart together?

6 A Yes, ma'am, we did.

7 Q And so -- and you talked about the fact that y'all
8 had similar shifts. You were --

9 A Similar hours, yes, ma'am.

10 Q And you knew when she was there, when she was
11 working. And that went on for a good year or so?

12 A Yes, ma'am, it did.

13 Q And would you sometimes drive together to work?

14 A Yes, ma'am. We used her car. Occasionally, we would
15 drive my truck. But we found it better to just use one
16 vehicle and save quite a bit of fuel that way. It's 12
17 miles to Wal-Mart from her house.

18 Q So you were very familiar with her schedule?

19 A Yes, ma'am. Our schedules were mounted on the
20 schedule board inside Wal-Mart in the employee area. So
21 you can know three weeks in advance what shift and hours
22 you're going to be working. That's the way Wal-Mart does
23 it.

24 Q And you had access to that to know when she was
25 working?

1 A Yes, ma'am.

2 Q And when she got off?

3 A Yes, ma'am.

4 Q And you knew how long it would take her to get from
5 Wal-Mart back home, too; right?

6 A I did.

7 Q Because you had traveled that way many times?

8 A Many times.

9 Q All right. Now, you did -- you testified that you
10 had moved out -- that you were living there until December
11 of 2010. So that would be like until this past December.
12 Are you sure about that?

13 A Well, we, actually, need to back up some. I moved
14 out before that December. It was like -- well, I'd have
15 to back up several months.

16 Q Okay. Well, actually, if you backed up, you're
17 saying that you just moved out -- we're now at the
18 beginning of February. So you're saying it was just a
19 month ago that you moved out?

20 A The year was wrong. It was 2009.

21 Q 2009?

22 A Yes, ma'am.

23 Q So it was a whole year before that. And you had
24 moved out before she got the order of protection, in fact;
25 right?

1 A Yes, ma'am, I had.

2 Q So that was a full year ago; right? So that was

3 wrong. You were off by about a year there; right?

4 A Well, in the year -- yes, ma'am, I was.

5 Q Okay. Now, you said that you received notice about

6 the order of protection hearing; right?

7 A Yes, ma'am.

8 Q Okay. And you were served with a summons?

9 A I was.

10 Q And you were served, and you knew when the date of

11 the hearing was?

12 A Yes, ma'am.

13 Q Okay. Does your son have a vehicle?

14 A No, ma'am, he did not.

15 Q Do you have any other family members in the area?

16 A Well, my daughter had a vehicle and -- but her hours

17 were -- she works at the hospital. And so --

18 Q Which hospital is that?

19 A Memorial.

20 Q Memorial Hospital?

21 A Yes, ma'am.

22 Q And how far was it from where you were living with

23 your son at that point? Because you weren't living with

24 the victim at that time. How far was it from your son's

25 place to Family Court approximately?

1 A We'll say five miles.

2 Q Five miles?

3 A Yes, ma'am.

4 Q And you said that from his place to where Pam lived
5 at that was eight miles; right?

6 A Yes, ma'am.

7 Q Okay. So you could walk eight miles to go see her,
8 but you wouldn't walk five miles to go to an important
9 Family Court hearing where your rights were going to be
10 potentially stripped away?

11 A Well, if I remember correctly, and I do, that day was
12 rainy and cold. And, on those days, I wouldn't attempt to
13 walk five or eight miles, you know, in the rain and cold.
14 Because I didn't have any clothes to go through the
15 weather, you know, to withstand the weather with at that
16 time.

17 Q Okay. So, before, you testified the reason was
18 because you didn't have transportation. And, now, you're
19 saying it's because of the weather, that you remember
20 distinctly it was a rainy day that day?

21 A I remember the day was rainy. And I remember the
22 Sunday that Pam called me was rainy and bad. Because I
23 asked her if she would come and get me. And she said that
24 it was just too bad to be out.

25 Q Okay. Now, you said that you read -- after this

1 hearing, then you were served with the order of
2 protection; right? The officer came out, gave it to you,
3 handed it to you. You heard him testify.

4 A He did.

5 Q You recognized him, and that was the same deputy;
6 right?

7 A Yes, ma'am.

8 Q And, obviously, you write some very eloquent letters.
9 So you have no problem reading or writing; correct?

10 A Thank you.

11 No, ma'am.

12 Q Okay. And you said you looked at the order and, in
13 fact, I'm showing you State's Exhibit No. 1. And what is
14 that?

15 A That is an order by Family Court for protection.

16 Q And isn't that the order of protection that was
17 served on you?

18 A Yes, ma'am, it is.

19 Q And your name is in the caption there as the
20 Respondent?

21 A Yes, ma'am.

22 Q Okay. If you look just at the first page, isn't it
23 true it says, The Court hereby orders that the above-named
24 Respondent, that's you, be restrained from any contact
25 with the Petitioner as set forth on these pages; is that

1 true?

2 A It is.

3 Q Okay. You understood that pretty clearly?

4 A Yes, ma'am.

5 Q Good. How about Page 2, Number 12, it says -- well,
6 you read it. What does that say?

7 A Petitioner should have the use and possession of the
8 home and furnishings located at.

9 Q Okay. And that was at right?

10 A Yes, ma'am.

11 Q Okay. Now, I'm going to direct your attention to
12 Page 3, and just focus on C. What does C say right at the
13 top of the page? And it's checked off there.

14 A Respondent is temporarily restrained, prohibited and
15 forbidden to communicate or attempt to communicate with
16 Petitioner in any way, or to enter or attempt to enter
17 Petitioner's place of residence, employment, education, or
18 the following locations.

19 Q Okay. So the first -- oh, and one more thing. H,
20 doesn't that say the sole and exclusive possessions of the
21 residence and furnishings located at that aforementioned
22 address is awarded to the Petitioner, Pamela?

23 A Yes, ma'am.

24 Q Okay. So restrained from any contact?

25 A Yes, ma'am.

1 Q Any attempt to communicate or communication was a
2 violation of this order; correct?

3 A Yes, ma'am.

4 Q So wouldn't you agree that letters would be contact?

5 A Yes, ma'am.

6 Q And going to see her would be contact?

7 A Yes, ma'am.

8 Q Okay. And you understood it when you read it, no
9 question about that?

10 A And phone calls would be contact.

11 Q Yeah.

12 A Yes, ma'am.

13 Q Okay. And -- but you made that contact anyway?

14 A Yes, ma'am.

15 Q Okay. Now -- so the court order didn't really,
16 obviously, mean much to you, did it?

17 A It did.

18 Q Okay. But the love that you had for Pamela was more
19 important and -- important enough to just completely
20 disregard a court order?

21 A Not completely disregard. I wasn't comfortable and
22 didn't feel like I was going to stay at the address. I
23 felt like that I was invited temporarily to get my clothes
24 and my truck.

25 Q Well -- so you're saying that the woman who went

1 through all this effort to apply for the order of
2 protection hearing, to go to the hearing, to get the
3 order, had ended the relationship, and had gone through
4 the proper legal proceedings to ensure that you would be
5 kept away from her, her home, her work, and all of that,
6 that that -- that she would simply say, Come on over? Is
7 that what you want this jury to believe?

8 A Four times by the phone on Sunday afternoon, yes,
9 ma'am.

10 Q Okay. Well, isn't it true she called your son, and
11 your son is the one that handed you the phone?

12 A Yes, ma'am, he was.

13 Q Okay. So she didn't come over there looking for you.
14 She wasn't that eager to see you, was she?

15 A I didn't recall that being a factor, no, ma'am.

16 Q Okay. And you didn't think about bringing your son
17 over there to -- you know, obviously, if you weren't
18 comfortable because of the order of protection, it was a
19 good idea to bring your son over there just so that you
20 would have somebody there with you to make sure that this
21 wasn't going to be construed as anything else but getting
22 your stuff?

23 A Well, at the time, I thought that what we had had
24 together that she was trying to do something of kindness
25 to help me so that I would have clothes to wear, that I

1 would have transportation to go back and forth to work. I
2 really didn't think about it as some kind of ploy, you
3 know.

4 Q Well, she -- and, in fact, she told your son, If a
5 family member comes over to get the stuff, they can come
6 while I'm here, they can come and get it. She just wanted
7 to give you the stuff, get that stuff to you through a
8 family member so that she wouldn't have any more contact.
9 It was just like she asked that judge that day not to have
10 contact?

11 A I really can't tell you the conversation she had with
12 my son.

13 Q Okay. So the lady that tormented you by ending the
14 relationship has talked with your son several times, and
15 you're not going to talk to him about what she said.
16 That's what you want this jury to believe?

17 A Well, he said, Dad, you had four phone calls. And I
18 believe it was your girlfriend. And she said she would
19 call back.

20 Q Okay. So --

21 A He left it at that.

22 Q So you're saying he didn't even talk to her about any
23 belongings?

24 A He never spoke to me about the word belongings or
25 anything. He did say, Maybe she's wanting to make up with

1 you, Dad, and you'll be able to go back home. So he drew
2 his own assumption. But as far as having a conversation
3 with her about the clothes or anything like that, he never
4 mentioned that.

5 Q Okay. Well, let's talk about the letter that you
6 wrote to her on March 1st. That would be State's Exhibit
7 No. 9. And that postmark, how does that read?

8 A The 1st of March; is that right?

9 Q I don't know. You tell me.

10 A It looks like the 1st of March.

11 Q 01 -- does it say 01 March, 2010?

12 A 2010.

13 Q So it's got the date, the month, and then the year?

14 A Yes, ma'am.

15 Q Okay. So that's the letter that you sent her;
16 correct?

17 A Yes, ma'am.

18 Q You've looked at that, State's Exhibit No. 9?

19 A Yes, ma'am.

20 Q Now, in that letter -- just one moment.

21 In that letter, isn't it true that you told her you
22 knew what was best for both of you, and that you were not
23 going to give up, and you believed the relationship could
24 work; correct? Do you want to review it?

25 A I will.

1 Q Okay. Take your time.

2 A (Witness reviewed document.)

3 Q Have you had time to review it?

4 A Yes, ma'am.

5 Q Okay. And isn't it true on Page 2 you say, I
6 understand they think they know how to protect you, but
7 they don't. I must concentrate on what's good for us, and
8 not what's right for the system. And then at the
9 bottom -- well, is that correct?

10 A Something to that regard.

11 Q Well --

12 A Exactly -- on Page 2?

13 Q Yes, sir. Let me point to that section just to help
14 out here for time purposes. They can do anything to me,
15 but I will never stop loving and caring for you, Darling;
16 is that right?

17 A Something like that.

18 Q Well, is it right there?

19 A Yes, ma'am.

20 Q I understand that they think they know how to protect
21 you, but they don't; is that correct?

22 A That's correct.

23 Q My goal is to stay off alcohol and be there for you,
24 Girl. We had everything fixed in our life and they
25 screwed that up?

1 A I think that's what I wrote.

2 Q Okay. So the fact that you couldn't see her anymore,
3 obviously, that was screwing things up; right?

4 A I thought so.

5 Q Okay. And you agree here, I must concentrate -- this
6 is what you said, I must concentrate on what's good for us
7 and not what's right for the system?

8 A I wrote that.

9 Q And it says, We have to live our lives alone and
10 apart from the one we love. No, that's not right. Our
11 love is the most important thing in the world. They don't
12 know how one heart feels and don't care?

13 A It's possible.

14 Q Well, is it there?

15 A Yes, ma'am.

16 Q And then you talked about trying to see her for a
17 little while so that you could discuss what's first in
18 your lives; right?

19 A Reconciliation.

20 Q And we can meet when and where you say, there will be
21 no pressure; is that right?

22 A Yes, ma'am.

23 Q So you were proposing on March 1st, which was just
24 two weeks after the order of protection hearing, and you
25 got it a week later. So, it's really just a week later

1 and you're already saying that order means nothing.

2 We need to figure out the way we're going to solve
3 this and you wanted to see her; right?

4 A Key words there is I wanted to see her.

5 Q Okay. And it doesn't say, I just want to see you to
6 get my stuff in there, does it? You told her why you
7 wanted to see her; right?

8 A Because I loved her.

9 Q Okay. So in the name of love. And you said that you
10 wrote these three letters that are here today and you
11 wrote some more letters; right?

12 A Yes, ma'am.

13 Q In fact, you wrote a lot of letters after the order
14 was issued; right?

15 A Yes, ma'am.

16 Q Would you agree that you wrote about four letters in
17 April?

18 A Yes, ma'am.

19 Q And three letters in May?

20 A Yes, ma'am.

21 Q And another three in June?

22 A Yes, ma'am.

23 Q Another three in July?

24 A Yes, ma'am.

25 Q Another two in August?

1 A Yes, ma'am.

2 Q Another two in September?

3 A (Witness nodded.)

4 Q Another two in October?

5 A Yes, ma'am.

6 Q Okay. And this is all during the time that an order
7 said you're not allowed to have contact; right?

8 A I wasn't doing very well at contact, was I? I was
9 the only one writing and mostly the only one reading, it
10 looked like.

11 Q And you said you got one letter from the victim?

12 A Yes, ma'am.

13 Q And did you save that letter?

14 A I did.

15 Q Okay. You don't have it here with you today?

16 A No.

17 Q Now, let's focus on the letter that you said -- the
18 letter of April 20th, just very briefly. And, in that
19 letter, isn't it true that you said that people do crazy
20 things for love, in the name of love; is that correct?

21 A Yes, ma'am. That's possibly what I said.

22 Q And crazy things like getting into a house when
23 you're not supposed to be there?

24 A No, ma'am. That's not crazy. That's insane.

25 Q Well, it says, You know how much I love you and what

1 I'll do to be near you; right?

2 A Yes, ma'am, it says that.

3 Q Okay.

4 A But I had refrained until I received an invitation.

5 Q Well, you didn't receive an invitation to write any
6 letters, did you?

7 A No, ma'am.

8 Q Now, January -- excuse me. I'm showing you State's
9 Exhibit No. 11. Now, on that earlier postmark, you said
10 the day appeared to be the 1st. Now, what's that day?

11 A It looks like the 10th.

12 Q Okay. What's the month?

13 A It looks like May. Is it May?

14 Q Well, look at it carefully. Doesn't it say Jan,
15 J-A-N?

16 A 2010.

17 Q Okay.

18 A So January, I guess. That's really hard to make out.

19 Q Okay. So it's hard to make out?

20 A I don't have good vision.

21 Q So this could say January 2011?

22 A It could.

23 Q Okay. Now, in that letter -- let me get to the
24 section. You say, This is all such a bad dream and I want
25 it all to disappear from my mind. This is not the way it

1 was supposed to be; is that correct?

2 A That's correct.

3 Q Everything was supposed to be beautiful, and warm,
4 and loving. So we had a bad time of it, and I was wrong
5 in the way I handled myself. I beg you to forgive me;
6 right?

7 A Yes, ma'am.

8 Q Everybody is a fool sometimes. I got carried away
9 and acted a damn fool?

10 A Yes, ma'am.

11 Q So if you were there with her consent and she invited
12 you in, and y'all had a lovey-dovey time, in fact, you say
13 y'all were intimate while you were there, she was worried
14 about your being cold and she was concerned about you
15 having some cranberry juice and all this, and she gave you
16 consent to be there, then why on earth would you apologize
17 to her?

18 A Because our differences that were much earlier had
19 not been talked about since we had no contact with each
20 other. I was the only one doing any talking.

21 Q Right.

22 A So I was trying to explain my part of why we had
23 problems in the beginning.

24 Q And you said you were the only one doing the talking.
25 And you were the only one who was ordered not to have any

1 contact or communicate with her; right?

2 A I think that the --

3 Q According to the order?

4 A -- protection was mutual.

5 Q Well, do you want to look at it? It doesn't say
6 she's ordered to have no contact with you, does it?

7 A I don't think it did.

8 Q No. It doesn't say that.

9 A No, ma'am.

10 Q It orders that you be restrained from contacting her.
11 So the only one that's under a court order is you;
12 correct?

13 A Yes, ma'am.

14 Q Okay. So when she testified here yesterday and said
15 that she did not let you in, and she was shocked by -- you
16 know, by your presence in there and was alarmed by it,
17 that she didn't invite you in, then you're telling the
18 jury not to believe her, but you're here telling them what
19 they should believe; right?

20 A No. Simply, I'm trying to explain that I wouldn't
21 have pulled off that kind of stunt because Ms. Morgan has
22 a heart valve problem. Plus, she suffers from some
23 psychological problems.

24 Q And did you think it was --

25 A And I wouldn't have jumped out from behind a door in

1 her house for anything. Because it could have caused her
2 to have a heart attack or some serious health problems. I
3 just wouldn't do that because I loved her too much, and
4 cared too much about her health and well-being.

5 Q So you thought it was good for her health to continue
6 to contact her even though she made it clear she didn't
7 want to have that contact over and over and over again?

8 A No, ma'am. She made it clear that she wanted me to
9 come get my clothes and my truck.

10 Q So she came in here yesterday and testified that she
11 did not give you consent; right?

12 A (There was no response.)

13 Q Did you hear her testify?

14 A I think I did.

15 Q And she said that you didn't have consent to be
16 there. She never told you that you could be there. And
17 she said no, no, no. When she talked to you about getting
18 your belongings and you wanted to meet, she said, no, no,
19 no. She was not interested in meeting with you. That's
20 what she said; right?

21 A No, ma'am.

22 Q Okay. You didn't hear that?

23 A No, ma'am.

24 Q Well, you did hear the part about her saying you had
25 no consent to be there; right?

1 A No, ma'am. I heard her say that I could come over
2 and get my clothes and truck after she got off of work.
3 That's what I heard her say.

4 Q She talked about a family member; right?

5 A (There was no response.)

6 Q Okay. Well, let's focus on when she was here
7 yesterday. And she testified that you didn't have consent
8 to come into the house and she -- in fact, you were
9 charged with burglary because of that; right?

10 A Yes, ma'am, I was.

11 Q And you were charged, you were arrested for that on
12 March 16th; correct?

13 A Yes, ma'am.

14 Q And in all those letters you wrote to her and all the
15 love pouring out and begging for forgiveness, you never
16 called her a liar. You never asked -- right, you never
17 called her a liar? You told her how much you loved her.
18 And you never said, Pam, why don't you, you know, come and
19 tell the truth; right?

20 A We didn't get that far into the discussion before I
21 was arrested. We didn't have time.

22 Q I'm talking about the time after you were arrested?

23 A Yes, ma'am.

24 Q And you were told you were being arrested for
25 burglary. In the time between March 16th and all the

1 letters and everything, you made all these contacts with
2 her and all these letters pouring out your love --

3 A Yes, ma'am.

4 Q -- Unrequited love, but love; right? And in all that
5 pouring out -- and you're even talking about still getting
6 married; right?

7 A We were.

8 Q That's right. So this is a woman who, basically,
9 your testimony is what she said -- she gave you consent,
10 that's what you're saying. So she must have come in here
11 and lied. And so this is a woman that you --

12 MS. MANIGAULT: Your Honor, I'm going to object for
13 the pitting of witnesses.

14 THE COURT: I sustain the objection.

15 Rephrase your question.

16 BY MS. TESSITORE:

17 Q So you wanted to marry a woman who told the officers
18 that you didn't have consent to be there; correct?

19 A At that time, it was questionable. Because I began
20 to realize that, undoubtedly, there was something wrong
21 that I didn't understand. The apology wasn't working, my
22 attempt at reconciliation wasn't working out. And I was
23 going to jail because I wanted to get my clothes and my
24 truck -- the key to my truck and drive away.

25 Q Well, don't you think it was kind of odd that she

1 would pick the dark of night, by herself, you by yourself
2 to go ahead and have this little meeting to give you your
3 stuff?

4 A No, ma'am. Really, trickery and deceit didn't enter
5 my mind at that time. I still thought that there was some
6 spark of hope that we could maybe reconcile our
7 differences, and talk it over, and come to some -- even if
8 I had to leave that night and walk all the way back home.
9 I was prepared to do that, too.

10 But, at that time, I thought maybe this is the
11 opportunity for us to sit down, discuss the relationship,
12 not going against the Court's order, maybe asking the
13 Court if we could reconcile our differences. If there was
14 any group or official agency that would come forward and
15 try to bond a relationship back together, instead of
16 splitting two people apart and just leave it cold. It was
17 so cold and calculous when you do a relationship that way.

18 Q But you had an opportunity to go to the Court, if not
19 that day, any day after that, to go tell the Judge that
20 this was not the right order, and to rescind it, or a
21 motion to reconsider it. You could have picked legal
22 steps to challenge that order, if you thought it was not a
23 good decision for your relationship; right?

24 A By that time, I had already acquired Ms. Manigault as
25 my attorney, who advised me on certain things like don't

1 stir up the hornets nest, leave it alone, maybe sometime
2 later, or you need to stay away. She did warn me, once I
3 obtained an attorney through the system. She told me and
4 warned me that I needed to stay away.

5 And so when she found out that I had went over there,
6 she said, You really made a mistake. You shouldn't have
7 done that.

8 Q But that's different than just filing a motion, going
9 through the proper legal steps to challenge the order;
10 right? You could have gone to Family Court?

11 A I didn't realize that I had that power. I thought it
12 would be up to Ms. Morgan to maybe transcend some of those
13 papers that kept us apart. So if I talked to her that we
14 would be able to maybe work it out to where she would
15 desire to go and maybe drop some of those orders of
16 protection so we could continue our relationship.

17 Q So you didn't file anything in Family Court; right?

18 A No, I didn't.

19 Q Okay. And let's just look at one picture. Look at
20 State's Exhibit No. 3. In the bottom corner, there's a
21 picture of some items; correct?

22 A Yes, ma'am.

23 Q And that's the living room?

24 A That is the living room.

25 Q And is that your blue coat right there?

1 A That could be.

2 Q Okay. And earlier you said you had no clothes,
3 nothing to keep you warm; right?

4 A No, ma'am. I didn't have a coat when I got there.
5 That's what I was looking for, some winter clothes.

6 Q Okay. Now, in State's Exhibit No. 8, what is -- is
7 that the bathroom window?

8 A Yes, ma'am, it is.

9 Q Okay. And Defendant's Exhibit No. 1, that's the same
10 picture, it's just taken out a little bit?

11 A Yes, ma'am.

12 Q Okay. A little more context around the back door?

13 A Uh-huh.

14 Q And isn't it true that along the window, there's a
15 pipe? There's a fitting; right?

16 A There is, yes, ma'am. That's a sewage ventilation
17 pipe.

18 Q And there's some fittings around that pipe wider than
19 the rest of the pipe; right?

20 A Yes, ma'am. And that's very old, too.

21 Q Okay. Well, what about -- and this trash can there,
22 while you were living there, is that the normal place
23 where the trash can would be kept?

24 A Either there or at the side of the road.

25 Q So you could move it around?

1 A Yes, ma'am. You could bring it up to the house. And
2 then on trash day, you could take it out to the side of
3 the road. It's one of those plastic --

4 Q So that could be moved around, that trash can; right?

5 A Yes, ma'am.

6 Q Okay. Now, let's just talk about when the officer
7 came out and found you in the house. The one place you
8 weren't supposed to be; right?

9 A Yes, ma'am.

10 Q Okay. So you were pretty much caught in the act,
11 wouldn't you say?

12 A Yes, ma'am.

13 Q And when he brought you outside and then for some
14 period of time, about 20 minutes, he came back out and
15 talked to you; right?

16 A Yes, ma'am.

17 Q Okay.

18 A He left me handcuffed in the car.

19 Q That's when you were seated in the car?

20 A I was seated in the car, yes, ma'am.

21 Q Okay. And you heard his testimony as well; correct?

22 A I did.

23 Q And he testified that he Mirandized you?

24 A Yes, ma'am, he did.

25 Q And that you told him -- after being Mirandized, he

1 asked you do you wish to speak to me and you said, Yes?

2 A He proceeded to ask me some questions like, What are
3 you doing here?

4 Q Okay. And you answered him; right?

5 A I did.

6 Q You were caught and you were telling him what you
7 did; right?

8 A I was.

9 Q Okay. And that was right when it happened; right?
10 That's when you talked to the officer?

11 A After he had been inside taking Ms. Morgan's
12 statement, then he come and talked to me.

13 Q Okay. But that was the night of the incident, right?
14 That's almost a year ago?

15 A Yes, ma'am.

16 Q And you heard the testimony yesterday from Ms. Morgan
17 and the officer; right?

18 A Yes, ma'am.

19 Q And you've had a year to think about what happened
20 that night; right?

21 A Yes, ma'am.

22 THE COURT: May I see the attorneys up here for just
23 a minute?

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Madam Forelady, and, ladies and gentlemen

1 gentlemen.

2 You may continue your cross-examination of the
3 witness, Madam Solicitor.

4 MS. TESSITORE: Thank you, Your Honor.

5 CONTINUED CROSS-EXAMINATION

6 BY MS. TESSITORE:

7 Q Mr. Gilliland, you said earlier that this was all a
8 ploy; right? That was the word you used.

9 A I considered it.

10 Q Okay. And that's because you were -- you say you
11 were invited over, you ate together, you had intimate
12 relations, you showered, you shared conversation, all of
13 that. And then, at some point, she tricked you and just
14 called 911?

15 A I don't see where she would have had to trick me.
16 She just called them.

17 Q Well, you said it was a ploy; right?

18 A I thought it was. Because, up to that point, we were
19 doing fine. We didn't eat together.

20 Q Okay. I'm sorry about that.

21 A Just had a drink.

22 Q Just a drink. Now, you admit you completely violated
23 the court order?

24 A Yes, ma'am.

25 Q Multiple times?

1 A I've admitted it multiple times, yes, ma'am.

2 Q Right. And you snuck around the order letter after
3 letter, even after being arrested for burglary in
4 violation of the order of protection; correct?

5 A Yes, ma'am.

6 Q And you got no positive response to those letters;
7 correct?

8 A No, ma'am.

9 Q All right, sir. And so you want the jury to believe
10 that the one personal contact that you had with this
11 victim was when she said come on over; right?

12 A Yes, ma'am.

13 Q And that -- now, you know that if you had the consent
14 from the victim to be in the house, then you can't be
15 convicted of burglary; right?

16 A No, ma'am. I didn't realize the charges were a big
17 part of it unless you broke into a residence or stole
18 something from the residence.

19 Q Okay. But you're saying today that you didn't break
20 in, you walked in because she said come on over?

21 A Yes, ma'am.

22 Q And she told you to come on over in the middle of the
23 night?

24 A Yes, ma'am.

25 Q And that consent, that just happens to be the very

1 thing that would mean that this jury couldn't convict you
2 of burglary; right?

3 A No, ma'am. The fact of the matter that I didn't do
4 the burglary.

5 Q Because you say you didn't go in the bathroom window?

6 A Not the fact that I broke the court order.

7 Q Because you said she let you in the door; right?

8 A Yes, ma'am.

9 Q That's what you're saying; right?

10 A Yes, ma'am.

11 MS. TESSITORE: No further questions.

12 THE COURT: Any redirect?

13 MS. MANIGAULT: None, Your Honor.

14 THE COURT: All right. Thank you, sir.

15 You may step down from the witness chair.

16 You may call your next witness, Ms. Manigault.

17 MS. MANIGAULT: The Defense rests, Your Honor.

18 THE COURT: All right. Is there anything in reply
19 from the State?

20 MS. TESSITORE: Nothing further from the State, Your
21 Honor.

22 THE COURT: Ladies and gentlemen, you've heard all
23 the testimony. We have some legal matters that we need to
24 take care of as far as the law and the instruction that I
25 give you that we need to iron out, and some other legal

1 So remember the importance of maintaining that
2 isolation, if you will. I'll see you back at 1:30. We'll
3 be ready to proceed with the trial at that time. Have a
4 good lunch, ladies and gentlemen.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 12:24 p.m.)

7 THE COURT: Okay. Are there any legal matters we
8 need to take care of?

9 I've got a proposed verdict form that I'll be glad to
10 let you review so that you'll know what will be presented
11 to the jury on that.

12 Any other matters we need to take care of?

13 Anything from the State, first of all?

14 And I'll be glad to hear from the Defense.

15 MS. TESSITORE: Your Honor, with respect to the
16 proposed jury charges, are you -- are we addressing that
17 now?

18 THE COURT: Is there anything we need to take care of
19 before that?

20 MS. MANIGAULT: Your Honor, the Defense would just
21 renew our motions that we made at the end of the State's
22 case.

23 THE COURT: I think there's sufficient conflicting
24 evidence here to be a jury issue. I respectfully deny
25 your motion, Ms. Manigault.

1 charge. I'm not going to comment on the evidence. But
2 I'll let them know that the evidence -- all the evidence
3 is in. I rule on the admissibility of the evidence.
4 We've taken breaks under the law, they know that. And
5 only the evidence that is before them, the testimony and
6 the documentary evidence, the pictures, and all that is
7 all that they can consider, and nothing else. So I think
8 that will adequately cover it, Ms. Tessitore.

9 MS. TESSITORE: Yes, sir.

10 MS. MANIGAULT: Your Honor, I have no intention of
11 arguing about those documents. We agreed to them without
12 objection, so I didn't have any intention --

13 THE COURT: She won't go there, Ms. Tessitore.

14 MS. TESSITORE: Oh, good.

15 Thank you.

16 MS. MANIGAULT: The only thing I would like to ask
17 the Court to consider is a charge on trespassing, which
18 would be included in burglary.

19 THE COURT: As a lesser included?

20 MS. MANIGAULT: Yes, sir.

21 THE COURT: What's the State's position on that?

22 MS. TESSITORE: Well, Your Honor, I'm not sure. I
23 mean, how -- if trespass is that he didn't have consent to
24 be there -- you know, I think that there's been no
25 evidence presented by the Defense as to the issue of

1 nighttime. I think all the evidence indicates that he was
2 there in the nighttime. He remained in the nighttime.

3 So I just -- I don't see how that would be a possible
4 verdict. I mean, if they find that -- I'm just not
5 sure.

6 THE COURT: How does that tie into the elements?

7 MS. MANIGAULT: Your Honor, one of the elements of
8 the burglary, I'm assuming, is to commit a crime therein.
9 And the crime that I'm assuming that the State is going to
10 argue is a violation of order of protection. Well, from
11 the testimony that the State itself presented, this is a
12 continuing violation.

13 So it's not a "new crime" that would be committed if
14 he did not have consent to go into the house. And so,
15 therefore, I'd ask the Court to consider the trespassing
16 charge.

17 MS. TESSITORE: Your Honor, but the Defendant
18 admitted that he violated the order of protection. So, I
19 mean, I think that's -- that makes that moot.

20 THE COURT: Okay. I'll study that over lunchtime and
21 let you know before you argue.

22 Any other objections to -- no other objections to the
23 first three, Ms. Manigault?

24 MS. MANIGAULT: Your Honor, the first three are,
25 generally, included into your regular charge. So I have

1 no objection to those. They're, generally, included
2 already.

3 THE COURT: Okay. Let me just let you look at the
4 verdict form. And, again, we'll revisit, if necessary,
5 the trespass.

6 (Pause.)

7 THE COURT: Is there any objection to the verdict
8 form, other than subject to your request on the
9 trespass?

10 MS. TESSITORE: None from the State, Your Honor.

11 MS. MANIGAULT: None from the Defense, Your Honor.

12 THE COURT: All right. We'll be back at 1:30 ready
13 to proceed with your argument.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: All right. Does the State have any more
16 position on the lesser included offense of trespass, or
17 anything else from Ms. Manigault?

18 I'll be glad to hear from either one of you about
19 that issue. I'm sure y'all diligently reviewed it during
20 the lunch hour -- during lunch, 45 minutes.

21 MS. TESSITORE: No, Your Honor.

22 I still maintain my position.

23 THE COURT: All right. I'm respectfully denying your
24 motion, Ms. Manigault.

25 And I always try to let the Appellate Court know what

1 I'm thinking about when I make these rulings, so if there
2 is any such issue that arises. I'm relying on State v.
3 Cross, it's in 323 S.C. 41, where it says that trespass is
4 not a lesser included offense of burglary in the first
5 degree. I'm conscious that, in this case, there is some
6 fact-specific issues, such as the reason for the burglary,
7 according to the State's position.

8 But I find in reading what they find as the elements
9 for trespass, both in the common law and under the
10 statutory scheme, that the requirements of the lesser
11 included offense would not be met, and that the -- really,
12 the facts in that case are very, very similar to this,
13 except for the protective order, the same sort of
14 male-female dating relationship issues.

15 And, from what I understand, the uniqueness of the
16 particular facts in that case, I still believe that the
17 language in that opinion leads me to believe that the law
18 is there, regardless of the specific facts of this case as
19 they analyzed it. So under that reliance, I, certainly,
20 see the argument that you could make.

21 Do you have any other matters that you can address
22 for me? I'll be glad to hear from you, ma'am.

23 MS. MANIGAULT: No, Your Honor. That's it.

24 Thank you.

25 THE COURT: Are you all ready to present your closing

1 Ms. Manigault, you may address the jury.

2 CLOSING ARGUMENTS

3 MS. MANIGAULT: Thank you, Your Honor.

4 Ms. Tessitore.

5 Ladies and gentlemen, again, I would like to thank
6 you for your time and attention that you've put into this
7 case. All of the evidence is in. You've heard the
8 testimony that has been presented by the State. You will
9 have a chance to review all of the physical evidence that
10 has been presented, and you'll have a chance to take that
11 with you to the jury room to continue to review it.

12 At the opening of the case, in my opening statement,
13 I gave you -- I mentioned to you three premises of
14 principles of law, which is the presumption of innocence,
15 the burden of proof, and reasonable doubt. And, as Your
16 Honor has told you from the very beginning and has just
17 told you again, he is the judge of the law. He will
18 charge you as to what the law is. And so what His Honor
19 says the law is, that's what you should take it as.

20 Now, there are two charges in this case, burglary
21 first and violation of an order of protection. So you
22 will not be burdened with the order of protection. My
23 client has freely admitted in testimony that he did
24 violate the order of protection. So that's already a
25 given. He has violated the order of protection. If you

1 remember my questions to him, Did you read the order? Did
2 you understand that the order said no contact? Do you
3 understand, even if you sent her letters to say I love you
4 a thousand times, it's still a violation? Even if he sent
5 her roses, candies, it would still be a violation.

6 The interesting thing that the State brought out is
7 that Ms. Pam Morgan could do the opposite of what the
8 order said. Now, Ms. Pam Morgan is the person that went
9 to Family Court to get an order of protection. But
10 Ms. Pam Morgan could call Thomas Gilliland any time she
11 got ready. Ms. Pam Morgan, according to the State, was
12 not under that order, only Thomas Gilliland. So she could
13 make the contact, if she desired to do so. And that is
14 the testimony that we have presented to you today, that
15 Ms. Pam Morgan made the contact because she desired to do
16 so.

17 The pictures that were taken, when you get them,
18 you'll see Greenville Forensics on every picture. The
19 testimony is -- even the pictures that the Defense put
20 into evidence. The testimony is that the pictures -- the
21 incident occurred on March the 16th, 2010. That's when
22 the incident occurred that my client is being charged
23 with, the order violation and the burglary charge.

24 The pictures, according to Ms. Pam Morgan, of the
25 outside of the house were taken on April the 2nd, after

1 Veredicto, it means to speak the truth. And I present to
2 you for your consideration that a verdict that speaks the
3 truth in this case is a verdict of guilty of violation of
4 order of protection, and not guilty of burglary first.

5 Thank you.

6 THE COURT: Solicitor, you may address the jury.

7 MS. TESSITORE: Thank you, Your Honor.

8 Ms. Manigault.

9 Good afternoon, ladies and gentlemen. I told you it
10 was going to be a short case. We had a lot of
11 interruptions, and so I apologize that it was not as short
12 as I had hoped.

13 So I'll try to -- I just want to make sure I hit some
14 points with you. And, obviously, the first point is that
15 the issue here is consent. And, ultimately, it doesn't
16 matter how Mr. Gilliland got in that house. He's the only
17 one who knows how he got in that house. But, ultimately,
18 it doesn't matter whether he went in through the front
19 door, through the back door, a window, another window or
20 down the chimney. He was in the house and the victim
21 testified that he didn't have consent to be there.

22 And the officer told you that he told him that he
23 went through the bathroom window. He didn't say he broke
24 through it, he smashed through it. The victim didn't
25 testify that there was pieces of glass shattered about.

1 And, again, you heard her, she said, He told me, I'm a cat
2 burglar and windows can be opened and locks can be -- you
3 know, doors can be jimmied.

4 So I think the first thing to start with is, as
5 Ms. Manigault pointed out, he admitted he violated the
6 order of protection. And I'm not going to hammer that. I
7 know you can read. And the order is clear, there's no
8 question about that. But the fact is -- the fact that he
9 violated that order and violated it so many times with
10 letter after letter after letter, obviously, means that he
11 has no regard for the law, and that pursuing his love for
12 her is more important than the law, and he was going to do
13 it his way.

14 And just to begin with, the March 1st letter, he
15 says -- this is just a week later after he gets the order
16 that is so clear. He understood the order, and there was
17 no question about it. He said, They think they know how
18 to protect you, but they don't. I must concentrate on
19 what's good for us, not the system. Live our lives apart,
20 no, that's not right. So he's going to decide what's
21 right.

22 You heard the victim. She had ended the
23 relationship. She was not feeling the same way,
24 obviously, as the Defendant felt about her. And she
25 decided that staying with him was not safe. As

1 Ms. Manigault just pointed out, he even apologized for
2 what had happened in the past. So something had happened.
3 Something had happened that led a judge to issue an order
4 of protection to her. She decided she had to end the
5 relationship, and she did. And she stuck by that.

6 Now, his letter is, also, clear, he says he's going
7 to tell her what is best, based on his love, and,
8 basically, says to heck with the court order. So he
9 wasn't taking into account how she felt. And he said, I'm
10 not going to spend one more minute without your love.

11 Now, when you heard from the victim as she testified,
12 she spoke simply, slowly, clearly. She's been through a
13 lot. She talked about the fact that she did have cancer.
14 And, you know, you heard that he took care of her during
15 that period of time. And, of course, we're not saying
16 that everything between the two of them was bad.
17 Obviously, there must have been good times. He must have
18 done some good things, otherwise they wouldn't have been
19 together as long as they were through that year.

20 And she told you she had depression, and she was
21 taking medication. But she, also, told you that she was
22 working. She's been working at Wal-Mart for a while now.
23 And she's been working up to 40 hours and supporting
24 herself. She's not one of these people who says, oh, I
25 have a disability. I've got to take medication. I'm just

1 going to drain the Government. That's not what she did.
2 So she's a hard worker. She continues to work. And she
3 stood up for herself to end a relationship that was no
4 longer safe in her view.

5 Now, Ms. Manigault talked about the call that she
6 made. And she told you -- I mean, she was right up front.
7 Yeah, I called his son's cell phone, because I wanted to
8 let him know to come and get his stuff. She wanted the
9 stuff out because she got the order. She made the
10 decision. She was sticking by it. She wasn't answering
11 his letters. She said just come and get your stuff. And
12 she told the son that, and the son handed the phone to
13 him. And that's how she ended up talking to him. If she
14 really wanted to go pursue him and reconcile, or even
15 consider that, she knew where he lived. She had the
16 vehicle to get over there. She didn't do that. There's
17 no -- you didn't hear him testify at all that she came
18 looking for him saying, you know, Romeo, where are you?
19 She didn't do that. He came to her house and not with her
20 consent.

21 Now, he did claim that she wrote one letter. In all
22 those letters he wrote to her over that period of time
23 when he was supposed to have no contact, one letter. But
24 he just didn't bring it with him today. I guess he didn't
25 think that it was that important.

1 Now, her demeanor here, also, indicated -- you know,
2 she was very calm. She was not highly emotional. She
3 said the night that she saw him in there, she, initially,
4 screamed because she was startled. She didn't expect to
5 see anybody in her house, except for her little dog that
6 she cares so much for. So she was startled. I mean, it
7 seems pretty commonsensical that if someone is in your
8 house, you're going to be startled. But she knew this
9 man. And she knew that he was just so focused on trying
10 to make her love him the way he loved her.

11 So it wasn't -- the State is not contending that he
12 was there to hurt her, to assault her, to do anything in
13 the sense of physically hurting her. And she picked up on
14 that. She knew, oh, you know, he just kept talking about
15 wanting to reunite, that's what she said. You know, we
16 just talked about that. And I was nervous. I was just
17 trying to figure out what to do.

18 And she -- when she could, she had the opportunity to
19 call 911. She was trying to figure out a plan. And, at
20 some point, she was able to say, I've got to use the
21 bathroom. She shut the door. And then the first thing
22 you hear, if you listen to the 911 call -- and you can
23 listen to it again if you need to -- she said,

24 . And she said three times, He's in my home, he's
25 in my home, he's in my home. And you could hear her. She

1 didn't sound like she was like, ha, ha, ha, he's in my
2 home, come and get him. It didn't sound like she was
3 there to execute a ploy. So think about that.

4 Think about the time that the dispatcher is asking
5 questions and she's not answering, because she didn't feel
6 like she could sit there and talk on the phone freely
7 enough. She was trying to be discreet and just let
8 somebody know, I need someone to come to get him to leave.
9 She wasn't being hurt. She didn't have to run away. It
10 was just trying to figure out how she could deal with the
11 situation to not make it worse. Obviously, she didn't
12 want to go back in time. She wanted to just try to get
13 him out of the home. So that's what she did.

14 Now, as Ms. Manigault said, you are the judges of the
15 facts and of the credibility. The officer testified that
16 the Defendant admitted to him that he went through the
17 bathroom window, that he walked eight miles to get there,
18 that he knew about the order, and that he went in through
19 the bathroom window. So to believe the Defendant's theory
20 that he had consent is, basically, to disbelieve what the
21 officer told you, and what the victim told you. So you'd
22 have to disregard all the testimony from the victim and
23 the officer, and they're just liars, and they must be
24 conspiring to convict this man right here. Does that make
25 sense? Would the officer put his line on the job -- put

1 his job on the line over this?

2 Now, look at the credibility of the Defendant and his
3 demeanor. And I'm going to say, you know, I guess they
4 say that water is freshest at its source. And so if you
5 have a river, you go to the source, and that's going to be
6 the freshest water you can find. Now, the first thing he
7 told the police and the first letter that came after that
8 order of protection -- first of all, what he told the
9 police, I went in there. I went through the window. He
10 told the officer that. Then he announced his intent in
11 March that he wanted to meet with her. He was begging her
12 for an opportunity to be with her.

13 And, now, he says, well, it was all a ploy. 10
14 months later, it was just a ploy, that she tricked him.
15 That she invited him over, that he came to the back door
16 and she was eager to see him, to please him, even to make
17 love to him. This man who she's been telling to stay away
18 for all this time. And then she snuck around the house
19 with a phone and she called the police. So he's not just
20 charged with an order of protection violation, he's
21 charged with burglary.

22 Now, don't you think that a man who goes to all these
23 lengths to express his love and all this, that if he had
24 this encounter like he says he did with her, and then she
25 called 911, set him up and it was a ploy, don't you think

1 that in all those letters that he wrote to the victim that
2 maybe just once he would say, how dare you lie? Why are
3 you doing this to me? And don't you think as he sat up
4 there just all full of -- you know, very peaceful and calm
5 that he would have some ounce of anger towards Pamela?
6 Don't you think that that would be normal human behavior,
7 if he felt he had been tricked, deceived, it was a ploy,
8 it was all about trickery?

9 So, instead, what do you have? You have all the
10 letters that talk about asking -- you know, you have the
11 letters. You have his testimony about the fact that he
12 was writing about loving her, still loving her, wanting to
13 marry her, to plant a garden. I mean, there was --
14 there's -- you can read these letters. And you'll get the
15 tone of these letters when you look at them. But he never
16 called her a liar or demanded that she tell the truth, go
17 talk to that Solicitor, tell her the truth, none of that.
18 Does that make sense?

19 He, also, as he sat up there, pretty much had answers
20 for everything. He had -- you know, oh, yeah, I remember
21 it was raining. Oh, yeah, well, I didn't have a coat.
22 And he just kind of -- everything -- he never really
23 stopped and said, I don't know. He never said that. This
24 was, you know, 10 months ago. But he knew it all today.
25 And he had the opportunity to hear the victim testify

1 yesterday, and the officer to testify yesterday, and all
2 night long. He's had all this time, 10 months, to think
3 about how he was going to explain his story that would
4 make sense, and it would all weave together so nicely.

5 But, again, think about it. Those letters that he
6 wrote, what he didn't say is the most important thing.
7 And the way he acted with no anger, no scorn. He was
8 just -- I mean, he seemed like he might even still be
9 thinking that there's a relationship for him and her
10 together. So, you know, whether he claims it's in the
11 name of love, it seems like it might be in the name of
12 some type of delusional love.

13 Now, just to touch upon the reference to law
14 enforcement. And there's no question that when that
15 officer went out there that night and the Defendant told
16 him, I went through the bathroom window, and this was
17 something he reported that night. The deputy, you know,
18 he did his job as far as talking with the victim. He got
19 the information. He put it in a report. And all of that
20 was done.

21 And he didn't do -- and I asked him, Why didn't you
22 walk around? Why didn't you call forensics? You know,
23 there isn't some number for her to just call
24 1-800-FORENSICS, come out here now. He should have gone
25 to that window. He should have looked around in the

1 bathroom. There is no question about that. But when he
2 hears the guy say, I opened the window and that's how I
3 got in, he's not thinking broken glass, and damage, or
4 anything like that. But, again, he should have done that.
5 The fact that he didn't should not be attributed against
6 the victim.

7 The reference to the things that she found. She
8 said, Well, she was kind of curious. She found these
9 items. She didn't testify it's my professional opinion
10 that he went through the window. She never said that.
11 And it's in your hands to decide. But she said it was
12 kind of curious, so I gathered these things. And I called
13 the Solicitor's Office, and then forensics came out. And
14 those are the people who are supposed to come out,
15 ideally, on the night that this happened. But, again,
16 that's not her fault, and she shouldn't be blamed for
17 that.

18 You can look at these pictures again, you know. Look
19 at them carefully. Look at the damage to the bottom of
20 that window, which would be consistent with somebody going
21 through that window on the very bottom here. And all that
22 aluminum is bent down like that. There's, certainly, ways
23 that he could have -- if he did go through the window that
24 he could have gotten through that window. And if he's
25 rattling the window to get it open, that would explain why

1 the screw is slightly bent. If the door hadn't been --
2 excuse me, the latch hadn't been completely closed and
3 maybe it was just a little bit -- didn't slide in all the
4 way because it's an old window, some work on that, you
5 know, you decide.

6 And I think the other thing the deputy said was, you
7 know, he admitted he went through the window. So I just
8 didn't think I had to do anything more. And that
9 admission came from his mouth, not anybody else's. Nobody
10 else said, oh, he went through that window. He's the one
11 that said it. So just keep that in mind.

12 The letter in January talks about asking for
13 forgiveness. You can look at the postmark. The victim
14 was confused, you know, the order of the day and the year.
15 You decide. You look at that and you decide. But he
16 asked for forgiveness. And he said he was wrong in the
17 way he handled himself and he got carried away. Does that
18 sound like somebody who's invited over and tricked?

19 You know, he talked, also, about in the letter of
20 April, 2010, People have done crazy for love before and
21 will do worse again. You know how much I love you and
22 what I'll do to be near you. And he asked for mercy and
23 forgiveness, again, trying to convince her to love him,
24 because he knew he screwed up. He got crazy. She wasn't
25 responding to that March letter. He needed to see her.

1 He wanted to see her. And he was going to find a way to
2 see her, and he did.

3 He thinks that this court order meant nothing,
4 obviously. He said that up there. He just completely
5 disregarded it. And he thinks that it's okay to break the
6 law, a judge's order. And he thought that he could do
7 that by entering her home. And he needs to know that it's
8 not okay. He violated two laws when he went over there.
9 And he needs to be held accountable for committing two
10 crimes. And the victim needs to know that following the
11 proper legal steps that that's what will lead to justice.

12 Thank you.

13 CHARGE ON THE LAW

14 THE COURT: Madam Forelady, and, ladies and gentlemen
15 of the jury, it's now my responsibility to instruct you on
16 the law of the case. These indictments that I read to
17 you, and that I have before me charge the Defendant with a
18 violation of an order of protection and, also, burglary in
19 the first degree. I remind you that the fact that the
20 Defendant has been arrested, and charged, and indicted in
21 the case is not evidence. It's not to create, in your
22 mind, any presumption of guilt. Indictments merely are
23 the papers by which the case is brought before this Court,
24 and for which the charges were made for disposition by
25 you, the jury. Of course, there's two separate charges

1 only means by which they can listen to it?

2 MS. TESSITORE: Yes. I'm sorry.

3 I'll just have to check the password.

4 THE COURT: Okay. If you will, get all the exhibits
5 together. Make sure with the court reporter that all the
6 exhibits are accounted for and you can get those together.

7 Ms. Fryer, here is the verdict forms that you can
8 give to the jury with the exhibits. And you can instruct
9 them that they can start their deliberations when all
10 exhibits are back.

11 Okay. We'll be at ease, in this case, until we hear
12 from our jury.

13 (WHEREUPON, the proceedings were recessed at
14 approximately 3:02 p.m.)

15 QUESTIONS FROM THE JURY

16 THE COURT: All right. We have an inquiry from the
17 jury in the Gilliland matter. I've shared the note with
18 the attorneys. We'll make this a Court's Exhibit, the
19 next number in line. I think we have some other Court's
20 Exhibits already.

21 All right. They're wanting some additional evidence.
22 I'll explain that to them. They, also, want a copy of the
23 transcript of Officer Flood. I'll explain to them that we
24 can play that for them after a little time. And, also,
25 the law on first degree burglary, which I'll give them.

1 And, if the jury is ready, have them come in, please.

2 This will be Court Exhibit No. 6.

3 (WHEREUPON, Court's Exhibit No. 6 was marked for
4 identification and admitted into evidence.)

5 (WHEREUPON, the jury came into open court at
6 approximately 4:29 p.m.)

7 THE COURT: Madam Forelady, you sent out an inquiry
8 about certain evidence. And let me see if I can address
9 your note in sequence. You wondered about reviewing a
10 police report and statement from the victim -- a statement
11 to the police. You, also, have asked for a copy of the
12 transcript of Officer Flood's testimony, and a re-charge
13 on the law of first degree burglary.

14 As far as the reports or statements, you have all the
15 evidence that's been presented in this case. And that's
16 the evidence that you'll need to examine, what you have,
17 to make your determination as to the facts.

18 I'm going to now instruct you on the law of first
19 degree burglary. Again, I indicate to you that what the
20 State must prove beyond a reasonable doubt to convict a
21 defendant of this offense is that the Defendant entered a
22 dwelling without consent. And without consent means
23 without the consent of the person in the lawful possession
24 of that dwelling. A dwelling is defined as any building
25 or portion of a building in which a person ordinarily

1 sleeps. A building constructed as a dwelling that has
2 never been occupied cannot be considered a dwelling for
3 purposes of burglary. But a building is a dwelling even
4 if the residents are temporarily absent from the building.

5 In order to prove that the Defendant entered the
6 dwelling, the State does not have to show that the
7 Defendant's entire body entered the dwelling. The
8 smallest entry is sufficient. It may be any part of the
9 body, such as a hand, or a foot, or even an instrument,
10 such as a hook or other instrument. In addition, the
11 State does not have to prove that force was used to gain
12 entry. If a person were to enter a building by using
13 deception, or artifice, or trick, or misrepresentation to
14 get consent to enter, this entry is without consent.

15 Next, the State must prove beyond a reasonable doubt
16 that the Defendant intended to commit a crime, either a
17 felony or a misdemeanor, at the time of the entry. The
18 mere entry into a dwelling without consent is not
19 burglary. If the intent to commit a crime is formed after
20 the entry, it's not burglary.

21 On the other hand, if the Defendant intended to
22 commit a crime at the time of the entry, it is a burglary
23 even if the intent was abandoned after the entry. It does
24 not matter that the intended crime was not completed.
25 Intent may be shown by acts and conduct of the Defendant

1 and any other circumstances from which you may naturally
2 and reasonably infer intent.

3 Finally, the State must prove beyond a reasonable
4 doubt that the Defendant entered or remained in the
5 dwelling in the nighttime. And nighttime is that period
6 between sundown and sunrise during which there's not
7 enough daylight to recognize a person's face, except by
8 artificial light or moonlight.

9 I hope this helps you with the instructions that I
10 gave you on first degree burglary.

11 We don't have the benefit of having a transcript of
12 testimony. If you would like to hear the testimony of any
13 of the witnesses, you asked for Officer Flood, if you'll
14 let us know that when you're back in your jury room, just
15 let the bailiffs know. The court reporter, in just a
16 short period of time, will be able to get that for you.
17 And you can come back in the courtroom here and we'll play
18 it for you to listen to again. If you decide you want to
19 hear that, please, let us know.

20 I'll ask you, now, to go back to the jury room and
21 continue your deliberations. If there's any testimony you
22 want to hear, just write a note through the Foreperson and
23 in just a little time, the court reporter can try to
24 find that on the equipment she has so it can be played for
25 you.

1 Madam Clerk, you may publish the verdicts.

2 VERDICT

3 THE CLERK: Your Honor, in the case of
4 2010-GS-23-4939, the State of South Carolina v. Thomas
5 Gilliland, we, the jury, by unanimous consent find the
6 Defendant, Thomas Gilliland, as to the charge of violation
7 of an order of protection, guilty.

8 In the case of 2010-GS-23-4940, we, the jury, by
9 unanimous consent find the Defendant, Thomas Gilliland, as
10 to the charge of burglary in the first degree, guilty.

11 These are signed by our Forelady, Ms. Greer.

12 Ladies and gentlemen of the jury, if you agree these
13 are the verdicts you reached in your deliberation room,
14 would you, please, raise your right hand.

15 (WHEREUPON, all jurors raised their hands.)

16 THE CLERK: Thank you.

17 THE COURT: All right. Are there any matters we need
18 to take care of with the jury before they are discharged
19 in this case?

20 Anything from the State?

21 MS. TESSITORE: Nothing from the State, Your Honor.

22 THE COURT: From the Defense?

23 MS. MANIGAULT: Nothing from the Defense, Your Honor.

24 THE COURT: Thank you very much, ladies and
25 gentlemen.

1 care of before sentence is imposed?

2 MOTIONS

3 MS. MANIGAULT: Yes, Your Honor.

4 The Defense would renew all its previous motions, and
5 ask the Court to set aside the verdict that was rendered
6 by the jury and grant the Defendant a new trial in that
7 the Defense does not believe that the evidence would
8 support the verdict that the jury returned, especially as
9 far as the burglary first is concerned.

10 THE COURT: Well, obviously, there was, certainly, a
11 large degree of conflicting evidence in the case all the
12 way around. I find that the Defendant did receive a fair
13 and impartial trial. And that while there was conflicting
14 evidence, as I stated, I find that the verdict is
15 sufficient under the evidence that was presented.

16 And, obviously, a judge can't enter a verdict in his
17 own opinion, but, rather, must, under the law, uphold the
18 jury's verdict if there is a sufficiency of the evidence.
19 And I think, in this case, there was sufficient evidence.

20 So I respectfully deny your motion, Ms. Manigault.

21 Anything else we need to discuss before sentence is
22 imposed?

23 MS. TESSITORE: Nothing from the State, Your Honor.

24 MS. MANIGAULT: No, Your Honor.

25 THE COURT: All right. Come forward, Mr. Gilliland.

1 THE COURT: Right before that, what did you do?

2 DEFENDANT GILLILAND: A welder.

3 THE COURT: With a company or just --

4 DEFENDANT GILLILAND: For American Cylinder
5 Head [phonetic].

6 THE COURT: Do your children live in the community.

7 DEFENDANT GILLILAND: Yes, sir. They live in
8 Greenville.

9 MS. TESSITORE: Your Honor, I think it's obvious, but
10 the one thing I failed to mention is that he have no
11 contact in any form whatsoever with the victim.

12 THE COURT: He's already had that, hasn't he? The
13 protective order?

14 MS. TESSITORE: Well, protective order, bond order.

15 THE COURT: Is it going to matter if I say it?

16 MS. TESSITORE: Well, my concern is that -- well, I
17 think it's important to put it on the record as part of
18 whatever sentence you fashion.

19 THE COURT: Well, that's what concerns me. It didn't
20 matter the last time.

21 Is it going to matter this time?

22 MS. TESSITORE: I doubt it.

23 SENTENCE

24 THE COURT: This is case 2010-GS-23-4940, the
25 sentence of the Court is that the Defendant be committed

1 to the State Department of Corrections for a period of 15
2 years. This is to include no contact with the victim
3 directly or indirectly by any means whatsoever.

4 Case 2010-GS-23-4939, a 30-day sentence to be
5 concurrent to that previously imposed.

6 I wish you the very best, Mr. Gilliland.

7 *****END OF TRANSCRIPT OF RECORD*****
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE FAMILY COURT
13TH JUDICIAL CIRCUIT

FILED CLERK OF COURT
GREENVILLE, S.C.

FAMILY COURT ORDER

Pamela Morgan

Petitioner

PROTECTION FROM DOMESTIC ABUSE ACT

(For Use By Family Court Judges)

vs.

Thomas Edward Gilliland

Respondent

FILE NO. 2010-DR-23-0641

Judge: Robert N. Jenkins, Sr.

Attorney for Petitioner:

Pro se

Attorney for Respondent:

Court Reporter:

Tracy McBride

PETITIONER IDENTIFIERS

Date of Birth of Petitioner

And/or on behalf of minor family member(s) or other
Protected persons: (list name and DOB)

RESPONDENT IDENTIFIERS

SEX *

RACE *

DOB*

M

W

EYES

HAIR

SOCIAL SECURITY #

Blue

Grey

DRIVERS LICENSE #

STATE

Relationship to Petitioner:

Respondent's Address

CAUTION:

☐ Weapon Involved

☐ Weapon Present on Respondent's Property

☐ Access to weapons

*Indicates required information for entry into NCIC

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and subject matter,
Respondent has been provided with reasonable notice and opportunity to be heard.
Additional findings of this order are as set forth below.

THE COURT HEREBY ORDERS:

☒ That the above named Respondent be restrained from any contact with the Petitioner/Plaintiff as set forth on the
attached pages.

The terms of the this order shall be effective until August 16, 2010.

WARNINGS TO RESPONDENT;

This order shall be enforced in any county of South Carolina and by the courts of any state, District of
Columbia, any U. S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state,
territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section
2262).

State and federal law provides penalties for possessing, transporting, shipping, or receiving any firearm
or ammunition (18 U.S.C. Section 922).

Only the Court can change this order.

For Additional Information Call:

Sheriff

Clerk of Court

Phone Number

Phone Number

SCCA/426ABCD (03/05)



A Petition for Order of Protection was filed on February 10, 2010. I held a hearing on February 16, 2010. Respondent was given actual notice and an opportunity to participate. Respondent did appear. After hearing the evidence, and examining the affidavits and verified pleadings, I have determined that the petition should be GRANTED, based on these facts:

1. That the Respondent and the Petitioner (check one or more):

☐ are husband and wife
☐ were husband and wife

☐ have this child/children in common:
☐ are household or family members
 pursuant to S.C. Code § 20-4-20(a)(2)

☐ are cohabiting
☒ were cohabiting

2. Venue is properly in this county, since this is the county where

☐ a. the act of abuse occurred; or

☐ b. the Respondent resides; or

☐ c. the parties last resided together.

3. occurred on (date) December 31, 2009 at 11:00 o'clock p.m., at _____ in this manner:

4. committed this abuse.
5. was the victim(s) of this abuse.

☐ Check here if the victim is less than 18 years old and name: _____

6. ☐ The evidence establishes that Respondent represents a credible threat to the physical safety of the victim. The Respondent used, attempted to use, or threatened to use physical force against Petitioner that is reasonably expected to cause bodily injury.

- ☐ 7. The Petitioner is a fit and proper person to have custody of the minor child or children.

- ☐ 8. Respondent is employed at _____ and earns approximately \$ _____ gross per month and has reasonable monthly expenses of \$ _____

- ☐ 9. Petitioner is employed and earns approximately \$ _____ gross per month, and has reasonable monthly expenses of \$ _____ for herself and the minor children.

- ☐ 10. Petitioner has shown a need for child support in the amount of \$ _____ per _____ and _____ Respondent has the ability to make these payments.

- ☐ 11. Petitioner has shown a need for temporary financial support in the amount of \$_____ per _____ and _____ Respondent has the ability to make those payments.

- ☒ 12. Petitioner should have the use and possession of the home and furnishings located at _____ in _____, S.C., with ~~Respondent making the mortgage and/or rental payments plus any taxes and/or insurance on the property.~~

- ☐ 13. Petitioner retained an attorney, S is a reasonable attorney's fee, and Respondent should contribute to this expense.

IT IS THEREFORE ORDERED THAT:

- ☒ A. Respondent is temporarily restrained, prohibited and forbidden to abuse, threaten to abuse, or molest, Petitioner or engage in any other conduct that would place Petitioner in reasonable fear of bodily injury.
- ☒ B. Respondent is temporarily restrained and prohibited from using, attempting to use, or threatening to use physical force against Petitioner that would reasonably be expected to cause bodily injury.
- ☒ C. Respondent is temporarily restrained, prohibited and forbidden to communicate or attempt to communicate with Petitioner/Respondent in any way or to enter or attempt to enter Petitioner's place of residence, employment, education or the following locations: _____
- ☐ D. Petitioner is awarded temporary custody of the minor children named: _____
- ☐ E. Respondent is awarded temporary visitation rights with the minor children as follows: _____
- ☐ F. Respondent shall pay the sum of \$ _____ each _____ as temporary child support through the clerk of court, plus 5% court costs, making a total payment of \$ _____, commencing on _____, and each and every _____ thereafter.
- ☐ G. Respondent shall pay the sum of \$ _____ each _____ as temporary financial support through the clerk of court, plus 5% court costs, making a total payment of \$ _____, thereafter commencing on _____, and each and every _____ thereafter.
- ☒ H. The sole, exclusive possession of the residence and furnishings located at the aforementioned address (appearing under number "11" of this order) is awarded to Petitioner ~~with Respondent making the mortgage and/or rental payments plus any taxes and/or insurance on the property.~~
- ☐ I. Respondent is temporarily restrained, prohibited, and forbidden to transfer, encumber, destroy, sell or otherwise dispose of, except in the ordinary course of business, real or personal property jointly owned or leased by the parties or in which Petitioner claims an equitable interest including, but not limited to, the following: _____
- ☐ J. Respondent shall pay \$ _____, to the Petitioner by _____ (date) as a contribution toward Petitioner's attorney fees.
- ☐ K. The following law enforcement agencies be served with a copy of this Order by the clerk of court: _____
- ☐ L. The law enforcement agencies listed below are directed to assist Petitioner as follows:
- ☐ (1) Accompany Respondent to remove his personal property at:
- ☐ (2) Accompany Petitioner to assist in placing her in possession of the residence, located at:
- ☐ (3) Other: _____

RESPONSIBLE LAW ENFORCEMENT AGENCIES:

- ☐ M. IT IS FURTHER ORDERED, pursuant to S.C. Code Ann. § 20-7-420-, that
- ☐ N. Federal Firearms Prohibition, pursuant to 18 U.S.C § 922.
1. Does this Order protect an intimate partner, a child of an intimate partner, or a child of the Respondent? ☐ YES ☐ NO
 2. Did the person restrained have actual notice and an opportunity to participate in the hearing? ☐ YES ☐ NO
 3. Does the Order find the restrained person a credible threat or explicitly prohibit the use, attempted use, or threatened use of physical force? ☐ YES ☐ NO

Rng

THE PROVISIONS OF THIS ORDER SHALL EXPIRE ON 8-16-2011 (a date which is not less than 6 months and does not exceed 12 months from the date of this Order) UNLESS OTHERWISE PROVIDED BY S.C. CODE ANN. §20-4-70. 167

AND IT IS SO ORDERED.
February 16, 2010 Date
Greenville, SC

Robert N. Jenkins Jr.
FAMILY COURT JUDGE

Paul B. Underhill
Clerk of Court C.P., G.S. & Family Court
Ex-Officio Clerk County Court
Greenville, SC
Dated Jan. 13, 2011

COPY GIVEN TO PETITIONER BY _____ (initials) COPY GIVEN TO RESPONDENT BY _____ (initials)

RESPONDENT'S HOME ADDRESS: _____

RESPONDENT'S PLACE OF EMPLOYMENT: _____

Information which may be of assistance to law enforcement: Respondent's height _____ weight _____ DL number _____

ATTACH PHOTOSTATIC COPY OF RESPONDENT'S DRIVERS LICENSE, IF AVAILABLE.

Rng

GCFCB2/19/201010:44:10CK

DOCKET NO. 2010-GS-23-
JRT 004939
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2010

2-2-11

THE STATE

VS.

THOMAS GILLILAND

ARREST WARRANT NUMBER

M179562

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

VIOLATION OF ORDER OF PROTECTION

VIOLATION § 16-25-0020

RECEIVED

JUL 02 2010

Clerk of Court
Greenville County

Paul B. Walden
Clerk of Court C.P. & G.S.
Greenville County, SC

Dated 7/10/11

Indictment for

3056

Foreperson of Petit Jury
Date: 7/10/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
VIOLATION OF ORDER OF PROTECTION

At a Court of General Sessions, convened on
County present upon their oath:

SEP 21 2010

the Grand Jurors of Greenville

That THOMAS GILLILAND did in Greenville County, on or about the 16th day of March 2010, violate the terms and/or conditions of an Order of Protection, issued by Greenville County Family Court, without permission and being prohibited from communicating with, or entering or attempting to enter either party's residence, place of education or employment. This is in violation of § 16-25-20 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

DOCKET NO. 2010-GS-23-004940
JRT
The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

September TERM 2010

2-2-11 THE STATE

VS.

THOMAS GILLILAND

ARREST WARRANT NUMBER

M179561

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury Date: 3/2/2011

Certified Copy
Paul B. Wilkerson
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 3/17/11

RECEIVED

JUL 02 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on **SEP 21 2010**

the Grand Jurors of Greenville

County present upon their oath:

That THOMAS GILLILAND did in Greenville County, on or about the 16th day of March 2010, willfully and unlawfully enter the dwelling of PAMELA MORGAN located at Greenville, without consent and with the intent to commit a crime therein and the entering and/or remaining did occur during the nighttime hours. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

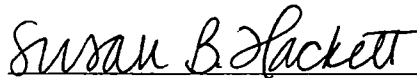
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 20th, 2012



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

ATTORNEY FOR APPELLANT

RECEIVED

APR 26 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS E. GILLILAND,

APPELLANT

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT I.....	5
ARGUMENT II	15
CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases

<u>Buchanan v. Delaware</u> , 981 A.2d 1098, 1099 (Del. 2009).....	11
<u>Carter v. State</u> , 329 S.C. 355, 495 S.E.2d 773 (1998).....	16
<u>Charleston County Sch. Dist. v. State Budget and Control Bd.</u> , 313 S.C. 1, 437 S.E.2d 6 (1993).....	8
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000).....	8
<u>In re Vincent J.</u> , 333 S.C. 233, 509 S.E.2d 261 (1998).....	8
<u>Maine v. Robinson</u> , 656 A.2d 744 (Me. 1995)	13
<u>Minnesota v. Colvin</u> , 645 N.W.2d 449 (Minn. 2002)	12
<u>New York v. Dombrowski</u> , 864 N.Y.S.2d 612 (N.Y. App. Div. 2008).....	11
<u>New York v. Lewis</u> , 840 N.E.2d 1014 (N.Y. 2005)	10, 11
<u>New York v. Vandewalle</u> , 847 N.Y.S.2d 816 (N.Y. App. Div. 2007)	9, 10
<u>Paschal v. State Election Comm’n</u> , 317 S.C. 434, 454 S.E.2d 890 (1995).....	8
<u>State v. Cross</u> , 323 S.C. 41, 448 S.E.2d 569 (1994).....	15, 16, 17
<u>State v. McFadden</u> , 342 S.C. 629, 539 S.E.2d 387 (2000), <u>overruled on other grounds by</u> <u>State v. Gentry</u> , 363 S.C. 93, 610 S.E.2d 494 (2005).....	16
<u>Washington v. Stinton</u> , 89 P.3d 717 (Wash. Ct. App. 2004).....	12, 13

Statutes

S.C. Code Ann. § 16-11-311(A).....	16
S.C. Code Ann. § 16-11-620.....	16
S.C. Code Ann. § 20-4-60.....	8, 9

STATEMENT OF ISSUES ON APPEAL

- I. The trial judge erred in failing to direct a verdict of acquittal on the charge of burglary in the first degree where the only evidence presented to support the element of intent to commit a crime in the dwelling was the violation of the order of protection.
- II. If Appellant's intent to violate the order of protection in the dwelling may serve to satisfy the element of burglary in the first degree which requires the state to prove that he intended to commit a crime in the dwelling, the trial judge erred by refusing to instruct the jury on the charge of trespass as a lesser-included offense because the order of protection essentially provided notice to Appellant not to be on the premises, just as a trespass notice would.

STATEMENT OF THE CASE

During its September 2010 term, a Greenville County Grand Jury indicted Appellant on one count of violating an order of protection (2010-GS-23-4939) and one count of burglary in the first degree (2010-GS-23-4940). R. 168 Indictments. Appellant proceeded to trial on both charges on February 1, 2011. Jennifer Tessitore prosecuted Appellant. Dorothy Manigault represented Appellant. The Honorable G. Edward Welmaker presided over the two-day trial. R. 1. The jury found Appellant guilty of both charges. R. 160 lines 3-11. Judge Welmaker sentenced Appellant to fifteen years imprisonment for the burglary conviction and thirty days imprisonment on the violation of protective order conviction. R. 162 line 24 – R. 163 line 5.

Thereafter, Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

I. The trial judge erred in failing to direct a verdict of acquittal on the charge of burglary in the first degree where the only evidence that Appellant intended to commit a crime in the dwelling was his violation of the order of protection.

In 2008, a romance blossomed between Appellant and Pamela Morgan, who were co-workers. R. 25 line 8 – R. 26 line 1; R. 81 lines 3-11. Eventually, the two decided to move in together. R. 23 line 24 – R. 24 line 1; R. 81 lines 12-16. In February of 2009, Appellant and Morgan moved into a home rented by Morgan. R. 24 lines 2-3; R. 57 lines 20-24. In January of 2010, the relationship soured. R. 24 lines 4-8. On February 16, 2010, Morgan obtained an order of protection against Appellant. R. 24 lines 9-11; R. 28 lines 1-3; R. 164 Order of Protection. Pursuant to the order of protection, Appellant was not permitted to contact Morgan and was not allowed into the home the two had shared. R. 164 Order of Protection. Despite the order of protection, Appellant continued to contact Morgan through numerous letters. R. 48 lines 11-22; R. 51 lines 6-12; R. 53 lines 12-15. Appellant admitted to violating the order of protection by writing Morgan letters. R. 83 lines 15-18.

Shortly after the issuance of the order of protection, Morgan contacted Appellant's son, with whom Appellant was living. R. 29 lines 14-23; R. 61 lines 4-5. Morgan testified that she called Appellant's son, who handed the phone to Appellant. R. 30 lines 11-12; R. 61 line 8. She then told Appellant that a member of his family could obtain Appellant's belongings when she was home. R. 30 lines 14-16. On March, 16, 2010 Morgan arrived home from work at 12:10 a.m. R. 31 lines 7-14; R. 60 lines 2-4. When she arrived, she was startled to see Appellant in her home. R. 33 lines 7-9. Thereafter, the Appellant talked to

Morgan for several hours. R. 63 lines 16-23. Eventually, Morgan contacted 911. R. 35 lines 19-24. Within a few minutes, officers arrived at her door. R. 36 lines 16-18.

Officer Flood, the responding officer, testified that when he arrived he learned there was an order of protection in place. R. 8 lines 2-3. He then placed Appellant, who was handcuffed, in his patrol car. R. 8 lines 4-6. After speaking with Morgan, Officer Flood then questioned Appellant. R. 8 lines 18-20. According to Officer Flood, Appellant claimed he walked eight miles to get there, he was aware of the order of protection, he entered through a bathroom window, and his purpose in going there was to reconcile the differences with Morgan. R. 12 lines 8-18. Officer Flood did not look in the bathroom, the alleged point of entry for Appellant. R. 14 lines 7-8; R. 40 lines 9-11. On April 2, 2010, an officer in forensics went to Morgan's home for the first time. R. 17 lines 20-22; R. 66 lines 13-16. During this visit, the forensics officer took photographs of the outside of the house. R. 66 line 20. Sometime after this visit, Morgan noticed the latch to the bathroom window was damaged. R. 41 line 23 – R. 42 line 3; R. 66 lines 21-23. The forensics officer returned to Morgan's home on April 13, 2010. R. 17 lines 23-24. During this visit, the officer took photographs of the inside of the house. R. 67 lines 8-11.

At the conclusion of the state's case, Appellant moved to dismiss the charge of burglary in the first degree because the state had not proven all of the elements. R. 78 lines 9-12. Holding that there was sufficient evidence from which the jury could logically and fairly deduce guilt, the trial judge denied the motion. R. 78 lines 13-22.

In his defense, Appellant presented a slightly different version of the facts. Appellant testified that according to his son, Morgan had called four or five times for Appellant while he was out. R. 85 lines 16-18. When Morgan called again, Appellant's son

gave the phone to Appellant. R. 85 lines 18-19. During the conversation, Morgan informed Appellant that he could pick up his belongings and his truck on her day off from work. R. 86 lines 8-13. During the late evening of March 15 and the early morning of March 16, Appellant walked to Morgan's home. R. 88 lines 13-14. He arrived at 12:15 a.m. when he knew she would be home from work as she worked second shift. R. 90 lines 3-5. He knocked on the door, and Morgan permitted him to enter. R. 88 line 23; R. 89 lines 8-9. The two engaged in conversation and then made love. R. 89 line 23; R. 91 lines 2-4. According to Appellant, around 3 a.m., a police officer arrived at the door. R. 95 lines 12-13. Appellant testified that he informed the officer that he walked eight miles to get there, he was permitted entry by Morgan, he wanted to reconcile with Morgan, and he was there to get his belongings. R. 97 lines 16 -24; R. 98 lines 10-17.

After the presentation of all of the evidence, Appellant renewed his dismissal motion. R. 137 lines 20-22. The judge denied the motion. R. 137 lines 23-25. During the conference among the attorneys and the judge concerning the jury instructions, Appellant noted that one of the elements of burglary is the intent to commit a crime in the dwelling and the state's evidence of such was a violation of the order of protection. R. 139 lines 7-10. Shortly after beginning its deliberations, the jury made an inquiry of the judge. The jury wanted the following: (1) to review a police report and a statement from Morgan to police; (2) a copy of the transcript of Officer Flood's testimony; and (3) a re-charge on the law of burglary in the first degree. R. 157 lines 9-10. After the jury returned a verdict of guilty on both charges, the defendant renewed all previous motions and asked the court to set aside the verdict and grant a new trial because the evidence did not support the verdict, "especially

as far as the burglary first is concerned.” R. 161 lines 3-9. The judge denied this motion. R. 161 lines 10-20.

The issue presented – whether a violation of an order of protection may satisfy the element of burglary in the first degree requiring the offender to have the intent to commit a crime in the dwelling - is one of first impression in South Carolina. A starting point for the analysis is the order of protection statute. An order of protection is issued to protect a person who has suffered abuse from further harm. S.C. Code Ann. § 20-4-60. The protection order includes both a no contact provision that makes any communication or contact with the abused person an act of contempt; and, most importantly, a provision that criminalizes any further abusive or malicious communication or physical act against the abused person. Id.

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (citations omitted). Where the statute’s language is plain and unambiguous, conveying a clear and definite meaning, the rules of statutory interpretation are not needed and the court should not impose another meaning. Id. (citing Paschal v. State Election Comm’n, 317 S.C. 434, 454 S.E.2d 890 (1995)). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The statute outlining violations of a protection order illustrates the legislative intent to protect persons who have been the victim of domestic violence and to categorize any violations as either contempt or trespass. See S.C. Code Ann. § 20-4-60. The first provision of the statute states that the order of protection is “to protect the petitioner or the abused person” by enjoining a particular person from “abusing, threatening to abuse, or molesting” by way of communication or actual contact with the protected person. Id. Likewise, the statute is clear as to the type of crime and punishment that is applicable to the violation of a protection order: “Violation of [an order of protection] is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars.” S.C. Code Ann. § 20-4-60(B)(1). Additionally, the statute provides that a person, convicted of criminal domestic violence and subject to an order of protection, who enters or remains on the grounds of a domestic violence shelter in which the person’s household member resides, is guilty of trespass. S.C. Code Ann. § 20-4-60(B)(2). This language shows that the legislature intended the violation of such an order to be either trespass or contempt. While this subsection states that the violation will be treated as trespass when the actual contact occurs at a domestic violence shelter, it is easily transferred to any dwelling “in which the person’s household member resides” because the statute treats the shelter as the person’s home. Id.

Although the issue presented is one of first impression in South Carolina, other jurisdictions have examined whether a violation of an order of protection may serve as the predicate crime for burglary. New York has examined this issue extensively. In New York v. Vandewalle, 847 N.Y.S.2d 816, 817 (N.Y. App. Div. 2007), the state supreme court

concluded that the evidence as to the burglary conviction was insufficient because the prosecution had failed to produce evidence that the defendant intended to commit a crime in the dwelling beyond the criminal of criminal contempt based upon his violation of the order of protection. The Court held “intended conduct that would be innocuous if the order of protection did not prohibit it . . . includ[ing] the defendant’s mere ‘contact’ or ‘communication’ with – or proximity to – the occupant of the building named in the order of protection” could not satisfy the element of burglary requiring that the offender have the intent to commit a crime in the dwelling. Id. The evidence in the case establishing that the defendant intended to hug his girlfriend, tell her he loved her, and tell her goodbye did not permit the inference that at the time of entry, the offender intended to harass, menace, intimidate, threaten, or interfere with his girlfriend. Id.

In New York v. Lewis, 840 N.E.2d 1014, 1015 (N.Y. 2005), the New York Court of Appeals held that the element of burglary requiring a defendant to have the intent to commit a crime in the dwelling was not satisfied “solely by a defendant’s intent to violate an order of protection by entering the dwelling that the order of protection declare[d] off limits.” However, the evidence in Lewis enabled the jury to infer that the offender intended to commit a crime inside the apartment beyond unlawful entry based on the defendant’s prior conduct and his conduct on the day of the crime. The prosecutor presented evidence that the offender previously damaged the victim’s property and previously struck the victim over the head causing serious injury. Additionally, the prosecutor presented evidence that on the day of the alleged burglary, the victim’s pocketbook and papers were strewn on the ground below her apartment windows and the offender had sworn at the victim and kicked her. Id. at 1017-1018. The Court held the evidence allowed the jury to conclude that the offender

entered the apartment with the intent to “harass, menace, intimidate, threaten, or interfere with [the victim] in her apartment.” Id. at 1018.

Relying upon Lewis, another New York appellate court affirmed a defendant’s conviction for burglary in the second degree where the prosecutor presented evidence that the defendant screamed obscenities and threats at the victim while in the residence. New York v. Dombrowski, 864 N.Y.S.2d 612, 613 (N.Y. App. Div. 2008). The court determined this conduct allowed the jury to infer that the defendant intended to commit a crime inside the home by violating the order of protection in a manner that went beyond trespass. Id.

The Supreme Court of Delaware concluded that a defendant’s unlawful entry into his own home, in violation of a Family Court order, could not serve as the predicate offense for burglary. Buchanan v. Delaware, 981 A.2d 1098, 1099 (Del. 2009). The defendant had been ordered to vacate the premises pursuant to a Family Court order following his divorce. Id. However, the defendant returned to the home where he was discovered by police. Id. The court held that the predicate crime element of burglary “may be satisfied by a defendant’s intent to engage in conduct prohibited by an order of protection while on the banned premises” but “is not satisfied solely by a [appellant’s] intent to violate an order of protection by entering the [banned] dwelling.” Id. at 1101. The court also stated that the appellant’s violation of the order was not a “continuing crime” that encompassed both unlawful entry and intent to commit criminal contempt because “absent the order, [the defendant] had every legal right to enter and remain on his own property.” Id. at 1102. The court also noted that there is “no clear definition for what constitutes a continual disregard of a court order.” Id. (emphasis in original).

Taking a more nuanced approach, the Supreme Court of Minnesota ultimately held that a violation of an order for protection was insufficient to establish first-degree burglary based on the facts presented. Minnesota v. Colvin, 645 N.W.2d 449, 456 (Minn. 2002). The order for protection provided that the defendant must not enter his ex-wife's residence or stay at the residence for any reason, even if invited. Id. at 451. One evening, ex-wife's roommate found the defendant in the home watching television and drinking a beer. When the roommate requested he leave, the defendant complied. Subsequently, the defendant was charged with burglary in the first degree and violation of the order for protection. Id. Ultimately, the defendant was convicted. Id. The Minnesota Court recognized that a violation of an order of protection can be committed in many ways, and the nature of the violation will determine whether the violation constitutes an independent crime under the burglary statute. Id. at 452. The prosecution argued on appeal that the defendant violated the protective order in two ways: (1) attempting to contact the victim; and (2) entering the victim's residence. Id. However, the appellate court determined the stipulated facts did not support the prosecution's contention that the defendant attempted to contact the victim. Id. at 453. As a result, the court concluded the defendant violated the protective order solely by entering the victim's residence. Id. The court concluded that a violation of a no-entry provision of a protective order, like trespass, could not be used as the basis for the independent crime of burglary. Id. at 454.

Although Washington State concluded that a violation of an order of protection may satisfy its burglary statute's requirement that the offender intend to commit a crime therein, Washington v. Stinton, 89 P.3d 717, 721 (Wash. Ct. App. 2004), this case actually supports Appellant's position. In Stinton, 89 P.3d at 718, the order of protection not only prohibited

the defendant from entering the victim's residence, it also prohibited him from harassing and threatening the victim. The state's theory was that the defendant's violation of the protective order provision against harassing the victim, not the unlawful entry, served as the predicate crime for burglary. Id. Appellant's case is distinguished easily because the prosecutor did not offer any evidence that Appellant engaged in unlawful conduct toward the victim while in the residence or that he had the intent to do so while in the residence. The conduct in Stinton involved harassment, which is a crime independent of the violation of the protective order. The victim testified that Appellant did nothing more than talk. Although, the protective order forbade Appellant from communicating with the victim, such conduct was not criminal except as a violation of the order of protection.

On the other hand, the Maine Supreme Court determined a defendant was properly charged with burglary for entering the victim's home with intent to commit assault and to violate a protective order. Maine v. Robinson, 656 A.2d 744, 747 (Me. 1995). However, the Maine Court did not express if the opinion would be the same had the defendant not also intended to commit an assault against the victim.

Simply put, Appellant's unlawful entry cannot establish both elements of burglary in the first degree – entry without consent and intent to commit a crime in the dwelling. In his closing arguments, the solicitor even stated that they were “not contending that [the appellant] was there to hurt [his girlfriend], to assault her, to do anything in the sense of physically hurting her.” R. 148 lines 11-13. It is evident from the record that Appellant only wanted to get back together with his girlfriend and entry into her apartment was in pursuit of this. Therefore, without any contrary intent to harass or molest her,

Appellant's entry into her home should not be legally sufficient to constitute the predicate crime element of first degree burglary.

II. If Appellant's intent to violate the order of protection in the dwelling may serve to satisfy the element of burglary in the first degree which requires the state to prove that he intended to commit a crime in the dwelling, then the trial judge erred by refusing to instruct the jury on the charge of trespass as a lesser-included offense because the order of protection essentially provided notice to Appellant not to be on the premises, just as a trespass notice would.

At the conclusion of the presentation of evidence, Appellant requested a jury instruction on trespass as a lesser included offense of burglary in the first degree. R. 138 lines 16-20. When the judge asked for the state's position, the prosecutor noted that trespass requires a lack of consent and that the defense did not dispute that the events took place in the nighttime. R. 138 line 22 – R. 139 line 5. At the judge's request, Appellant responded that one of the elements of burglary is the intent to commit a crime in the dwelling and the state's evidence of such was a violation of the order of protection. R. 139 lines 7-10. After hearing argument from both sides and conducting independent research, the trial judge denied Appellant's request. R. 140 lines 23-24. Citing State v. Cross, 323 S.C. 41, 448 S.E.2d 569 (1994) the trial judge determined that trespass is not a lesser-included offense of burglary in the first degree. R. 141 lines 2-5. Importantly, the trial judge noted that there were "some fact-specific issues, such as the reason for the burglary according to the state's position" causing him trouble. R. 141 lines 5-7. Because the facts of this case are so different from those in Cross, the court should look at this issue and determine whether trespass can be a lesser included of first degree burglary where the basis of the charge is a violation of the "no contact" provision of a protective order.

The question presented is whether trespass is a lesser included offense of burglary in the first degree. One of the tests used to determine if an offense is a lesser included of a charged offense is the elements test. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). Using the elements test, an offense is a lesser included of a greater offense if the greater offense includes all the elements of the lesser offense. State v. McFadden, 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). Therefore, it is necessary to review the elements of the offense of burglary in the first degree and trespass. The elements of first degree burglary are as follows:

[A] person enters a dwelling without consent and with intent to commit a crime in the dwelling and either: (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime: (a) is armed with a deadly weapon or explosive; or (b) causes physical injury to a person who is not a participant in the crime; or (c) uses or threatens the use of a dangerous instrument; or (d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or (2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or (3) the entering or remaining occurs in the nighttime.

S.C. Code Ann. § 16-11-311(A). The elements of trespass are as follows:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative.

S.C. Code Ann. § 16-11-620.

At first blush, trespass does not appear to be a lesser-included offense of burglary in the first degree. In fact, this Court held as such in Cross, supra based upon the facts

presented. This Court noted that burglary in the first degree applied only to dwellings and that statutory trespass required a prior warning against entry or a request to leave, which were not elements of burglary. Cross, 323 S.C. at 44, 448 S.E.2d at 570. Concerning common law trespass, this Court held that burglary did include the elements of a willful malicious injury or entry after notice. Id. In Cross, the jury could have determined that the defendant entered the victim's home and had sexual intercourse with her while holding a knife on her on two occasions, removed personal belongings from the home, cut a hole in the sheetrock of the garage to enter the home and forced the victim to accompany him to Myrtle Beach. Id. at 43, 448 S.E.2d at 569-570. Appellant's case is easily distinguishable and the facts of his case present a situation in which trespass is a lesser included offense of burglary in the first degree.

In Cross, this Court correctly noted that statutory trespass requires a prior warning against entry or a request to leave, which is not a stated element of burglary. However, in Appellant's case, it was such an element. The evidence presented by the state to satisfy the element of burglary that the person intended to commit a crime in the dwelling was that Appellant intended to violate the order of protection, which amounted to a prior warning to Appellant not to enter the dwelling. Appellant had notice of the order or protection and had an opportunity to be heard prior to its issuance. The protective order specifically forbade Appellant from entering or attempting to enter the victim's place of residence. Here, Appellant had been warned not to enter, but did so anyway.

In closing argument, the state conceded that Appellant was not there "to hurt her, assault her, to do anything in the sense of physically hurting her." R. 148 lines 11-13. The only evidence of any crime to be committed in the dwelling was a violation of the order of

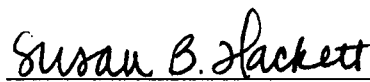
protection. The prosecutor concluded her argument with the following: “[Appellant] thinks that it’s okay to break the law, a judge’s order. And he thought that he could do that by entering her home. ... He violated two laws when he went over there.” R. 155 lines 5-8.

Therefore, because a violation of a “no contact” provision of a protection order amounts to a trespass, the elements of trespass can be reasonably inferred in the elements of burglary, and there is enough evidence in the record to support a trespass charge, the court should allow for trespass as a lesser included offense in limited circumstances.

CONCLUSION

Appellant requests this Court to direct a verdict of acquittal on the charge of burglary in the first degree if this Court determines that a violation of an order of protection cannot serve as a predicate offense of burglary. In the alternative, Appellant requests this Court to reverse his burglary conviction and remand this matter for a new trial.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of March, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 12, 2012

Susan B. Hackett

Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

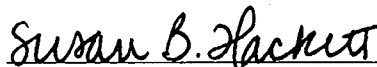
V.

THOMAS E. GILLILAND,

APPELLANT

CERTIFICATE OF SERVICE

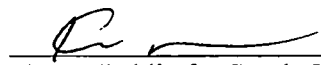
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of March, 2011.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of March, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

RECEIVED

APR 26 2013

S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE,

vs.

Respondent,

THOMAS E. GILLILAND,

Appellant.

INITIAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JULIE KATE KEENEY
Staff Attorney

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS, JR.
Solicitor, Thirteenth Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	7
I. A. Appellant failed to properly preserve the issue of whether a violation of an order of protection can be the basis for the intent to commit a crime element of burglary in the first degree when Appellant moved for a dismissal but failed to specify the grounds for dismissal.	7
B. The trial judge properly denied Appellant's motion for dismissal on the charge of burglary in the first degree because violation of an order of protection is a crime under South Carolina law; therefore, the intent to commit a crime element of burglary in the first degree was satisfied.	9
II. The trial court properly denied Appellant's request to instruct the jury on the charge of trespass as a lesser-included offense of burglary in the first degree.	18
CONCLUSION	22

TABLE OF AUTHORITIES

Cases:

<u>Charleston County Sch. Dist. v. State Budget and Control Bd.</u> , 313 S.C. 1, 437 S.E.2d 6(1993)	10
<u>Colorado v. Rhorer</u> , 967 P.2d 147 (Colo. 1998)	10, 11, 13
<u>Colorado v. Widhalm</u> , 991 P.2d 291 (Colo. App. 1999)	10, 11
<u>Grady v. Corbin</u> , 495 U.S. 508 (1990)	20
<u>Hendrick v. Eastern Distribution, Inc.</u> , 316 S.C. 34, 446 S.E.2d 440	8
<u>Hodges v. Rainey</u> , 341 S.C. 79, 533 S.E.2d 578 (2000)	10
<u>In re Vincent J.</u> , 333 S.C. 233, 509 S.E.2d 261(1998)	10
<u>In re Walter M.</u> , 386 S.C. 387, 688 S.E.2d 133 (Ct. App. 2009)	7
<u>McMillian v. South Carolina</u> , 383 S.C. 481, 680 S.E.2d 905 (2009)	15, 16
<u>Minnesota v. Colvin</u> , 645 N.W.2d 449 (Minn. 2002)	10-12, 15
<u>New York v. Carpio</u> , 835 N.Y.S.2d 107 (N.Y. App. Div. 2007)	14
<u>New York v. Dombrowski</u> , 864 N.Y.S.2d 612 (N.Y. App. Div. 2008)	15
<u>New York v. Lewis</u> , 840 N.E.2d 1014 (N.Y.2005)	13, 14
<u>New York v. Vandewalle</u> , 847 N.Y.S.2d 816 (N.Y. App. Div. 2007)	10, 12
<u>State v. Brandt</u> , 393 S.C. 526, 713 S.E.2d 591 (2011)	20
<u>State v. Burkhart</u> , 350 S.C. 252,565 S.E.2d 298 (2002)	18
<u>State v. Christensen</u> , 194 S.C. 131, 9 S.E.2d 555 (1940)	16
<u>State v. Cross</u> , 323 S.C. 41, 448 S.E.2d 569 (Ct. App. 2004)	18-20
<u>State v Ferebee</u> , 273 S.C. 403, 257 S.E.2d 154 (1979)	17
<u>State v. Fleming</u> , 254 S.C. 415, 175 S.E.2d 624 (1970)	7
<u>State v. Freiburger</u> , 366 S.C. 125, 620 S.E.2d 737 (2005)	7

<u>State v. Fuchess</u> , 267 S.C. 427, 229 S.E.2d 331 (1976)	21
<u>State v. Gadsden</u> , 314 S.C. 229, 442 S.E.2d 594 (1994)	21
<u>State v. Gaines</u> , 380 S.C. 23, 667 S.E.2d 728 (2008)	18
<u>State v. Gourdine</u> , 322 S.C. 396, 472 S.E.2d 241 (1996)	19
<u>State v. Johnson</u> , 363 S.C. 53, 609 S.E.2d 520 (2005)	7
<u>State v. McFadden</u> , 342 S.C. 629, 539 S.E.2d 387 (2000)	19
<u>State v. Morris</u> , 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1991)	7,8, 21
<u>State v. Pickney</u> , 339 S.C. 346, 529 S.E.2d 526 (2000)	8
<u>State v. Prioleau</u> , 345 S.C. 404, 548 S.E.2d 213 (2001)	7
<u>State v. Tyndall</u> , 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999)	21
<u>State v. Watson</u> , 349 S.C. 372, 563 S.E.2d 336 (2002)	19
<u>United States v. Dixon</u> , 509 U.S. 688 (1993)	20
<u>Washington v. Stinton</u> , 89 P.3d 717 (Wash. Ct. App. 2004)	10, 12
 <u>Other Authorities:</u>	
S.C. Code Ann. § 16-3-1710	12
S.C. Code Ann. 16-11-310.	16
S.C. Code Ann. § 16-11-311 (1976)	9, 19
S.C. Code Ann. § 16-11-620 (1976)	19
S.C. Code Ann. § 20-4-60 (1976)	3, 9, 10, 17

STATEMENT OF ISSUES ON APPEAL

I.

A. Appellant failed to properly preserve the issue of whether a violation of an order of protection can be the basis for the intent to commit a crime element of burglary in the first degree when Appellant moved for a dismissal but failed to specify the grounds for dismissal.

B. The trial judge properly denied Appellant's motion for dismissal on the charge of burglary in the first degree because violation of an order of protection is a crime under South Carolina law; therefore, the intent to commit a crime element of burglary in the first degree was satisfied.

II.

The trial court properly denied Appellant's request to instruct the jury on the charge of trespass as a lesser-included offense of burglary in the first degree.

STATEMENT OF THE CASE

In September 2010, a Greenville County Grand Jury indicted Appellant on one count of violating an order of protection (2010-GS-23-4939) and one count of burglary in the first degree (2010-GS-23-4940). (R. * Indictments.) Appellant proceeded to trial on both charges on February 1, 2011. The Honorable G. Edward Welmaker presided over the two-day trial. (Tr. 1.) On February 2, 2011, the jury found Appellant guilty of both charges. (Tr. 281 lines 3-11.) Thereafter, Judge Welmaker sentenced Appellant to fifteen years of imprisonment for burglary in the first degree and thirty days of imprisonment for violating the order of protection. (Tr. 288 line 24-Tr. 289 line 5.)

On February 10, 2011, Appellant filed his Notice of Appeal. On December 15, 2011, Appellant served his Initial Brief. This brief follows.

STATEMENT OF FACTS

On March 16, 2010, Appellant broke into Pamela Morgan's ("Morgan") home through a bathroom window without Morgan's consent. (Tr. 81 lines 15-17; Tr. 103 lines 3-10.) Appellant allegedly went to Morgan's house in order to reconcile with Morgan and obtain his belongings. (Tr. 184 lines 8-24; Tr. 185 lines 10-17.)

At trial, Morgan testified that approximately two years before the March 16, 2010 incident, she met Appellant at work. (Tr. 98 lines 10-12.) Shortly after the two met, they began dating. (Tr. 168 lines 3-7.) Eventually, Appellant moved in with Morgan. (Tr. 96 lines 24-25 - Tr. 97 lines 1-5; Tr. 168 lines 12-16.) However, around January 2010, an incident occurred that made Morgan realize she could no longer live with Appellant. (Tr. 97 lines 4-8.)

As a result of the January 2010 incident, Morgan sought an order of protection. (Tr. 97 lines 7-11.) On February 16, 2010, the Thirteenth Judicial Circuit Family Court issued an order of protection against Appellant pursuant to the Protection from Domestic Abuse Act. R. (* Order of Protection; S.C. Code Ann. § 20-4-60 (1976).)

According to the order of protection, Appellant was prohibited from doing the following acts: 1) abusing, threatening to abuse, molesting, or engaging in any conduct that would place Morgan in reasonable fear of bodily injury; 2) using, attempting to use, or threatening to use physical force against Morgan that would reasonably be expected to cause bodily injury; 3) communicating or attempting to communicate with Morgan; or 4) entering or attempting to enter Morgan's place of residence, employment, or education. (R. * Order of Protection.)

During the trial, Deputy Rebecca Devore-Snow testified that on February 10, 2010, she served Appellant with the summons and notice of an emergency hearing for an order of

protection. (Tr. 152 lines 23-24.) However, Appellant testified that he did not attend the hearing. (Tr. 169 lines 4-12.)

After the Family Court granted Morgan's request for an order of protection, Deputy Kenneth Posey testified that he served the order of protection upon Appellant on February 23, 2010. (Tr. 157 lines 24-25- Tr. 158 line 1.) At trial, Appellant admitted that he received and understood the order of protection. (Tr. 171 lines 19-23; Tr. 200 lines 8-25- Tr. 201 lines 1-4.)

After the order of protection was issued, Morgan called Appellant's son. (Tr. 102 lines 14-25.) However, Appellant's son handed the phone to Appellant. (Tr. 103 lines 11-20.) She wanted Appellant to know that one of his family members could come over and obtain Appellant's belongings. (Tr. 103 lines 1-8.) However, she did not give Appellant permission to come over and obtain his belongings. (Tr. 103 lines 9-10.)

During the trial, Morgan testified that she came home from work around midnight on March 16, 2010 hoping to be greeted by her dog. (Tr. 105 lines 17-22.) However, Morgan found more than just her dog in her home. (Tr. 106 lines 1-11.) Much to Morgan's surprise, Appellant walked out of Morgan's bedroom and began approaching her. (Tr. 106 lines 5-12; Tr. 104 lines 19-20.) Completely startled, Morgan asked Appellant how he got inside her house. (Tr. 106 lines 5-25.) Appellant responded by saying, "I'm a cat burglar. Doors can be jimmied, windows can be opened." (Tr. 106 lines 11-25- Tr. 107 line 1.)

Morgan testified that she did not make any effort to run or call out for a neighbor because she knew it would not do any good. (Tr. 108 lines 7-14.) Approximately three hours later, Morgan was finally able to call 911. (Tr. 108 lines 15-24). The police arrived at her house shortly thereafter. (Tr. 108 lines 15-25 - Tr. 109 lines 1-18.)

At trial, Deputy Ryan Brent Flood, the responding officer, testified that he responded

to a 911 call relating to a domestic disturbance at Morgan's home at approximately 3:00 a.m. on March 16, 2010. (Tr. 73 lines 9-16.) When he arrived at the scene, he knocked on the back door of Morgan's home and observed Appellant standing inside the house behind a frightened Morgan. (Tr. 74 lines 16-25 - Tr. 75 lines 1-5; Tr. 76 lines 14-18.)

During the trial, Deputy Flood testified that after he arrived at the scene he questioned Appellant. (Tr. 77 lines 18-25; Tr. 78-81.) Upon questioning, Appellant admitted to Deputy Flood that he entered Morgan's home through the bathroom window in hopes of reconciling with Morgan. (Tr. 81 lines 6-18.) Furthermore, Appellant told Deputy Flood that Appellant knew there was an order of protection against him. (Tr. 81 lines 20-22.)

At the close of the State's case, Appellant moved to dismiss the charge of burglary in the first degree. (Tr. 161- lines 9-12.) However, the trial judge denied Appellant's motion. (Tr. 161 lines 13-22.)

After the court denied Appellant's motion to dismiss, Appellant chose to testify in his defense. (Tr. 166 lines 8-23.) According to Appellant, Morgan contacted Appellant's son while Appellant was out on a walk. (Tr. 172 lines 16-18.) When Appellant returned from his walk, Appellant's son handed the phone over to Appellant. (Tr. 172 lines 18-19.) During the conversation, Appellant claimed Morgan told him he could get his clothes and truck from her house after she got off of work. (Tr. 173 lines 3-10.)

Appellant testified he walked eight miles to Morgan's house, and he arrived at Morgan's house around 12:15 a.m. on March 16, 2010. (Tr. 173 lines 17-20; Tr. 177 lines 3-5.) He knew Morgan would be on the way home from work. (Tr. 177 lines 3-5.) Appellant claimed he knocked on the back door of Morgan's house, and Morgan let him inside her home. (Tr. 175 line 23; Tr. 176 lines 8-9.) Furthermore, Appellant claimed he made love with Morgan. (Tr. 178 lines 2-4.) According to Appellant, a police officer

arrived at Morgan's house around 3:00 a.m. (Tr. 182 lines 12-13.) Moreover, Appellant testified he never told the police officer that he broke into Morgan's home. (Tr. 184 lines 5-16.)

At trial, Appellant admitted he understood that writing letters to Morgan, entering Morgan's home, and calling Morgan were all violations of the order of protection. (Tr. 170 lines 7-18; Tr. 171 lines 24-25 - Tr. 172 lines 1-7; Tr. 202 lines 1-25.) Nevertheless, he chose to contact Morgan despite the court's order. (Tr. 202 lines 1-14.)

Furthermore, Appellant admitted to violating the order of protection by writing Morgan letters on numerous occasions. (Tr. 170 lines 15-18; Tr. 208 lines 9-25 - Tr. 209 lines 1-10; Tr. 223 lines 22-25 - Tr. 224 lines 1-5.) In one of Appellant's letters to Morgan, Appellant wrote the following: "I understand they think they know how to protect you, but they don't. I must concentrate on what's good for us, and not what's right for the system." (Tr. 206 lines 2-9.)

After the presentation of all of the evidence, Appellant renewed his motion to dismiss the charge of burglary in the first degree. (Tr. 227 lines 20-22.) However, the trial judge denied Appellant's motion for dismissal once again. (Tr. 227 lines 23-25.)

During the jury charges conference, Appellant asked the court to charge the jury on trespass as a lesser-included offense of burglary in the first degree. (Tr. 231 lines 16-20; Tr. 232 lines 7-16.) After the court conducted its own research, the court denied Appellant's motion to charge the jury on trespass. (Tr. 232 lines 20-21; Tr. 233 lines 23-24.)

After deliberations, the jury found Appellant guilty of burglary in the first degree and violating the order of protection. (Tr. 281 lines 3-15.)

ARGUMENT

I.

A. Appellant failed to properly preserve the issue of whether a violation of an order of protection can be the basis for the intent to commit a crime element of burglary in the first degree when Appellant moved for a dismissal but failed to specify the grounds for dismissal.

After the State presented its case, Appellant moved for a dismissal because “the State has not proved the elements of the crime.” (Tr. 161 lines 9-12.) However, the trial judge denied Appellant’s motion on the grounds that there was sufficient evidence that the jury could fairly and logically deduce guilt. (Tr. 161 lines 13-22.) Furthermore, the trial judge stated the following: “I find there’s not a total failure of evidence, it’s not just a mere suspicion, but there’s evidence sufficient for the jury to make the ultimate decision on the facts.” (Tr. 161 lines 18-21.)

“Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review.” In re Walter M., 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009). If an error is not presented to and ruled upon by the trial judge, it cannot be raised for the first time to the appellate court. State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). The appellate court will not consider any issues that were not presented to or passed upon by the trial judge. State v. Fleming, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970).

Furthermore, an issue must be raised in a sufficiently specific manner to call attention to the exact error to the trial court. State v. Johnson, 363 S.C. 53, 58, 609 S.E.2d 520, 523 (2005); see State v. Prioleau, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (“[A]n objection should be sufficiently specific to bring into focus the precise nature of the alleged error so it can be reasonably understood by the trial judge.”). Similarly, “[w]here an objection and the ground therefor is not stated in the record, there is no basis for appellate

review.” State v. Morris, 307 S.C. 480, 485, 415 S.E.2d 819, 823 (Ct. App. 1991).

Moreover, in Hendrick v. Eastern Distribution, Inc., this Court held that the defendant must argue which element of the cause of action is not supported by the evidence when making a motion for a directed verdict. 316 S.C. 34, 44, 446 S.E.2d 440, 446 (Ct. App. 1994) (aff’d in part and vacated in part, 320 S.C. 218, 464 S.E.2d 112 (1995) reh’g denied, (Dec. 8, 1995)).

In reviewing the denial of a directed verdict motion, the reviewing court views the evidence in the light most favorable to the State and determines if any direct or substantial circumstantial evidence exists that reasonably tends to prove defendant’s guilt or from which appellant’s guilt may logically be deduced. State v. Pickney, 339 S.C. 346, 349, 529 S.E.2d 526, 527 (2000). On motion for directed verdict, the trial court is concerned only with the existence of evidence, and not its weight. Id.

Here, Appellant never raised the issue of whether a violation of an order of protection could serve as the predicate crime for burglary in the first degree. (Tr. 161 lines 9-12; Tr. 227 20-22.) Furthermore, Appellant never mentioned the “intent to commit a crime” element in his motion for a dismissal. (Tr. 161 lines 9-12; Tr. 227 20-22.) Instead, Appellant made a general motion to dismiss the burglary charge and failed to state his grounds for a directed verdict with specificity.

Moreover, because Appellant failed to state his grounds for a directed verdict with specificity, the trial judge was never presented with the issue Appellant is arguing on appeal. Therefore, the trial judge never had an opportunity to rule upon the issue.

In summary, the issue of whether a violation of an order of protection can serve as the predicate crime for burglary in the first degree is not preserved for appeal.

B. The trial judge properly denied Appellant's motion for dismissal on the charge of burglary in the first degree because violation of an order of protection is a crime under South Carolina law; therefore, the intent to commit a crime element of burglary in the first degree was satisfied.

Appellant argues the trial court should have granted a directed verdict because the State failed to prove Appellant intended to commit a crime within the dwelling. However, he entered Morgan's dwelling with the intent to contact, possibly harass, Morgan in violation of an order, which is a crime under section 20-4-60 (B)(1).

i. South Carolina's burglary in the first degree statute only requires Appellant to intend to commit a crime, not necessarily a felony.

A good starting point is to look at South Carolina's first degree burglary statute. "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." S.C. Code Ann. § 16-11-311 (A) (1976).

Under South Carolina's burglary in the first degree statute, the defendant need only have the intent to commit a crime, not necessarily a felony. *Id.* Therefore, if Appellant intended to commit any crime when he entered Morgan's home without her consent, the intent to commit a crime element for burglary in the first degree would be satisfied.

ii. The Legislature clearly intended a violation of an order of protection statute to be a criminal offense.

Next, this Court must determine if violation of an order of protection is a crime.

The Protection from Domestic Abuse Act provides the punishment for individuals who violate order of protections. S.C. Code Ann. § 20-4-60 (B) (1). The Act states the following: "Violation of this order is a *criminal offense* punishable by thirty days in jail or

a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars.” *Id.* (emphasis added).

The cardinal rule of statutory construction is to ascertain and give effect to the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). Under the plain meaning rule, the court should not alter the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998)(citations omitted). Furthermore, “[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the express intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

Here, the Legislature was clear. A violation of an order of protection is a “criminal offense.” S.C. Code Ann. § 20-4-60 (B) (1). Therefore, this Court does not have to look any farther than the plain meaning of the statute to conclude that a violation of an order of protection is a crime.

iii. Appellant intended to violate the no-contact provision of the order of protection, which is a crime, when he entered Morgan’s house through the bathroom window in hopes of reconciling their differences.

Other jurisdictions have examined whether a violation of a no-contact provision of an order of protection may serve as the predicate crime for burglary. See Colorado v. Rhorer, 967 P.2d 147, 148 (Colo. 1998); Colorado v. Widhalm, 991 P.2d 291, 294 (Colo. App. 1999); Minnesota v. Colvin, 645 N.W.2d 449, 454 (Minn. 2002); New York v. Vandewalle, 847 N.Y.S.2d 816, 817 (N.Y. App. Div. 2007); Washington v. Stinton, 89 P.3d 717, 721 (Wash. Ct. App. 2004);

In Rhorer, the Supreme Court of Colorado held that a violation of a no-contact restraining order satisfies the intent to commit a crime therein element of burglary. 967 P.2d at 148. The defendant broke into the basement window of the victim's house in violation of a no-contact provision of a restraining order. Id. Because the restraining order statute stated it was a crime to violate the order, the defendant's violation of the no-contact order served as an appropriate predicate crime for burglary. Id. at 150.

Relying on Rhorer, the Colorado Court of Appeals in Widhalm held a "violation of a restraining order could serve as a predicate crime for first degree burglary." Widhalm, 991 P.2d at 294. The court reasoned that because the defendant entered the victim's apartment with the intent to contact the victim in violation of the restraining order, the jury could conclude the defendant committed burglary. Id.

In Colvin, the Supreme Court of Minnesota noted that the defendant could have violated the order of protection in a number of ways. 645 N.W.2d at 452. The order of protection prohibited the defendant from: "(1) committing acts of domestic abuse against his ex-wife; (2) having any contact with his ex-wife; (3) entering her residence; (4) entering or calling her workplace." Id. In violation of the order of protection, the defendant in Colvin entered his ex-wife's home and started watching television and drinking beer inside the ex-wife's house. Id. at 450-451. He made no attempt to contact the ex-wife. Id. at 452-453.

Although the Colvin court ultimately concluded the defendant's violation of the no-entry provision of the order of protection did not satisfy the predicate crime element of burglary, the court stated the following: "[W]e in no way hold that all violations of an [order of protection] are the same as trespass. We simply hold that all the factfinder found in this case was an illegal entry." Id. at 455.

Moreover, the Colvin court reasoned that if the defendant tried to contact his ex-wife in violation of the order of protection, then his conduct would not resemble trespass. Id. at 452. However, merely violating a no-entry provision of the order of protection looks too much like trespass. Id.

Furthermore, in Stinton, the Washington Court of Appeals held a violation of a order of protection could satisfy the predicate crime element of burglary. 89 P.3d at 721. The order of protection in Stinton prohibited the defendant from harassing contact with his ex-girlfriend. Id. at 718. Additionally, the order of protection prohibited the defendant from entering his ex-girlfriend's home. Id. The defendant broke his ex-girlfriend's door and entered her house. Id. He argued with his ex-girlfriend and refused to leave her house. Id. The court reasoned that the defendant's harassing contact with the ex-girlfriend was a "separate and distinct" violation of the order of protection from the mere unlawful entry. Id. at 720.

Unlike the cases cited above, the court in Vandewalle concluded the defendant did not have the intent to commit a crime based on the defendant's mere "contact" or "communication" with the victim. 847 N.Y.S.2d at 817. However, Appellant's case is easily distinguishable from the defendant's case in Vandewalle.

In Vandewalle, the court found no evidence that the defendant intended to harass, menace, intimate, threaten, or interfere with the victim. Id. However, the jury in Appellant's case could have reasonably concluded from the evidence that Appellant intended to harass Morgan.¹ Appellant refused to accept the fact that his relationship with Morgan was over. (Tr. 99 lines 18-22.) Appellant violated the order of protection time after time. Tr. (206-

¹ Note, harassment is a crime under S.C. Code Ann. § 16-3-1710.

211.)² Furthermore, his testimony made it clear to the jury that the court could not keep him away from Morgan. (Tr. 205 lines 18-25 - Tr. 206 lines 1-22; Tr. 207-209.) Therefore, the jury could have concluded Appellant intended to harass Morgan when he entered Morgan's house without her consent.

In summary, violating a no-contact provision of an order of protection satisfies the intent to commit a crime element of burglary in the first degree.

iv. Appellant intended to violate the no-entry provision of the order of protection, which is a crime, when he entered Morgan's house through the bathroom window in hopes of reconciling their differences.

Only a few jurisdictions have addressed whether a violation of an no-entry provision of an order of protection can serve as the predicate crime for burglary. See Rhorer, 967 P.2d 147; Colvin, 645 N.W.2d 449 (Minn. 2002); New York v. Lewis, 840 N.E.2d 1014 (N.Y.2005).

One of those jurisdictions is Colorado. In Rhorer, the Supreme Court of Colorado rejected the court of appeals' statement that "an intent simply to enter premises, even if in violation of a court order, would not constitute an intent to commit another crime 'therein'" as required under the burglary statute. 967 P.2d at 148 (citations omitted).

Another jurisdiction that has examined the issue at hand is New York. The cases Appellant cites in his brief generally hold that a violation of a no-entry provision is too much like trespass, and because those states do not recognize trespass as a predicate crime

²During Appellant's closing, Appellant's trial counsel admitted to the jury that Appellant violated the order of protection, and she urged the jury to find Appellant guilty of violating the order of protection. Tr. 238 lines 20-25; Tr. 239 lines 1-5; Tr. 250 lines 1-4.

for burglary, the no-entry violation cannot serve as the basis for the predicate crime element of burglary.

For example, in Lewis, the New York Court of Appeals held that the “‘intent to commit a crime therein’ element of burglary may be satisfied by a defendant’s intent to engage in conduct prohibited by an order of protection while in the banned premises.” 840 N.E.2d at 1015 (internal citation omitted). The court explained that an “[u]nlawful entry cannot itself be used as the sole predicate crime in the ‘intent to commit a crime therein’ element of burglary. If it could, every violation of a do-not-enter provision of an order of protection would become a burglary the instant defendant knowingly entered upon the banned premises.” Id. at 1017.

However, the Lewis court found that there was sufficient evidence for the jury to conclude that the defendant intended to violate *other* provisions of the order of protection (ie. harassing, intimidating, threatening the victim) when the defendant entered the dwelling without consent. Id. at 1018. Moreover, the court explained that those acts (ie. harassing, intimidating, threatening the victim) were “distinct from the trespass element of burglary, and when prohibited by an order of protection or when independently criminal, can serve as predicate crimes for the ‘intent to commit a crime therein’ element of burglary.” Id.

Interestingly, the court in New York v. Carpio held that when it came to proving the intent to commit a crime in the dwelling element of burglary, the trial court “could be satisfied by proof that the defendant intended to violate the provision of the order of protection requiring that he stay away from the person named therein.” 835 N.Y.S.2d 107 (N.Y. App. Div. 2007).

Even though New York courts reject the idea that a mere violation of a no-entry

provision of an order of protection can serve as the predicate crime for burglary, New York courts have held that other violations of order of protections can serve as the predicate crime for burglary. For example, in New York v. Dombrowski, the court held that the defendant's violation of the order of protection went beyond mere trespass and satisfied the intent to commit a crime within the dwelling element of burglary. 864 N.Y.S.2d 612, 613 (N.Y. App. Div. 2008). The defendant in Dombrowski entered his ex-girlfriend's apartment through a window and yelled obscenities and threats at his ex-girlfriend while she was in the shower. Id. Although the court noted that mere trespass could not serve as the predicate crime for burglary in New York, the court reasoned that the predicate crime for burglary was satisfied when the defendant violated the offensive conduct provision in the order of protection. Id.

Additionally, in Colvin, the Supreme Court of Minnesota held that a "violation of a no-entry provision of an [order of protection], like trespass, is excluded from the crimes that can be the bases for the independent crime element of burglary." Colvin, 645 N.W.2d at 454. However, as discussed in the no-contact subsection above, the Colvin court did not hold that all violations of order of protections failed to meet the predicate crime element of burglary. Id. at 455.

Furthermore, in contrast to the New York and Minnesota decisions above, no South Carolina court has ever held that trespass cannot serve as the predicate crime for burglary in the first degree. In fact, the only South Carolina case that attempted to address whether trespass could serve as the predicate crime for burglary in the first degree was a post-conviction relief case. See McMillian v. South Carolina, 383 S.C. 481, 680 S.E.2d 905 (2009).

In McMillian, the petitioner claimed his trial counsel was ineffective because his

trial counsel advised him that trespass could serve as the predicate crime of first degree burglary. 383 S.C. at 482, 680 S.E.2d at 906. The Court cited a case, State v. Christensen, 194 S.C. 131, 9 S.E.2d 555 (1940), that was decided when the old statute of housebreaking was in effect. 383 S.C. at 486-87, 680 S.E.2d at 908. Under the old housebreaking statute, “the element of intent to commit a crime of a lesser grade could be satisfied by a trespass.” 383 S.C. at 486, 680 S.E.2d at 908. Although the Court did not directly state trespass could serve as the predicate crime for burglary in the first degree, the Court did conclude that petitioner’s trial counsel was not ineffective when she advised the petitioner that trespass could serve as the predicate crime for burglary in the first degree. 383 S.C. at 487-88, 680 S.E.2d at 908-909.

Moreover, there is no evidence that the Legislature intended to exclude certain crimes from the definition of the word “crime.” In fact, S.C. Code Ann. section 16-11-310, which is the definition section for the three burglary statutes, does not define crime at all. S.C. Code Ann. § 16-11-310.

In summary, Appellant intended to commit two crimes when he broke into Morgan’s home without her consent. First, Appellant intended to contact Morgan in violation of the order of protection. Second, Appellant intended to enter Morgan’s home in violation of the order of protection. Therefore, Appellant is guilty of burglary in the first degree.

v. By recognizing that a violation of an order of protection may serve as the predicate crime for burglary in the first degree, this Court is furthering the purpose behind the Protection from Domestic Abuse Act.

According to the Protection from Domestic Abuse Act, the purpose of an order of

protection is “to protect the petitioner or the abused person” by “enjoining the respondent from communicating or attempting to communicate with the petitioner . . . and . . . enjoining the respondent from entering or attempting to enter the petitioner’s place of residence S.C. Code Ann. § 20-4-60 (A) (1) & (2).

By recognizing that the intent to violate an order of protection may satisfy the intent to commit a crime element of burglary in the first degree, the purpose of the Protection of Domestic Abuse Act is furthered. Individuals protected by such orders should additionally be protected by our laws against burglary because burglary is considered an offense against habitation rather than property. See State v Ferebee, 273 S.C. 403, 406, 257 S.E.2d 154, 155 (1979). Accordingly, our burglary statutes should protect individuals from the most unwanted intrusion, an intrusion into an individual’s home by a stalker or abuser, who a court has ordered to stay away.

II.

The trial court properly denied Appellant's request to instruct the jury on the charge of trespass as a lesser-included offense of burglary in the first degree.

During the jury charge's conference, Appellant asked the court to charge the jury on trespass as a lesser-included offense of burglary in the first degree. (Tr. 231 lines 16-20.) Appellant noted that one of the elements of burglary is the intent to commit a crime therein, and the crime that Appellant assumed the State was going to argue was the violation of the order of protection. (Tr. 232 lines 7-16.) Appellant took the position that the court should charge the jury on trespass because the violation of the order of protection was a continuing violation; therefore, there was no "new crime" that would be committed if he did not have consent to go into the house. (Tr. 232 lines 7-16.)

After the court conducted its own research, the court denied Appellant's motion to charge the jury on trespass. (Tr. 232 lines 20-21; Tr. 233 lines 23-24.) In making its decision, the trial court relied on State v. Cross, 323 S.C. 41, 448 S.E.2d 569 (Ct. App. 2004), which held trespass is not a lesser-included offense of burglary in the first degree. (Tr. 234 lines 1-5.) Moreover, the court found that the facts of the case at hand were similar to the facts in Cross, except for the order of protection violation. (Tr. 234 lines 8-13.) Furthermore, the court found that the language in the Cross opinion lead the court to believe that the holding of Cross would apply to the case at hand. (Tr. 234 lines 15-20.)

To warrant reversal, a trial court's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant. State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008); State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 301 (2002)

i. The trial court's refusal to charge the jury on trespass as a lesser-included offense was not erroneous.

The trial court must charge the jury on a lesser-included offense if a jury could infer from any evidence that the defendant committed the lesser rather than the greater offense. State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). The primary test for determining if one offense is the lesser-included offense of another is the elements test. State v. Watson, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002). Under the elements test, the greater offense must include all the elements of the lesser offense. State v. McFadden, 342 S.C. 629, 632, 539 S.E.2d 387, 389 (2000).

The elements of burglary in the first degree are as follows: "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." S.C. Code Ann. § 16-11-311 (A).

Furthermore, the elements of trespass are as follows:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative.

S.C. Code Ann. § 16-11-620 (1976).

Relying upon Cross, the trial judge properly denied Appellant's request to instruct the jury on the charge of trespass as a lesser-included offense of burglary in the first degree.

(Tr. 233 lines 23-25-Tr. 234 lines 1-20.)

In Cross, this Court held that statutory trespass and common law trespass were not lesser-included offenses of burglary in the first degree. 323 S.C. at 44, 448 S.E.2d at 570. Applying the elements test, this Court reasoned that burglary in the first degree does not require a prior warning against entry or a request to leave; however, statutory trespass does require that element. Cross, 323 S.C. at 44, 448 S.E.2d at 570. Moreover, “[c]ommon law criminal trespass requires either a willful malicious injury or entry after notice[;]” however, burglary does not. Id.

Here, Appellant frames the issue as the following: “The question presented is whether trespass is a lesser-included offense of burglary in the first degree.” (App. Br. 16.) This Court does not have to look any farther than Cross to answer Appellant’s question. This Court was clear: Trespass is not a lesser-included offense of burglary in the first degree. Cross, 323 S.C. at 44, 448 S.E.2d at 570.

Moreover, the predicate crime to the burglary in the first degree offense is irrelevant when determining whether or not trespass is a lesser-included offense of burglary in the first degree. The fact that the State proved Appellant violated the order of protection is irrelevant to the application of the elements test for lesser-included offenses. Appellant tries to revive the test set forth in Grady v. Corbin, 495 U.S. 508, 518 (1990), which looks at the underlying conduct of the offenses. However, the Supreme Court overruled Grady in United States v. Dixon, 509 U.S. 688 (1993). See also State v. Brandt, 393 S.C. 526, 539, 713 S.E.2d 591, 598 (2011). Therefore, this Court must look at the elements of first degree burglary and the elements of trespass, not the elements of the predicate crime.

In summary, because this Court determined in Cross that trespass is not a lesser-included offense of burglary, the trial judge’s decision should be affirmed.

ii. Even if this Court finds that the trial judge erred in not charging the jury on trespass as a lesser-included offense, the err was not prejudicial.

Even if trespassing was a lesser-included offense of burglary in the first degree, there is no evidence Appellant committed trespassing to the exclusion of burglary. In South Carolina, a trial court commits error by refusing to charge a lesser-included offense only if the evidence supports a reasonable inference that the accused committed the lesser *rather than* the greater offense. State v. Fuchess, 267 S.C. 427, 229 S.E.2d 331 (1976); State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999); State v. Morris, 307 S.C. 480, 415 S.E.2d 819, 821 (Ct. App. 1992) (emphasis added). Merely that “the jury might accept the State’s evidence in part and reject it in part will not support a request for the lesser charge.” Morris. See State v. Gadsden, 314 S.C. 229, 232, 442 S.E.2d 594, 596-97 (1994) (finding “where there is no evidence to support a finding that the defendant was guilty of the lesser offense, there can be no error in the failure to charge the lesser offense.”)

Here, the jury had the option of believing one of two versions of events that took place on March 16, 2010. The first version was that Appellant broke into Morgan’s home through her bathroom window. The other version was that Morgan invited Appellant into her home. Clearly, the jury believed Appellant broke into Morgan’s home through her bathroom window because they convicted Appellant of burglary in the first degree. However, if the jury believed Appellant’s story that Morgan invited him into her home, then Appellant would not have been guilty of burglary or trespass. In other words, Appellant was guilty of burglary or nothing. Therefore, Appellant suffered no prejudice from the trial court’s refusal to instruct the jury on trespass.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

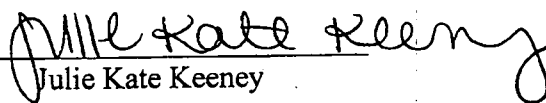
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JULIE KATE KEENEY
Staff Attorney

W. WALTER WILKINS, JR.
Solicitor, Thirteenth Judicial Circuit

BY:


Julie Kate Keeney

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

ATTORNEYS FOR RESPONDENT

January 30, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

THOMAS E. GILLILAND,

Appellant.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by the Appellant, Respondent proposes the following to be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Order of Protection
- (3) Trial Transcript pages: 1; 73-81; 96-99; 102-109; 152; 157-158; 161; 166; 168-173; 175-178; 182; 184-185; 200-202; 205-211; 223-224; 227; 231-234; 238-239; 250; 281; 288-289

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. Additionally, Respondent notes personal data identifiers and other sensitive information should be redacted from the transcript or other

documents pursuant to the South Carolina Supreme Court Order dated March 18, 2009.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

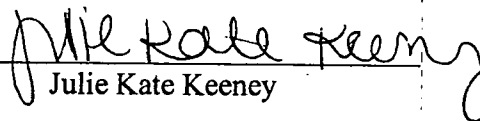
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

JULIE KATE KEENEY
STAFF ATTORNEY

W. WALTER WILKINS, JR.
Solicitor, Thirteenth Judicial Circuit

By: 
Julie Kate Keeney

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

ATTORNEYS FOR RESPONDENT

January 30, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

THOMAS E. GILLILAND,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record,

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 30th day of January, 2012.

Ellen R. DuBois

Ellen R. DuBois
Legal Assistant

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