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"Burglar of Interest": An Analysis of South Carolina Burglary Law After *State v. Singley*

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**“BURGLAR OF INTEREST”:
AN ANALYSIS OF SOUTH CAROLINA BURGLARY LAW
AFTER *STATE V. SINGLEY***

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I. INTRODUCTION

On July 16, 2009, Sergeant James Crowley of the Cambridge Police Department investigated a potential break-in at a home near Harvard University.¹ When Crowley arrived at the home, the 911 caller—who remained on an adjacent sidewalk after making the call²—told him she had witnessed two men on the porch of the home and that one of them had “wedg[ed] his shoulder into the door as if he was trying to force entry.”³ Crowley went to the front door and asked a suspect inside the house to “step out onto the porch.”⁴ Crowley and the suspect’s attorney provided somewhat different accounts of the ensuing incident;⁵ however, when the suspect did not submit to the officer’s request, Crowley apparently questioned the suspect inside the house and later arrested

1. See generally James Crowley, Cambridge Police Dep’t, Incident Report No. 9005127 (July 16, 2009), available at <http://www.volokh.com/2009/07/20/arrest-of-harvard-prof-henry-louis-gates-jr/> (detailing the incident); see also André Douglas Pond Cummings, *Post Racism?*, 14 J. GENDER RACE & JUST. 601, 622–24 (2011) (describing the circumstances surrounding the incident); Abby Goodnough, *Harvard Professor Jailed; Officer Is Accused of Bias*, N.Y. TIMES, July 21, 2009, at A13 (describing the circumstances surrounding the incident); Krissah Thompson, *Harvard Professor Arrested at Home; Police Report Says Henry Gates Called Officers Racist*, WASH. POST, July 21, 2009, at A4 (identifying the location of the home as “near Harvard University”).

2. See Crowley, *supra* note 1.

3. *Id.*

4. *Id.*; see also Cummings, *supra* note 1, at 622 (describing the encounter); Charles Ogletree, *Statement on Behalf of Henry Louis Gates, Jr.*, ROOT (July 20, 2009, 7:26 PM), <http://www.theroot.com/views/lawyers-statement-arrest-henry-louis-gates-jr> (providing a rendition of events espoused by the suspect’s attorney).

5. Compare Crowley, *supra* note 1 (describing the suspect as combative and highly skeptical of Crowley’s intentions), with Ogletree, *supra* note 4 (describing Crowley’s conduct as intrusive and cryptic); see also Cummings, *supra* note 1, at 622–23 (discussing the disputed facts).

him after both men finally departed to the front porch.⁶ According to his attorney, the suspect spent about four hours in the Cambridge police station after his arrest.⁷

Perhaps this rendition of a summertime encounter with the law indicates a routine police response to criminal activity—certainly nothing worthy of international media attention, a statement by the president of Harvard University, and increased consumption of alcoholic beverages by America’s political leaders.⁸ However, certain additional details reveal the basis for a national controversy: the “suspect” in this case was African-American scholar Henry Louis Gates, Jr., of Harvard University, who broke into his own home after finding the front door jammed and was subsequently arrested on his front porch by a white police officer.⁹ Allegations of racial profiling abounded after the incident.¹⁰ In the ensuing turmoil, Gates demanded an apology, bloggers accused the 911 caller of racism, and President Barack Obama accused the police of “act[ing] stupidly.”¹¹ President Obama eventually convened a “beer summit”

6. See Crowley, *supra* note 1; Ogletree, *supra* note 4.

7. Ogletree, *supra* note 4; see also Cummings, *supra* note 1, at 623 (supporting the attorney’s contention that the police released the suspect after four hours of detention).

8. But cf. John Laueran, *Gates Police Confrontation Ends With Charge Dropped (Update 1)*, BLOOMBERG (July 21, 2009, 5:16 PM), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=anupUHZw.F0Y> (noting the international news coverage of the incident and describing the response by Harvard University’s president); Katie Zezima & Abby Goodnough, *Charges Against Black Harvard Professor Are Dropped, but He Seeks Officer’s Apology*, N.Y. TIMES, July 22, 2009, at A12 (noting that Harvard University president Drew Gilpin Faust stated that she was “deeply troubled by the incident” (internal quotation marks omitted)); Helene Cooper & Abby Goodnough, *In a Reunion over Beers, No Apologies, but Cordial Plans to Have Lunch Sometime*, N.Y. TIMES, July 31, 2009, at A10 (describing the White House “beer summit” involving President Barack Obama, Vice President Joseph R. Biden, Jr., Sergeant Crowley, and the suspect).

9. See Crowley, *supra* note 1; see also Cummings, *supra* note 1, at 622 (describing the supposed “break-in” and noting Gates’s credentials); Goodnough, *supra* note 1, at A13 (noting the circumstances behind the “break-in”); Jay Lindsay, *Lucia Whalen, 911 Caller in Gates Case, Speaks Publicly*, HUFFINGTON POST (July 29, 2009, 10:30 PM), http://www.huffingtonpost.com/2009/07/29/lucia-whelen-911-caller-i_n_246919.html (noting the scope of the controversy). Crowley arrested Gates for disorderly conduct rather than a crime against property. See Crowley, *supra* note 1; see also Cummings, *supra* note 1, at 622–23 (elaborating on the grounds for the arrest). Gates showed Crowley his Harvard identification card, and Crowley reported that he “was led to believe that Gates was lawfully in the residence.” Crowley, *supra* note 1. But see Ogletree, *supra* note 4 (alleging that Gates also showed Crowley his driver’s license and noting that the license included Gates’s address). However, Crowley alleged that Gates continually shouted claims of racial bias at him; thus, Crowley was able to arrest Gates for disorderly conduct once Gates exited the house. See Crowley, *supra* note 1; Cummings, *supra* note 1, at 623. But see Ogletree, *supra* note 4 (providing the rendition of the events espoused by Gates’s attorney).

10. See Lindsay, *supra* note 9; see also Cummings, *supra* note 1, at 624 (“[T]he incident starkly reminded all thoughtful observers of the pervasive disparate treatment that minority Americans face when confronted by the U.S. criminal justice system.”); Goodnough, *supra* note 1, at A13 (noting Harvard faculty members’ allegations of racial profiling).

11. Lindsay, *supra* note 9 (internal quotation marks omitted); see also Cummings, *supra* note 1, at 623 (noting the controversy following President Obama’s remarks). The 911 caller, Lucia Whalen, was actually “a first-generation Portuguese-American who [did not] live in the area”;

at the White House, at which the President and Vice President discussed the conflict with Gates and Crowley.¹²

Analyses of the arrest and ensuing controversy tended to focus on its racial components.¹³ However, a slight variation of the factual situation presents another interesting issue: if the caller had known Gates was breaking into his own residence, would she still have had reason to notify the police? In other words, "Can a person burglarize his own home?"¹⁴

In South Carolina, the answer to this question depends on the nature of the person's interest in the home.¹⁵ On the one hand, the South Carolina Supreme Court has established that a defendant cannot burglarize the "home" in which he has a *possessory interest* and an expectation of safety and security.¹⁶ However, in the recent case *State v. Singley*,¹⁷ the court clarified that, as a matter of law, an *ownership interest* in the "home" does not prohibit conviction for this offense.¹⁸ Thus, in South Carolina, a person *can* burglarize his own real property—but only if the person lacks the requisite possessory and security interests therein.¹⁹

This Comment argues that, while consistent with the historical and multijurisdictional definition of burglary as a crime against possession and while appropriately protective of the possessor's expectation of peaceful inhabitation, the South Carolina Supreme Court's ruling in *Singley* could be further refined by the addition of protections for certain absentee property owners. Part II describes the *Singley* decision and the court's basis for reaching it. Part III discusses the historical foundations of burglary law and asserts that the court's decision in *Singley* is firmly grounded in a tradition that defines burglary as a crime against habitation. Likewise, Part IV discusses current burglary laws across the United States and concludes that the court's decision is consistent with the majority approach. Part V proposes a revision to the *Singley* test, under which an absentee property owner who can enter the home without causing harm to the possessor and who can expect to enjoy the premises safely and securely cannot be convicted of burglary. This revision would retain the protections of the possessor enumerated in *Singley* while also protecting property owners who

Whalen called the police at the behest of an elderly woman. Lindsay, *supra* note 9. According to Whalen's attorney, Whalen's accusers had mislabeled her as a wealthy white woman. *Id.*

12. See Cooper & Goodnough, *supra* note 8, at A10; see also Cummings, *supra* note 1, at 623–24 (criticizing the "beer summit" method of conflict resolution).

13. See, e.g., Lindsay, *supra* note 9 (noting that the arrest "sparked a national debate over racial profiling and police conduct"); see also Cummings, *supra* note 1, at 622–24 (describing the incident in terms of racial conflict); Thompson, *supra* note 1, at A4 (describing an analysis of the incident's racial aspects).

14. *People v. Gauze*, 542 P.2d 1365, 1365 (Cal. 1975).

15. See *State v. Singley*, 392 S.C. 270, 276–77, 709 S.E.2d 603, 606–07 (2011) (quoting *State v. Brooks*, 277 S.C. 111, 112–13, 283 S.E.2d 830, 831 (1981); *State v. Trapp*, 17 S.C. 467, 470 (1882)).

16. See *id.* at 276–77, 709 S.E.2d at 606.

17. 392 S.C. 270, 709 S.E.2d 603 (2011).

18. See *id.* at 278, 709 S.E.2d at 607.

19. See *id.* at 276–77, 709 S.E.2d at 606.

have not threatened the personal safety of the possessor—therefore aligning the court’s decision with one of the key justifications for burglary law. Part VI concludes with further analysis of the Henry Louis Gates anecdote.

II. THE *SINGLEY* TEST

On October 2, 2005, Ferris Geiger Singley committed a burglary.²⁰ Though much less controversial than the pseudo-burglary that Professor Gates committed,²¹ Singley’s actions were far more dangerous.²² At about 2:30 a.m., Singley entered a Charleston County home through a rear window, and when the house’s inhabitant returned, Singley seized her, held a knife to her throat, and ordered her to give him money.²³ After the victim complied with Singley’s demand, he tied her to a bed and fled the premises.²⁴ The victim eventually freed herself and called the police from a neighbor’s house.²⁵ Before the day was over, the police found Singley and arrested him.²⁶ Singley was then indicted for several criminal offenses, including first degree burglary.²⁷ In early May 2006, he was tried by a jury in Charleston County before Circuit Court Judge R. Knox McMahon.²⁸

The background details of this burglary further dramatize Singley’s narrative. The victim was Singley’s mother, and the dwelling burglarized was Singley’s childhood home.²⁹ Singley lived in the home for the first two decades of his life, eventually moving out in his early twenties.³⁰ He returned home in April 2005 and lived there “until his mother ‘put him out’ of the house” three

20. See Brief of Respondent at 3, *Singley*, 392 S.C. 270, 709 S.E.2d 603 (No. 26954), 2010 WL 5398789, at *3.

21. See generally Goodnough, *supra* note 1, at A13 (describing the circumstances surrounding Gates’s arrest).

22. See *Singley*, 392 S.C. at 272, 709 S.E.2d at 604.

23. *Id.*; see also Brief of Respondent, *supra* note 20, at 3 (describing the facts of the case).

24. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604; Brief of Respondent, *supra* note 20, at 3.

25. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604.

26. *Id.*; Brief of Respondent, *supra* note 20, at 3.

27. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604. For the definition of the offense of first degree burglary in South Carolina, see S.C. CODE ANN. § 16-11-311 (2003). In addition to burglary, Singley was indicted for armed robbery and kidnapping. See *Singley*, 392 S.C. at 272, 709 S.E.2d at 604.

28. See Brief of Respondent, *supra* note 20, at 3; Brief of Petitioner at 4, *Singley*, 392 S.C. 270, 709 S.E.2d 603 (No. 26954), 2010 WL 5398788, at *4.

29. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604.

30. *Id.* Singley was thirty-eight years old when he committed the burglary. See Record on Appeal at 2, *Singley*, 392 S.C. 270, 709 S.E.2d 603 (No. 26954) (on file with author). Singley’s age at the time of the burglary can be inferred from his age at the time of the trial—thirty-eight, according to his mother—which occurred on May 1 and 2, 2006. See *id.*; Brief of Petitioner, *supra* note 28, at 4.

weeks later.³¹ After this point, "Singley did not have permission to return to the house."³²

However, several years before the incident, Singley inherited a 12.5% interest in the house from his father via intestate succession.³³ Armed with the argument that—due to his property interest—he could enter the house without consent from his mother, Singley moved for a directed verdict on the burglary charge at trial, asserting that the State failed to meet its burden of proof on the consent aspect of South Carolina's burglary law.³⁴ Despite Singley's arguments, the circuit court denied his motion.³⁵ The jury returned a guilty verdict on the burglary charge, and Singley appealed, arguing that the court improperly denied his motion for a directed verdict.³⁶

In an opinion written by Judge Short, the South Carolina Court of Appeals began its analysis by construing South Carolina's first degree burglary statute.³⁷ A person may only be found guilty of burglary under this statute if, *inter alia*, that person "enters a dwelling without consent and with intent to commit a crime in the dwelling."³⁸ The court noted that, for the purposes of the burglary statute,

31. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604.

32. *Id.*

33. *See id.*

34. *See id.* at 272–73, 709 S.E.2d at 604; Brief of Respondent, *supra* note 20, at 4–5; *see also* S.C. CODE ANN. § 16-11-311(A) (2003) (listing entry without consent as a necessary element of burglary). Singley moved for a directed verdict on the other charges as well. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604.

35. *Singley*, 392 S.C. at 273, 709 S.E.2d at 604.

36. *Id.* (citing *State v. Singley*, 383 S.C. 441, 442–43, 679 S.E.2d 538, 539 (Ct. App. 2009), *aff'd*, 392 S.C. 270, 709 S.E.2d 603 (2011)); *see also Singley*, 383 S.C. at 443, 679 S.E.2d at 540 (quoting *State v. Weston*, 367 S.C. 279, 292–93, 625 S.E.2d 641, 648 (2006)) (enumerating the standard of review for a court's denial of a motion for a directed verdict). The jury also found Singley guilty of armed robbery, but acquitted him on the kidnapping charge. *Singley*, 392 S.C. at 273, 709 S.E.2d at 604. Singley appealed the burglary conviction only. *Id.* (citing *Singley*, 383 S.C. at 443, 679 S.E.2d at 539).

37. *See Singley*, 383 S.C. at 442–44, 679 S.E.2d at 539–40 (citing S.C. CODE ANN. § 16-11-311(A)).

38. *Id.* at 443, 679 S.E.2d at 540 (quoting S.C. CODE ANN. § 16-11-311(A)). The portion of the statute that the court construed provides 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 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.

Id. at 443–44, 679 S.E.2d at 540 (quoting S.C. CODE ANN. § 16-11-311(A)). Thus, in addition to the entering and intent elements, the potential burglar must also satisfy at least one other statutory

the relevant “consent” is that of “the person in lawful possession” of the dwelling.³⁹ The court then asserted that, although neither the South Carolina Code nor the relevant case law contain a definition of “lawful possession,” the South Carolina Supreme Court traditionally addressed burglary in terms of its effects on possession rather than ownership.⁴⁰ The court noted that tribunals in North Carolina and Georgia also rejected the ownership-based definition of burglary in favor of definitions based upon possession.⁴¹

Thus, the South Carolina Court of Appeals concluded that Singley’s ownership interest alone did not make him a person in “lawful possession” of the dwelling.⁴² The court then held that, while Singley’s mother lawfully possessed the dwelling, Singley did not—a fact “most notably evidenced by Singley’s acknowledgment of his mother’s right to occupancy and possession by his acquiescence to her demand for him to vacate the house in April 2005.”⁴³ Finding no error in the denial of Singley’s motion for a directed verdict, the

element to be convicted. *See* S.C. CODE ANN. § 16-11-311(A). While some of these other elements describe conduct, others do not—a person may satisfy one of the elements simply by entering in the nighttime. *See* S.C. CODE ANN. § 16-11-311(A)(3).

39. *Singley*, 383 S.C. at 444, 679 S.E.2d at 540 (quoting S.C. CODE ANN. § 16-11-310(3) (2003)) (internal quotation mark omitted). The statute to which the court cited is a definitional statute that applies to South Carolina’s burglary laws. *See* S.C. CODE ANN. § 16-11-310.

40. *Singley*, 383 S.C. at 444, 679 S.E.2d at 540 (quoting *State v. Brooks*, 277 S.C. 111, 112, 283 S.E.2d 830, 831 (1981)) (internal quotation marks omitted); *see also* *State v. Trapp*, 17 S.C. 467, 471 (1882) (noting in dicta that burglary is a crime against habitation, though the alleged inhabitant need not be the person who occupies the house at the time of the burglary); *cf.* *State v. Miller*, 225 S.C. 21, 26, 80 S.E.2d 354, 356 (1954) (identifying “housebreaking” as a crime against possession).

41. *See Singley*, 383 S.C. at 446, 679 S.E.2d at 541; *see also* *State v. Harold*, 325 S.E.2d 219, 222 (N.C. 1985) (“[O]ccupation or possession of a dwelling is equivalent to ownership, and actual ownership of the premises need not be proved.” (citing *State v. Beaver*, 229 S.E.2d 179, 181–82 (N.C. 1976))); *Murphy v. State*, 234 S.E.2d 911, 914 (1977) (quoting *Jones v. State*, 75 Ga. 825, 827 (1885)) (citing *Trice v. State*, 42 S.E. 1008, 1008 (Ga. 1902)) (noting that, under Georgia case law, the state must prove occupation rather than ownership).

42. *See Singley*, 383 S.C. at 446, 679 S.E.2d at 541. Before analyzing Singley’s case, the court also discussed South Carolina burglary cases involving master–servant relationships, as well as the South Carolina Supreme Court’s decision in the 1998 burglary case of *State v. Coffin*. *See id.* at 445–46, 679 S.E.2d at 541 (quoting *State v. Coffin*, 331 S.C. 129, 130–32, 502 S.E.2d 98, 98–99 (1998); *State v. Bee*, 29 S.C. 81, 83, 6 S.E. 911, 912 (1888)) (citing *State v. Howard*, 64 S.C. 344, 348–49, 42 S.E. 173, 175 (1902)). Before *Singley*, *Coffin* was the only case in which the court considered a defendant’s property interest in the dwelling burglarized under South Carolina’s burglary law. *See* *State v. Singley*, 392 S.C. 270, 275, 709 S.E.2d 603, 605 (2011); *see also Coffin*, 331 S.C. at 132, 502 S.E.2d at 99 (holding that the issue of defendant’s property interest presented a jury question and that defendant’s motion for a directed verdict was properly denied). However, unlike Singley, the defendant in *Coffin* apparently did not have an undivided property right to the dwelling; rather, the evidence indicated he was a house guest “[whose] rights were dependent solely on [the lawful possessor’s] good graces.” *Singley*, 392 S.C. at 275, 709 S.E.2d at 606; *see also Coffin*, 331 S.C. at 131–32, 502 S.E.2d at 99 (identifying the burglary victim—who was also defendant’s girlfriend—as “a person in lawful possession” of the dwelling burglarized). Thus, *Singley* gave the South Carolina Supreme Court an opportunity to address property matters beyond the scope of its *Coffin* decision.

43. *Singley*, 383 S.C. at 446–47, 679 S.E.2d at 541.

court affirmed Singley's conviction.⁴⁴ Once again, Singley appealed, and the South Carolina Supreme Court granted certiorari.⁴⁵ The court decided the case on April 4, 2011, in an opinion written by Justice Hearn.⁴⁶

Like the court of appeals, the South Carolina Supreme Court noted historical support for the "possessory" approach to burglary present in South Carolina case law,⁴⁷ as well as the possession-based definitions of burglary applied in neighboring jurisdictions.⁴⁸ While the court acknowledged that "[i]t is axiomatic that 'one cannot commit the offence of burglary by breaking into his own home [sic],'"⁴⁹ the court construed the phrase "own home" in terms of the policy rationale underlying burglary law.⁵⁰ Because "[t]he law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime, when peace, solitude and safety are most desired and expected,"⁵¹ the court asserted that burglary law protects the inhabitant's right to safety and security in the dwelling rather than the owner's property interest in the home.⁵² Thus, the court concluded that "the proper test is whether, under the totality of the circumstances, a burglary defendant had custody and control of, and the right and expectation to be safe and secure in, the dwelling burglarized."⁵³

44. *Id.* at 447, 679 S.E.2d at 542.

45. *See Singley*, 392 S.C. at 271–72, 709 S.E.2d at 604. On appeal to the South Carolina Supreme Court, Singley argued that he *did* have a right to possession of the dwelling, as his mother had not formally terminated his right to occupy the dwelling. *See* Brief of Petitioner, *supra* note 28, at 7. This argument is considered in more detail below. *See infra* text accompanying notes 198–204.

46. *See Singley*, 392 S.C. at 270–71, 709 S.E.2d at 603.

47. *See id.* at 274, 709 S.E.2d at 605 (citing *State v. Clamp*, 225 S.C. 89, 102, 80 S.E.2d 918, 924 (1954); *State v. Alford*, 142 S.C. 43, 45, 140 S.E. 261, 262 (1927); *State v. Trapp*, 17 S.C. 467, 471 (1882)); *see also supra* notes 39–40 and accompanying text (outlining the court of appeals' discussion of South Carolina precedent). Before analyzing South Carolina case law, the court also addressed the relevant burglary statutes discussed by the court of appeals. *See Singley*, 392 S.C. at 274, 709 S.E.2d at 605 (quoting S.C. CODE ANN. §§ 16-11-310(3)(a), -311(A)(3) (2003)).

48. *See Singley*, 392 S.C. at 274–75, 709 S.E.2d at 605; *see also supra* note 41 and accompanying text (noting the court of appeals' acknowledgement of other jurisdictions' approaches). Additionally, the court distinguished Singley's ownership rights from those of the defendant in *State v. Coffin*, who did not have an undivided property right to the dwelling burglarized. *See supra* note 42 (discussing the factual differences between *Singley* and *Coffin*).

49. *Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *Trapp*, 17 S.C. at 470).

50. *See id.*

51. *Id.* (quoting *State v. Brooks*, 277 S.C. 111, 112, 283 S.E.2d 830, 831 (1981)) (internal quotation mark omitted).

52. *See id.* The court also referred to cases from New Hampshire and Ohio containing similar policy rationales for burglary law, as well as a California case involving a possession-based definition of burglary. *See People v. Smith*, 48 Cal. Rptr. 3d 378, 384 (Ct. App. 2006) (quoting *People v. Clayton*, 76 Cal. Rptr. 2d 536, 538 n.3 (Ct. App. 1998)); *State v. Lilly*, 717 N.E.2d 322, 327 (Ohio 1999); *State v. McMillan*, 973 A.2d 287, 292 (N.H. 2009).

53. *Singley*, 392 S.C. at 277, 709 S.E.2d at 606. The court noted the similarity of this test to the New Hampshire Supreme Court's approach to burglary law; under *McMillan*, the finder of fact "must look beyond legal title and evaluate the totality of the circumstances in determining whether a [burglary] defendant had license or privilege to enter." *Id.* (quoting *McMillan*, 973 A.2d at 292) (internal quotation mark omitted).

Using this test, the court held that the trial court judge properly submitted the case to the jury.⁵⁴ According to the court, “A reasonable jury could conclude that Singley did not have any expectation of peace and security in the dwelling at issue nor custody and control of it, despite his ownership interest.”⁵⁵ The court noted that Singley left the dwelling upon his mother’s request, found a new residence, and failed to return to the dwelling until he entered through a window six months later—indicating the dwelling was not Singley’s “own home.”⁵⁶ Thus, the court affirmed the judgment of the South Carolina Court of Appeals.⁵⁷ Singley lost his case—and the possession-based definition of burglary prevailed.⁵⁸

III. *SINGLEY* IN HISTORICAL CONTEXT

Viewed solely as an extension of the traditional English definition of burglary,⁵⁹ the South Carolina Supreme Court’s *Singley* test⁶⁰ constitutes a sensible application of common law principles.⁶¹ Originally, the dwelling protected by burglary law was called a “mansion house”⁶²—a term that included any type of dwelling.⁶³ Thus, according to Coke, “every house *for the dwelling and habitation of man* is taken to be a mansion-house, wherein burglary may be

54. *See id.* at 277, 709 S.E.2d at 607. In reaching this conclusion, the court construed the facts in a “light most favorable to the State,” per the standard of review for directed verdict motions. *Id.* at 273, 709 S.E.2d at 604 (citing *State v. Parris*, 363 S.C. 477, 481, 611 S.E.2d 501, 503 (2005)).

55. *Id.* at 277, 709 S.E.2d at 607. While the court previously defined the relevant property elements as “custody and control of, *and* the right and expectation to be safe and secure in, the dwelling burglarized” the court joined the elements with the word “nor” in its analysis of Singley’s case. *Id.* (emphasis added). This distinction will be discussed in more detail below. *See infra* Part V.

56. *Singley*, 392 S.C. at 277–78, 709 S.E.2d at 607 (internal quotation marks omitted).

57. *See id.* Chief Justice Toal, and Justices Pleicones, Beatty, and Kittredge concurred; no Justice offered a separate opinion. *See id.*

58. *See id.*

59. *See, e.g.*, 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 223 (photo. reprint 1979) (1769) (providing the traditional definition of burglary); 3 EDWARD COKE, INSTITUTES OF THE LAWS OF ENGLAND 63 (London, Flesher 1644) (“A Burglar . . . is by the [c]ommon law a felon, that in the night breaketh and entreth into a mansion house of another, of intent to kill some reasonable creature, or to commit some other felony within the same, whether his felonious intent be executed or not.”); 1 WILLIAM HAWKINS, A TREATISE OF THE PLEAS OF THE CROWN 101 (photo. reprint 1978) (1716) (“Burglary is a [f]elony at the [c]ommon [l]aw, in breaking and entering the [m]ansion [h]ouse of another . . . to the [i]ntent to commit some [f]elony within the same, whether the felonious [i]ntent be executed or not.”).

60. *See Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

61. *See Commonwealth v. Majeed*, 694 A.2d 336, 338 & n.2 (Pa. 1997) (citing 4 BLACKSTONE, *supra* note 59, at 223).

62. 3 WAYNE R. LAFAYE, SUBSTANTIVE CRIMINAL LAW § 21.1(c) (2d ed. 2003) (quoting 1 HAWKINS, *supra* note 59, at 162 (6th ed. 1787)).

63. *Id.* (citing 3 COKE, *supra* note 59, at 64).

committed.”⁶⁴ Prominent eighteenth-century legal scholars affirmed this habitation-based definition of burglary.⁶⁵ In his *Commentaries on the Laws of England*, Blackstone asserted that burglary involves “a forcible invasion and disturbance of that right of habitation, which every individual might acquire even in a state of nature.”⁶⁶ Furthermore, William Hawkins listed burglary as one of two “[o]ffences against the [h]abitation of a [m]an.”⁶⁷

Modern commentators on American criminal law have also espoused this traditional burglary framework.⁶⁸ In *Substantive Criminal Law*, Wayne R. LaFare stated that “common-law burglary found its theoretical basis in the protection of man’s right of habitation.”⁶⁹ Charles E. Torcia, author of the fifteenth edition of *Wharton’s Criminal Law*, defined the dwelling element as a matter of occupancy.⁷⁰ Indeed, Blackstone’s “right of habitation”⁷¹ undergirds the Model Penal Code approach to burglary law.⁷² The Code’s reportorial staff noted that, although the drafters potentially could have eliminated burglary as a substantive offense in the Model Penal Code, “the maintenance of a crime of burglary reflects a considered judgment that especially severe sanctions are appropriate for criminal invasion of premises *under circumstances likely to*

64. 3 COKE, *supra* note 59, at 64 (emphasis added); *see also* 3 LAFARE, *supra* note 62, § 21.1(c) (“[T]he basis of the crime [of burglary] was invasion of the right of habitation, and occupancy rather than ownership was determinative.” (citing 3 COKE, *supra* note 59, at 64)).

65. *See* 4 BLACKSTONE, *supra* note 59, at 223–26 (citations omitted); 1 HAWKINS, *supra* note 59, at 103–05 (citations omitted).

66. 4 BLACKSTONE, *supra* note 59, at 223; *see also* Majeed, 694 A.2d at 338 n.2 (“The historical principle underlying the law of burglary is the protection of the right of *habitation*.” (citing 4 BLACKSTONE, *supra* note 59, at 223)).

67. 1 HAWKINS, *supra* note 59, at 101. Arson was the other offense against habitation. *See id.*

68. *See, e.g.,* 3 LAFARE, *supra* note 62, § 21.1(c) (citations omitted) (outlining the burglary framework); 3 CHARLES E. TORCIA, WHARTON’S CRIMINAL LAW § 325 (15th ed. 1995) (citations omitted) (describing the possessory interest required for burglary). Moreover, the Model Penal Code codified this framework. *See* MODEL PENAL CODE §§ 221.1–.2 explanatory note (1985) (explaining that the Model Penal Code requires “an unprivileged entry into a building or occupied structure”).

69. 3 LAFARE, *supra* note 62, § 21.1(c).

70. 3 TORCIA, *supra* note 68, § 325 (citations omitted).

71. 4 BLACKSTONE, *supra* note 59, at 223.

72. *See* MODEL PENAL CODE §§ 221.1–.2 explanatory note. Under the Model Penal Code, “[a] person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.” MODEL PENAL CODE § 221.1(1). Furthermore, an “occupied structure” is “any structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.” MODEL PENAL CODE § 221.0(1).

*terrorize occupants.*⁷³ Furthermore, the comments to the Model Penal Code define the protected premises in terms of occupancy rather than ownership.⁷⁴

Thus, by defining “lawful possession”⁷⁵ in terms of habitation rather than ownership,⁷⁶ the South Carolina Supreme Court aligned its approach to burglary law with the traditional common law framework⁷⁷—a framework still espoused by scholars today.⁷⁸ The *Singley* test⁷⁹ is, therefore, a rational extension of entrenched common law principles.⁸⁰ As Part IV reveals, most other state jurisdictions also have found these principles to be compelling bases for burglary law.

IV. *SINGLEY* IN JURISDICTIONAL CONTEXT

In *State v. McMillan*,⁸¹ the New Hampshire Supreme Court asserted that “[i]t is generally accepted that burglary statutes are intended to protect the occupant or possessor of real property.”⁸² Although the *McMillan* court only considered cases from five other jurisdictions,⁸³ a comparison of the burglary laws from each state reveals that the court reached the correct conclusion: even though the burglary law framework differs from state to state, courts in a majority of states define burglary as a crime against possession.⁸⁴

73. MODEL PENAL CODE §§ 221.1–.2 explanatory note (emphasis added). Under the Model Penal Code approach, burglary could have been treated as “an attempt to commit the intended crime plus an offense of criminal trespass,” thus eliminating the need for separate burglary provisions. *Id.*

74. MODEL PENAL CODE AND COMMENTARIES § 221.1 cmt. 3(b) (1980).

75. See S.C. CODE ANN. § 16-11-310(3)(a) (2003).

76. See *State v. Singley*, 392 S.C. 270, 274, 709 S.E.2d 603, 605 (2011) (citing *State v. Clamp*, 225 S.C. 89, 102, 80 S.E.2d 918, 924 (1954); *State v. Alford*, 142 S.C. 43, 45, 140 S.E. 261, 262 (1927); *State v. Trapp*, 17 S.C. 467, 471 (1882)).

77. See 4 BLACKSTONE, *supra* note 59, at 223; 3 COKE, *supra* note 59, at 64; 1 HAWKINS, *supra* note 59, at 101.

78. See sources cited *supra* note 68.

79. See *Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

80. See sources cited *supra* note 59.

81. 973 A.2d 287 (N.H. 2009).

82. *Id.* at 291 (citing *People v. Glanda*, 774 N.Y.S.2d 576, 581 (App. Div. 2004); *Turner v. Commonwealth*, 531 S.E.2d 619, 621 (Va. Ct. App. 2000)). The South Carolina Supreme Court used *McMillan* to formulate the *Singley* test. See *Singley*, 392 S.C. at 277, 709 S.E.2d at 606; see also *supra* note 53 and accompanying text (quoting the *Singley* test and supporting text from *McMillan*).

83. *McMillan*, 973 A.2d at 291–92 (quoting *State v. Hagedorn*, 679 N.W.2d 666, 670 (Iowa 2004)) (citing *Glanda*, 774 N.Y.S.2d at 581; *Turner*, 531 S.E.2d at 621). In addition to the cases cited in the preceding parenthetical, the court also referred to *State v. Lilly* and a Supreme Court of Pennsylvania case. See *id.* (citing *State v. Lilly*, 717 N.E.2d 322, 327 (Ohio 1999); *Commonwealth v. Majeed*, 694 A.2d 336, 338 (Pa. 1997)). The court also mentioned a second case from New York. See *id.* (citing *People v. Scott*, 760 N.Y.S.2d 828, 831 (Sup. Ct. 2003)).

84. See *Hamilton v. State*, 219 So. 2d 369, 374 (Ala. 1969) (quoting *Fuller v. State*, 177 So. 353, 354 (Ala. Ct. App. 1937)); *People v. Smith*, 48 Cal. Rptr. 3d 378, 384 (Ct. App. 2006) (quoting *People v. Clayton*, 76 Cal. Rptr. 2d 536, 538 n.3 (Ct. App. 1998)); *People v. Johnson*, 906 P.2d 122, 125 (Colo. 1995) (en banc) (citing *People v. Barefield*, 804 P.2d 1342, 1345 (Colo. App. 1990));

South Carolina's definition of burglary⁸⁵ is not an anomalous one in the states that compose the Fourth Circuit; all states in this circuit define burglary as a crime against possession.⁸⁶ In *State v. Harold*,⁸⁷ the Supreme Court of North Carolina noted that, under state case law, possession or occupation constitutes ownership in burglary cases.⁸⁸ According to the court, the policy underlying burglary law is the "protect[ion of] the habitation of men, where they repose and sleep, from meditated harm."⁸⁹ The Supreme Court of Appeals of West Virginia defined burglary in terms of possession or occupation.⁹⁰ In Maryland, the court of appeals asserted that burglary was a crime against habitation at common law and noted that Maryland's burglary statutes adopted this common law definition.⁹¹

In *Turner v. Commonwealth*,⁹² the Court of Appeals of Virginia considered another joint ownership scenario—spousal burglary of marital property.⁹³ The defendant in *Turner*, Henry Levi Turner, separated from his wife in early 1997.⁹⁴

State v. Fauntleroy, 921 A.2d 622, 629 (Conn. App. Ct. 2007) (quoting CONN. GEN. STAT. ANN. § 53a-118(a)(5) (West 2012)); *State v. Hamilton*, 318 A.2d 624, 627 (Del. Super. Ct. 1974); *In Interest of M.M.*, 571 So. 2d 112, 113 (Fla. Dist. Ct. App. 1990) (quoting *In Interest of M.E.*, 370 So. 2d 795, 797 (Fla. 1979)); *State v. Miller*, 622 N.W.2d 782, 787 (Iowa Ct. App. 2000) (quoting *State v. Pace*, 602 N.W.2d 764, 768 (Iowa 1999)); *Matthews v. Commonwealth*, 709 S.W.2d 414, 420 (Ky. 1985) (quoting *Cladd v. State*, 398 So. 2d 442, 444 (Fla. 1981)) (citing *State v. Herrin*, 453 N.E.2d 1104, 1106 (Ohio Ct. App. 1982); *State v. Schneider*, 673 P.2d 200, 203 (Wash. Ct. App. 1983)); *State v. Champagne*, 206 So. 2d 518, 520 (La. 1968) (quoting *State v. Simmons*, 190 So. 2d 83, 85 (La. 1966)); *State v. Cook*, 2 A.3d 333, 338 (Me. 2010) (quoting *State v. Cookson*, 293 A.2d 780, 784–85 (Me. 1972)); *McKenzie v. State*, 962 A.2d 998, 1002 (Md. 2008); *Davis v. State*, 163 So. 391, 392 (Miss. 1935) (citing *Clinton v. State*, 142 So. 17, 18 (Miss. 1932); *Brown v. State*, 33 So. 170, 170 (Miss. 1903)); *State v. Rains*, 537 S.W.2d 219, 226 (Mo. Ct. App. 1976) (citing *State v. Harrison*, 285 S.W. 83, 87 (Mo. 1926)); *Liakas v. State*, 72 N.W.2d 677, 679 (Neb. 1955); *McMillan*, 973 A.2d at 291 (citing *Glanda*, 774 N.Y.S.2d at 581; *Turner*, 531 S.E.2d at 621); *Glanda*, 774 N.Y.S.2d at 581; *State v. Harold*, 325 S.E.2d 219, 222 (N.C. 1985) (quoting *State v. Surles*, 52 S.E.2d 880, 882 (N.C. 1949)) (citing *State v. Beaver*, 229 S.E.2d 179, 182 (N.C. 1976)); *Lilly*, 717 N.E.2d at 327; *Calhoun v. State*, 820 P.2d 819, 821–22 (Okla. Crim. App. 1991); *State v. Casey*, 478 P.2d 414, 415 (Or. Ct. App. 1970); *Majeed*, 694 A.2d at 338 & n.2 (citing 4 BLACKSTONE, *supra* note 59, at 223); *Singley*, 392 S.C. at 277, 709 S.E.2d at 606; *Hobby v. State*, 480 S.W.2d 554, 556 (Tenn. Crim. App. 1972); *Maack v. State*, 928 S.W.2d 219, 222 (Tex. App. 1996) (quoting TEX. PENAL CODE ANN. § 1.07(a)(35)(A) (West 2011)); *Turner*, 531 S.E.2d at 621 (quoting *Rash v. Commonwealth*, 383 S.E.2d 749, 751 (Va. Ct. App. 1989)); *Schneider*, 673 P.2d at 203 (quoting *State v. Klein*, 80 P.2d 825, 827 (Wash. 1938)); *Newcomb v. Coiner*, 178 S.E.2d 155, 157 (W. Va. 1970) (citations omitted).

85. See *Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

86. See *McKenzie*, 962 A.2d at 1002; *Harold*, 325 S.E.2d at 222 (quoting *Surles*, 52 S.E.2d at 882) (citing *Beaver*, 229 S.E.2d at 182); *Singley*, 392 S.C. at 277, 709 S.E.2d at 606; *Turner*, 531 S.E.2d at 621 (quoting *Rash*, 383 S.E.2d at 751); *Newcomb*, 178 S.E.2d at 157 (citations omitted).

87. 325 S.E.2d at 219.

88. *Id.* at 222 (citing *Beaver*, 229 S.E.2d at 182).

89. *Id.* (quoting *Surles*, 52 S.E.2d at 882) (internal quotation mark omitted).

90. See *Newcomb*, 178 S.E.2d at 157 (citations omitted).

91. See *McKenzie*, 962 A.2d at 1002.

92. 531 S.E.2d 619 (Va. Ct. App. 2000).

93. See *id.* at 620.

94. *Id.*

Turner's wife continued to reside in the jointly owned marital residence, while Turner found residence elsewhere.⁹⁵ In February 1998, Turner broke into the marital residence on two separate occasions, and during the second break-in, Turner shot his wife and one of her acquaintances.⁹⁶ Turner argued that his ownership interest precluded conviction for breaking and entering.⁹⁷ The court disagreed, applying the possession-based definition of burglary instead.⁹⁸ After analyzing the circumstances surrounding the burglary,⁹⁹ the court concluded that "[Turner's] proprietary interest was relegated to [his] wife's superior possessory interest and right to exclusive habitation."¹⁰⁰

Two states in the neighboring Eleventh Circuit also define burglary as a crime against possession.¹⁰¹ In Alabama, burglary indictments *do* entail a showing of ownership; however, the "ownership" alleged in the indictment "is not the title, but the occupancy or possession at the time the offense was committed."¹⁰² Similarly, the Florida Supreme Court distinguished burglary-law ownership from property-law ownership, noting that "burglary is a disturbance to habitable security and not to the fee."¹⁰³ Georgia's definition of burglary is more ambiguous.¹⁰⁴ Under Georgia law, burglary indictments traditionally had to demonstrate that the residence burglarized was not the burglar's dwelling but rather "was *occupied* by the prosecutor."¹⁰⁵ Ownership was, therefore, "not an essential ingredient to proving that the premises entered were the 'dwelling place of another' within the meaning of [Georgia] burglary law."¹⁰⁶ However, a recent amendment to Georgia's burglary law defined "dwelling" as "any building, structure, or portion thereof which is designed or intended for occupancy or residential use," and established burglary as, *inter alia*, a crime against "an

95. *Id.*

96. *See id.*

97. *Id.* at 620–21.

98. *Id.* at 621.

99. *Id.* at 622.

100. *Id.* Numerous other courts that have analyzed "spousal burglary" of property formerly inhabited by both spouses reached the same conclusion as the *Turner* court. *See, e.g.,* Parham v. State, 556 A.2d 280, 284–85 (Md. Ct. Spec. App. 1989) (citations omitted) (collecting supportive case law).

101. *See* Hamilton v. State, 219 So. 2d 369, 374 (Ala. 1969) (quoting Fuller v. State, 177 So. 353, 354 (Ala. Ct. App. 1937)); In Interest of M.E., 370 So. 2d 795, 797 (Fla. 1979) (citing Addison v. State, 116 So. 629, 630 (Fla. 1928)).

102. *Hamilton*, 219 So. 2d at 374 (quoting *Fuller*, 177 So. at 353).

103. *In Interest of M.E.*, 370 So. 2d at 797.

104. *Compare* Phillips v. State, 263 S.E.2d 480, 481 (Ga. Ct. App. 1979) (asserting that occupancy, not ownership, is the key ingredient for purposes of the Georgia burglary law), with GA. CODE ANN. § 16-7-1 (Supp. 2012) (defining burglary as, *inter alia*, a crime against "an occupied, unoccupied, or vacant dwelling house of another").

105. *Phillips*, 263 S.E.2d at 481 (emphasis added) (quoting *Murphy*, 234 S.E.2d at 914) (internal quotation mark omitted).

106. *Id.* (quoting *Murphy*, 234 S.E.2d at 914).

occupied, unoccupied, or vacant dwelling house of another."¹⁰⁷ Under the amended burglary statute, a person could be convicted for burglarizing a vacant building that was simply "*intended* for occupancy"¹⁰⁸—thus undermining Georgia's traditional possession-based definition of burglary.¹⁰⁹ Due to this current state of ambiguity, Georgia should no longer be counted among the states that define burglary in terms of possession.¹¹⁰

However, every state in the Fifth Circuit applies the possession-based definition of burglary.¹¹¹ Mississippi and Louisiana apply frameworks similar to those in Alabama and Florida: while a showing of ownership is required for conviction in these states, "ownership" is defined in terms of possession.¹¹² Texas applies the "greater right to possession" approach, under which ownership may be shown through "(1) title, (2) possession or (3) a greater right to possession than the defendant."¹¹³ Although this approach includes title as method of proving ownership, case law establishes possession as the critical focus.¹¹⁴

In the Sixth Circuit, Tennessee, Kentucky, and Ohio apply the possession-based definition of burglary.¹¹⁵ In Tennessee, "title . . . follows the possession

107. H.B. 1176, 151st Gen. Assemb., Reg. Sess. (Ga. 2012); *see also* GA. CODE ANN. § 16-7-1 (Supp. 2012) (containing the amended version of Georgia's burglary law). The basis for these amendments was a 2011 report by the legislatively created Special Council on Criminal Justice Reform for Georgians. *See* SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM FOR GEORGIANS, REPORT OF THE SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM FOR GEORGIANS 21 (2011); *see also* Ga. H.B. 1176 (noting that the Council report formed the basis for the Title 16 amendments, as well as the amendments to several other statutory provisions). The Council suggested that first degree burglary cover burglaries of both occupied and unoccupied dwellings. SPECIAL COUNCIL ON CRIMINAL JUSTICE REFORM FOR GEORGIANS, *supra*, at 20.

108. GA. CODE ANN. § 16-7-1 (Supp. 2012) (emphasis added).

109. *See supra* notes 105–06 and accompanying text.

110. *See supra* note 84.

111. *See State v. Champagne*, 206 So. 2d 518, 520 (La. 1968) (quoting *State v. Simmons*, 190 So. 2d 83, 85 (La. 1966)); *Davis v. State*, 163 So. 391, 392 (Miss. 1935) (citing *Clinton v. State*, 142 So. 17, 18 (Miss. 1932); *Brown v. State*, 33 So. 170, 170 (Miss. 1903)); *Mack v. State*, 928 S.W.2d 219, 223 (Tex. App. 1996) (quoting TEX. PENAL CODE ANN. § 1.07(a)(35)(A) (West 1994)).

112. *See Champagne*, 206 So. 2d at 520 (quoting *Simmons*, 190 So. 2d at 85); *Davis*, 163 So. 391, 392 (citing *Clinton*, 142 So. at 18; *Brown*, 33 So. at 170); *see also Hamilton*, 219 So. 2d at 374 (quoting *Fuller*, 177 So. at 354) (noting that, for purposes of a burglary indictment, "ownership" must be alleged in terms of possession or occupancy); *In Interest of M.E.*, 370 So. 2d at 797 ("Ownership means any possession which is rightful as against the burglar and is satisfied by proof of special or temporary ownership, possession, or control." (citing *Addison v. State*, 116 So. 629, 630 (Fla. 1928))).

113. *Davis v. State*, 783 S.W.2d 313, 316 (Tex. App. 1990) (citing *Alexander v. State*, 753 S.W.2d 390, 392–94 (Tex. Crim. App. 1988)); *see also* TEX. PENAL CODE ANN. § 1.07(a)(35)(A) (West 2011) (enumerating the three methods of proving ownership).

114. *See Mack*, 928 S.W.2d at 223; *see also Alexander*, 753 S.W.2d at 392 ("[U]nder the Penal Code, any person who has a greater right to the actual care, custody, control, or management of the property than the defendant can be alleged as the 'owner.'").

115. *See Matthews v. Commonwealth*, 709 S.W.2d 414, 420 (Ky. 1985) (quoting *Cladd v. State*, 398 So. 2d 442, 444 (Fla. 1981)) (citing *State v. Herrin*, 453 N.E.2d 1104, 1106 (Ohio Ct.

and possession constitutes sufficient ownership as against the burglar.”¹¹⁶ While discussing spousal burglary of marital property, the Supreme Court of Kentucky identified possession as the key property right protected by burglary law.¹¹⁷ As noted by the *Singley* court,¹¹⁸ the Supreme Court of Ohio established custody and control as the guiding principle used to assess the dwelling burglarized.¹¹⁹

Michigan case law is more ambiguous on this point.¹²⁰ Traditionally, Michigan applied the ownership-based definition of burglary¹²¹ that the *Singley* court rejected.¹²² In the 1915 case of *People v. Eggleston*,¹²³ the Michigan Supreme Court considered a convicted burglar’s assignments of error regarding the trial judge’s jury charges.¹²⁴ One of the respondent’s requests to charge contained an assertion that, because the respondent had a joint deed of the dwelling burglarized, “if [the respondent] thought that [his] ownership gave him a right to enter the house if he desired, then he would not be guilty of making a felonious breaking and entering.”¹²⁵ Although the court could not find error in the trial judge’s rejection of this charge,¹²⁶ the court asserted that “if by reason of the condition of the title to said property the respondent honestly believed that he had a right to enter, it is difficult to see how he could have entertained criminal intent, which is a necessary element of the crime charged.”¹²⁷ Thus, in the early

App. 1982); *State v. Schneider*, 673 P.2d 200, 203 (Wash. Ct. App. 1983)); *State v. Lilly*, 717 N.E.2d 322, 327 (Ohio 1999); *Hobby v. State*, 480 S.W.2d 554, 556 (Tenn. Crim. App. 1972) (citing *Hindman v. State*, 384 S.W.2d 18, 20 (Tenn. 1964); *Anderson v. State*, 455 S.W.2d 630, 632 (Tenn. Crim. App. 1970); *Taylor v. State*, 455 S.W.2d 168, 170 (Tenn. Crim. App. 1970)).

116. *Hobby*, 480 S.W.2d at 556 (citing *Hindman*, 384 S.W.2d at 20; *Anderson* 455 S.W.2d at 632; *Taylor*, 455 S.W.2d at 170).

117. *See Matthews*, 709 S.W.2d at 420 (quoting *Cladd*, 398 So. 2d at 444) (citing *Herrin*, 453 N.E.2d at 1106; *Schneider*, 673 P.2d at 203).

118. *See State v. Singley*, 392 S.C. 270, 276, 709 S.E.2d 603, 606 (2011).

119. *See Lilly*, 717 N.E.2d at 327.

120. *See People v. Eggleston*, 152 N.W. 944, 945 (Mich. 1915); *People v. Winters*, No. 288925, 2010 WL 1979163, at *3 (Mich. Ct. App. May 18, 2010); *People v. Card*, No. 228661, 2001 WL 694507, at *1 (Mich. Ct. App. Apr. 6, 2001); *People v. Szpara*, 492 N.W.2d 804, 806 (Mich. Ct. App. 1992) (quoting *Eggleston*, 152 N.W. at 945) (citing *People v. Gauze*, 542 P.2d 1365, 1367 (Cal. 1975)).

121. *See Eggleston*, 152 N.W. at 945.

122. *See Singley*, 392 S.C. at 276, 709 S.E.2d at 606.

123. 152 N.W. 944.

124. *See id.* at 944.

125. *Id.* at 945. In Michigan, the relevant statute defines burglary with the terms “break[ing] and enter[ing]” and “home invasion.” *See* MICH. COMP. LAWS ANN. § 750.110a(2)–(8) (West 2004 & Supp. 2012). Though the term “burglary” does not actually appear in this statute, the substantive defense defined therein is the offense of burglary. *Compare id.* (defining burglary in terms of “break[ing] and enter[ing]” and “home invasion”), with S.C. CODE ANN. § 16-11-311 (2003) (defining “burglary in the first degree”).

126. *See Eggleston*, 152 N.W. at 945; *see also People v. Szpara*, 492 N.W.2d 804, 806 (Mich. Ct. App. 1992) (quoting *Eggleston*, 152 N.W. at 945) (noting that the *Eggleston* court did not decide “whether the trial court was required to give an instruction that the defendant could not be found guilty of breaking and entering property of which he was partial owner”).

127. *Eggleston*, 152 N.W. at 945.

twentieth century, ownership rights seemed to preclude burglary convictions in Michigan.¹²⁸

In 1992, however, the Michigan Court of Appeals gave the possessory approach stronger consideration.¹²⁹ In *People v. Szpara*,¹³⁰ the court affirmed the conviction of a burglary defendant who, during the course of a divorce, broke into the marital home and beat his wife, despite a court order forbidding him from entering the property.¹³¹ Citing *Eggleston* and the California burglary case of *People v. Gauze*,¹³² the defendant claimed he had been wrongfully charged with burglarizing his own home.¹³³ While the *Eggleston* court believed that titleholders probably could not form the intent necessary to burglarize their own property,¹³⁴ the Supreme Court of California addressed the possessory rights at stake, concluding that the right of habitation could not be violated in this scenario.¹³⁵ Despite these arguments, the court of appeals concluded that, because of the court order, the defendant had no right to enter the marital home.¹³⁶ He, therefore, entered “*against the possessory right* of [his wife].”¹³⁷

Even though the court’s language here suggests an acceptance of the possession-based definition of burglary, the court did not explicitly adopt this approach. Instead, the court simply could have been using the language of possession to contrast *Gauze* with the defendant’s situation and ultimately to reject the defendant’s argument.¹³⁸ The court of appeals subsequently issued two unpublished opinions involving claims of ownership in the home burglarized; however, these opinions do not resolve the ambiguity in the court’s approach.¹³⁹ In both *People v. Card*¹⁴⁰ and *People v. Winters*,¹⁴¹ the court analyzed the respective defendant’s claims under the statutory standard for entering without permission—entering “without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling”¹⁴²—without resolving whether an owner who has no

128. *See id.*

129. *See Szpara*, 492 N.W.2d at 806 (citing *People v. Gauze*, 542 P.2d 1365, 1367 (Cal. 1975)).

130. 492 N.W.2d 804.

131. *See id.* at 805.

132. 542 P.2d 1365.

133. *See Szpara*, 492 N.W.2d at 805–06. The Supreme Court of California’s holding in *Gauze* is discussed further in the policy section of this Comment. *See infra* Part V.

134. *See Eggleston*, 152 N.W. at 945.

135. *See Szpara*, 492 N.W.2d at 806 (citing *Gauze*, 542 P.2d at 1367).

136. *See id.* at 806.

137. *Id.* (emphasis added).

138. *See id.* (citing *Gauze*, 542 P.2d at 1367).

139. *See People v. Winters*, No. 288925, 2010 WL 1979163, at *3 (Mich. Ct. App. May 18, 2010); *People v. Card*, No. 228661, 2001 WL 694507, at *1 (Mich. Ct. App. Apr. 6, 2001).

140. 2001 WL 694507.

141. 2010 WL 1979163.

142. MICH. COMP. LAWS. ANN. § 750.110a(1)(c) (West 2004 & Supp. 2012).

possessory interest in the dwelling can burglarize it.¹⁴³ Thus, Michigan should not be counted among the plethora of other states that currently apply a possession-based definition of burglary.¹⁴⁴

On the other hand, the state courts found in the Third Circuit do provide support for the possession-based approach to burglary law.¹⁴⁵ In *Commonwealth v. Majeed*,¹⁴⁶ the Supreme Court of Pennsylvania cited Blackstone's *Commentaries* for the proposition that burglary law protects possessory rights.¹⁴⁷ Likewise, the Delaware Superior Court defined burglary as a crime against possession—"habitation or occupancy"—while contrasting the offenses of assault and burglary.¹⁴⁸ In *State v. Berkey*,¹⁴⁹ the New Jersey Superior Court, Law Division stated that the law

throw[s] around the habitation area of any residence, be it a single-family home or a large apartment, a protective mantle so that it may become a place of family repose free from intrusion by strangers and secure for the quiet and peace of family members who reside therein. Anyone who breaches or intrudes into this protective mantle to commit a crime therein is guilty of burglary.¹⁵⁰

Although the *Berkey* court did not specifically define burglary as a crime against possession, the "protective mantle" described by the court clearly protects the right of habitation.¹⁵¹

Thus, the various approaches to burglary law by the states that compose the Fourth Circuit and four of the more geographically proximate circuits almost always include a possession-based definition of burglary.¹⁵² Indeed, the majority

143. See *Winters*, 2010 WL 1979163, at *3; *Card*, 2001 WL 694507, at *1. In *Card*, the burglar had no ownership or possessory interest in the dwelling burglarized; thus, the court had no reason to determine which property interest was superior. See *Card*, 2001 WL 694507, at *1. In *Winters*, the defendant claimed he could not be convicted of burglary because he resided with the victim. See *Winters*, 2010 WL 1979163, at *3. However, the court found no error in the jury's verdict, as there was evidence the victim did not want the defendant in the house; furthermore, the defendant "did not have a key to the [victim's] home, his name was not on the lease, and his personal papers did not list the [victim's] address as his home address." *Id.* Thus, the court rejected the defendant's claims because the evidence indicated he lacked *both* ownership and possession. See *id.*

144. See *supra* note 84.

145. See *State v. Hamilton*, 318 A.2d 624, 627 (Del. Super. Ct. 1974); *Commonwealth v. Majeed*, 694 A.2d 336, 338 & n.2 (Pa. 1997) (citing 4 BLACKSTONE, *supra* note 59, at 223); cf. *State v. Berkey*, 630 A.2d 855, 857 (N.J. Super. Ct. Law Div. 1993) (describing burglary law as a "protective mantle" that protects inhabitants).

146. 694 A.2d 336.

147. See *id.* at 338 n.2 (citing 4 BLACKSTONE, *supra* note 59, at 223).

148. See *Hamilton*, 318 A.2d at 627.

149. 630 A.2d 855.

150. *Id.* at 857.

151. See *id.*

152. See *supra* notes 85–151 and accompanying text.

of state jurisdictions take this approach.¹⁵³ Thus, in *Singley*, the South Carolina Supreme Court applied a broadly accepted principle of burglary law¹⁵⁴ to a situation involving a burglar with an ownership interest in the dwelling burglarized,¹⁵⁵ holding such ownership interest inferior to the question of possession.¹⁵⁶

V. *SINGLEY* IN POLICY CONTEXT

Although the *Singley* decision is firmly rooted in the historical definition of burglary¹⁵⁷ and is the current consensus definition among state jurisdictions,¹⁵⁸ the wisdom of the decision as a matter of public policy still must be considered. Two competing policy concerns arise: (1) the possessor's right to security in his home¹⁵⁹ and (2) the criminal defendant's interest in avoiding multiple prosecutions for a single offense.¹⁶⁰ On the one hand, "The law of burglary is primarily designed to secure the sanctity of one's home, especially at nighttime, when peace, solitude and safety are most desired and expected."¹⁶¹ On the other hand, if the defendant simply committed a crime after entering his "own home [sic]"—and therefore did not commit burglary¹⁶²—prosecuting the defendant for burglary would entail charging him twice for a single offense.¹⁶³

The *Singley* test¹⁶⁴ adequately addresses the first policy concern.¹⁶⁵ In *Singley*, the South Carolina Supreme Court acknowledged the possessor's right

153. See *supra* note 84.

154. See *supra* note 84; see also *State v. Singley*, 392 S.C. 270, 274, 709 S.E.2d 603, 605 (2011) ("[B]urglary is a crime against possession and habitation, not a crime against ownership." (citing *State v. Clamp*, 225 S.C. 89, 102, 80 S.E.2d 918, 924 (1954); *State v. Alford*, 142 S.C. 43, 45, 140 S.E. 261, 262 (1927); *State v. Trapp*, 17 S.C. 467, 471 (1882))).

155. See *Singley*, 392 S.C. at 272–73, 709 S.E.2d at 604.

156. See *id.* at 278, 709 S.E.2d at 607.

157. See *supra* Part III.

158. See *supra* Part IV.

159. See *Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *State v. Brooks*, 277 S.C. 111, 112–13, 283 S.E.2d 830, 831 (1981)); see also *State v. Lilly*, 717 N.E.2d 322, 327 (Ohio 1999) ("[T]he purpose of burglary law is to protect the dweller.").

160. See *State v. Trapp*, 17 S.C. 467, 470 (1882); accord *People v. Gauze*, 542 P.2d 1365, 1368 (Cal. 1975) ("To impose sanctions for burglary would in effect punish [a defendant] twice for the crime he committed while in the house.").

161. See *Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *Brooks*, 277 S.C. at 112, 283 S.E.2d at 831 (1981)) (internal quotation mark omitted).

162. See *id.* at 276, 709 S.E.2d at 606 (quoting *Trapp*, 17 S.C. at 470); see also S.C. CODE ANN. § 16-11-311(A) (2003) (stating that a person may only be found guilty of first degree burglary if, *inter alia*, "the person enters a dwelling without consent"); S.C. CODE ANN. § 16-11-310(3)(a) (for purposes of South Carolina's burglary statute, "consent" means "the consent of the person in lawful possession").

163. See *supra* note 160 and accompanying text.

164. See *Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

165. See *supra* note 159 and accompanying text.

to security in his home before propounding its test;¹⁶⁶ indeed, “the right and expectation to be safe and secure” in such a setting is an explicit element of the *Singley* test.¹⁶⁷ *Singley*, therefore, constituted a resounding affirmation of the possessor’s peace and safety interests in his home.¹⁶⁸

The second policy concern¹⁶⁹ is somewhat more problematic under the *Singley* framework.¹⁷⁰ The court’s acknowledgment of the principle that “one cannot commit the offence of burglary by breaking into his own home [sic]”¹⁷¹ certainly addresses the main thrust of the multiple prosecution issue,¹⁷² but the *Singley* test¹⁷³ arguably does not remove the possibility of double prosecution for a single offense. This test focuses the property analysis on “whether, under the totality of the circumstances, a burglary defendant had custody and control of, and the right and expectation to be safe and secure in, the dwelling burglarized.”¹⁷⁴ Thus, for a burglary conviction to be precluded by the *Singley* test, the defendant must have *both* a possessory interest *and* a “right and expectation” of peace and safety in the dwelling.¹⁷⁵ But, what if a burglary defendant has the requisite “right and expectation,” but does *not* have the custody and control *Singley* requires?

The Supreme Court of California’s policy analysis in *Gauze* illuminates this dilemma.¹⁷⁶ While defending the prohibition of “own home” burglary convictions, the court noted that

no danger arises from the mere entry of a person into his own home, no matter what his intent is. He may cause a great deal of mischief once inside. But no emotional distress is suffered, no panic is engendered,

166. See *Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *Brooks*, 277 S.C. at 112–13, 283 S.E.2d at 831).

167. *Id.* at 277, 709 S.E.2d at 606.

168. See *id.* at 276–78, 709 S.E.2d at 606–07 (quoting *Brooks*, 277 S.C. at 112–13, 283 S.E.2d at 831).

169. See *supra* note 160 and accompanying text.

170. See *generally Singley*, 392 S.C. at 277, 709 S.E.2d at 606 (establishing burglary as a crime against both possession and the possessor’s right of peace and safety in the dwelling).

171. *Id.* at 276, 709 S.E.2d at 606 (quoting *State v. Trapp*, 17 S.C. 467, 470 (1882)) (internal quotation marks omitted).

172. See *Trapp*, 17 S.C. at 470; see also *supra* notes 160, 162–63 and accompanying text (establishing the relationship between the prohibition of “own home” burglary convictions and the issue of multiple prosecutions for a single offense). In *Trapp*, the South Carolina Supreme Court stated two reasons for requiring an allegation of ownership in a burglary indictment: (1) “For the purpose of showing on the record that the house alleged to have been broken into, was not the dwelling house of the accused, inasmuch as one cannot commit the offence of burglary by breaking into his own house” and (2) “[f]or the purpose of so identifying the offence, as to protect the accused from a second prosecution for the same offence.” *Trapp*, 17 S.C. at 470.

173. See *Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

174. *Id.* (emphasis added).

175. *Id.*

176. See *People v. Gauze*, 542 P.2d 1365, 1368–69 (Cal. 1975) (citations omitted).

and no violence necessarily erupts merely because he walks into his house.¹⁷⁷

The court then provided examples of “potentially absurd results” that could occur if the prohibition did not exist: a person could be convicted of burglary for “calmly entering his house with intent to forge a check” or for “walking into his home with intent to administer a dose of heroin to himself,” even if he later decided not to commit the crime.¹⁷⁸ Absurd as these situations may seem, if a person can have a “right and expectation” of peace and safety¹⁷⁹ in a residence over which he does not have custody and control—therefore indicating the residence is the person’s “own home” with regard to the *policy* underlying burglary¹⁸⁰ but not as a matter of *possession*¹⁸¹—the “own home” concept splits into two separate definitions that collide, creating the possibility that a person may indeed burglarize a dwelling in which he has a valid expectation of security. This scenario would therefore violate the prohibition of “own home” burglary convictions,¹⁸² as well as the policies underlying this prohibition.¹⁸³

An original hypothetical based partially on the facts of *Singley*¹⁸⁴ illustrates the potential for the multiple prosecution issue to arise under this case’s framework. This hypothetical involves a burglary defendant similar to *Singley* in some ways: he inherited a partial interest in his family home after his father’s death, and he continued to live in the home with his mother, the majority owner.¹⁸⁵ However, the defendant’s mother asked him to vacate the premises specifically because he had become an alcoholic. She told the defendant he had to begin attending a rehabilitation program at a local inpatient clinic and that he could not return to the home until he had completed the program. The defendant’s mother made this arrangement because she loved her son and was concerned for his wellbeing; she believed he could not recover without extensive

177. *Id.* at 1368.

178. *Id.* at 1369. The subject of these examples could be convicted even if the person failed to commit the intended crime, as burglary occurs upon entry. *See id.*; *see also* CAL. PENAL CODE § 459 (West 2012) (defining burglary as *entry* in certain property “with intent to commit grand or petit larceny or any felony”); S.C. CODE ANN. § 16-11-311(A) (2003) (establishing that a person may only be found guilty of first degree burglary if, *inter alia*, “the person *enters* a dwelling without consent and with intent to commit a crime in the dwelling” (emphasis added)).

179. *Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

180. *See id.* at 276, 709 S.E.2d at 606 (quoting *State v. Brooks*, 277 S.C. 111, 112–13, 283 S.E.2d 830, 831 (1981)).

181. *See id.* at 278, 709 S.E.2d at 607.

182. *Id.* at 276, 709 S.E.2d at 606 (quoting *State v. Trapp*, 17 S.C. 467, 470 (1882)); *accord* *People v. Gauze*, 542 P.2d 1365, 1368 (Cal. 1975) (“To impose sanctions for burglary would in effect punish [a defendant] twice for the crime he committed while in the house.”).

183. *See Gauze*, 542 P.2d at 1368.

184. *See* text accompanying notes 20–36 (providing the *Singley* facts).

185. *Cf. Singley*, 392 S.C. at 272, 709 S.E.2d at 604 (noting that *Singley* inherited a partial property interest from his father, that his mother owned the majority interest in the property, and that *Singley* continued to reside in the house for some time after inheriting his property interest).

inpatient therapy. The defendant—who usually respected his mother’s requests—agreed to this arrangement, taking his belongings and vacating the premises.¹⁸⁶

Several months passed without incident. The defendant telephoned his mother regularly and told her about his experiences at the clinic. The defendant’s mother was happy with the defendant’s progress, but she never withdrew her demand that he complete the program before returning home.¹⁸⁷ About six months later,¹⁸⁸ the defendant had a severe relapse. He decided to leave the rehabilitation clinic at night, return home, forge one of his mother’s checks to obtain cash, and use the cash to buy alcohol. He followed through with this plan, nonchalantly entering his house¹⁸⁹ after locating a key his mother kept under the doormat. The defendant’s mother was not home at the time of his entry.¹⁹⁰ After finding his mother’s checkbook in its usual place on her dresser, the defendant forged the check and went to his mother’s bank to cash it. However, the bank recognized the forgery and notified the police. The defendant was then arrested and charged with forgery and burglary.

In this hypothetical, the defendant relinquished custody and control of the property: he abandoned the dwelling at his mother’s request, took his possessions with him, and agreed not to return until completing the rehabilitation program.¹⁹¹ Furthermore, he did not have his mother’s consent to reenter the dwelling.¹⁹² However, the defendant arguably did not relinquish his “right and expectation” of peace and safety in the dwelling¹⁹³—therefore retaining the ability to call the dwelling his “own home.”¹⁹⁴ The defendant and his mother shared no ill will: the defendant’s mother refused to allow the defendant to return

186. Cf. *Mack v. State*, 928 S.W.2d 219, 223 (Tex. App. 1996) (holding that the defendant cotenant did not have a “greater right to possession” (internal quotation marks omitted) when, *inter alia*, he “moved out, removed almost all of his possessions from the apartment,” and “agreed not to visit the apartment unless he first called for permission”).

187. Cf. *Singley*, 392 S.C. at 272, 709 S.E.2d at 604 (“As between Singley and his mother, Singley did not have permission to return to the house.”).

188. Cf. *id.* (noting that Singley’s burglary occurred about six months after he vacated the dwelling).

189. Cf. *People v. Gauze*, 542 P.2d 1365, 1369 (Cal. 1975) (noting that, if a person could burglarize his own home, he could be found guilty of burglary after “*calmly* entering his house with intent to forge a check,” which is a “potentially absurd result[.]” of such a doctrine (emphasis added)).

190. In this example, the absence of the defendant’s mother at the time of his entry will allow for certain hypothetical variations on the possible effects of the entry. See *infra* notes 191–204 and accompanying text.

191. See *supra* notes 185–86 and accompanying text.

192. See *supra* note 187 and accompanying text.

193. See generally *Singley*, 392 S.C. at 277, 709 S.E.2d at 606 (establishing the dweller’s “right and expectation” of safety and security as one of the elements of the *Singley* test).

194. See *id.* at 276, 709 S.E.2d at 606 (quoting *State v. Brooks*, 277 S.C. 111, 112–13, 283 S.E.2d 830, 831 (1981)); see also *supra* notes 171–83 and accompanying text (providing that a burglary defendant may be able to establish that the dwelling burglarized is his “own home” through his right to and expectation of peace and safety, if not through lawful possession).

to the dwelling because she was concerned for his well-being. Had the defendant's mother seen him reenter the house, she likely would have felt sadness, surprise, anger, or disappointment; however, his reentry would not have created the danger that the *Gauze* court contemplated.¹⁹⁵

Of course, the *Gauze* court also asserted that when a person enters his own home, "no emotional distress is suffered, no panic is engendered, and no violence necessarily erupts."¹⁹⁶ Inferentially, the presence of these elements—emotional distress, panic, and violence—indicates that a person did not, in fact, have the right to and expectation of peace and safety in the dwelling. Thus, evaluating the potential effects of the hypothetical defendant's entry¹⁹⁷ and comparing them to the negative reactions that the *Gauze* court listed¹⁹⁸ provides some indication of the defendant's rights and expectations with regard to peace and safety.

Had the defendant's mother been present at the time of his entry, the entry would not have caused violence or panic, given the defendant's relationship with his mother. The entry may well have caused emotional distress, but it would have been the distress of a mother suffering at the sight of her wayward child, not an inhabitant distressed at the sight of a violent intruder.¹⁹⁹ The existence of the emotional reactions contemplated in *Gauze*²⁰⁰ is, of course, far more ambiguous when the occupant has not formally challenged the burglar's possessory rights.²⁰¹ The *Singley* framework²⁰² could, therefore, criminalize family members for engendering emotional harm without the implication of

195. See *People v. Gauze*, 542 P.2d 1365, 1368 (Cal. 1975); see also *supra* text accompanying note 177 (quoting the policy rationale for the prohibition of "own home" burglary convictions espoused by the *Gauze* court).

196. *Gauze*, 542 P.2d at 1368.

197. See *id.* at 1369.

198. See *id.* at 1368.

199. Cf. *Turner v. Commonwealth*, 531 S.E.2d 619, 620 (Va. Ct. App. 2000) (noting that, after the burglary defendant kicked in the door of his wife's trailer, his wife fearfully ran past him and fled to her mother's house). The distinction here, of course, has nothing to do with the relative violence of the intended crime; for a person to be found guilty of burglary in South Carolina, the person must simply have entered the dwelling "with intent to commit a crime." S.C. CODE ANN. § 16-11-311(A) (2003) (emphasis added). However, the difference between the wife's fear in *Turner* and the mother's potential distress in the hypothetical is instructive here: while the former was inspired by a criminal act, the latter would have been a product of a close, but tormented, familial relationship. See generally *Turner*, 531 S.E.2d at 620 (describing a burglary victim's flight from the premises after the burglar's entry).

200. See *Gauze*, 542 P.2d at 1368.

201. Cf. Brief of Petitioner, *supra* note 28, at 7 (arguing that the defendant still had a possessory right in the dwelling because his mother had not formally challenged his right). Indeed, in *Singley*, the defendant's attorney argued on appeal that, because *Singley*'s mother "had taken no formal steps to terminate his right of possession, habitation and occupancy," *Singley* should be acquitted of the burglary charge. *Id.*

202. See *State v. Singley*, 392 S.C. 270, 277, 709 S.E.2d 603, 606 (2011).

criminal intent²⁰³—as when a wayward family member reenters his “own home.”²⁰⁴

Thus, as the preceding hypothetical demonstrates, a burglary defendant could be convicted of burglarizing what appears to be his “own home”—the place in which he has a right to and an expectation of peace and safety²⁰⁵—under the *Singley* test.²⁰⁶ As this outcome entails charging the defendant twice for the same offense²⁰⁷ and trivializes the other key policy underlying burglary law,²⁰⁸ a more consistent definition of “own home” should be promulgated in South Carolina. Luckily, a simple conclusion is readily available: instead of requiring a showing of *both* custody and control *and* a right to and expectation of peace and safety,²⁰⁹ the test could simply require a showing of *either* of these elements. Therefore, the *Singley* test could be rewritten as follows: “[T]he proper test is whether, under the totality of the circumstances, a burglary defendant had custody and control of” *or* “the right and expectation to be safe and secure in, the dwelling burglarized.”²¹⁰ This modified test retains the *Singley* court’s protections of the lawful possessor,²¹¹ while also ensuring that a property owner who has a right to and an expectation of peace and safety in the dwelling— independent of any possessory interest—does not suffer double prosecution for burglarizing his “own home.”²¹²

Perhaps the best venue for change would be the South Carolina General Assembly, which could incorporate this modified *Singley* test into South Carolina’s statutory framework.²¹³ Conversely, the South Carolina Supreme

203. See *supra* text accompanying notes 191–98. Of course, the burglary defendant in the preceding hypothetical did, indeed, enter the house with criminal intent. See *supra* text accompanying notes 188–90. However, the defendant’s mother would not have contemplated such criminal intent upon his entry, as the defendant was told to leave the house for rehabilitation—not because she feared he would cause her harm or conduct criminal activity in the house. See *supra* text accompanying notes 185–86.

204. See *supra* text accompanying note 196.

205. See *Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *State v. Brooks*, 277 S.C. 111, 112–13, 283 S.E.2d 830, 831 (1981)).

206. See *generally id.* at 277, 709 S.E.2d at 606 (establishing the “totality of the circumstances” test for analyzing the defendant’s property interest in the dwelling burglarized).

207. See *supra* notes 162–63, 169–73 and accompanying text.

208. See *generally Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *Brooks*, 277 S.C. at 112–13, 283 S.E.2d at 831) (establishing the dweller’s expectation of and right to peace and safety in his residence as “the very purpose behind the law of burglary”).

209. See *generally id.* at 277, 709 S.E.2d at 606 (enumerating the current *Singley* test).

210. For the current *Singley* test, see *id.*

211. See *id.* at 274, 709 S.E.2d at 605.

212. See *supra* notes 162–63, 169–73 and accompanying text.

213. See *generally* S.C. CODE ANN. § 16-11-310(3)(a) (2003) (establishing “the consent of the person in lawful possession” as the requisite consent for purposes of burglary law). This statute provides the requisite definitions for South Carolina’s first, second, and third degree burglary statutes. See *id.* Thus, it may be an ideal place to enumerate the modified *Singley* test.

Court could grant certiorari to a similar case to modify its *Singley* test.²¹⁴ Either way, South Carolina's burglary laws should balance the rights of the possessor with the burglary defendant's interest in avoiding double prosecution for a single offense.²¹⁵

VI. CONCLUSION

Henry Louis Gates would not be guilty of burglary if the bizarre events surrounding his arrest²¹⁶ occurred in South Carolina.²¹⁷ Even if Gates had the criminal intent necessary for a burglary conviction²¹⁸—which he obviously did not²¹⁹—the South Carolina Supreme Court previously affirmed the classic principle that a person cannot burglarize his own home.²²⁰ Of course, because the house “burglarized” was Gates's own home,²²¹ Gates would have also met the dual standards established in *Singley*—custody and control of the property, as well as the expectation of peace and security therein.²²²

However, some property owners may have an expectation of peace and security in a dwelling without having custody and control of the property.²²³ Under the *Singley* framework, these property owners could conceivably be convicted of burglarizing dwellings that resemble their “own homes”—minus the required possessory interest. The South Carolina General Assembly should, therefore, incorporate a modified version of the *Singley* test, under which the expectation of peace and security in the dwelling burglarized acts as an independent element of burglary convictions.²²⁴ This test would protect criminal defendants from overprosecution while maintaining protections for the inhabitants of residential property.²²⁵

214. Of course, this approach has an obvious practical drawback: it requires a factually specific set of circumstances that may not arise in the near future. *Cf.* *Murdaugh v. Robert Lee Constr. Co.*, 185 S.C. 497, 504–05, 194 S.E. 447, 451 (1937) (noting in a civil case that the South Carolina Supreme Court “is limited to deciding questions of law” and, therefore, “may not pass upon the force and effect of [the facts in the record]”). Indeed, it would be preferable if those with ownership interests in property did not hold possessors at knife point.

215. *See supra* notes 159–63 and accompanying text.

216. *See supra* notes 1–12 and accompanying text.

217. *See generally Singley*, 392 S.C. at 277, 709 S.E.2d at 606 (determining the property rights that preclude convictions for burglary).

218. *See* S.C. CODE ANN. § 16-11-311(A).

219. *See generally* Goodnough, *supra* note 1, at A13 (describing the circumstances surrounding Gates's arrest).

220. *See Singley*, 392 S.C. at 276, 709 S.E.2d at 606 (quoting *State v. Trapp*, 17 S.C. 467, 470 (1882)).

221. *See supra* note 9 and accompanying text.

222. *See Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

223. *See supra* text accompanying note 176.

224. *See supra* text accompanying notes 210–12.

225. *See supra* Part V.

The *Singley* court's definition of burglary²²⁶ is consistent with the classic theoretical definition of the crime,²²⁷ as well as the approach to burglary law taken by courts in a majority of the states.²²⁸ Furthermore, this definition properly protects the dweller's habitation rights.²²⁹ If the South Carolina General Assembly codifies the *Singley* test with the modification proposed above,²³⁰ the *Singley* framework would also protect burglary defendants from multiple prosecutions for a single offense.²³¹ South Carolina's burglary law should protect Ferris Singley's mother in her place of residence. However, it should also protect burglary defendants who, due to their expectation of peace and security in the dwelling burglarized, are no more guilty of burglary than Henry Louis Gates.

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226. See *Singley*, 392 S.C. at 277, 709 S.E.2d at 606.

227. See *supra* Part III.

228. See *supra* Part IV.

229. See *supra* Part V.

230. See *supra* text accompanying note 210.

231. See *supra* Part V.