

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Edward B. Cottingham, Circuit Court Judge

Appellate Case No.: 2013-000197

THE STATE.....Respondent

v.

MARQUIS T. EVANS.....Appellant

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT
RECEIVING STOLEN GOODS
VALUE MORE THAN \$2000 BUT LESS THAN
\$10,000
(THIRD OR SUBSEQUENT OFFENSE)

At a Court of General Sessions, convened on December 13, 2012, the Grand Jurors of Horry County present upon their oath:

RECEIVING STOLEN GOODS
VALUE MORE THAN \$2000 BUT LESS THAN \$10,000
(THIRD OR SUBSEQUENT OFFENSE)

CDR: 3599 16-13-0180(A)

That Marquis T Evans did in Horry County on or about July 13, 2011, with criminal and fraudulent intent, buy, receive or possess stolen goods, chattels or other property knowing or having reason to believe the goods, chattels or property were stolen, said property having a value of two thousand (\$2000) dollars or less, in violation of Section 16-13-180(A), S. C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense, in violation of Section 16-01-0057, S. C. 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.


J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

PAGE 03/03

SCOTT BELLAMY

8432485142

15:24

05/08/2013

WITNESSES

Jonathan Rabon Horry County Police Department

EST WARRANT NUMBER

2012GS2604650

CDR: 3599 16-13-0180(A)

DOA: 7/14/2011

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-26- 04650

The State of South Carolina

County of Horry

Bradley C. Richardson
11H02908

COURT OF GENERAL SESSIONS

December, 2012 TERM

THE STATE

vs.

Marquis T Evans
B/ M
1517 Dalkan Rd
Fuquay, NC
DOB: 1976-09-04
SSN: 686092787

ATTORNEY: Bellamy, G. Scott

Indictment for

RECEIVING STOLEN GOODS
VALUE MORE THAN \$2000 BUT LESS
THAN \$10,000
(THIRD OR SUBSEQUENT OFFENSE)

ORIGINAL

J. Gregory Hambree, Solicitor

TRUE BILL
DEC 13 2012

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

2012-GS-26-04650

THE STATE OF SOUTH
CAROLINA,

Plaintiff,

vs.

MARQUIS T. EVANS,

Defendant.

Transcript of Record

January 10, 2013

B E F O R E:

Honorable Edward B. Cottingham
Horry County Courthouse
Conway, South Carolina

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

Bradley C. Richardson, Esquire
Attorney for Plaintiff

G. Scott Bellamy, Esquire
Attorney for Defendant

Kay H. Richardson, CVR
Circuit Court Reporter

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1 (January 10, 2013)

2 THE COURT: All right. Bring the jury in, please.

3 Any special voir dire for the State?

4 MR. RICHARDSON: No, sir, none from the State.

5 MR. BELLAMY: None from the Defendant.

6 MR. RICHARDSON: Your Honor, we provided a witness list
7 to the Court. You have a copy of that. I laid it up on your
8 desk.

9 THE COURT: Is somebody bringing up my jury?

10 MR. RICHARDSON: Yes, sir, Your Honor.

11 THE COURT: All right.

12 MOTIONS:

13 MR. RICHARDSON: Your Honor, one matter prior to the jury
14 coming in. I would move that at the commencement of the trial
15 that the bond be considered to be revoked at that point and
16 the Defendant remain in the custody and care of the Sheriff's
17 Department.

18 THE COURT: What you say that?

19 MR. BELLAMY: Judge, he's probably been here ten times.
20 When I called him yesterday, he's sitting right here. I don't
21 think there's any need for that, Judge.

22 THE COURT: I don't see any basis for that. He's here in
23 court, he came when he was called and he's been here and, in
24 addition to that, counsel needs his presence here for the
25 preparation for trial. That motion is respectfully denied

1 MR. RICHARDSON: Certainly, Your Honor.

2 MR. BELLAMY: Hopefully, we'll be finished today, Judge,
3 so ---

4 THE COURT: Well, we'll work towards that end and if not,
5 we'll be here in the morning but let's try and finish today
6 for the staff's benefit.

7 MR. RICHARDSON: Certainly, Your Honor.

8 THE COURT: That is if I can get a jury up here.

9 *****OFF THE RECORD*****

10 (On the Record.)

11 (REPORTER'S NOTE: The jury panel enters the courtroom.)

12 JURY SELECTION:

13 THE COURT: All right. The jury panel is now in the
14 courtroom and I say to all of you, good morning. I hesitated
15 to have to call you back on a Thursday. You've been here very
16 diligently and patiently throughout the week but there was one
17 other case that we needed to dispose of this week. This will
18 be the last case for your consideration and your duties will
19 end at the conclusion of this case.

20 For scheduling purposes, we think that there's a
21 possibility that this case can be concluded by the day and the
22 lawyers and everybody is working diligently to that end
23 consistent with fairness and justice but you do need to know
24 that this will be the last case for your consideration.

25 From your number this morning, we are going to select

1 twelve jurors and two alternates. For those who are not
2 selected will be excused for the day and for the week with my
3 profound thanks for their services as well as your services.
4 I tend to indicate to jurors that we fully recognize that all
5 of you are here at considerable inconvenience to your
6 families, to your jobs and to your personal pursuits. But as
7 I've said to jurors many times, you will never be called upon
8 to perform a higher duty than that of juror in a criminal
9 case.

10 | Our judicial system says that an individual shall not be
11 deprived of his or her liberty not for one day until and
12 unless a jury of their peers has found him guilty beyond a
13 reasonable doubt. That concept protects your liberty and with
14 equal importance it protects mine. Unless an individual is
15 appointed or elected, they very seldom have the opportunity to
16 participate in their government. Jury duty gives you that
17 opportunity to participate in your judicial service. It's not
18 mine, it's not Horry County's; it belongs to the people of
19 Horry County. And all of us including the litigants and the
20 lawyers appreciate your services here this morning.

21 Solicitor, call your case.

22 MR. RICHARDSON: Thank you, Your Honor. May it please
23 the Court, at this time the State would call 2012-GS-26-4650,
24 The State of South Carolina, County of Horry, versus Marquis
25 T. Evans. A true-billed indictment for receiving stolen

1 goods, value 2,000 to \$10,000, Your Honor.

2 THE COURT: All right, sir. Mr. Bellamy representing the
3 Defense. Are you ready for trial?

4 MR. BELLAMY: Ready for trial, Judge.

5 THE COURT: All right. Ladies and gentlemen, this
6 Defendant and all defendants come before us upon a document as
7 I hold in my hand, and it will be in the jury room, known as
8 an indictment. This indictment contains allegations as
9 against this Defendant and they're allegations only, they're
10 no evidence, it's just the allegations that the State says
11 they can prove beyond a reasonable doubt. To these
12 allegations, this Defendant specifically pleads not guilty,
13 thereby placing the burden of proof upon the State of South
14 Carolina of proving him guilty if they can. By this
15 indictment, this Defendant is charged with the offense of
16 receiving stolen goods. At the appropriate time, I will
17 define for you the elements of the charge and the elements
18 that the State must prove beyond a reasonable doubt.

19 Now, from your number, counsel for the State and the
20 Defense desire twelve folks with no friends to reward, no
21 enemies to punish, just twelve people who can get in this box,
22 as finders of the facts and say under oath, Judge, I will base
23 my verdict on the law and evidence heard in this courtroom.

24 Now, the Defendant is Maurice Evans. Mr. Evans, please
25 stand and face the jury.

1 MR. BELLAMY: Your Honor, Marquis Evans.

2 THE COURT: Marquis Evans, I'm sorry, Marquis Evans. Any
3 of you related by blood or connected by marriage with Marquis
4 Evans? Please stand.

5 (REPORTER'S NOTE: No response.)

6 THE COURT: Do any of you have any close personal
7 connections with Mr. Evans such as neighbor, friend, church
8 worker, co-worker, any close connections?

9 (REPORTER'S NOTE: No response.)

10 THE COURT: If any of you know Mr. Evans in any capacity
11 whatsoever, I respectfully request that you stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: (To Defendant) Be seated.

14 This involves a case of receiving stolen goods. Have any
15 of you personally or members of your immediate family ever
16 been charged with such a charge as receiving stolen goods,
17 please stand and we'll discuss it up here in person --
18 private. Anybody?

19 (REPORTER'S NOTE: No response.)

20 THE COURT: Now, you know, in life's experiences, we
21 develop biases and prejudices. And sometimes people say,
22 well, he's charged with something, he must be guilty; that's
23 just simply not the law and can never be the law. But having
24 said that now, I make the following inquiry: Do any of you
25 have such biases or prejudices that you feel that you cannot

1 give both the State of South Carolina and this Defendant a
2 fair trial? If you can -- if you stand and tell me that, I'll
3 excuse you. I want to make sure that this Defendant and the
4 State receives a fair trial.

5 Counsel for the State, any additional inquiry other than
6 the witness list?

7 MR. RICHARDSON: No, sir, Your Honor. If you want, I can
8 just go through my witness list and they can take a look at my
9 witnesses and see if they recognize them.

10 THE COURT: I'll have him call up here and they can
11 stand.

12 MR. RICHARDSON: Yes, sir. Thank you, Your Honor.

13 THE COURT: Mr. Bellamy, any other additional inquiry
14 other than -- I've got one other inquiry.

15 The State is represented by the Solicitor's Office of the
16 Fifteenth Circuit involving Horry and Georgetown Counties.
17 Any of you have any relatives working in that organization?
18 (REPORTER'S NOTE: No response.)

19 THE COURT: Any of you have any cases pending in the
20 Solicitor's Office?

21 Come forward, please.

22 Counsel, join me at the bench.

23 Yes, ma'am, your name?

24 JUROR 73: Mayon John Cox.

25 THE COURT: And your juror number?

1 JUROR 73: 73.

2 THE COURT: And what is your response?

3 JUROR 73: I recently had a burglary and I ---

4 THE COURT: A what?

5 JUROR 73: A burglary. About a year and half ago and the
6 -- I just received my letter from the Solicitor's Office
7 yesterday that the trial will be happening soon.

8 THE COURT: Okay. Would the fact that they are
9 representing you in this cause, would prejudice you as against
10 this Defendant?

11 JUROR 73: No, sir.

12 THE COURT: You can tell me under oath that you can
13 disregard the fact that they are representing you in that
14 case? It has nothing to do with this case?

15 JUROR 73: No, sir.

16 THE COURT: And you will based your law and evidence --
17 base your verdict on ---

18 JUROR 73: Yes, sir.

19 THE COURT: I think you're qualified.

20 MR. RICHARDSON: Your Honor, if I may inquire, did Mr.
21 Cox say he's a victim or been charged.

22 JUROR 73: Victim, yes.

23 MR. RICHARDSON: Victim, okay. Okay.

24 THE COURT: Yes. What -- would you have additional
25 inquire ---

1 MR. BELLAMY: No, sir, Judge.

2 THE COURT: I'm gonna ask them about you.

3 MR. BELLAMY: Thank you.

4 MR. RICHARDSON: Thank you, sir.

5 THE COURT: Mr. Bellamy represents the Defendant. Are
6 any of you clients of Mr. Bellamy or have you been in the last
7 year, please stand.

8 (REPORTER'S NOTE: No response.)

9 THE COURT: Yes, ma'am? Come forward, please.

10 I believe you were my foreperson on Tuesday.

11 JUROR 207: I was. This is just a question regarding
12 your last question as far as having pending things. Is it
13 just for you or for members of your immediate family?

14 THE COURT: Do you have any cases pending in the
15 Solicitor's Office?

16 JUROR 207: Not me.

17 THE COURT: Who does?

18 JUROR 207: My father.

19 THE COURT: What kind of case is it?

20 JUROR 207: I don't know the exact charge but it's
21 probably some sort of ---

22 THE COURT: That wouldn't affect your ability to be fair
23 in this case, would it?

24 JUROR 207: No.

25 THE COURT: You can base your law -- verdict on the law

1 and evidence here?

2 JUROR 207: Yes.

3 THE COURT: I think you can.

4 JUROR 207: Okay.

5 MR. BELLAMY: What's her number, Judge?

6 JUROR 207: 207.

7 THE COURT: I want to thank you for your services.

8 JUROR 207: Thank you.

9 MR. RICHARDSON: Thank you, ma'am.

10 THE COURT: Nobody answered for Mr. Bellamy.

11 All right. Ladies and gentlemen, this young man to my
12 left is my associate, law clerk, graduate of the Law School of
13 the University and has been admitted to the South Carolina Bar
14 and renders invaluable service to me. He's going now to read
15 the name of some potential witnesses and my inquiry is this,
16 any of you related by blood or marriage or have any close
17 relationship with these folks. Most of them are with the
18 Horry County Police Department and I'm sure you casually know
19 them but that's not what I need to know. If there's any close
20 relationships. Please read them, Trey.

21 LAW CLERK: Captain Dale Buchanan; Lieutenant ---

22 MR. RICHARDSON: Your Honor, do you want the witnesses to
23 stand whenever he calls them?

24 THE COURT: Yes.

25 LAW CLERK: Captain Dale Buchanan.

1 THE COURT: Anybody stand?

2 LAW CLERK: No, sir, Your Honor.

3 THE COURT: Next?

4 LAW CLERK: Lieutenant Jamie Dabari.

5 MR. RICHARDSON: Lieutenant Debari is not here; he's in
6 another court today.

7 LAW CLERK: Detective Michael Michael Kathman; Detective
8 Scott Kluska, K-L-U-S-K-A; Lori Rabon ---

9 MR. RICHARDSON: Lori is not present with us today.

10 LAW CLERK: Dayne C. Dukes; Jay Richards; Richard
11 Martino; Antoinette Cross.

12 THE COURT: That concludes the witness list. Nobody has
13 indicated any potential reference to them.

14 Anything further now from the State before I select the
15 jury?

16 MR. RICHARDSON: No, sir, Your Honor. We're ready to go.

17 THE COURT: For the Defendant?

18 MR. BELLAMY: Your Honor, just -- I was in another court
19 on Monday when the general qualifications took place. If,
20 when the jurors come up, if they could state their occupation
21 and their spouse's occupation for me, I would appreciate that,
22 Judge.

23 THE COURT: I'll be glad to permit that.

24 MR. BELLAMY: Thank you, Judge.

25 THE COURT: As you come forward, please state your

1 spouse's name and occupation, please.

2 The strikes, gentlemen, will be obviously five and five.
3 I want two alternates and the strikes will be one and two
4 separately as to those alternates.

5 Madame Clerk, please proceed to call of the jury.

6 CLERK: When I call your name, please come to the front
7 of the courtroom, turn around and face the back of the
8 courtroom and bring any belongings that you have with you.

9 355, Evan Stanley.

10 What say the State?

11 MR. RICHARDSON: Please present Mr. Stanley.

12 CLERK: Defense?

13 MR. BELLAMY: Your Honor, if he could give us his
14 occupation?

15 THE COURT: Your occupation, Mr. ---

16 JUROR 355: Front desk at the Best Western Carolinian.

17 THE COURT: And your wife, she works?

18 JUROR 355: I'm single.

19 THE COURT: Okay.

20 MR. BELLAMY: Swear Mr. Stanley; thank you, sir.

21 CLERK: Please be seated in the jury box.

22 125, Brian Gibson.

23 What say the State?

24 MR. RICHARDSON: Please present Mr. Gibson.

25 MR. BELLAMY: Could we get his occupation, Judge?

1 JUROR 125: Retail Sales and Management, my wife does the
2 same thing.

3 MR. BELLAMY: We would excuse Mr. Gibson from the trial
4 of this particular case, Your Honor.

5 CLERK: You are excused from this particular case.

6 78, Snow Davis.

7 What say the State?

8 MR. RICHARDSON: Please present Ms. Davis.

9 CLERK: Defense?

10 MR. BELLAMY: Again, Your Honor, the occupation. I
11 apologize. If we could get her occupation?

12 THE COURT: May I have your occupation, please, ma'am?

13 JUROR 78: Retired.

14 THE COURT: From what?

15 JUROR 78: Housekeeping.

16 THE COURT: Thank you.

17 MR. BELLAMY: Seat Ms. Davis. Thank you, ma'am.

18 CLERK: Please be seated in the jury box.

19 284, Jackson Parker.

20 What say the State?

21 MR. RICHARDSON: Please present Mr. Parker.

22 CLERK: Defense?

23 MR. BELLAMY: Seat Mr. Parker.

24 CLERK: Please be seated in the jury box.

25 THE COURT: Mr. Parker -- Mr. Parker, that's all right.

1 I had the door locked.

2 CLERK: 343.

3 MR. RICHARDSON: What number was that, Madame Clerk?

4 THE COURT: Mr. Parker, we're glad to have you.

5 CLERK: 343, Adam Smith.

6 THE COURT: Occupation, please.

7 JUROR 343: Tow truck driver for Allen's Auto Service.

8 CLERK: What say the State?

9 MR. RICHARDSON: Please present Mr. Smith.

10 CLERK: Defense?

11 MR. BELLAMY: Seat Mr. Smith. Thank you, sir.

12 CLERK: Please be seated in the jury box.

13 10, Justyn Barber.

14 What say the State?

15 THE COURT: Good morning. Occupation, please, ma'am.

16 JUROR 10: Steak & Shake, grill operator.

17 MR. RICHARDSON: Please excuse Mr. Parker.

18 CLERK: You are excused from this particular case.

19 106, Mary Flynn.

20 JUROR 106: I work for a local bank in electronic banking

21 support and I also cashier for a local retail company.

22 CLERK: What say the State?

23 MR. RICHARDSON: Please present Ms. Flynn.

24 CLERK: Defense?

25 MR. BELLAMY: We would excuse Ms. Flynn from the trial of

1 this particular case, Your Honor.

2 CLERK: You're excused from this particular case.

3 207, Nicole Kocot.

4 JUROR 207: I'm a computer programmer and ---

5 CLERK: What say the State?

6 MR. RICHARDSON: Please present Ms. Kocot.

7 CLERK: Defense?

8 MR. BELLAMY: We would excuse Ms. -- is it Kocot?

9 JUROR 207: Uh-huh (affirmative response).

10 CLERK: You are excused from this particular case.

11 291, Uthumporn Perras.

12 What say the State?

13 JUROR 291: I'm a hair stylist and my husband a fire
14 inspector.

15 MR. RICHARDSON: Please present Ms. Perras.

16 CLERK: Defense?

17 MR. BELLAMY: Seat Ms. Perras.

18 CLERK: Please be seated in the jury box.

19 241, Kimberly McCloud.

20 JUROR 241: Warranty administrator for a car dealership.

21 CLERK: What say the State?

22 MR. RICHARDSON: Please present Ms. McCloud.

23 CLERK: Defense?

24 MR. BELLAMY: Seat Ms. McCloud.

25 CLERK: Please be seated in the jury box.

1 152, Brenda Herring.

2 JUROR 152: Occupation is a packer and caregiver for my
3 mother.

4 CLERK: What say the State?

5 MR. RICHARDSON: Ms. Herring, did you say a packer?

6 JUROR 162: Packer, inspector.

7 MR. RICHARDSON: Okay. Please present Ms. Herring.

8 CLERK: Defense?

9 MR. BELLAMY: Seat Ms. Herring.

10 CLERK: Please be seated in the jury box.

11 77, John Danford.

12 JUROR 77: I'm a senior planner with Georgetown Planning
13 and Zoning and my wife is in school.

14 CLERK: What say the State?

15 MR. RICHARDSON: Please present Mr. Danford.

16 CLERK: Defense?

17 MR. BELLAMY: We would excuse Mr. Danford from the trial
18 of this particular case, Your Honor.

19 CLERK: You are excused from this particular case.

20 368, Cornelia Todd.

21 CLERK: State your occupation, please.

22 JUROR 368: I work for (inaudible)-Patrick, I'm an
23 assembly clerk.

24 CLERK: What say the State?

25 MR. RICHARDSON: Please present Ms. Todd.

1 CLERK: Defense?

2 MR. BELLAMY: Seat Ms. Todd. Thank you.

3 CLERK: Please be seated in the jury box.

4 304, Deborah Rabon. State your occupation, please?

5 JUROR 304: Horry County Schools Administrative
6 Assistant.

7 CLERK: What say the State?

8 MR. RICHARDSON: Please present Ms. Rabon.

9 CLERK: Defense?

10 MR. BELLAMY: We would excuse Ms. Rabon from this
11 particular case.

12 CLERK: You are excused from this particular case.

13 195, Barbara Jones.

14 JUROR 195: I'm employed at Walmart, Assistant Manager.

15 CLERK: What say the State?

16 MR. RICHARDSON: Please present Ms. Jones.

17 CLERK: Defense?

18 THE COURT: Occupation, Ms. Jones?

19 JUROR 195: I work at Walmart.

20 MR. BELLAMY: Seat Ms. Jones, Your Honor.

21 CLERK: Please be seated in the jury box.

22 243, Russell McDonald.

23 JUROR 243: Chief Engineer for Canfor Southern Pine.

24 CLERK: What say the State?

25 MR. RICHARDSON: Please present Mr. McDonald.

1 CLERK: Defense?

2 MR. BELLAMY: Seat Mr. McDonald. Thank you.

3 CLERK: Please be seated in the jury box.

4 127, Danielle Goodman.

5 JUROR 127: Cashier at Wilco, single.

6 CLERK: What say the State?

7 MR. RICHARDSON: Please present Ms. Goodman.

8 CLERK: Defense?

9 MR. BELLAMY: Seat Ms. Goodman.

10 CLERK: Please be seated in the jury box.

11 33, Linda Bratcher.

12 JUROR 33: I was the manager of a federal credit union
13 and I also work for Horry County Library as a sub and I'm
14 currently retired.

15 CLERK: What say the State?

16 MR. RICHARDSON: Please present Ms. Bratcher.

17 MR. BELLAMY: Seat Ms. Bratcher.

18 CLERK: Please be seated in the jury box.

19 THE COURT: That will constitute the jury. We'll have
20 two alternates, one and two, please.

21 CLERK: 56, Chasity Christian. Please state your
22 occupation.

23 JUROR 56: (Inaudible.)

24 COURT REPORTER: I'm sorry.

25 JUROR 56: I'm unemployed.

1 CLERK: What say the State?

2 MR. RICHARDSON: Please present Ms. Christian.

3 CLERK: Defense?

4 MR. BELLAMY: Seat Ms. Christian.

5 CLERK: Please be seated in the jury box.

6 18, Paul Behrendt.

7 JUROR 18: Service technician for General Electric.

8 CLERK: What say the State?

9 MR. RICHARDSON: Please present Mr. Behrendt.

10 CLERK: Defense?

11 MR. BELLAMY: How do you pronounce your name?

12 JUROR 18: Behrendt.

13 MR. BELLAMY: Behrendt. Seat Mr. Behrendt. Thank you.

14 CLERK: Please be seated in the jury box.

15 THE COURT: That constitutes the jury and the two
16 alternates.

17 Ms. Margol, escort the jury to the jury room, please.

18 Be calling you back in just a few minutes.

19 (REPORTER'S NOTE: The following takes place outside the
20 presence of the jury for this particular case.)

21 THE COURT: For the State, any questions concerning the
22 validity of the jury?

23 MR. RICHARDSON: Your Honor, I do have a matter to take
24 up outside the presence of the jury.

25 THE COURT: Sir?

1 MR. RICHARDSON: I do have a matter to take up outside
2 the presence of the jury.

3 THE COURT: Let the jury please step outside. Please
4 remain. I have a matter and I may be calling you back.

5 Mr. Bailiff, have them escorted out and remain out there
6 for further instructions.

7 (REPORTER'S NOTE: The remaining jury panel exits courtroom.)

8 THE COURT: Yes, sir, counsel?

9 MR. RICHARDSON: Your Honor, I would challenge the
10 strikes of the Defense.

11 THE COURT: On what basis?

12 MR. RICHARDSON: All the strikes were Caucasian
13 individuals, two white males, three white females. They
14 appear to be non-race neutral.

15 THE COURT: Well, let me hear from counsel for the
16 Defense.

17 MR. BELLAMY: Well, Judge, first of all, out of thirty-
18 five people out there, there were only four African-American
19 jurors. It's overwhelmingly a white jury. But I can give you
20 reasons if you want, Judge, because I wrote down ---

21 THE COURT: I think -- and I agree with you there was
22 only four African-Americans out there and the Defendant is
23 Caucasian but let me hear the reasons anyway.

24 MR. BELLAMY: Judge, on Number 125, that individual was
25 involved in retail sales where things are stolen, shoplifting,

1 that's why we struck that person.

2 THE COURT: That was appropriate under facts in this
3 case.

4 MR. BELLAMY: Likewise, 106, it was a retail sales
5 person. Juror Number 207 ---

6 THE COURT: I would think that's an appropriate race
7 neutral strike.

8 MR. BELLAMY: Number 207, Judge, that was the third juror
9 I struck, she had previously served on a jury as the
10 foreperson this week which convicted an individual. Based on
11 that ---

12 THE COURT: The blond-headed lady.

13 MR. BELLAMY: Yes, sir.

14 THE COURT: That's race neutral.

15 MR. BELLAMY: 77, that was a county employee, I believe,
16 somebody with the planning department. We struck them because
17 they work in this building and a county employee. It's not in
18 the courthouse but because they work for the county.

19 THE COURT: Were any African-Americans selected?

20 MR. BELLAMY: Yes, sir, Judge. I believe one or two --
21 I'm not sure of the exact number.

22 MR. RICHARDSON: Four, including the alternate, Your
23 Honor, that was selected ---

24 THE COURT: Sir?

25 MR. RICHARDSON: Four African-Americans were selected to

1 sit on the jury including the alternate. Three on the main

2 ---

3 THE COURT: Well, that's about all we had in the venire,
4 isn't that; isn't that true?

5 MR. RICHARDSON: Yes, sir, Your Honor. If I may respond
6 to that, Mr. Bellamy indicates he struck due to their
7 involvement in retail. We've got people that work -- I think
8 we had one lady that works -- we've got Juror Number 195, is a
9 Walmart Assistant Manager.

10 MR. BELLAMY: Judge, I was out of strikes at the time she
11 came up.

12 THE COURT: I understand. He was out of strikes.

13 MR. RICHARDSON: If I may just go back, Your Honor. ---

14 THE COURT: I signaled to him five strikes were out at
15 the time.

16 MR. RICHARDSON: Yes, Your Honor. If I may just review
17 quickly, please, sir.

18 THE COURT: I do believe that all the African-Americans
19 were selected.

20 MR. RICHARDSON: They were, Your Honor, but that -- just
21 because we did select African-Americans, I have no problem
22 with them being on the jury; I have a problem with striking
23 all Caucasians. The Defendant is black.

24 THE COURT: He has nothing else to strike if all the
25 blacks were on the jury.

1 MR. RICHARDSON: Yes, sir, Your Honor. I understand but
2 I am just saying the race neutral reason, I don't believe, was
3 given. They're ---

4 THE COURT: I suspect and I conclude they were race
5 neutral in every respect and the one that he did select with a
6 retail background was chosen after I signaled to him that his
7 strikes were over. I conclude that the jury was properly
8 drawn and I respectfully deny your motion.

9 MR. RICHARDSON: Certainly, Your Honor. Thank you, Your
10 Honor.

11 MR. BELLAMY: May I just run to the restroom for just --
12 it'll take me a minute.

13 THE COURT: Yes, sir. Mr. Bailiff.

14 DEPUTY: Yes, Your Honor.

15 THE COURT: Do I need to bring the jury back in or can
16 you excuse them from out there?

17 DEPUTY: Your preference, Your Honor.

18 THE COURT: Excuse them for the day and for the week with
19 my gratitude.

20 DEPUTY: Absolutely, Your Honor.

21 THE COURT: Thank you.

22 *****OFF THE RECORD*****

23 (On the Record.)

24 (REPORTER'S NOTE: The following takes place after a break and
25 outside the presence of the jury.)

1 THE COURT: All right. We are designating as foreperson
2 of this jury Ms. Linda Bratcher, B-R-A-T-C-H-E-R, Bratcher.

3 Bring my jury in, please.

4 MOTIONS:

5 MR. BELLAMY: Judge, just one thing, if the State has
6 witnesses which were at the same place at the same time, I
7 would ask that they be sequestered so that one witness doesn't
8 hear what the other witness said.

9 THE COURT: Sequester your witnesses other than those who
10 are here, the investigating officer is entitled to be here.

11 THE COURT: Bring the jury in, please.

12 MR. RICHARDSON: Buchanan will be serving as the chief
13 investigating officer but he is the chief ranking officer.

14 MR. BELLAMY: So, he'll stay and everybody will leave?

15 MR. RICHARDSON: Yeah, all the other officers.

16 (REPORTER'S NOTE: The following takes place inside the
17 presence of the jury.)

18 COURT TO JURY:

19 THE COURT: Ms. Bratcher, I have designated you as
20 foreperson of the jury. You will preside in the jury room
21 during the deliberations, be the jury spokesman in the
22 courtroom and I will of course keep you fully advised of your
23 duties. Please occupy that chair at all times. The two
24 alternates will occupy those chairs; the rest of you may sit
25 as you choose.

1 Swear the jury, please.

2 JURY IS DULY SWORN:

3 (REPORTER'S NOTE: Jury responds unanimously in the
4 affirmative.)

5 THE COURT: Madame Foreman, ladies and gentlemen,
6 understanding that for some of you this may have been the
7 first time you've had the opportunity to serve as a juror or
8 in a criminal case. Let me generally describe for you our
9 procedure. It's not a substitute for the detailed
10 instructions that I will give you at the conclusion of all the
11 testimony. The first thing that will occur is that the
12 Solicitor, who has the burden of proof in this case will give
13 you an opening statement. That's kind of a guideline to help
14 you follow the introduction of the testimony. Mr. Bellamy,
15 representing the Defendant will thereafter give you a
16 statement as to his position. Following that, we will take
17 the testimony of the various witnesses in the case. Now,
18 there are several important things that you need to know.
19 First is that this Defendant is presumed innocent and that
20 presumption of innocence remains with him throughout the
21 trial, during deliberations until you, the jury, have found
22 him guilty if at all. He is presumed innocent and he doesn't
23 have to prove a thing.

24 Now, during the trial of the case, I tell you, too, that
25 you twelve are the sole and only finders of the facts in this

1 case. There is nobody in this wide world that can tell you
2 what the facts are. And you may say, and properly so, well,
3 Judge, I just got to your courtroom, how do I know what the
4 facts are. Well, as I've indicated, there will be various
5 witnesses to give their version of what occurred. There will
6 be documents in the trial of the case which will be with you
7 during your deliberations. As these witnesses testify, it is
8 your duty to judge their credibility, believability. You may
9 believe all of what a witness says or none. You may believe a
10 small portion and disregard the larger. Obviously, you would
11 not determine the truth or falsity of a matter by counting up
12 the number of witnesses who may have testified on one side or
13 the other. In coming to court for Horry County, you bring
14 your experiences to bear and you bring your life's experiences
15 and we know that when folks, everyday, tell us things, we size
16 them up. There are certain tools that we use, some of the
17 tools we use, we may say, Hey, how did they know about what
18 they're testifying to. We may say to ourselves, Hey, did this
19 person want me to believe one thing or another? We might say,
20 Is that testimony consistent with other testimony that I've
21 known in the case? And these are tools that we use. You, of
22 course, may think of others but you just bring your common
23 sense to bear in judging the credibility and believability of
24 every witness who testifies, and after doing that, you take
25 the facts as you find them to be, apply those facts to the law

1 of this case.

2 Now, in that connection, I am charged with certain
3 responsibilities as are you are. My responsibilities are to
4 preside over the trial of the case and to permit appropriate
5 evidence into the trial of the case for your consideration as
6 finders of the facts. However, I emphasis to you that I am
7 not a factual -- I have no factual opinion about anything in
8 this case. I am not entitled to a factual opinion. And I say
9 to you, if any word, ruling, mannerism of mine might tend to
10 indicate to any of you how I feel about any factual situation
11 between these litigants, please disregard that. You and you
12 alone are my finders of the facts, you and you alone are the
13 judges, the sole judges, of the credibility of the witness.

14 You may have your opening statement.

15 STATE'S OPENING STATEMENT:

16 MR. RICHARDSON: Thank you. Big floppy ears, two tons or
17 more, walks around on four legs, has a long trunk, tusks; I
18 almost guaranty you everyone of y'all have got an elephant in
19 your mind right now. I didn't tell you it was an elephant but
20 all the clues I gave you lead to the one and only one
21 conclusion. It's an elephant. I didn't tell you it works in
22 a zoo or at the circus but you know. This case is built on a
23 lot of circumstantial evidence and that's what circumstantial
24 evidence is. The Judge will tell you at the conclusion,
25 there's no difference in weight required by circumstantial or

1 direct evidence but circumstantial evidence is just that. A
2 Scooby-Doo mystery, you look for collection of clues that lead
3 to one conclusion. And in this case, the evidence that you're
4 gonna see will tell you that back on July 13th, 2011, the
5 Defendant, Marquis Evans, was in possession, had received
6 goods that he knew were stolen or should have known were
7 stolen. That's all the State's got to prove. That's all the
8 State's got to prove beyond a reasonable doubt. And that
9 reasonable doubt, all that means is, I've got to give you
10 evidence that leaves you firmly convinced of the Defendant's
11 guilt and that's what we're gonna do. We're gonna describe
12 the elephant and you're gonna know the elephant's there.

13 You're gonna hear from a witness that works, Mr. Dayne
14 Dukes, that works a security consultant, loss prevention and
15 recovery for Amerigas -- Airgas -- I'm sorry -- Airgas
16 National Welders. It's a tool and die company. They sell and
17 lease equipment. He'll tell you about them a little bit. And
18 he'll tell you about a store that was burglarized back on June
19 24th, 2011, up in Wilson, North Carolina. He was contacted,
20 asked to do an investigation and he'll tell you how he found
21 the property that was stolen from that store on Craig's List,
22 the on-line pawn shop. He found it two days later advertised
23 up in Virginia. He's gonna then tell you they tried to
24 recover the property at that point but that listing was taken
25 down and then they discovered the listing had been re-posted

1 in the Myrtle Beach area of South Carolina. Mr. Dukes is
2 going to tell you about the investigation that he conducted,
3 what steps he took and what plans he made in trying to recover
4 that lost property. He'll tell you that he got in contact
5 with the seller on this Craig's List, made arrangements to
6 come down to Horry County and purchase that equipment. He'll
7 tell you how he contacted the Horry County Police Department
8 and asked for assistance, that a crime had been committed and
9 crime was to be committed. And you're gonna hear how on July
10 13th, 2011, after making arrangements with this Defendant, Mr.
11 Dukes and the Horry County Police Department showed up at Big
12 Lots parking lot, right here in Conway, Horry County, and
13 arranged a purchase of a little less than half price, all this
14 equipment that got stolen. They'll tell you that they made
15 the arrest there, they arrested the Defendant. And low and
16 behold, in this vehicle, they found all of this equipment that
17 had been stolen out of Wilson, North Carolina. He'll tell you
18 how serial numbers had been removed. And there's a lot of
19 other evidence you'll hear during the course of the case. And
20 I'm not gonna bore you with all the details at this point
21 because you're gonna get to hear it all from the witness
22 stand, you're gonna get to hold some of the evidence in your
23 hands. But at the conclusion of this case, all that evidence,
24 all the testimony, the only evidence you will have before you
25 will lead you to one conclusion, that back on July 13th,

1 2011, here in Horry County, the Defendant, knowingly, should
2 have known that he possessed stolen goods. That's what we're
3 gonna show you. And once you hear all the evidence, It'll
4 leave you one thing to do, do your job, weigh out the evidence
5 and render and true and just verdict, the Defendant is guilty.

6 Thank you.

7 THE COURT: Thank you, counsel. Mr. Bellamy?

8 DEFENDANT'S OPENING STATEMENT:

9 MR. BELLAMY: May it please the Court, Your Honor.
10 Madame Forelady and ladies and gentlemen of the jury, I think
11 the Solicitor just summed it up kind of what Judge Cottingham
12 told you a little bit earlier, he's just guilty, he's just
13 guilty. He's charged; he's just guilty. Let's convict him.
14 Let's convict him because -- I'll tell you right now, my
15 client was here in Horry County back in 2011. My client had
16 items in his car, ain't no question about it; we ain't gonna
17 argue about that. But there's more to it than that. The
18 State has a burden and we use the word burden of proof, not
19 obligation, they should do it, burden. That's a strong word
20 that we use. When somebody has a burden on them and that
21 burden is on Mr. Richardson and the State of South Carolina.
22 Not to prove to you that my client had something that -- and
23 he says it was stolen, I'll leave that up to you to determine
24 if in fact those items were stolen but they got to prove he
25 knew it. And what he's telling you, well, we got

1 circumstantial evidence. What I suggest that he's telling you
2 is they're gonna ask you to take leaps of faith, assume a lot
3 of things, figure it out, suppose, be suspicious, because
4 circumstantial evidence is like a chain. Each link must be
5 strong enough to hold the weight. If just one link in a chain
6 is defective or weak, that chain breaks, doesn't it? But what
7 he's gonna ask you to do -- I suggest you do in this trial is
8 to hook that chain back together based on assumptions,
9 suspicions, and things of that nature.

10 He used the example, describing an elephant. He did a
11 pretty good job. And I don't have it up here with me, but if
12 I had a matchbox and I shook it and you could hear the shaking
13 back and forth, y'all all would assume there are matches in
14 there, wouldn't you? But I could open it up and it could be
15 paperclips. You don't know until you open it up and you look
16 at it.

17 Now, Judge Cottingham has said my client has specifically
18 pled not guilty. He sits here presumed to be innocent. Your
19 job is not to try Mr. Evans but it's to try the State of South
20 Carolina and their burden of proof. Mr. Evans doesn't have to
21 prove anything. And I say to you you probably come in here
22 and you say, well, we don't know anybody. We don't know you,
23 Mr. Bellamy; we don't Mr. Richardson; we don't know Mr. Evans;
24 and we don't know these people as they've asked you the
25 questions and make sure you can be fair and unbiased. How in

1 the world can I presume Mr. Evans to be not guilty; I don't
2 know him. How can I do that? Now, Judge Cottingham said, a
3 lot of people come in and figure, well, they're charged and
4 they're guilty -- they're charged, they're probably guilty, so
5 I think a lot of people might come in like that. Or you might
6 be somewhere in the middle of, I don't know either way. But,
7 what the Judge tells you, you've got to be all the way over
8 here, I believe he's innocent. How do you do that if you
9 don't know him? Well, let me give you an example to suggest
10 how you as jurors can do that. Let's say we all have some
11 person in our lives, might be our husband, wife, might not be,
12 might be our mother, grandmother, child, preacher, somebody,
13 somebody we trust and have the most confidence and faith in in
14 the world, whoever that might be for you or for me. And
15 imagine you get a phone call and they say, this person in your
16 life has been charged with this crime. And the first thing I
17 would say or would think to myself is, I don't believe it. I
18 do not believe that because I know that person and they
19 wouldn't do that, not that you couldn't, if they could prove
20 it. But that's presumption of innocence. That first follow-
21 up, I know that person wouldn't do that. That's how you must
22 view Mr. Evans today as that person in your life.

23 Folks, this is an important day for the State, but
24 equally an important day for Mr. Evans. He's presume
25 innocent, the burden squarely on the State of South Carolina.

1 When they talk to you about the evidence and the things,
2 they're gonna tell you about everything that happened. I hope
3 they tell you about the statement he gave to them; I hope they
4 tell you about his cooperating. He wrote out the statement; I
5 hope they present that to you too, so that they present
6 everything.

7 As Judge Cottingham said, there's probably no higher
8 service other than serving in our military other than jury
9 service in the criminal case because of the very freedom for
10 you, for me, and today for Mr. Evans, is on the line. Look at
11 my client as innocent. Hold the State's feet to the fire and
12 ask yourself, as the evidence is presented, how can they prove
13 that he knew that whatever was in his car was stolen.

14 Listen to my questions, listen to Mr. Richardson's
15 questions. Ask yourself what's presented and what's not
16 presented in the case. And I believe, ladies and gentlemen of
17 the jury, the evidence will show you at the end of the day
18 that the State of South Carolina has not proven their case
19 beyond a reasonable doubt and that your verdict should be not
20 guilty.

21 Thank you so much.

22 THE COURT: Thank you, Mr. Bellamy.

23 Call your first witness for the State, please.

24 MR. RICHARDSON: Thank you, Your Honor. The State calls
25 Mr. Dayne Dukes.

1 DAYNE CHRISTOPHER DUKES, HAVING BEEN
2 SWORN, TESTIFIED AS FOLLOWS:

3 CLERK: Would you please state your full name and spell
4 your last name.

5 MR. DUKES: Yes. Name -- full name is Dayne C. Dukes,
6 Dayne Christopher Dukes, D-U-K-E-S.

7 DIRECT EXAMINATION OF DAYNE CHRISTOPHER DUKES BY MR.
8 RICHARDSON:

9 Q: Good morning, Mr. Dukes. I guess I can still call it
10 morning?

11 A: Yes, sir, it is.

12 Q: Could you tell us a little bit about yourself, where
13 you're from, what kind of work you do and that kind of thing?

14 A: Yes. I reside in Florida. I have lived there for the
15 past twenty-seven years. I am presently working for a company
16 known as Airgas National Welders, which is a national
17 organization with 1185 locations throughout the United States,
18 Hawaii and Alaska. I have been providing, taking care of
19 their loss prevention department over the -- these -- this
20 period of time. And my background is I have my own consulting
21 firm in Florida. I started to work for my father's company
22 and then continued the company after he passed. So, I've been
23 doing this for over thirty-seven years.

24 Q: And as a security agency working directly for Airgas, and
25 I'm sorry I messed up and called them Amerigas or -- Airgas

1 National Welders, you said that there are locations located
2 throughout the nation, correct?

3 A: That is correct.

4 Q: Any in the Carolinas?

5 A: They have a total of -- between North and South Carolina
6 and Georgia, approximately fifty-seven locations for this
7 region.

8 Q: And what kind of business is Airgas National Welders?

9 A: Airgas National Welders is a company that sells, of
10 course, welding machines, supplies such as saw blades, wire,
11 they provide cylinders to hospitals, to folks that are in the
12 welding business and that type of industry. They sell to the
13 public, they retail and also wholesale.

14 Q: But pretty specific equipment, correct?

15 A: That is correct.

16 Q: And you said you're in charge of loss prevention for
17 Airgas?

18 A: That is correct.

19 Q: How many people work under you?

20 A: At different times, somewhere between -- we'll have
21 between eight and fifteen people working for us on a full-time
22 basis.

23 Q: Thank you. And in working in loss prevention, is that
24 security?

25 A: Yes.

1 Q: What kind of duties do you take over as you work for
2 Airgas?

3 A: We have a team of forensic auditors that work on my staff.
4 We have private investigators that work for us, ex-police
5 officers that have retired and moved on to investigation work
6 for us. We do this from California all the way to the east
7 coast and up in other states and Porto Rico.

8 Q: And in working as security/loss prevention and recovery
9 for Airgas, are you familiar with their business records,
10 their practices?

11 A: Yes, I am

12 Q: And in general, say a store has some kind of loss, what
13 happens?

14 A: We would get contacted by a division president or a CFO of
15 a different region. There are total of twelve regions in
16 Airgas and they divide up the country that way with each with
17 about fifty to a hundred-and-fifty locations that those
18 regions handle.

19 Q: And you may've said it earlier but how long have you been
20 working for Airgas?

21 A: We're approaching eight years here, coming up.

22 Q: So, quite a while now?

23 A: Yes, sir.

24 Q: And you were so employed back in 2011?

25 A: That is correct.

1 Q: Now, in your capacity as a loss prevention specialist,
2 loss recovery specialist for Airgas National Welders, did you
3 have the opportunity to become involved in an investigation
4 with regard to a burglary that occurred in Wilson, North
5 Carolina?

6 A: Yes, I had received a phone call right -- probably July
7 1st from our Division President, Steven Marinelli to take a
8 look at this situation, that this had occurred. Exchanged
9 some emails back and forth with some Wilson, North Carolina
10 upper management folks, district manager. And at that point,
11 contacted the Wilson Police Department, obtained copy of the
12 police report and the inventory that was listed as being
13 removed during the break-in at our Airgas National Welders
14 location in Wilson, North Carolina.

15 Q: And you said you requested a report.

16 A: Yes, we -- and we obtained one.

17 Q: And that's a report that would be part of the public
18 record, correct?

19 A: That is correct, sir.

20 MR. BELLAMY: Your Honor, I'm not sure if he's intending
21 to introduce it, this is a police report not prepared by him.
22 We would object to it.

23 THE COURT: I'm not gonna permit a police report to be
24 introduced.

25 MR. BELLAMY: We would object, Your Honor.

1 THE COURT: Sustained.

2 MR. RICHARDSON: Your Honor, as far a public record it's
3 under the public record rule.

4 THE COURT: He, of course -- he can testify from it.
5 It's a matter -- it's a business record but it will not be
6 introduced by statute as you understand.

7 MR. RICHARDSON: Yes, sir, Your Honor.

8 BY MR. RICHARDSON:

9 Q: You reviewed the report, though?

10 A: Yes, I did.

11 MR. RICHARDSON: If I may show it to him just for
12 identification purposes.

13 THE COURT: You may.

14 MR. RICHARDSON: Not for introduction into evidence.

15 STATE'S EXHIBIT NUMBER ONE

16 MARKED FOR IDENTIFICATION.

17 BY MR. RICHARDSON:

18 Q: Let me show you what's been marked for identification
19 purposes only as State's Number One, I believe.

20 A: Yes, sir.

21 Q: Do you recognize State's Number One?

22 A: Yes, sir, I do.

23 Q: And what is State's Number One?

24 A: It is a police report from Wilson, North Carolina, that is
25 dated June 25th, 2011, at approximately 10 A.M.

1 THE COURT: Is the author of that report here?

2 MR. RICHARDSON: No, sir, Your Honor. It's a Wilson,
3 North Carolina police officer.

4 THE COURT: I see.

5 MR. RICHARDSON: It's just their police report.

6 THE COURT: All right, sir.

7 MR. RICHARDSON: For identification purposes only, Your
8 Honor.

9 THE COURT: All right.

10 BY MR. RICHARDSON:

11 Q: Is that the report you're relying on or one of the things
12 you relied on in formulating some of your documentation?

13 A: Yes, sir, it is.

14 Q: What else did you rely on in formulating your
15 documentation, your investigation?

16 A: Well, we went to the facility with the police officers up
17 there, the Detective Plyer (spelled phonetically) and looked
18 at how entry was made into the location in Wilson. At that
19 point, we started to do some research because we had had some
20 similar activity take place in North Carolina at some other of
21 our branches.

22 Q: And the date of this burglary, do you recall what the date
23 of that burglary was at Wilson, North Carolina?

24 A: Yes, it was the evening of somewhere between evening and
25 morning of June 24th, 2011.

1 Q: So, the evening of June 24th, maybe into the morning of
2 June 25th?

3 A: That is correct.

4 Q: And did you formulate -- were you able to obtain a list of
5 items that were reported stolen from that?

6 A: Right. We recovered a list after a complete inventory was
7 done of the branch, we obtained a listing of approximately
8 \$13,000 in assets that had been removed during this event.

9 Q: And these, items were -- what type of items were they?

10 A: It was assorted, welding machines, portable welding
11 machines, cables, torches, saws, expensive saws, table saw,
12 assorted saw blades, wire, solder and things of that nature.

13 Q: Now, with regard to -- once you obtained this list, you
14 had serial numbers and everything?

15 A: Correct. We did have some serial numbers, yes.

16 Q: And those were listed with the particular pieces of
17 equipment.

18 A: They were listed with the manufacturers as coming -- being
19 shipped into our distribution center, documented and then
20 forwarded on to the branches that then sells them from the
21 distribution center.

22 Q: And as you stated previously, this is pretty particular
23 equipment, I mean, you don't find it at Lowe's?

24 A: No. You may be but it's -- primarily it's sold in welding
25 supply locations.

1 Q: Once you learned about the burglary ---

2 A: Right.

3 Q: --- and you obtained a list; you began your investigation?

4 A: We did at that point.

5 Q: Now, we stated earlier that you worked in the capacity of
6 doing loss prevention, loss recovery.

7 A: Right.

8 Q: What steps, if any, did you take to try and investigate
9 further or try to regain the lost property?

10 A: Well, we then at that point, we had one of our forensic
11 auditors who I sat with during this investigation. We went on
12 the internet to Craig's List.

13 Q: And what -- for everybody's benefit, some of us may've
14 heard that -- what is Craig's List?

15 A: Craig's List is a place that folks can go and sell assets
16 and they can, you know, obtain payment for what they're
17 selling out there in the market place.

18 Q: Kind of like an on-line classified section?

19 A: On-line classified section or -- that's what I would call
20 it, yes.

21 Q: And with regard to Craig's List, you're familiar with it?

22 A: Yes, I am familiar with it.

23 Q: And is Craig's List, for lack of better term, is it
24 particular to any certain area?

25 A: Nah, it's quite diverse, I believe. It's -- sell cars,

1 sell tools, golf clubs, sporting equipment.

2 Q: Geographically, it is particular to an area, like ---

3 A: No, it's open anywhere in the world on the internet.

4 Q: Does Craig's List target certain areas, like if I wanted
5 to buy something in Columbia, South Carolina, would I just ---

6 A: You can specifically ---

7 MR. BELLAMY: Your Honor, I would object to what Craig's
8 List -- he's not an expert on Craig's List.

9 THE COURT: No, sir, I will permit this testimony.

10 MR. RICHARDSON: Thank you, Your Honor.

11 THE COURT: Doesn't require an expert to testify about
12 what Craig's List is. All they go to do is look on the T.V.
13 Proceed.

14 A: No, I believe on Craig's List you could be specific to an
15 area, okay. And we discovered in our research that started
16 shortly after this break-in in Wilson that an advertisement
17 for some equipment similar to this equipment that was stolen
18 from our location in Wilson, was advertised in the Hampton
19 Roads, Norfolk, Virginia area within forty-eight hours of our
20 burglary.

21 Q: And Hampton Roads, Virginia, where is that located with
22 relation to Wilson, North Carolina?

23 A: Oh, it's probably -- we did a search going out
24 approximately in a 200-mile radius of Wilson and that's where
25 it popped up and showed itself.

1 Q: And when you were searching on the internet, you were just
2 searching for this particular equipment?

3 A: We were looking for any similarities to it with the
4 category, the catalogue numbers, the part numbers, and the
5 pricing is what really flagged the situation to us.

6 Q: And you said you found something up in the Hampton Roads,
7 Virginia area?

8 A: That is correct.

9 Q: Now, I assume this pops up on your computer screen?

10 A: It was on our computer screen, yes, and we printed it off.

11 Q: So, you -- printed it off, printed a screen shot?

12 A: Yes, printed a screen shot with all the information and
13 contact information to reach out to the individual or
14 individuals to contact about this equipment that was for sale.

15 Q: With the contact information so you could contact the
16 individual, was that included on Craig's List?

17 A: Yes, it was.

18 Q: No sense in trying to sell something if they don't know
19 how to get a' hold of you?

20 A: Right. That is correct.

21 STATE'S EXHIBIT NUMBER TWO

22 MARKED FOR IDENTIFICATION.

23 Q: I'm going to show you what's been previously marked as
24 State's Number Two. I'm going to show you what's been marked
25 for identification as State's Exhibit Two. If you could take

1 a gander at that and tell me if you recognize it, please, sir.

2 A: Yes, I do recognize this.

3 Q: What do recognize State's Number Two to be?

4 A: This is the advertisement for equipment for sale on
5 Craig's List that was posted on there on June the 26th,
6 approximately less than forty-eight hours of our branch in
7 Wilson, North Carolina being broken into.

8 Q: And these are screen shots of exactly what you saw on
9 Craig's List?

10 A: That is correct.

11 Q: Now, that -- no doubt about it, that is a fair and
12 accurate depiction of those -- of what you saw on the screen?

13 A: That is correct. And we matched it up with our list of
14 inventory that was stolen during the break-in.

15 MR. RICHARDSON: Your Honor, the State would seek to
16 introduce and publish State's Number Two.

17 THE COURT: You may do so.

18 MR. BELLAMY: No objection, Your Honor.

19 MR. RICHARDSON: Mr. Bellamy objected, Your Honor.

20 MR. BELLAMY: No objection.

21 THE COURT: No objection.

22 MR. RICHARDSON: I'm sorry. I've got a hearing problem
23 today.

24 THE COURT: I'll loan you my hearing aids.

25 MR. RICHARDSON: Yes, sir.

STATE'S EXHIBIT NUMBER TWO

ADMITTED INTO EVIDENCE

THE COURT: Proceed.

BY MR. RICHARDSON:

Q: Mr. Dukes, if I can direct you back, as we look at State's Number Two, I want to play particular attention to a few items. You stated that this was actually posted on June 26th?

A: That is correct.

Q: And the burglary occurred on June 24th.

A: Correct.

Q: Or 25th, somewhere in there?

A: Right.

Q: So, pretty quick, it hit the internet?

A: Yes, sir.

Q: And when did you all discover this Craig's List post?

A: We discovered it approximately a -- after researching it, it popped up to us on the first -- just after July the 4th, after doing the research and stuff and doing some verification.

Q: And so this was an older posting but it was first posted on the 26th?

A: It was first posted on the 26th.

Q: And you discovered it after you got involved on July 20 -- of July 1st, I'm sorry.

A: Yeah, right.

1 Q: Now, with regard to State's Number Two, does it give you
2 any indication on how to contact the seller of these items?

3 A: Right. You could do it through contacting their -- their
4 address at Craig's List and there was also a phone number that
5 was provided.

6 Q: And what was that phone number?

7 A: It was area code 919-349-1916 out of the -- North
8 Carolina.

9 Q: 919-349-1916.

10 A: That is correct.

11 Q: Does it say anything with regard to the identity of the
12 seller?

13 A: It reflects the name of Matt on there with that number.

14 Q: Now, after you find this Craig's List posting on or about
15 July 3rd, July 4th, 2011 ---

16 A: Yes, sir.

17 Q: What steps if any do you take with regard to making
18 contact with this fellow?

19 A: We attempt to contact through the Craig's List and it
20 turned out that this advertisement had been shut down off of
21 Craig's List.

22 Q: And I think there's two pages there, Mr. Dukes.

23 A: Yes, sir.

24 Q: Could you tell me what was being advertised for sale as of
25 June 26th, 2011 on both pages?

- 1 A: Yes, sir. We found that there were some machines, a Power
2 MIG machine welder still in the packaging; a PowerCut 900
3 plasma cutter was for sale; a Lincoln Power MIG welder that
4 was for sale; another Millermatic 140 portable welder; and
5 assorted blades and some other accessories and such, hard
6 goods we call them in the Airgas language.
- 7 Q: Hard goods are not machinery; it's what you use with the
8 machinery?
- 9 A: Right. Hard goods is, you know, like tools and the gloves
10 and ---
- 11 Q: Be like drill bits?
- 12 A: Correct; that would be correct.
- 13 Q: And you attempted to contact the seller on this, the site,
14 this Craig's List posting had already been taken down?
- 15 A: That had been removed from Craig -- but it would -- still
16 showed up there but you couldn't access them. You couldn't
17 get a response back.
- 18 Q: Okay. Did this advertisement say anything with regard to
19 pricing?
- 20 A: Yes, it did. It mentioned some pricing in the ad, which
21 was substantially less than what the items even wholesale for,
22 not even what the retail would be on those items.
- 23 Q: Give us an example of the first one.
- 24 A: Well, you look here at a brand new Millermatic 140
25 portable welder, these retail for around \$900 and it is being

1 sold for substantially less than that.

2 MR. BELLAMY: Your Honor ---

3 THE COURT: Wait a minute.

4 MR. BELLAMY: I would object. He's talking about
5 substantially less; tell us what that number is. That's a
6 rather vague ---

7 THE COURT: Well, he can do that or you can inquire on
8 cross examination.

9 A: Right, I would have to have a price list in front of me to
10 ---

11 THE COURT: Develop that if you can. If not, I'll let
12 him develop it.

13 MR. RICHARDSON: Yes, sir, Your Honor.

14 BY MR. RICHARDSON:

15 Q: Mr. Dukes, if I may see this?

16 A: Sure.

17 Q: I'm gonna leave that there for right now. So, you attempt
18 to make contact with this seller but you're not able to?

19 A: That is correct.

20 Q: And the seller listed his name as Matt?

21 A: That is correct.

22 Q: And is trying to sell this up in the Hampton Roads,
23 Virginia area?

24 A: Right.

25 Q: That's around Norfolk?

1 A: Yes, sir.

2 Q: Now, once you weren't able to make contact with this
3 seller on this item, did you just give up and say, all right,
4 well, I guess I'm done?

5 A: No, did not.

6 Q: What did you next do?

7 A: At that point we received a phone call and email contact
8 from our division president, again, Steve Marinelli, said that
9 he was notified by one of his associates that works between
10 the Florence, South Carolina location for Airgas National
11 Welders and the location in Myrtle Beach that this
12 advertisement had popped up on the Myrtle Beach area on
13 Craig's List. So, we immediately got on to the Craig's
14 Listing and saw that was the identical posting that was posted
15 in the Norfolk, Hampton Roads area back on June the 26th.

16 Q: And by identical posting, you're talking about the same
17 equipment is for sale?

18 A: Same equipment is for sale, the same wording, same
19 verbiage, the same type of printing used to print up the
20 advertisement on Craig's List and then the same data as far as
21 contact information.

22 Q: And once again, you saw this on the computer screen,
23 correct?

24 A: That is correct and we printed it off.

25 Q: You printed it off. Let me show you what's been marked as

1 State's Number Three.

2 MR. BELLAMY: No objection, Your Honor.

3 THE COURT: All right, sir.

4 BY MR. RICHARDSON:

5 Q: If you'll take a look at State's Number Three and tell me
6 if you can identify that item.

7 A: Yes. These are items that were mentioned in the
8 advertisement that was up on the Norfolk area and we matched
9 it up with our inventory that was removed from our Wilson,
10 North Carolina Airgas branch. It's matching some of the --
11 matching our equipment.

12 Q: And that's a fair and accurate representation of what you
13 saw on the computer screen?

14 A: Yes, sir, it is.

15 Q: The Craig's List posting?

16 A: Yes.

17 MR. RICHARDSON: Your Honor, the State would seek to
18 introduce State's Number Three into evidence.

19 THE COURT: You may do so.

20 MR. RICHARDSON: And publish it at the appropriate time.

21 THE COURT: You can publish it now. It will be with you
22 -- with the jury during their deliberations.

23 STATE'S EXHIBIT NUMBER THREE

24 ADMITTED INTO EVIDENCE.

25 Q: Mr. Dukes, I'm gonna ask you -- you've got your glasses on

1 ---

2 A: Yes, sir, I do.

3 Q: If you could ---

4 A: My cheaters.

5 Q: If you could, just read the entire ad.

6 A: Myrtle Beach Craig's List, For Sale/Wanted/tools, welders
7 and plasma cutters, beach area. Date, July 10th, 2011 at
8 11:13 A.M. Reply to cell number 248-665-2676 at
9 Craigslist.org. Closing and trying to liquidate equipment.
10 Selling all equipment for almost fifty percent off of retail
11 value. Don't miss this wonderful deal. These discounts don't
12 come around too often. Don't miss out. One brand new ESAB
13 PowerCut 900 plasma cutter, retail price around \$2300, selling
14 for only 1600; cutter retails around \$1200, selling each for
15 only 750 a piece, \$750 apiece, retail price around \$1100 each,
16 selling for only \$650 each; one brand new Steel Max 14-inch
17 metal cutting chapsaw with carving tip plate, this saw retails
18 around \$625, selling for only \$325; also have several blades
19 available. All prices are final as they are already dirt
20 cheap. You won't find any new equipment for these prices
21 anywhere. Will consider giving discount for multiple
22 purchases. Please, please, unless you are ready to buy, don't
23 call asking questions. All information to answer those
24 questions can be answered by clicking the links below to read
25 specifications directly from the manufacturers web site or by

1 performing a Google search for info you may need. Please
2 respond via email as I check often.

3 Q: Thank you, Mr. Dukes. Let's see you just read off the --
4 the first thing they had offered for sale in this Myrtle Beach
5 add is one brand new ESAB PowerCut 900 plasma cutter, correct?

6 A: That is correct.

7 Q: And that is also what was listed on the item out of
8 Hampton Roads, correct?

9 A: That is correct.

10 Q: The only difference is you got prices now?

11 A: That's right.

12 Q: There's no phone number attached to State's Exhibit ---

13 A: On that one there's no phone number, right.

14 Q: Without a phone number, how were you expected to make
15 contact with the seller?

16 A: We contacted that Craig's List advertisement through an
17 email address that we set up to contact, listing a phone
18 number here in the Conway, South Carolina area, which was
19 close to Myrtle Beach.

20 Q: And you say you set up an email account?

21 A: Correct.

22 Q: I take it it didn't say Dayne Dukes at ---

23 A: No, it sure did not.

24 Q: Okay. And why not?

25 A: Well, for purposes of anonymity, to just maintain some

1 privacy situation.

2 Q: And you've got a cell phone registered to here in ---

3 A: Conway, South Carolina. It was a phone that was purchased
4 at Walmart, a track phone.

5 MR. RICHARDSON: Is there an objection, Mr. Bellamy?

6 MR. BELLAMY: No, I'm getting water.

7 BY MR. RICHARDSON:

8 Q: Okay. Now, once you set up this track phone and done the
9 email ---

10 A: And an email address.

11 Q: What did you do?

12 A: At that point, probably within forty-five minutes of
13 sending the email with that phone number, we were -- I was
14 sitting in a restaurant with my laptop with another forensic
15 auditor up in Salisbury, North Carolina -- I received a phone
16 call from that phone number that was listed on the first
17 Craig's Listing that was posted in Norfolk, Hampton Roads,
18 Virginia, the 919 number, it came through on my cell phone.

19 Q: And that was 919-349-1916?

20 A: That is correct. I still have that cell phone.

21 Q: So, you got contact -- or if I understand correctly, you
22 sent an email to the Myrtle Beach seller of this power
23 equipment?

24 A: That is correct.

25 Q: And the phone call you got back came from the same phone

1 number listed in the Hampton Roads, Virginia ---

2 A: Advertisement, correct.

3 Q: Now, when you -- I assume you spoke with this person on
4 the phone?

5 A: Spoke to -- I don't know if was -- the first phone call
6 that came through did not sound like the next phone call that
7 came through did not sound like the next phone call that came
8 through, the voice on the line.

9 Q: But was it the same number?

10 A: Same phone number.

11 Q: And the persons calling in, the 9-1 from the 919-349-1916,
12 did they identify themselves?

13 A: Yes.

14 Q: And how did they identify themselves?

15 A: I don't have the name in front of me, it's on my -- over
16 there.

17 Q: Did you make notes on this?

18 A: Yes, I did, sir.

19 Q: And was it -- here are your notes -- help refresh your
20 recollection?

21 A: Yes, I would, sir.

22 MR. RICHARDSON: Your Honor, I'd ask to be allowed to
23 present the Defendant with the ---

24 A: It's right on the top page.

25 THE COURT: He's entitled to do that.

1 Q: If you will just take a moment, look at that and see if
2 you can refresh your recollection.

3 A: Danny Miller.

4 Q: So, the person on the other end of the line said he was
5 Danny Miller and that's the person on the other end of the
6 line at 919-349-1916?

7 A: Correct.

8 Q: And the 919 area code, do you know where that links back
9 to?

10 A: It links back to the Raleigh, Cary, North Carolina area.

11 Q: So, the 919 is a Raleigh area code?

12 A: Correct.

13 Q: And in relation to Wilson, North Carolina, how close is
14 that?

15 A: I believe probably within forty-five-to-fifty-minute
16 drive.

17 Q: Now, when you spoke with Danny by phone, you said you
18 spoke to an individual twice, correct?

19 A: First phone call was one individual. Okay. And then the
20 second phone call was with another individual that I continued
21 to have conversations with.

22 Q: And no doubt about it, they said Danny Miller?

23 A: That is correct and stayed with the name Danny Miller.

24 Q: And the Virginia advertisement said the seller was Matt?

25 A: That is correct.

1 Q: Same phone number?

2 A: Same phone number.

3 Q: Now, after speaking with Danny, what type of arrangements
4 -- or what did you do next in your investigation?

5 A: At that point, on the phone conversation sitting up there
6 in Salisbury, North Carolina and talking to this individual
7 identifying himself as Danny Miller, we discussed the items
8 that were listed in the Craig's List ad and discussed
9 negotiating the price, even from the numbers on the
10 advertisement, and where we could arrange to, you know, meet
11 with and pay cash. And he told me he was in the -- resided in
12 the Myrtle Beach area of South Carolina and that he could meet
13 me and we could, you know, exchange the items for the cash
14 payment.

15 Q: And so, you agreed to meet him in the Myrtle Beach area?

16 A: That is correct.

17 Q: Where at in the Myrtle Beach area, do you recall?

18 A: The first conversation that I had as to a meeting place
19 was that we were gonna meet at a mall in Myrtle Beach, up in
20 North Myrtle Beach area and then that got changed.

21 Q: And upon making these arrangements, did you contact
22 anybody in local law enforcement?

23 A: Yes. Once contact -- the contact started with this
24 individual on the afternoon of July 11th. We arranged to set
25 up to meet sometime on the 13th in late morning. So, at that

1 point we started to prepare as to who this individual was to
2 this phone number and it came back as Marquis Evans.

3 Q: That's what your investigation found?

4 A: That's what our investigators came back and told us and
5 informed us. So, we knew an address of where that number tied
6 to in the Raleigh area. We then coordinated to meet with this
7 individual here in Conway, South Carolina. After coming down
8 and meeting and contacting the Horry County PD on the 13th of
9 July.

10 Q: Okay. You just stated that you tracked the phone number
11 back and it came back to Marquis Evans, correct?

12 A: That is correct, sir.

13 Q: Did you learn anything else with regard to where Marquis
14 Evans resided?

15 A: Yes, sir, I did.

16 MR. BELLAMY: Judge, now -- and I let it go before but
17 what other people had told him, I think is hearsay. What he
18 knows of his own knowledge I don't have problem with that.

19 THE COURT: Sure, I understand that.

20 MR. BELLAMY: But not what other people told him.

21 BY MR. RICHARDSON:

22 Q: After researching the phone number and researching the
23 address, did you take any steps?

24 A: Yes, sir. I had two private investigators, they are both
25 retired Raleigh Police Department, one's lieutenant and

1 retired captain, went to Marquis -- that address.

2 MR. BELLAMY: Judge ---

3 Q: If you didn't do it personally ---

4 A: I didn't do it personally.

5 Q: Okay.

6 MR. BELLAMY: My objection is he's talking about what
7 somebody else did.

8 MR. RICHARDSON: Your Honor, I withdraw the question.

9 THE COURT: All right. That's fine. I sustain that.

10 BY MR. RICHARDSON:

11 Q: Let's get back on track.

12 A: Okay, sir.

13 Q: You made arrangements -- you began speaking with him on
14 July 11th, correct?

15 A: That is correct, in the afternoon of July 11th.

16 Q: And you made arrangements to make the purchase here in the
17 Myrtle Beach area.

18 A: Correct.

19 Q: And I think everybody knows Conway, Aynor and everything
20 else as the Myrtle Beach area.

21 A: Yes, sir.

22 Q: You planned to make that purchase on the 13th, cash money?

23 A: That is correct, sir.

24 Q: Now, after you made these arrangements, what steps if any
25 did you take?

1 A: At that point, we came into town that morning and we -- I
2 had with me, myself, Richard Martino, Jay Richards and I had a
3 retired police officer from the Raleigh Police Department with
4 me and we arranged to meet at the Horry County Police
5 Department. And it was a prearranged meeting that had been
6 set up with somebody in Raleigh for us -- and who to go see at
7 the Horry County PD.

8 Q: And I know it seems like a simple question but what was
9 the purpose of that meeting?

10 A: To let -- inform them of what we had uncovered up in North
11 Carolina and some information that we had obtained and that we
12 were setting up to purchase this equipment that was coming to
13 us in the Myrtle Beach area.

14 Q: And that's what you told the County Police, correct?

15 A: That is correct, sir.

16 Q: Did you get any agreements to assist or anything?

17 A: We had a very extensive meeting with them, probably lasted
18 about forty-five minutes or so. They then left the conference
19 room and they had a conversation among themselves and then
20 they came back and said that they would help assist us in this
21 situation that was coming down.

22 Q: They agreed to assist you with this investigation and the
23 purchase?

24 A: Right, they were gonna handle -- they were gonna take it
25 over so to speak.

1 Q: So, a sting?

2 A: They were gonna take care of the sting, correct, and have
3 us step aside.

4 Q: Now, in speaking with Danny Miller on July 11th, had you
5 identified yourself by name?

6 A: Yes, as Mike.

7 Q: Mike. And did you give that name to anybody?

8 A: I gave that name to the Captain, sitting back there.

9 Q: Captain Dale Buchanan.

10 A: Yes, sir.

11 Q: And why did you give it to Captain Buchanan?

12 A: Because he was gonna be the -- he was gonna be me, so to
13 speak, in this meeting with this Danny Miller.

14 Q: So, he agreed to play the part of Mike?

15 A: That is correct.

16 Q: Now, the -- where did you agree to make the purchase?

17 A: After having contact with the police department, they said
18 set the thing up. It was gonna be set up at the mall. It was
19 changed to the Big Lots store here in Conway in the Applebee's
20 kind of parking lot there. So, I contacted Danny Miller and
21 told him that it would be okay because that I am from Conway,
22 if he could come and meet me there with the equipment then I
23 would have the cash.

24 Q: Did Danny Miller tell you where he resided?

25 A: No, he -- well, he had mentioned that he resided in the

1 Myrtle Beach area, our original conversation, and it never
2 really came up.

3 Q: And so this Danny Miller said he lived in Myrtle Beach?

4 A: That's correct.

5 Q: And you spoke to him again around the 13th; is that
6 correct?

7 A: Yeah, we had some text messages back and forth on the
8 phone and a couple of phone conversations and I asked him
9 after the request by the Horry County PD, they asked me to try
10 to find out what type of vehicle he would be driving down or
11 would be arriving in. So, I asked Danny Miller what he would
12 be driving and he told me he would be in a gold Lexus.

13 Q: Gold Lexus.

14 A: With North Carolina plates.

15 Q: With NC plates?

16 A: Yes, sir.

17 Q: And what number were you calling when you contacted Danny
18 Miller?

19 A: I was calling that 919 number.

20 Q: Now, you said Captain Buchanan agreed to play Mike?

21 A: That is correct.

22 Q: And do you remember what kind of vehicle Captain Buchanan
23 was in?

24 A: I believe it's a -- I don't want say old blue Ford pickup
25 truck but it's an aged truck, okay, and Carolina blue color

1 and I informed Danny Miller that I would be in that truck.

2 Q: Maybe call it an experienced truck?

3 A: Yes, got good miles on it.

4 Q: Right. And so you told Captain Buchanan use the name of
5 Mike; he agreed to be Mike?

6 A: Yes, sir.

7 Q: You're dialing back and forth with Danny Miller on the 919
8 number?

9 A: Right.

10 Q: Same one that was posted up in Virginia?

11 A: Yes, sir.

12 Q: And the buy was set up. Do you remember what time the buy
13 was supposed to take place?

14 A: Well, it was supposed to become -- happen around 1:00-1:30
15 but he was a bit late in arriving.

16 Q: And as Captain Buchanan was sitting in the Big Lots
17 parking lot ---

18 A: Yes, sir.

19 Q: --- in his truck, where were you stationed?

20 A: I was observing from across the street at the hamburger
21 location and then also at one other time over by the
22 Applebee's, behind the Applebee's in my truck.

23 Q: All within about a hundred yards or so?

24 A: Yes, sir.

25 Q: No problem seeing everything?

1 A: That is correct.

2 Q: And tell us what, if anything, you observed occur in the
3 Big Lots parking lot?

4 A: Well, Captain was sitting in his truck, he had some
5 baseball caps on the dashboard. And in pulls this gold Lexus
6 and pulls up beside the blue pickup truck.

7 Q: Do you witness any interaction between ---

8 A: At that point, the Captain gets out of his vehicle, he's
9 in civilian clothes, you know, kind of casual for that
10 situation. And then this individual over here got out of his
11 vehicle and I could see them talking.

12 Q: Now, you say this individual over here. The person you
13 saw get out of that gold Lexus, do you see him the courtroom
14 today?

15 A: Yes, sir, I do.

16 Q: And who was that?

17 A: Marquis Evans.

18 Q: The Defendant sitting over there beside Mr. Bellamy?

19 A: Yes, sir.

20 Q: Now, you witnessed some interaction between the Captain
21 and the Defendant?

22 A: Yes, sir, I did. I saw them talking.

23 Q: And after they talked, did you observe anything happening?

24 A: I believe the door opened and I -- and then at that point,
25 here came some other police officers arrived on the scene in

1 their vehicles.

2 Q: Did you ever arrive on the scene?

3 A: Yes, sir. We were contacted to drive up to his vehicle,
4 you know, to stay back a bit, after they pulled the inventory
5 out of the trunk -- out of his car, back seat and trunk.

6 Q: And the inventory ---

7 A: The inventory ---

8 Q: What type of inventory was it?

9 A: It was these machines, the big saw that probably takes up
10 this much area (indicating) about this high, blades, torches,
11 assorted other items. And they were taken out and laid on the
12 ground.

13 MR. RICHARDSON: Your Honor, if Mr. Bellamy and I may
14 approach.

15 (REPORTER'S NOTE: A bench conference was held off the record
16 in the presence of the jury but out of hearing of the jury.)

17 BY MR. RICHARDSON:

18 STATE'S EXHIBITS FOUR, FIVE, SIX, SEVEN, EIGHT AND NINE

19 MARKED FOR IDENTIFICATION

20 Q: Mr. Dukes, I'm gonna go ahead and hand you State's Five,
21 Six, Seven, Eight and Nine. If you'll take a look at those
22 and see if you recognize those.

23 A: Yes, I recognize these pictures.

24 Q: Let me hand you one more.

25 A: Yes, sir.

1 STATE'S EXHIBIT NUMBER TEN

2 MARKED FOR IDENTIFICATION

3 Q: State's Number Ten, do you recognize that as well?

4 A: Yes.

5 Q: And these are photographs, correct?

6 A: Yes, sir, they are.

7 Q: And can you tell us what these photographs -- in general,
8 what are these photographs?

9 A: These photographs of the equipment that was removed from
10 his vehicle during the daylight hours, late in the afternoon.

11 Q: That is the equipment that was at the scene ---

12 A: That is correct.

13 Q: --- of the sting on July 13th, 2011?

14 A: Yes, sir.

15 Q: And these photographs fairly and accurately depict
16 everything you saw at the scene?

17 A: Yes, it does.

18 Q: All right. If I may, State's Number Four, what do we see
19 here?

20 A: You have here pictures of the Sawzall that was advertised
21 on Craig's List, the big saw; the machines that were
22 advertised on Craig's List; the cables and the accessories
23 that go with the ESAB machines and stuff.

24 Q: And State's Number Five.

25 A: This is some accessory items; the torches; the saw itself,

1 the steel back saw; and some packaging that had been already
2 been opened prior to the stuff arriving at the scene.

3 Q: State's Six?

4 A: This is blades and another PowerCut machine that was
5 advertised on Craig's List, a PowerCut -- PowerCut 900, that
6 was advertised, I read about earlier.

7 Q: Seven?

8 A: This is another -- the PowerMax machine 30; ESAB machine
9 that was also advertised and discussed with Daniel Miller over
10 the telephone as part of the sale.

11 Q: And Number Eight?

12 A: This is just a photograph of some packaging that was taken
13 out of the box, opened prior to arriving in the Conway area.

14 Q: And this is all equipment similar in nature to what was
15 stolen out of the Wilson store?

16 A: It's on our inventory list, yes.

17 Q: State's Nine and Ten, can you tell us what we're seeing
18 there?

19 A: This is the Lexus vehicle that he told me he would be
20 arriving in and then there's a photograph her, Number Ten, is
21 a photograph of his license plate from North Carolina.

22 MR. RICHARDSON: I honestly don't know, did I seek to
23 introduce this?

24 MR. BELLAMY: No objection.

25 STATE'S EXHIBIT NUMBERS, FOUR, FIVE, SIX, SEVEN,

1 EIGHT, NINE AND TEN ADMITTED INTO EVIDENCE

2 THE COURT: You may proceed.

3 BY MR. RICHARDSON:

4 Q: Now, all the equipment we just looked through, is that all
5 the equipment that was seized out of that vehicle?

6 A: Yes, it is.

7 Q: And out of that equipment, did there ever come a time when
8 you were able to specifically identify that equipment?

9 A: Yes, we, with one of the other officers that was ---

10 MR. BELLAMY: Your Honor, I would object to what one of
11 the other officers ---

12 THE COURT: Well, let me hear what he said.

13 A: Myself and Jay Richards and a detective went through all
14 the inventory.

15 THE COURT: I will permit that. He says he did it. Go
16 ahead.

17 A: I was there.

18 THE COURT: All right, sir.

19 MR. BELLAMY: Thank you, Your Honor.

20 BY MR. RICHARDSON:

21 Q: Now, this equipment, does it come with any kind of
22 particular markings or any way to identify them, typically?

23 A: Yes, it does. We open up the equipment, the boxing around
24 it, after cross-referencing it with our inventory that was
25 listed in the police report from Wilson, a detailed inventory

1 list, we matched it up to those items as to what was Airgas --
2 identified as Airgas National Welders property. Okay. At
3 that point, we removed covering, you have to take the machines
4 apart to look for serial numbers. On three of the machines
5 that were there, the serial numbers had been removed.

6 Q: Is that a serial number plate, a sticker or ---

7 A: It's a plate-sticker type deal. It could be multiple,
8 plate and sticker ---

9 Q: Okay.

10 A: --- and/or sticker. On one machine we found that the
11 serial number matched, after going through our corporate
12 headquarters in Charlotte, we were able to match up that
13 serial number that was assigned to that machine out of our
14 Wilson, North Carolina branch as to being an exact -- the
15 exact machine that was taken during the break-in.

16 Q: So, one of the machines you fit an exact match, you were
17 able to find the serial number?

18 A: Right. He had missed it. He had taken a couple of
19 numbers off that machine, or somebody had, and then missed a
20 serial number that was on there with multiple places that it
21 was.

22 Q: And as you're going -- was there some question with regard
23 to one of the pieces of equipment and the serial number at
24 some point?

25 A: Yes, there was because it had been in a -- it was supposed

1 to be part of a box that multiple things come in, in
2 packaging, you know, as an accessory item. It had been taken
3 out and it was separate so it was difficult to identify that
4 on our property list but it turned out it was supposed to be
5 in the box as part of the equipment, as an accessory. So, we
6 had to distinguish that.

7 Q: So, it'd be kind of like buying a Thomas the Train set for
8 your kids and you get a couple of trains with the train set?

9 A: Exactly.

10 Q: But in this case, it was power tools or whatever to go
11 with the power equipment?

12 A: Right.

13 Q: And y'all were later able to identify that?

14 A: We were able to identify it and put that box back together
15 as to what should be in that packaging.

16 Q: Now, this equipment that was photographed and seized that
17 day ---

18 A: Yes, sir.

19 Q: Do you know what happened to it?

20 A: It was returned back to us and we signed for it and took
21 possession of that property.

22 Q: And this is cumbersome equipment, correct?

23 A: Yes.

24 Q: And it was sent back to you all because you're the victim?

25 A: That is correct.

1 Q: And you were able to identify at least one of the pieces
2 of equipment, no doubt about it?

3 A: Right.

4 Q: The exact serial number as one stolen out of Wilson, North
5 Carolina?

6 A: That is correct.

7 Q: And then all the other equipment matched up to the
8 descriptions?

9 A: That is correct.

10 Q: Down to a T?

11 A: Yes, sir.

12 Q: But those serial numbers had been removed?

13 A: Right on the power -- the big equipment, there's no serial
14 numbers on the torch packaging and stuff like that.

15 Q: And you say that the property was released back to you for
16 Airgas?

17 A: Back to Airgas National Welders. We took possession of it
18 and took it back to Wilson, North Carolina for the Wilson
19 Police Department to have access to it.

20 Q: And all this equipment, you feel comfortable saying this
21 is what was stolen out of Wilson, North Carolina?

22 A: Yes, sir, I do.

23 Q: And that's after years of experience with security and
24 loss prevention?

25 A: Yes, sir.

1 Q: Now, let's get a value of this, that's an element of the
2 crime, can you give us a rough estimate on the value of all
3 the equipment that was taken out of the Defendant's car that
4 day?

5 A: I would have to say close to \$5,000.

6 Q: No doubt it's over \$2,000?

7 A: No doubt, no doubt at all.

8 Q: And Big Lots, here in Conway, it seems like a simple
9 question, do you know what county that's located in?

10 A: Horry.

11 Q: Horry County.

12 A: I'm hope I'm pronouncing it correct.

13 Q: You're doing a great job today.

14 A: Thank you, sir.

15 Q: And all that equipment was taken back to the Wilson, North
16 Carolina store?

17 A: That's where -- yes, and that's where it still is at this
18 point on a pallet, shrink-wrapped.

19 Q: And that Wilson, North Carolina store was burglarized June
20 24th, 2011?

21 A: That is correct.

22 Q: And that Craig's List ad popped up in Virginia two days
23 later?

24 A: Yes, sir.

25 Q: You personally verified all this information with regards

1 to the burglary and the equipment?

2 A: Yes, sir.

3 Q: And the number that was listed on the Norfolk or Hampton
4 Roads, rather, Craig's List, that's the number you used to
5 contact this Defendant?

6 A: Actually, he called us.

7 Q: He called you from that 919 number?

8 A: From that 919 number, yes, after our contact through
9 Craig's List.

10 Q: And Airgas' task for you was seeing this thing through
11 because that's your job?

12 A: That is correct.

13 MR. RICHARDSON: Court's indulgence, Your Honor.

14 THE COURT: All right, sir.

15 Q: No doubt about it ---

16 A: No doubt about it.

17 Q: --- on July 13th, 2011, this is the man who was in
18 possession of that stolen equipment?

19 A: That is correct, sir.

20 Q: Thank you. If Mr. Bellamy has any questions, please
21 answer them for him.

22 A: Sure will, sir; thank you.

23 Q: Thank you.

24 MR. BELLAMY: May it please the Court, Your Honor.

25 CROSS EXAMINATION OF DAYNE CHRISTOPHER DUKES BY MR. BELLAMY:

1 Q: Mr. Dukes ---

2 A: Yes, sir.

3 Q: What was the specific piece of equipment that you say was
4 in my client's possession that matched a serial number of
5 something out of the Wilson store? Tell me what the equipment
6 was.

7 A: The -- I would have to see the pictures, please.

8 Q: I'm asking the name of what it is. I mean, does it have a
9 name and what is that name?

10 A: It's a Millermatic machine.

11 Q: Millermatic machine?

12 A: Yes, sir.

13 Q: What kind of equipment is it? Tell me specifically the
14 name of the machine.

15 A: It's a welding machine.

16 Q: Okay. Does it have a number like 2450 Millermatic 900,
17 what is it? Give us the specific piece of equipment.

18 A: Well, it goes by the -- ESAB machine is what it goes by.

19 Q: So, what -- is it ESAB or Millermatic, which one is it?

20 A: Right. ESAB.

21 Q: Well, show me which one it is.

22 A: This one right here, sir, this yellow machine.

23 Q: Yellow machine. Okay. And you took a photograph of the
24 serial number; show us that.

25 A: I do not have a photograph of the serial number, sir.

1 Q: You don't have anything to show this jury that a serial
2 number on the machine that you say matches something out of
3 your store in Wilson?

4 A: No, sir; I do not.

5 Q: You do not. Okay. And in fact, Mr. Dukes, in North
6 Carolina, the report that was made about stuff stolen out of
7 the store, y'all put an item on the -- told the police an item
8 and gave a wrong serial number, didn't you?

9 A: I'm not aware of that, sir.

10 Q: Well, I believe you called Horry County Police, did you
11 not, to say we got it wrong, we listed something as stolen and
12 in fact, we had sold it to a customer; y'all need to change
13 that. Didn't you do that?

14 A: Sir, there was an item in a box that was taken out that
15 did not have a serial number.

16 Q: You didn't tell the Horry County Police that we have made
17 a mistake and put a piece of equipment as stolen on the Wilson
18 Police report that in fact y'all had sold to a customer?

19 A: Sir, I personally did not do that, sir, I did not make a
20 phone call.

21 Q: Well, did you email them?

22 A: No, sir, I did not email.

23 Q: We'll move along. Well, can tell me -- back to this piece
24 of equipment, tell us what the serial number is.

25 A: I don't have that in front of me, sir, available.

1 Q: Okay. Now ---

2 THE COURT: You are entitled to look at your records to
3 refresh your memory if you care to?

4 A: Okay. I'd have to go through this. It's a very big file.

5 Q: Well, if you would, if you give us the serial number and
6 where you got from -- from Wilson, North Carolina. Can you do
7 that?

8 A: It may not be in this file.

9 Q: Okay. Then I'll move right along.

10 MR. RICHARDSON: Your Honor, I would ask that the witness
11 have time to actually look through his notes.

12 THE COURT: Yeah, I'll permit him to do that. You
13 testified as to a serial number and, of course, that's for the
14 jury to consider. He's asking you now to show them the
15 number. Take your time.

16 MR. RICHARDSON: Your Honor, if it's gonna take Mr. Dukes
17 any bit of time, the State would have no objection to the jury
18 having a break right now.

19 THE COURT: That's appropriate. We'll take a break at
20 this time. I'll call you back in about fifteen minutes.
21 Thank you.

22 MR. RICHARDSON: Thank you, Your Honor.

23 (REPORTER'S NOTE: The following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. This question is outside the

1 presence of the jury.

2 Mr. Witness, you testified under oath ---

3 A: Yes, sir.

4 THE COURT: That there was a piece of equipment where
5 somebody had obliterated serial numbers but they were on there
6 in several other places.

7 A: In one other place, yes, Your Honor.

8 THE COURT: And you were able to discern that place and
9 that number.

10 A: Yes, sir.

11 THE COURT: Now, that was your testimony. All he's
12 asking you is what equipment it is and what the number was
13 with specificity. And you take your time.

14 A: Yes, sir.

15 THE COURT: I believe that -- am I correct, wasn't that
16 your testimony?

17 A: That is correct, sir.

18 THE COURT: The record will reflect that this statement
19 is outside the presence of the jury. And he wants to know the
20 name of the equipment that you talked about, where was it
21 located and the exact numbers.

22 While he's doing that, we'll take a break. Thank you.

23 A: I have the number here now.

24 THE COURT: Sir?

25 A: I do have the number, Your Honor.

1 THE COURT: Do you have the name of the equipment?

2 A: Yes, I did.

3 THE COURT: Does it show the place on it? It's not
4 really necessary as long as you are testifying that that
5 number was on that piece of equipment.

6 A: Yes, I'm gonna testify that it's the Caddy MIG welder,
7 model number and serial number is 11110471.

8 THE COURT: All right. Would you take -- would you care
9 to -- you may come down and take a break if you want to but --
10 -

11 A: Thank you, sir.

12 THE COURT: You may elicit that number.

13 MR. BELLAMY: Yes, sir.

14 THE COURT: I'm gonna require that question to be
15 answered now.

16 MR. BELLAMY: Yes, sir, Judge.

17 THE COURT: All right. Would you care to come down for a
18 few minutes?

19 A: I appreciate that, Your Honor.

20 THE COURT: Do you not discuss your testimony with
21 anyone.

22 A: Yes, sir.

23 THE COURT: All right. Let's take a break now and we'll
24 be back.

25 MR. RICHARDSON: Thank you, Your Honor.

1 THE COURT: But I am going to require that he -- that you
2 are permitted to testify to that.

3 MR. BELLAMY: Yes, sir, Judge.

4 *****OFF THE RECORD*****

5 (On the Record.)

6 (REPORTER'S NOTE: The following takes place after a break and
7 outside the presence of the jury.)

8 THE COURT: Be seated, please. Have the Defendant resume
9 the witness stand.

10 Are we ready to proceed?

11 What say the State?

12 MR. RICHARDSON: We're prepared to go forward, Your
13 Honor.

14 THE COURT: Defendant?

15 MR. BELLAMY: Yes, sir, Your Honor.

16 THE COURT: Bring the jury in.

17 (REPORTER'S NOTE: The following takes place inside the
18 presence of the jury.)

19 THE COURT: All right. You may proceed with your
20 examination.

21 BY MR. BELLAMY:

22 Q: Mr. Dukes, back to the question that I had asked you.

23 A: Yes, sir.

24 Q: Give us the specific name of this piece of equipment.

25 A: With the serial number?

1 Q: Yes.

2 A: Okay. It is -- it's called a Caddy MIG welder and I have
3 the serial number.

4 Q: What are you reading from, Mr. Dukes?

5 A: I'm reading from the report that was prepared by Jonathon
6 Rabon, a detective for Horry County PD.

7 Q: So, this is not your report?

8 A: I was there when this report was put together, this -- the
9 inventory or Return of Assets sheet.

10 Q: Could I see that report?

11 A: There's some other notes on it.

12 THE COURT: You didn't let him finish answering the
13 question, first, as to ---

14 Q: Okay. Go ahead.

15 THE COURT: Answer the question first as to serial
16 number, please.

17 A: It is a 11110491 for this Caddy MIG welder.

18 THE COURT: Now you're entitled to look at the report.

19 MR. BELLAMY: Can you give me just a second, Judge?

20 THE COURT: Surely.

21 BY MR. BELLAMY:

22 Q: Show me the number on here again, I'm ---

23 A: It's right here (indicating).

24 Q: Okay. And was this item returned to you or did you -- did
25 the County Police keep it?

1 A: This was returned to us.

2 Q: Okay.

3 A: This report was prepared and then returned to us after
4 that report was prepared.

5 MR. BELLAMY: Your Honor, let me check one second. I'm
6 not sure I've ever received -- seen this document.

7 THE COURT: All right, sir. Was this document provided
8 to him?

9 MR. RICHARDSON: I don't even know what document we're
10 talking about, Your Honor.

11 THE COURT: Sir?

12 MR. RICHARDSON: I don't know what document ---

13 THE COURT: The document that allegedly relates to the
14 serial number for the description of the property he just
15 described.

16 MR. RICHARDSON: If he will show me what he's looking at,
17 Your Honor, there's several descriptions in the report.

18 Yes, Your Honor, he's received this.

19 MR. BELLAMY: No, Judge, I don't believe I've received
20 this document.

21 MR. RICHARDSON: Your Honor ---

22 MR. BELLAMY: I'll have to go back and check but ---

23 MR. RICHARDSON: It's in the evidence log that goes out
24 with discovery.

25 THE COURT: I will accept the State's position that is in

1 the evidence log that it was mailed to you.

2 MR. BELLAMY: Well, I'm may disagree with him; I haven't
3 looked, Judge, I ---

4 THE COURT: I understand. But whether you received it or
5 not, I'm gonna -- it's admissible.

6 BY MR. BELLAMY:

7 Q: Now, Mr. Dukes ---

8 A: Yes, sir.

9 Q: This serial number, did you -- you didn't prepare this
10 document?

11 A: No, sir, I did not.

12 Q: And this would've been prepared by Jonathon Rabon?

13 A: Yes, sir.

14 Q: Okay. And did you take a picture of that serial number
15 off of the item taken from my client?

16 A: No, sir, I didn't -- I was not involved in taking the
17 photographs.

18 Q: Okay.

19 A: The police department did that.

20 Q: Okay. But you had the item in your possession for a year
21 and a half, correct?

22 A: Yes, sir.

23 Q: And have you taken a picture of that serial number to
24 bring here to show to this jury?

25 A: No, sir, I have not taken a picture of that serial number.

1 Q: Okay. And that serial number you say that's on this piece
2 of equipment matches a serial number from what, a list of
3 stuff from Wilson Police Department?

4 A: It was the list of inventory that was removed from the
5 Wilson Airgas location was provided to the Wilson Police
6 Department, okay, with a listing of this particular item here,
7 okay, and we were able to cross reference that serial number
8 ---

9 Q: When we say we, did you do this?

10 A: I saw the notations and email transfers reflecting that
11 this -- that this serial number matched up with the property
12 of Airgas National Welders.

13 Q: So, you didn't do it. Where did you get the serial
14 number, from the police report?

15 A: I got it from -- we were all together with the police
16 department here in Horry County PD, okay, we were there when
17 they went through all the equipment and made notations of what
18 serial numbers they could find, okay, and this is one that
19 came back ---

20 Q: Is it ---

21 A: --- and then we cross referenced, got on the phone and we
22 were notified by Airgas National Welders in Charlotte that
23 that in fact was our equipment from the manufacturer.

24 Q: Okay. But there was no other pieces of equipment other
25 than it being similar in nature that you could match

1 specifically to the Wilson store, correct?

2 A: Well, we -- we could match by model number, okay, from our
3 inventory list of what was stolen from the branch in Airgas
4 Welders up in Wilson.

5 Q: Okay. But my question is, there were no other specific
6 serial numbers -- in other words, you know, you can buy this
7 equipment, you say, at Lowe's and -- how many locations does
8 Airgas have?

9 A: 1,185.

10 Q: Okay. So, you got over 1,000 stores selling this exact
11 same equipment so there's no way for you to sit here and tell
12 this jury that this equipment came from that Wilson store, can
13 you?

14 A: Yes, sir, I can. I can tell you that this one machine ---

15 Q: This one, but other than that, this other stuff that was
16 in the car, you can't tell us that that's from Wilson, can
17 you?

18 A: Other than it matches up with our inventory list of what's
19 missing, sir.

20 Q: But there was stuff in the car that didn't match up with
21 the inventory list, too, right?

22 A: I'm not aware of that, sir.

23 Q: Well, didn't the police keep some of the stuff?

24 A: They turned everything over to us.

25 Q: On that very day? They turned everything over to you?

1 A: We came back about -- within a week or two and picked up
2 about two or three more items.

3 Q: But ---

4 A: Because it was broke -- the boxes were broken apart of --
5 when this stuff comes, you get -- you get cables, you get
6 parts that go with it to put it together, okay, and that did
7 not have -- appear on our sheet. It's one -- it comes under
8 one part number.

9 Q: But there were items -- okay, let me say this. There were
10 items listed in the police report in Wilson that weren't found
11 with my client, correct?

12 A: Oh, yes, there was ---

13 Q: A lot?

14 A: A substantial amount.

15 Q: Okay. And other than this one item, the items that you
16 took possession of, you can't specifically say that they came
17 from that Wilson store as opposed to the other thousand or
18 Lowe's stores, can you?

19 A: I can say for sure that this one item ---

20 Q: Okay. I've covered that.

21 A: Okay.

22 Q: We've covered that.

23 A: Yes, sir.

24 Q: And in fact, one item that y'all listed as stolen and I'm
25 -- Mr. Richardson may be better at this but maybe if you can

1 answer it, there was one item y'all listed with a serial
2 number as being stolen that in fact y'all had sold to a
3 customer; isn't that true?

4 A: I'm not aware of that, sir.

5 Q: Okay.

6 A: I've not seen any information on that.

7 Q: Now, out there on the scene -- well, let's move on. Mr.
8 Evans cooperated with police, did he not? You saw him.

9 A: He appeared to be cooperative, yes, sir.

10 Q: He let them look in the back of his car, correct?

11 A: There was six police officers there, I think that that was
12 ---

13 Q: Well, he let them look?

14 A: Yes, sir.

15 Q: Did they have a search warrant?

16 A: I'm not aware of that.

17 Q: They didn't, did they?

18 A: Not that I know of.

19 Q: Okay. And in fact, he opened the trunk so they could look
20 in there too, didn't he?

21 A: Yes, sir.

22 Q: Okay. So he fully let them look through his car when he
23 legally didn't have to, didn't he?

24 A: I don't know about what the law is, sir.

25 Q: Okay. If you don't, you don't. But he did let them look

1 freely?

2 A: I guess so.

3 Q: Okay. And the number, phone number that you were
4 corresponding with, that's -- you're a private investigator,
5 right?

6 A: Not me, no, sir.

7 Q: Well, you're an investigator to some extent.

8 A: Yes, sir.

9 Q: You've asserted that to these people here.

10 A: Yes, sir.

11 Q: You can find out who that number belongs to and you did,
12 didn't you?

13 A: Yes, we did, sir.

14 Q: Basically, do a reverse lookup on any computer, pretty
15 much?

16 A: Yes, sir.

17 Q: And the Craig's List posting number, you can get that,
18 too, that's -- you can't keep yourself secret, can you?

19 A: Do what now, sir?

20 Q: You can figure out who has posted something by going to
21 their email on Craig's List, can't you?

22 A: No, I don't believe so, not all the time.

23 Q: Well, y'all did.

24 A: Well, we did it because -- we found that out after the
25 first listing.

1 Q: Okay. So, you found out who it was. So, he -- it's not
2 like it's something super secret that nobody could figure out
3 that it's Marquis Evans, was it? Y'all figured it out by
4 phone and otherwise, correct?

5 A: Our private investigators in North Carolina did some
6 research on that phone number, yes.

7 Q: Okay. So, it could be found out?

8 A: Yes, sir.

9 Q: All right. Now, you previously talked about Craig's List
10 and you're familiar with -- Mr. Richardson asked you questions
11 -- some of these things for sale like for 2300 retail, that's
12 what y'all would sell it to me for, right?

13 A: Some -- yes, even less -- yes.

14 Q: Okay. And he selling it for 1600, right; that's one of
15 the items.

16 A: Uh-huh (affirmative response).

17 Q: So, that's about a third off. You think that people from
18 Craig's List are selling things for the same price when people
19 could go to -- it's always a lot less ---

20 MR. RICHARDSON: Your Honor, he's asking for speculation.

21 THE COURT: No, sir. He's testified on Craig's List.
22 I'll let the jury consider the testimony.

23 MR. RICHARDSON: Thank you, Your Honor.

24 BY MR. BELLAMY:

25 Q: Things on Craig's List are not gonna be -- you're not

1 gonna buy them for the same price you could go to the regular
2 store -- I mean, it's always gonna be less, right?

3 A: Not necessarily.

4 Q: So, people would get on Craig's List and buy it from
5 individuals with no warranty, no nothing for the same price
6 they could go into Airgas Welders?

7 A: Well, sir, he told us on our conversation that I had with
8 him over the phone, if it was Marquis Evans on the
9 conversation, okay ---

10 Q: But what I'm asking ---

11 A: --- that he -- that he had warranties for this inventory,
12 okay, that it was not used, that it was brand new.

13 Q: Well, they also said in there, all sales are final. So,
14 someone's gonna go buy a piece of equipment from somebody in a
15 parking lot of somewhere and got no way, no redress against
16 anybody, and you're telling me they're gonna pay the same
17 price. Come on now. Look at that jury and tell them that.

18 MR. RICHARDSON: Your Honor, he's badgering right now.

19 THE COURT: No, he's not badgering. He can ask -- if he
20 doesn't know, he doesn't know. If he can answer ---

21 A: I'm not aware of pricing or how much discounts are on
22 Craig's List. They all vary. They can be -- I'm sure from it
23 being an exact price to, you know, depending upon how somebody
24 is financially in trouble or something.

25 Q: So, if somebody had some tools or something and they were

1 in bad financial trouble and needed to pay the rent or eat,
2 they might sell it for ten cent on the dollar for Christmas,
3 wouldn't they?

4 THE COURT: Now, you're asking him to speculate too far.

5 A: Certainly ---

6 THE COURT: This jury understands how Craig's List works.

7 Q: Let's move on. So, I don't -- would it be fair to say
8 there's no inference you can draw from whatever prices he put
9 on these things; isn't that right?

10 A: No, just from conversations I had with him on the phone.

11 Q: Well, the prices he listed, you can't draw anything from
12 that, can you?

13 A: He even discounted even better over the phone.

14 Q: Isn't that the way it works? Never mind. All right.

15 Now, and we don't have this equipment here today, do we?

16 A: No, sir.

17 Q: Who all showed up at the Horry County Police Department?

18 It was you, Mr. Richards ---

19 A: Jay Richards, Richard Martino and a Charles Branch from
20 Raleigh, North Carolina.

21 Q: Who is he?

22 A: Charlie Branch is a retired lieutenant from the Raleigh
23 Police Department who works for me.

24 Q: Did y'all ever tell the Lieutenant Debari or the police
25 that y'all were the owners of Airgas?

1 A: Never, sir.

2 Q: And if a report reflected that y'all said that y'all were
3 the owners of Airgas that was made by the police department,
4 that would be incorrect; is that what you're telling me?

5 A: Sir, we're not -- we would never say something like that.

6 Q: I'm just asking.

7 A: No, sir.

8 Q: Okay.

9 MR. BELLAMY: Court's indulgence for one second.

10 THE COURT: All right, sir.

11 Q: Mr. Dukes ---

12 A: Yes, sir.

13 Q: You told us that this Wilson location was burglarized on
14 the 24th day of June of 2011, correct?

15 A: Yes, sir.

16 Q: And that my client was in possession of whatever was
17 stolen from -- on that date, correct?

18 A: Excuse ---

19 Q: What my client possessed was possessed from somebody
20 breaking in on the 24th or going in the 24th?

21 A: That is correct.

22 Q: Okay. You've never -- nobody has ever charged my client
23 with breaking and entering, have they?

24 A: No, sir.

25 Q: Have they charged anybody with breaking and entering?

- 1 A: I'm not -- not aware of that at this point.
- 2 Q: Let me show you what's marked as State's Exhibit Two. Do
3 you recognize that?
- 4 A: Yes, sir.
- 5 Q: Tell us again what that is.
- 6 A: It's the posting from Craig's List, okay, reflecting the
7 equipment matching to equipment that we had stolen from our
8 branch in Wilson, North Carolina.
- 9 Q: What's the date?
- 10 A: On this Craig's List?
- 11 Q: The posting, yeah. It has a -- does it not have a date
12 and time that it ---
- 13 A: It was posted on June the 26th at 9:41 P.M.
- 14 Q: Right below it, is there another posting from my client on
15 Craig's List listing items that are similar, welding
16 equipment?
- 17 A: Yeah, there's a -- multiple postings.
- 18 Q: Okay. And that's his posting, is it not?
- 19 A: It doesn't say his name -- other than the name Matt.
- 20 Q: Matt. And is the phone number identical?
- 21 A: To the number that he called us from, yes.
- 22 Q: Okay. So -- and what's the date on that one, Mr. Dukes?
- 23 A: That's also June.
- 24 Q: June what?
- 25 A: June 21st.

1 Q: June 21st, my client post what for sale?

2 A: He posted a link Power MIG welders. We had another break-
3 in ---

4 Q: Hold it. That's my question.

5 MR. RICHARDSON: Your Honor, if the witness could explain
6 his answer.

7 THE COURT: Yes, I'm gonna permit him to explain the
8 answer. You may do so.

9 A: The reason I became involved in this investigation when it
10 was initiated back in June, I became privy to the fact that we
11 had had a break-in at two of our locations, one in Raleigh,
12 one in Cary was broken into twice, and there was a break-in in
13 our Raleigh location over the course of approximately ten
14 months. The Cary location is within twenty miles of Fuquay
15 Varina, okay, and the same type of equipment was stolen out of
16 all those locations also, similar to the Wilson location.

17 Q: But you're here today and you just testified under oath to
18 this jury that you're saying he possessed not stuff from all
19 that you're talking about now, that what he had was from June
20 24th, right? You just testified to it.

21 A: Right, sir.

22 THE COURT: Back off a -- back off a little bit.

23 Q: When I show you the same post three days before that
24 break-in, where he's got stuff for sale, you want to now come
25 in and tell us about some other break-in that you can't link

1 him to at all, can you?

2 A: Sir, if the individual went to that location prior to
3 breaking into it in Wilson and ---

4 Q: But ---

5 THE COURT: Go ahead.

6 A: If an individual happened to go the Wilson branch and knew
7 what was gonna be taken on the break-in on the 24th, what an
8 avenue to post it prior to this transaction taking place.

9 Q: Let me make sure I'm understanding you. You're
10 speculating that my client anticipated and figures what
11 somebody was gonna get on the 24th so he's goes ahead and
12 advertises it on the 21st?

13 A: There's been multiple advertisements of him running
14 equipment for sale on Craig's List other than these.

15 Q: And there's a lot of people that buy things, flea markets
16 and wherever at discount prices and try to sell it and make
17 money cause if you've got a little bit of money -- just like
18 the pawn shops, you can take advantage of people, might not be
19 what's moral or whatever we want to call it but it's business,
20 isn't it?

21 A: I guess it's business on Craig's List. I'm not familiar
22 with dealing on Craig's List.

23 Q: There's no question that my client had for sale three days
24 before Wilson was broken into similar if not the same exact
25 equipment that we know wasn't from the 24th?A: Well, we do

1 know the one machine that we had recovered in Wilson -- from
2 Wilson here in July the 13th was equipment from Wilson break-
3 in on the 24th.

4 Q: And you have no link to my client to that break-in, do
5 you?

6 A: Other than the fact that he had the equipment in his
7 possession on the 13th of July.

8 Q: Other than that, you don't have anything, do you?

9 A: (No response)

10 Q: No further questions. Answer any questions ---

11 THE COURT: Was there any redirect?

12 REDIRECT EXAMINATION OF DAYNE CHRISTOPHER DUKES BY MR.

13 RICHARDSON:

14 Q: Briefly on the last thing Mr. Bellamy went over, those
15 postings he showed you, the one from June 21st ---

16 A: Yes, sir.

17 Q: What's the description of the property?

18 A: It is, for sale, two brand new Lincoln Power MIG welders
19 still in pre-packaging condition.

20 Q: And MIG welders we got in this -- from the purchase here
21 in Horry County that came from Wilson, that was a different
22 type, correct?

23 A: That is correct.

24 Q: And the property y'all recovered, is the property that
25 listed on the June 26th ---A: On the listings of June 26th

1 and the ones in July.

2 Q: And not the June 21st?

3 A: That is correct.

4 Q: Thank you.

5 THE COURT: All right, sir. You may come down. Call
6 your next witness, please.

7 MR. BELLAMY: Just one question, Judge.

8 THE COURT: Yes you may do some. Limit it to his
9 redirect now under the rules.

10 MR. BELLAMY: Yes, sir, Judge.

11 RECROSS EXAMINATION OF DAYNE CHRISTOPHER DUKES BY MR. BELLAMY:

12 Q: You just testified that the stuff stole -- that's good
13 grammar, stole -- stolen on the 24th is different than what my
14 client posted on the 21st?

15 A: The items that we -- that he posted or whoever posted on
16 Craig's List in late June and then duplicated itself on July
17 10th ---

18 Q: I'm talking about the 21st now, on the 21st ---

19 A: Those items we did not purchase. They're different
20 machines.

21 Q: Okay. On this evidence report from Wilson, underlined
22 there is the exact same thing, isn't it, that's listed on the
23 21st?

24 A: It's also listed in our ---

25 Q: What does it say there? What's underlined there?

1 A: What's your question -- oh, Lincoln Power MIG 140C welder,
2 sir.

3 Q: All right. And this is from the 24th?

4 A: Right but those welders were also stolen from our location
5 in Raleigh back in June.

6 Q: But he's not charged with that, is he?

7 A: No, sir.

8 Q: Thank you.

9 MR. RICHARDSON: Your Honor, the State would ask that Mr.
10 Dukes be excused.

11 THE COURT: He is. May he be excused from his subpoena?

12 MR. BELLAMY: I don't have a problem with him being
13 excused. I've asked that he be sequestered should he be --
14 the State would decide to recall him?

15 MR. RICHARDSON: Your Honor, he's representing ---

16 THE COURT: Sir?

17 MR. RICHARDSON: Your Honor, he's representing the
18 victim. He's already testified. He can certainly stay in the
19 courtroom. Mr. Bellamy is asking if he can be sequestered.

20 THE COURT: Oh, no, I'm not gonna sequester him. He's
21 entitled to stay in the courtroom if he wants to.

22 A: Thank you.

23 THE COURT: No, he was the primary investigating officer.

24 MR. BELLAMY: No, I believe Mr. Buchanan is the ---

25 THE COURT: No, sir. I'm going to permit him to stay in

1 the courtroom.

2 MR. BELLAMY: That'll be fine.

3 THE COURT: He's testified.

4 A: Thank you, Your Honor.

5 THE COURT: Thank you.

6 Call your next witness.

7 MR. RICHARDSON: I'd call Detective Michael Kathman of
8 the Horry County Police Department.

9 MICHAEL KATHMAN, HAVING BEEN SWORN, TESTIFIED

10 AS FOLLOWS:

11 CLERK: Please state your full name and spell your last
12 name.

13 MR. KATHMAN: Michael Kathman, K-A-T-H-M-A-N.

14 DIRECT EXAMINATION OF MICHAEL KATHMAN BY MR. RICHARDSON:

15 Q: Detective Kathman, please tell us a little bit about
16 yourself, your employment, where you're employed, how long and
17 in what capacity?

18 A: I am employed with the Horry County Police Department for
19 approximately the last nine years and I am currently a violent
20 crimes detective; previously property crimes detective.

21 Q: And back in -- so, you're a detective.

22 A: Yes, sir.

23 Q: What type of duties are assigned to you?

24 A: At the current time, investigating violent crimes.

25 Previously -- prior to two weeks ago, I was in the property

1 crimes unit assigned property crimes cases.

2 Q: Congratulations, I assume.

3 A: We'll see.

4 Q: Back on July 13th, 2011, were you working as a property
5 crimes detective?

6 A: Yes, sir.

7 Q: And property crimes, tell us some of the stuff you have to
8 do in property crimes investigation.

9 A: We were assigned cases on a daily basis after review of
10 cases and we're responsible for following up with the
11 investigation, burglaries, larcenies, credit card thefts.

12 Q: Receiving stolen goods?

13 A: Receiving stolen good, yes.

14 Q: Anything that deals with hard physical property?

15 A: Correct.

16 Q: Now, in the course of your duties, as a property crimes
17 investigator, you were back on July 13th, 2011, did you have
18 an opportunity to assist with the investigation and recovery
19 of some stolen property in which Airgas National Welders
20 Corporated as the victim?

21 A: Yes, sir.

22 Q: How did that come about?

23 A: I was approached -- I'm not exactly certain who approached
24 me at the police department, it was I believe either
25 Lieutenant Debari or Detective Rabon about some individuals

1 who had come to the department who had arranged a purchase of
2 some items that they had stolen with an individual through
3 Craig's List and they were attempting to seek police
4 assistance.

5 Q: And that occurred July 13, 2011?

6 A: I believe so; I don't recall exactly now.

7 Q: Tell us what you recall about the investigation?

8 A: I responded -- basically I was told at the time is that an
9 arrangement had been made, there was some property that had
10 been stolen at a location in North Carolina, had been listed
11 on Craig's List. The victim or representatives of the victim
12 had made arrangements through that Craig's List posting to
13 make a purchase of those items in Horry County. They
14 responded to the police department and spoke with -- I'm not
15 sure who they exactly spoke with when they first got there.
16 And then it was arranged eventually to make that transaction
17 take place in the Conway area.

18 Q: Do you remember where specifically in the Conway area that
19 was to take place?

20 A: In the parking lot of the Big Lots on Church Street and
21 501 in Conway.

22 Q: And that's here in Horry County?

23 A: Yes, sir.

24 Q: Now, did there come a time when you actually entered the
25 Big Lots parking lot?

1 A: Yes.

2 Q: What caused you to enter the Big Lots parking lot?

3 A: We had Captain Buchanan had used a pickup truck and was
4 basically acting as the individual attempting to purchase the
5 items that had been listed that they had set up. We were
6 actually somewhat in the perimeter around the parking lot when
7 we got a vehicle description of what it -- a gold Lexus, I
8 believe, that the individual with the property for sale was
9 gonna be driving and when that vehicle approached Captain
10 Buchanan's truck, we pulled up to the location.

11 Q: Upon arriving at the location -- Captain Buchanan that was
12 your boss, right?

13 A: Yes, sir.

14 Q: Y'all were around the area. You arrived at the Lexus.

15 How were the Lexus and Captain Buchanan's truck parked?

16 A: They were side-by-side, I believe. I can't remember which
17 direction each was faced but my memory, they were right next
18 to each other.

19 Q: And prior to that, you knew what type of vehicle the
20 seller of this equipment was gonna be driving?

21 A: Yeah. We were told a gold Lexus is what we were looking
22 for.

23 Q: A little unusual?

24 A: Yes, yeah.

25 Q: And when this gold Lexus pulled in, y'all run up, walk up,

1 drive up?

2 A: We drove up. We were sitting in cars out of -- I mean in a
3 parking lot but on the outskirts of where the truck was parked
4 and we drove up.

5 Q: Tell us what happens when you get out of your vehicle?

6 A: When I got out, we got out, I believe Captain Buchanan was
7 speaking with the driver of the gold Lexus. There were
8 several other detectives that were on the scene and it's my
9 recollection I could look -- there looked to be some equipment
10 or tools or some type of equipment, I guess, in the back seat
11 of the gold Lexus.

12 Q: So, you could see through the window in the backseat there
13 was property?

14 A: Yes.

15 Q: That had been described to you?

16 A: Not really in detail, no, I couldn't say specifically what
17 piece of property it was. It just looked like some sort of
18 equipment or tools type of stuff.

19 Q: Some kind of tools, but no doubt you could see the
20 property?

21 A: You could see it, yes.

22 Q: And you weren't the lead detective on the case, correct?

23 A: No, sir, I was not.

24 Q: And with Captain Buchanan there, you weren't the highest
25 ranking detective on the case, correct?

- 1 A: I was not, no.
- 2 Q: Who was the lead detective?
- 3 A: Jonathon Rabon.
- 4 Q: And he's out of town this week, correct?
- 5 A: That was my understanding, yes.
- 6 Q: Now, once this property was located, did y'all do anything
- 7 to search the vehicle or anything?
- 8 A: Yeah, I believe it was -- the individual that was driving
- 9 had given consent to search the vehicle. The equipment was
- 10 removed from the vehicle. I looked at it -- I couldn't tell
- 11 you exactly what the items were but there was multiple pieces
- 12 of tool-like equipment that were pulled from the vehicle.
- 13 Q: Prior to this consent, had you already seen the equipment
- 14 in the back of the vehicle?
- 15 A: Yes, in the back seat, yes.
- 16 Q: No way to un-ring a bell, right?
- 17 A: Right.
- 18 Q: Now, were there photographs taken of the property?
- 19 A: I believe -- I presume so, I did not take any of them but
- 20 I can't be certain whether there was or wasn't. I haven't --
- 21 don't have the file.
- 22 Q: Let me show you what's been previously admitted as State's
- 23 Four through Ten, if you'll just take a look at those.
- 24 They're already in evidence.
- 25 A: Yes, sir.

1 Q: Do those photographs fairly and accurately depict the
2 property you saw that day?

3 A: To the best of my recollection, yes, yes. Yes, sir, they
4 do.

5 Q: And that was on July 13th, 2011. Now in addition to
6 photographing those tools and equipment, did you -- did you do
7 anything to memorialize or document what you found in the
8 vehicle?

9 A: Yes. We did end up towing the vehicle and when we tow a
10 vehicle, we do a tow sheet or a vehicle inventory record. I
11 believe I completed that document for the vehicle inventory
12 that was taken.

13 Q: Let me have it marked.

14 STATE'S EXHIBIT NUMBER ELEVEN

15 MARKED FOR IDENTIFICATION

16 Q: Let me show you what has now been marked as State's Number
17 Eleven for Identification. Do you recognize -- can you
18 recognize State's Number Eleven?

19 A: Yes, sir.

20 Q: And State's Number Eleven, what do you recognize it as
21 being?

22 A: It's an Horry County Police Department Vehicle Impound and
23 Inventory Record.

24 Q: And how do you recognize it?

25 A: I've completed many of them.

1 Q: But is there a signature on there?

2 A: Yes, my signature is on there, my name is also and the
3 officer's name and my badge number.

4 Q: No doubt this is a copy of the towing report you
5 completed?

6 A: No doubt.

7 Q: You wouldn't sign it unless you did it, correct?

8 A: Correct; that is mine.

9 MR. RICHARDSON: Your Honor, the State would seek to
10 introduce and publish State's Number Eleven?

11 THE COURT: You may do so.

12 STATE'S EXHIBIT NUMBER ELEVEN

13 ADMITTED INTO EVIDENCE

14 Q: Detective, if you'll just go through and under Inventory
15 Taken, that section -- you have better handwriting than me but
16 let's read it out for the jury one time just in case they have
17 a question when they get it. ~

18 A: Just -- you want me to go down the list?

19 Q: Yes, sir.

20 A: Victor torch head; Hanes torch head or -- I'm sorry --
21 Harris torch heard; Harris torch body; Victor torch body;
22 unknown torch body; one box ESAB coreshield 2; one box MIG
23 welding wire 70-56; ESAB flow meter regulator in box; steel
24 cut fourteen-inch saw, blue CML514; pack of stainless steel
25 nine-inch blade; Caddy MIG welder, Model C200I; pack of thin

1 steel fourteen-inch blade; ESAB Power Cut 900 plasma cutter;
2 fourteen-inch stainless steel blade; a Victor torch kit; and a
3 Hypertherm PowerMax plasma cutter.

4 Q: Okay. That's -- those are tools and welding equipment you
5 found in the Defendant's gold Lexus?

6 A: Correct.

7 Q: And you marked it down because it was part of the
8 inventory?

9 A: That was the inventory that was taken from the vehicle;
10 yes, sir

11 Q: And there were other items in the vehicle?

12 A: Yes.

13 Q: Did you mark down who the vehicle was registered to?

14 A: Registered, I have an Antoinette Cross and an address of
15 1517 Balkan Road, Fuquay Varina, North Carolina.

16 Q: And the vehicle is registered up in North Carolina?

17 A: Correct.

18 Q: Were you able to find any type of credit card or anything
19 in there?

20 A: Yes. Inside the car there was a Master Card with the name
21 Marq -- Marquis Evans.

22 Q: Thank you. Now, as y'all stood around taking
23 photographs, do you recall any discussions about serial
24 numbers or anything?

25 A: I recall -- yeah, there were several discussions about a

1 lack of serial numbers. I know there were several other
2 people -- I looked at a couple pieces of equipment, not real
3 hard detail, but I wasn't able to see any numbers or anything
4 and just gave me the impression that -- I heard discussion
5 that they weren't finding any serial numbers.

6 Q: Once you concluded the inventory what happened to those
7 tools?

8 A: Those tools, I believe, a portion of them were returned to
9 the representatives of the victim business that were there and
10 I believe a portion were turned into the evidence department
11 at the police department.

12 Q: Lieutenant Kathman, that's pretty much the extent of your
13 involvement in this particular case, correct?

14 A: Yes, sir.

15 Q: Thank you. If you'll answer any questions Defense may
16 have..

17 MR. BELLAMY: May it please the Court.

18 CROSS EXAMINATION OF MICHAEL KATHMAN BY MR. BELLAMY:

19 Q: Detective Kathman, I've just got a couple. When y'all
20 rolled up there on Mr. Evans ---

21 A: Yes, sir.

22 Q: --- he didn't try to run, did he?

23 A: No, sir.

24 Q: He didn't try to jump in the car, take off or anything
25 like that?

1 A: No, sir.

2 Q: And when you approached or y'all approached, I guess, I
3 believe Lieutenant Debari ---

4 A: Lieutenant Debari was also there.

5 Q: --- asked for consent to search and you ---

6 A: I believe that was my understanding; yes, sir.

7 Q: Okay. And he let him look in the trunk, too, where other
8 items were found?

9 A: Yes.

10 Q: Which was not in plain view?

11 A: Correct.

12 Q: I don't have any further questions. Thank you.

13 A: Yes, sir.

14 THE COURT: All right, sir. It's an appropriate time ---
15 it's twenty minutes till 1:00. If we return at 2 o'clock,
16 that'll give the jury an hour and twenty minutes for lunch.

17 Madame Foreman, ladies and gentlemen, do not discuss this
18 case with anyone, let no one discuss it with you under any
19 circumstances, do not even discuss it among yourselves until I
20 have given you the case for your deliberation. Let me tell
21 you why that's improper. Two or three of you at lunchtime
22 might want to discuss some issue in the case but whatever your
23 decision is has got to be the unanimous decision of all twelve
24 of you and, if several of you are discussing some issue, you
25 are depriving your fellow jurors of your thought process and

1 they're entitled to that. So, please permit no discussions at
2 lunch time of any issue. And Madame Foreman, permit no
3 discussion in the jury room of any issues in this case until
4 I've given it to you for your deliberations. And certainly
5 make no independent inquiry. Your verdict must be based on
6 the law and evidence in this courtroom. Please be back at 2
7 o'clock in the jury room and we will resume.

8 All right. We're in recess.

9 (REPORTER'S NOTE: The jury is excused for lunch.)

10 *****OFF THE RECORD*****

11 (On the Record.)

12 (REPORTER'S NOTE: The following takes place after lunch break
13 and outside the presence of the jury.)

14 THE COURT: Are we ready to proceed?

15 MR. RICHARDSON: We are, Your Honor.

16 THE COURT: How about it Bellamy?

17 MR. BELLAMY: Yes, sir, Your Honor.

18 THE COURT: Bring the jury in.

19 MR. BELLAMY: Your Honor ---

20 THE COURT: Yes, sir.

21 MR. BELLAMY: Did you want to question Mr. Evans about
22 testifying so that could go ---

23 THE COURT: Well, as I understand it, the State has
24 another witness.

25 MR. BELLAMY: Okay. Yes, sir. THE COURT: I will do

1 that at the appropriate time.

2 (REPORTER'S NOTE: The following takes place inside the
3 presence of the jury.)

4 THE COURT: Good afternoon, ladies and gentlemen. So
5 that you'll know, I know that some of you are concerned, we
6 have discussed it with the attorneys and all and we're gonna
7 make every effort to conclude this case today. May not get it
8 done but I think we will.

9 Call your next witness. Call your witness.

10 MR. RICHARDSON: Thank you, Your Honor. Putting a little
11 pressure on us.

12 State would call Captain Dale Buchanan with the Horry
13 County Police Department.

14 THE COURT: You said little. I said much.

15 JOHN DALE BUCHANAN, HAVING BEEN SWORN,
16 TESTIFIED AS FOLLOWS:

17 CLERK: State your full name and spell your last name.

18 MR. BUCHANAN: My name is John Dale Buchanan, B-U-C-H-A-
19 N-A-N.

20 DIRECT EXAMINATION OF JOHN DALE BUCHANAN BY MR. RICHARDSON:

21 Q: Captain Buchanan, correct?

22 A: That's correct.

23 Q: Captain, if you could please tell us where you're
24 employed, how long and in what capacity?

25 A: I'm employed with the Horry County Police Department at

1 this time as Precinct Commander of the Central Precinct and
2 also Commander of Support Services Division; previously,
3 Commander of Criminal Investigations Division.

4 Q: And when you say previously Criminal Investigations
5 Divisions, that CID, correct?

6 A: Yes.

7 Q: And back in July of 2011, is that where you were
8 stationed?

9 A: I was.

10 Q: And in Criminal Investigative Division, CID, what is it?

11 A: Basically broke down into sections of property crime
12 detectives, violent crime detectives, crime scene
13 investigators and departments of evidence and personnel, and
14 narcotics and vice.

15 Q: Captain, I'm gonna move the microphone a little closer to
16 you just so we can all hear. If you'll just slide up just a
17 little bit. Thank you, Captain.

18 When you say property investigation, I believe we heard
19 Detective Kathman talk a little bit earlier about what types
20 of crimes were involved in investigation but thefts of
21 property and ---

22 A: Property crimes involves investigation of burglaries,
23 larcenies, anything involving stolen property or any way that
24 it may have been used in a crime.

25 Q: And as the Captain over CID back in 2011, was it common

1 practice for you to become personally involved in an
2 operation?

3 A: No.

4 Q: Pretty abnormal?

5 A: Pretty abnormal.

6 Q: So, with regard to back in July 13th, 2011, did there come
7 an opportunity where you did become personally involved in a
8 property crimes investigation?

9 A: It did. It came about, I actually was there and privy to
10 overhear when these gentlemen came in the police department.
11 I believe they talked to Lieutenant Debari first, I overheard
12 that. I was there kind of dressed down that day because I
13 intended to leave early and drove my personal vehicle to work
14 because I wanted to go pick up some items to carry home when I
15 got off work.

16 Q: So, you were just kind of checking in that day?

17 A: Yeah, more or less, yes.

18 Q: Right place at the right time.

19 A: Yes.

20 Q: And we heard about Lieutenant Debari, what was his
21 position?

22 A: He was my Deputy Commander of Criminal Investigations.

23 Q: So, he was right under you?

24 A: Yes.

25 Q: And you say that Mr. Dukes and some his compatriots came

1 into discuss a sting operation, correct?

2 A: They came in to discuss the fact that they had possibly
3 located some property that had been stolen from them at was
4 being sold on Craig's List and they wanted to set up some type
5 operation to try to recover that property.

6 Q: And what assistance, if any, did the Horry County Police
7 Department agree to?

8 A: We agreed, after -- after looking at all the information
9 they had and discussing the case, we agreed to go ahead and
10 set up a meet with the individual that they had already been
11 speaking with about the property. We decided instead of
12 having one of them meet the person, that one of us would do it
13 and I elected to do that, to meet this person and arrange to
14 see the property and see what he had for sale.

15 Q: And what decision-making went into choosing you to be the,
16 I guess, undercover officer for the purpose of this case?

17 A: Just the fact that I was there dressed down in plain
18 clothes and had my old truck there and was not -- it would not
19 be recognized as a police vehicle, that's for sure.

20 Q: Didn't want to roll up to Big Lots in a Crown Vic?

21 A: Exactly.

22 Q: Now, and I just said Big Lots, where -- what was the plan
23 exactly?

24 A: Well, the plan was, these gentlemen had been speaking with
25 the individual. They had come up with the idea of meeting him

1 Conway, I think, the beach was discussed first and we didn't
2 think that would be a good idea; so, we changed it to Conway.
3 They arraigned by telephone for him to come to the Big Lots
4 parking lot and meet there.

5 Q: Okay. So, they did the phone calls, correct?

6 A: Yes. And they -- we were involved and privy to what was
7 going on with that; yes, sir..

8 Q: Y'all were in the same room when they were on the phone.

9 A: Sometimes, yes.

10 Q: Now, y'all made this arrangement to go up to Big Lots to
11 purchase this power equipment. And when you get up to Big
12 Lots, you arrive in your truck?

13 A: Yes.

14 Q: How long are you there before the transaction?

15 A: Not very long. I came up -- some of our unmarked
16 detectives followed me up there. They arranged to met -- to
17 park around and disperse themselves amongst the other parked
18 cars in the parking lot out there. I pulled up in an open
19 area of the parking lot where there was not any vehicles
20 parked around and I sat there probably less than ten minutes.

21 Q: And after ten minutes, what happened?

22 A: A vehicle, a gold Lexus which is the vehicle that were
23 expecting to show up, drove into the parking lot. He came in
24 to the parking lot in an area sort of behind where my truck
25 was parked. Came across the parking lot and pulled up

1 directly beside my truck on the right-hand side facing the
2 same direction my truck was.

3 Q: Okay. So, if I understand, he pulls in first, stops, and
4 then pulls up some more?

5 A: No, he pulls in, he comes in from behind -- an area behind
6 where my truck's at and pulls up beside my truck on the right-
7 hand side and stopped.

8 Q: So, he's over on the passenger side?

9 A: He's over on the passenger side of my truck.

10 Q: And once this gold Lexus comes up, do you see anyone in
11 the vehicle?

12 A: I do. There's one person driving the car.

13 Q: And that person driving the car, do you see him in the
14 courtroom?

15 A: I do.

16 Q: And who is that?

17 A: He is the Defendant sitting beside his attorney.

18 Q: But no other passengers in the car?

19 A: No.

20 Q: Now, he pulls up beside you, what if anything happens at
21 that point?

22 A: When he pulled up beside of me, I waited for, I don't
23 know, a couple of seconds to get out of the truck. When I got
24 out and walked around to the rear of my truck, he got out of
25 his car and met me in the area there at the rear of my truck

1 kinda between his car and my car. While standing there, I
2 looked into the car and could see a lot of stuff in the
3 backseat, property. Walked up to him, met him, and introduced
4 myself as Mike. And I said, you're Danny? And he replied,
5 yes.

6 Q: So, you identified yourself as Mike?

7 A: Mike, that's right.

8 Q: And why was that?

9 A: Because that's who he thought he was talking to on the
10 phone was someone named Mike.

11 Q: And you asked if he was Danny?

12 A: No, I just -- I introduced myself as Mike and I said,
13 you're Danny? And he said yes.

14 Q: So, he agreed that he was Danny?

15 A: Yes.

16 Q: After nodding in agreement that he was indeed Danny, Danny
17 Miller, what if anything transpired.

18 A: He opened the back door of the car where I could see the
19 property in the back seat of the car. There was an awful lot
20 of industrial type welding equipment, saw blades, things like
21 that in there, most of it still in packaging. And by the time
22 that happened, the detectives that we had stationed in the
23 parking lot all came driving up, kind of surrounded us a
24 little bit. Got out of the car at that time. I identified
25 myself as a police officer to him and he was -- the detectives

1 came up and they were taking him into custody.

2 Q: Now, you'd ask if he was Danny and he said yes. Did you
3 ever learn a different name for him?

4 A: I did.

5 Q: And what name is that?

6 A: Marquis Evans.

7 Q: So, it's not Marquis Danny Evans, it's just Marquis Evans?

8 A: The name I know now is Marquis Evans, yes.

9 Q: Were you ever able to determine where Marquis Evans lived?

10 A: I know now it's a small town named Fuquay, North Carolina.

11 Q: Okay. So, he lived up in North Carolina?

12 A: Yes.

13 Q: Now, the Defendant was placed into custody, correct?

14 A: Yeah. Well, he -- when I introduced myself as a police
15 officer, and he saw the other police cars coming up, he's
16 like, a deer in headlight look, you know, and he's like,
17 what's going on and I kind of recognized that look. Usually
18 it's run or fight but he didn't. He just stood there kind of
19 like, what's going on?

20 Q: And there were police officers all around him?

21 A: Yes.

22 Q: There wasn't a whole lot of place to run?

23 A: No.

24 Q: Big open parking lot?

25 A: Yes.

1 Q: He was out of the car?

2 A: Yes.

3 Q: Couldn't step on the gas?

4 A: No.

5 Q: Where was he located with relation to his steering wheel?

6 A: He was at rear of his car by the left-rear fender.

7 Q: Driver side?

8 A: Driver side, yes.

9 Q: And the rear passenger door was open, if I understand?

10 A: That's right.

11 Q: So he couldn't have got into his driver seat if he tried?

12 A: I wouldn't have been easy to do, no.

13 Q: And all the tools and equipment, they were in plain view?

14 A: Yes.

15 Q: What if anything happened to those tools?

16 A: When the detectives got there, they began to talk to him.

17 And at some point, one of my detectives, I'm not sure which

18 one, gained permission to look inside the car and he also

19 agreed to open the trunk. And when he did there was other

20 equipment in there, similar type equipment.

21 Q: And that equipment was taken into custody?

22 A: It was. They placed it all out on the ground and began to

23 photograph it and record it on evidence sheets and all that.

24 Q: And I know the jury has got to be a little bit bored with

25 this, looking at the pictures, but I just want you to look

1 through them real quick. Is this the photographs your
2 detectives took?

3 A: Okay.

4 Q: And that's State's Four through Ten, I believe. Are those
5 clear and accurate depictions of the property that was found
6 in the Defendant's vehicle?

7 A: They are.

8 Q: Now, as Captain over the investigative division at the
9 time, are you aware of any attempts that were made to identify
10 this equipment?

11 A: Shortly after the -- getting the equipment out of the car
12 and all that, I left the scene but I do know that there was a
13 full investigation done by the detectives of the Property
14 Crimes Division. I reviewed their case file afterwards and
15 there were steps made to make sure that all the property was
16 identified.

17 Q: And do you know what was used to help identify the
18 particular equipment?

19 A: The victim's identification for one thing, inventory
20 sheets that they had from equipment stolen from their
21 business, police reports from the Cary, North Carolina, Police
22 Department, I believe it was.

23 Q: And all of this matched up to ---

24 A: All of that together was used, yes.

25 Q: Now, I'm gonna ask you a policy and procedures question on

1 that.

2 A: Okay.

3 Q: Now, in your experience as Captain over CID and I assume
4 at some point in your career, an actual detective, is it
5 common place to return evidence to victims?

6 A: It is.

7 Q: Even prior to trial?

8 A: Yes.

9 Q: And what steps are taken prior to returning that evidence?

10 A: Our policy is if the property can be returned to the
11 victim, we do that, after first making sure that it is
12 identified, photographed, recorded on property and evidence
13 sheets and signed for by the victim. But we do take every
14 effort we can to make sure that it is the property of the
15 victim. A lot of property we recover is large or what we, you
16 know, actually logistics makes it incumbent that we return a
17 lot of this property to victims.

18 Q: As long as we can identify it and we document it?

19 A: Exactly, yes.

20 Q: And prior to returning the property to the victim, is it
21 common place to -- let me see if I can back up and ask this
22 question. Would you just hand property out to somebody if
23 they said, hey, that's mine?

24 A: No.

25 Q: Once again, I believe you stated you used police reports,

1 inventory logs, all this was used to identify this particular
2 equipment as belonging to Airgas National Welders.

3 A: That's correct.

4 Q: And you are satisfied that that is indeed the property
5 that was stolen out of that Wilson store?

6 A: I am satisfied that it is.

7 Q: By everything that you've seen?

8 A: By everything that I've seen and our investigation.

9 Q: Captain, I appreciate your answers. If you'll answer any
10 questions Mr. Bellamy might have.

11 A: Thank you.

12 MR. BELLAMY: May it please the Court?

13 CROSS EXAMINATION OF JOHN DALE BUCHANAN BY MR. BELLAMY:

14 Q: Captain Buchanan, you were head of CID at that time, I
15 guess?

16 A: Correct; yes, I was.

17 Q: Okay. And you just previously testified that you reviewed
18 things that you're -- and obviously, I understand, as Captain,
19 you typically -- you don't -- not actively in every case, you
20 have to review and supervise, I understand that. And you did
21 that in this case?

22 A: Yes.

23 Q: Okay. And there was -- the lead detective in this case is
24 Detective Jonathon Rabon, correct?

25 A: That's correct.

- 1 Q: And he's not here today?
- 2 A: He's not. He's out of town.
- 3 Q: And the detective assigned to question Mr. Evans is
- 4 Detective Kluska?
- 5 A: Correct.
- 6 Q: He is here today, isn't he?
- 7 A: He is.
- 8 Q: Okay. And in fact, you did review the fact that Detective
- 9 Kluska interviewed and took a statement from my client, didn't
- 10 you?
- 11 A: I'm aware of that; yes, sir.
- 12 Q: A written statement, in fact?
- 13 A: I believe so.
- 14 Q: I show you this. Can you identify that as that written
- 15 statement?
- 16 A: This is a Voluntary Statement ---
- 17 Q: And without -- because it's not in evidence, but without
- 18 telling us what it says but do you recognize that as being his
- 19 statement?
- 20 A: I recognize, yes, it is; Detective Kluska's signature is
- 21 on it.
- 22 Q: And it's a statement of who?
- 23 A: It's says it's a statement of Marquis Evans.
- 24 Q: And Detective Kluska is here today?
- 25 A: He is.

1 Q: Okay. And Mr. Richardson made a point that my client
2 couldn't run; he didn't make any effort to get away, did he?

3 A: No.

4 Q: Whether he could have or not, he didn't?

5 A: Whether he could have or not, he didn't.

6 Q: He didn't. And he was fully cooperative in opening the
7 truck, those sort of things so you could see not just through
8 the window but what was in the trunk which there were items
9 there too, right?

10 A: Yes.

11 Q: And you didn't have a search warrant, did you?

12 A: No.

13 Q: And actually when you first pulled up, he's not actually
14 under arrest for anything at about point because you don't
15 know what you have, do you?

16 A: That's correct.

17 Q: So, he didn't have to give you permission to do any of
18 that, did he?

19 A: No, he didn't have to.

20 Q: But he did?

21 A: He did.

22 MR. BELLAMY: Court's indulgence for just one minute.

23 THE COURT: All right, sir.

24 Q: Just one more question, Captain Buchanan. Did Mr. Evans
25 give you a statement about anything or was that all to

1 Detective Kluska?

2 A: He didn't give me a statement.

3 Q: No further questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION OF JOHN DALE BUCHANAN BY MR. RICHARDSON:

6 Q: With regard to that statement, do you know if there was
7 any follow-up done with information obtained from that
8 statement?

9 MR. BELLAMY: Judge, I would object unless he knows of
10 his own ---

11 THE COURT: Well, no, sir, you asked the statement, he's
12 entitled to ask the question.

13 MR. BELLAMY: I understand.

14 A: I know that the entire case was followed up on by
15 detectives as far that statement in particular, no, I do not.

16 MR. RICHARDSON: Your Honor, I have no further questions.
17 The captain, if he could be excused, please, to return to his
18 duties.

19 THE COURT: You may be excused.

20 A: Thank you.

21 THE COURT: Any further witnesses from the State?

22 MR. RICHARDSON: No, sir, Your Honor, the State would
23 rest at this time.

24 THE COURT: The State concludes its case.

25 Madame Foreman, I'm gonna let you go to the jury room for

1 just a moment and I'll be calling you back out. Thank you.

2 (REPORTER'S NOTE: The following takes place outside the
3 presence of the jury.)

4 THE COURT: All right. Any motions from the State or the
5 Defense?

6 MR. RICHARDSON: None from the State, Your Honor.

7 THE COURT: Defense?

8 MOTIONS:

9 MR. BELLAMY: Your Honor, at this time, on behalf of my
10 client, Marquis Evans, I would move for a directed verdict of
11 not guilty. Your Honor, I do not believe that the State even
12 in the view of the light most favorable to the State has made
13 a sufficient case that my client knew or should have known
14 that these items were stolen. I would submit to Your Honor
15 the fact that this is a purely circumstantial evidence case as
16 to the issue of knowledge of my client. And whenever the
17 State relies wholly, as they do in this case, on
18 circumstantial evidence, there is a different standard of
19 proof versus ---

20 THE COURT: No, sir. No, sir. The State -- I'm gonna
21 charge circumstantial evidence. There's no difference between
22 circumstantial evidence and direct evidence and I'll give you
23 that charge. You'll have a copy of it before you.

24 MR. BELLAMY: I understand, Your Honor, but I would again
25 so that based on the totality of their evidence, even -- there

1 is no evidence to show that my client even knew that the items
2 were stolen, which is a necessary element, or had reason to
3 know. And based upon that, Judge, we would ask that the Court
4 direct a verdict of not guilty at this time.

5 THE COURT: I would respectfully disagree with you in
6 that there is testimony that this Defendant had in his
7 possession numerous recently stolen items identified by
8 product number. As to one specific item, it was identified by
9 the exact number on the plates. There is an additional
10 inference that the jury well may derive and that is that there
11 is testimony that some of this stuff was still in its original
12 packaging indicating it was brand new. Obviously, we know
13 that brand new merchandise is generally not sold. I would
14 think there is an inference to be derived by the jury -- it is
15 a circumstantial evidence case and I'll charge circumstantial
16 evidence but I would respectfully deny your motion and think
17 it's a question for the jury.

18 Take a look at my request to charge now. Do you want me
19 to charge intent?

20 MR. BELLAMY: Yes, sir, Your Honor.

21 THE COURT: Okay. And you see the charge with reference
22 to possession -- receiving stolen goods? That's right off the
23 internet.

24 State, you got any other charges?

25 MR. RICHARDSON: Your Honor, is the intent charge

1 included in this?

2 LAW CLERK: It's one of the last ones.

3 MR. BELLAMY: It's on page seven.

4 MR. RICHARDSON: Thank you. Thank you.

5 THE COURT: Yeah, I'm gonna include intent.

6 MR. RICHARDSON: May I have a moment, Your Honor.

7 THE COURT: The word intent is in the language of the
8 crime itself, so I think it's appropriate. I will not charge
9 it if both of you agree that it doesn't go. Absent that, I'm
10 gonna charge it.

11 Mr. Bellamy, you got any additional charges?

12 MR. BELLAMY: No, sir, Your Honor.

13 THE COURT: All right, sir.

14 All right. Anything further from the State?

15 MR. RICHARDSON: Your Honor, if you want to discuss with
16 the Defendant about his rights to testify.

17 THE COURT: I'm getting ready to do that but I wanted to
18 deal with the charge first.

19 MR. RICHARDSON: No further charges from the State.

20 THE COURT: All right. Have the Defendant stand, please.

21 MARQUIS T. EVANS, HAVING BEEN SWORN,
22 TESTIFIED AS FOLLOWS:

23 THE COURT: Incidentally, will there be any testimony on
24 behalf of the Defense?

25 MR. BELLAMY: No, sir, Your Honor.

1 THE COURT: All right. Mr. Defendant, we're at that
2 stage of the case where you are -- may present any testimony
3 that you desire to do. In addition to that, you have the
4 absolute right to testify; do you understand that?

5 MR. EVAN: Yes, sir.

6 THE COURT: You have the absolute right not to testify.
7 Obviously, with such a serious matter, you would discuss it
8 with your attorney if you chose to but the decision ultimately
9 to testify or not to testify rests with you. Do you
10 understand that?

11 MR. EVANS: Yes, sir.

12 THE COURT: You cannot be heard to say later that you
13 either did or did not because your lawyer made you do it. He
14 can't do that; it's your decision. You understand that?

15 MR. EVANS: Yes, sir.

16 THE COURT: In the event you elect not to testify, I
17 would charge the jury that that fact must not be used against
18 you in any way, that the fact that you did not testifies
19 raises absolutely no adverse interests against you. I would
20 charge the jury that that fact must not even entered into
21 their deliberations in the jury room. Do you understand that?

22 MR. EVANS: Yes, sir.

23 THE COURT: Now, do you have any questions as to your
24 right to testify or not to testify?

25 MR. EVANS: No, sir.

1 THE COURT: All right, sir. And what is your decision?

2 MR. EVANS: At this time I would refuse ---

3 THE COURT: Sir?

4 MR. EVANS: At this time I will not testify.

5 THE COURT: Well, at this time -- this is the only time
6 you got.

7 MR. EVANS: I will not testify, I'm sorry.

8 THE COURT: It is your decision not to testify?

9 MR. EVANS: Yes, sir.

10 THE COURT: The Court will certainly honor it. Thank
11 you.

12 All right. Bring the jury in.

13 MR. RICHARDSON: Your Honor, as I assume as is your
14 custom, you're gonna read the charge to the jury first?

15 THE COURT: I am. Anybody have any objection to that?

16 MR. RICHARDSON: Certainly not, Judge.

17 MR. BELLAMY: Judge, from a procedural standpoint, once I
18 rest, I would believe I need to renew my motions at that time.

19 THE COURT: You may do so.

20 MR. BELLAMY: Do we want to send the jury back and forth
21 or ---

22 THE COURT: No, let's go ahead and do it now.

23 MR. BELLAMY: I would renew those motions ---

24 MR. RICHARDSON: Whoa ---

25 THE COURT: Wait a minute. He's already rested in the

1 presence of the jury. You may make your motions now since you
2 are putting up no additional testimony.

3 MR. BELLAMY: I would renew those motions, Judge.

4 THE COURT: I will accept your renewal and for the
5 reasons stated, respectfully deny them.

6 MR. BELLAMY: Thank you.

7 THE COURT: Bring the jury in.

8 (REPORTER'S NOTE: The following takes place inside the
9 presence of the jury.)

10 THE COURT: Madame Foreman, the State of South Carolina
11 has concluded its testimony and rested. The Defense, now, as
12 I understand it, also rests. Is that true?

13 MR. BELLAMY: Yes, sir, Your Honor.

14 CHARGE BY THE COURT

15 THE COURT: The Defendant himself, as is his
16 constitutional right, has elected not to testify. Now, in
17 that connection, I charge you that the fact that a Defendant,
18 and this Defendant, chose to exercise his constitutional
19 rights not to testify, raises absolutely no adverse inferences
20 against him. That magnificent document of our Constitution
21 protects your rights not to testify and it protects mine. Now
22 the fact that he did not testify raises absolutely no
23 inferences against him. You must not even consider that
24 in your deliberations.

25 Madame Foreman, the fact that he did not testify is not a

1 matter for your discussion in the jury room. In your
2 deliberations, let there be no conversation about the fact
3 that this Defendant did not testify. That is his absolute
4 right as it is yours and mine.

5 Generally, we charge the jury after summation of counsel.
6 Jurors in the past few years have said, Judge, I wish you
7 would've told me what the law was, I could've followed the
8 position of the lawyers better and so it is that I'm gonna
9 charge you the law as it is.

10 As you will recall, I've taken the step a little further
11 and I charged you with reference to some of the law even at
12 the beginning of the case. It being my view after twenty-nine
13 years on the bench that a juror at least are entitled to know
14 what they've got to do and what their responsibilities are and
15 jurors have said that's very helpful and I conclude that it
16 is. I will be renewing some of those matters that I discussed
17 preliminary at the time that you were chosen.

18 You will recall that I told you that this Defendant and
19 all the defendants that come into court upon a document known
20 as an indictment. This is simply the allegations as against
21 this Defendant that the State must prove beyond a reasonable
22 doubt. This will be with you in the jury room. The fact that
23 he was arrested, charged and indicted raises absolutely no
24 inference against him. This is simply the charging document
25 that this Defendant and all defendants receive prior to

1 beginning of a trial.

2 Now, I emphasize again to you that this Defendant has
3 pled not guilty, thereby, placing the burden of proof upon the
4 State of South Carolina of proving him guilty if they can to
5 your satisfaction beyond a reasonable doubt. This presumption
6 of innocence remains with this Defendant from the moment he
7 entered the door of this courtroom, remains with him
8 throughout the trial until and unless you the jury has found
9 him guilty beyond a reasonable doubt. This presumption of
10 innocence that I've discussed with you has been said to be
11 like a robe of righteousness which remains with him draped
12 around his shoulders until it has been removed by evidence
13 satisfactory to you beyond a reasonable doubt.

14 I want to emphasize to you that this presumption of
15 innocence is not mere legal theory. It is not just a legal
16 phrase. It is a substantial right to which this Defendant and
17 every defendant is entitled to unless and until you the jury
18 are satisfied from the evidence of the Defendant beyond a
19 reasonable doubt.

20 Let me now discuss with you the terminology of reasonable
21 doubt. The State, as I've indicated, has a burden of proving
22 the Defendant guilty beyond a reasonable doubt. Some of you
23 may have served in civil court cases where you told that the
24 burden of proof is by the greater weight or the preponderance
25 of the evidence. In criminal cases, the burden is more

1 strongly than that. It is beyond a reasonable doubt. It must
2 be more powerful and is. It must be beyond a reasonable
3 doubt.

4 Now, Madame Foreman and ladies and gentlemen, proof
5 beyond a reasonable doubt is proof that leaves you firmly
6 convinced of the Defendant's guilt. There are very few things
7 in this wide world that we know with absolute certainty. And
8 in criminal cases, the law does not require proof that
9 overcomes every possible doubt. The law doesn't require that.
10 If based on your consideration of the evidence, you are firmly
11 convinced that the Defendant is guilty of the crime charged,
12 you must therefore find the Defendant guilty. If on the other
13 hand you think there is a real possibility that this Defendant
14 is not guilty, you must give this Defendant the benefit of
15 that doubt and find him not guilty. Now, you and I, as jurors
16 and judge, have responsibilities. I remind you that during
17 this trial, you and I have these responsibilities to perform.
18 As a trial judge, it is my duties to preside over the trial of
19 the case, as I've done. It is my duty to rule on the
20 admissibility of evidence. It is my duty to charge you the
21 law applicable to the various issues in this case. And I tell
22 you in that regard, in your deliberations, you are to consider
23 only the evidence and depositions heard in this courtroom and
24 from no other source. This Defendant must be tried on the
25 basis of the evidence heard today and from no other source.

1 Now, as I told you I have the additional duty of
2 providing the law applicable to this case. And in that
3 connection, I charge you as I will again in a moment that you
4 twelve are the sole and only finders of the facts, judges of
5 the credibility of the witnesses and say to you, Madame
6 Foreman, you and your distinguished jury take the facts as you
7 find them to be from the evidence and exhibits in this
8 courtroom and apply those facts to the law as I give it to
9 you.

10 Now, in that regard, you and I may disagree with what the
11 law is or ought to be but for the purposes of this charge and
12 this court, under your oath, you are required to accept the
13 law as I give it to you, even though you or I might disagree
14 with what the law is or ought to be. Your oath requires that
15 you accept the law as I give it as being the correct law,
16 remembering that as finders of the facts you take those facts
17 as you find them to be and apply it to the law that I have
18 given to you.

19 Now, I want to emphasize again that you twelve are the
20 sole and only finders of the facts in this case, you alone are
21 the sole and only judges of the credibility meaning the
22 believability of every witness who testified. I discussed
23 this briefly with you at the beginning of the trial and I tell
24 you again, in judging credibility and believability all of us
25 use various tools but primarily we use our common sense based

1 on our experiences in life in deciding whether or not somebody
2 is telling me the truth, the whole truth and nothing but the
3 truth or partial truth. You make that determination in
4 judging credibility and believability and thereafter finding
5 the facts in this case.

6 Now, I prepared some exact charges with reference to the
7 law of this case. I'm going to ask my administrative
8 assistant to read to you these charges. Please accept his
9 rendition as coming from me directly.

10 You may proceed.

11 LAW CLERK: I instruct you and emphasize that the fact
12 that the Defendant did not testify is not a factor to be
13 considered by you in any way in your deliberation and in your
14 consideration on the question of the guilt of the innocence of
15 the Defendant -- or the innocence of the Defendant. It must
16 not be considered by you in any manner whatsoever. A
17 Defendant has the constitutional right to remain silent and
18 the assertion of this right must not be considered by you in
19 your deliberations. I repeat, under your oath, you are to
20 draw no conclusion whatsoever from the fact that the Defendant
21 in this case did not testify. The fact that this Defendant
22 did not testify should not even be discussed in the jury room.
23 The burden of proof, as I have stated to you, is on the State.
24 The Defendant is not required to prove his innocence. The
25 burden of proof remains on the State to prove guilt beyond a

1 reasonable doubt.

2 The Defendant is charged with receiving stolen goods.
3 The State must prove beyond a reasonable doubt that the
4 Defendant bought, received or possessed goods, chattels or
5 other property and that the Defendant knew or had reason to
6 believe that the property was stolen. Whether the Defendant
7 knew or had reason to believe that the property was stolen may
8 be shown by direct or circumstantial evidence. The State may
9 prove that the Defendant knew or had reason to believe that
10 the property was stolen by showing that the Defendant knew
11 facts that would make a reasonable person believe that the
12 property was stolen.

13 There are two types of evidence which are generally
14 presented during a trial, direct evidence and circumstantial
15 evidence. Direct evidence is the testimony of a person who
16 claims to have actual knowledge of a fact such as an eye
17 witness. It is evidence which immediately establishes the
18 main fact to be proved. Circumstantial evidence is proof of a
19 chain of facts and circumstances indicating the existence of a
20 fact. It is evidence which immediately establishes collateral
21 facts from which the main fact may be inferred.
22 Circumstantial evidence is based on inference and not on
23 personal knowledge or observation. The law makes absolutely
24 no distinction between the weight or value to be given to
25 either direct or circumstantial evidence nor is a greater

1 degree of certainty required of circumstantial evidence than
2 of direct evidence. You should weigh all of the evidence in
3 the case. After weighing all the evidence, if you are not
4 convinced of the guilt of the Defendant beyond a reasonable
5 doubt, you must find the Defendant not guilty.

6 In order to establish criminal liability, criminal intent
7 is required. For example, the mental state required to be
8 proven by the State for a particular crime might be purpose,
9 intent, knowledge, recklessness or criminal negligence.
10 Criminal intent must be proven by the State beyond a
11 reasonable doubt. Criminal intent is always a matter that
12 must be determined by the jury from the circumstances
13 surrounding the situation. There is no way to prove intent to
14 a mathematical certainty. There is no way medical science can
15 dissect a person's brain and determine what the person had in
16 mind so the law says that criminal intent may be inferred from
17 the circumstances shown to have existed. This is how you make
18 a determination of whether or not the element requiring intent
19 was present. It is not necessary to establish intent by
20 direct and positive evidence but intent may be established by
21 inference in the same way as any other fact by taking into
22 consideration the acts of the parties and all the facts and
23 circumstances of the case.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. It is up to you to determine what the Defendant

1 intended to do based on the circumstances shown to have
2 existed. Criminal intent can arise from action or a failure
3 to act. It may arise from negligence, recklessness or an
4 indifference to duty or to consequences that is considered by
5 the law to be equivalent of criminal intent.

6 THE COURT: Ladies and gentlemen, please accept the
7 foregoing as remarks previously prepared by you as to the law
8 on the issues in the case.

9 During your deliberations, Madame Foreman, I'm going to
10 send to you two documents. The first is an open statement
11 that's clarification as to your verdict. Your verdict will
12 either be we find the Defendant not guilty or we find the
13 Defendant guilty and you would check whatever you find
14 unanimously to be. Once you have found the verdict on this
15 form please then go to the indictment, turn to the back of it
16 under the word verdict, write whatever your verdict is and
17 sign your name. Now, your verdict must be the unanimous verdict
18 of all of you. It cannot be a verdict of the majority or,
19 obviously, the minority.

20 We're gonna have concluding statements at this time,
21 after which, I'm gonna send you to the jury room for your
22 deliberations. And I will hear, if any, any objections or
23 additions to the charge after summation of counsel.

24 Okay. The State will proceed first.

25 STATE'S CLOSING BY MR. RICHARDSON:

1 MR. RICHARDSON: Thank you, Your Honor.

2 Back in the early fall, I'd gone grocery shopping in the
3 morning when I woke up on Saturday and one the things I got
4 was a big bag of Chips Ahoy cookies, one of my favorite things
5 to eat with big glass of milk. And I went and dumped them in
6 the cookie jar and I -- it was still early in the morning and
7 so I went on outside and decided to wash my car. Got done,
8 cleaned up, went inside and said, hmm, about time for a mid-
9 morning snack, I'm gonna get some cookies. I went over to
10 that cookie jar and they were gone, flat gone. I know there's
11 four of us in the house, five counting the dog, six for the
12 cat. I pretty much ruled out the dog and cat pretty quick;
13 they can't life the cookie jar. My wife had stepped out and
14 she's not partial to Chips Ahoy; so I ruled her out. I got
15 two left, two little boys. I looked on the floor and saw a
16 few crumbs, not a lot, and I followed them. Walked into the
17 oldest one's room and he's sitting and watching T.V., said,
18 hey, Dad. Walked in the second room, little, five-years-old,
19 and there he sits, got crumbs on the carpet -- his momma got
20 him on that -- got crumbs on his face and he's over in the
21 corner, he heard me coming, he heard me talking to my oldest,
22 and he's hiding. I didn't see him eat the cookies; I wasn't
23 able to pick up crumbs and say, uh-huh, that's a fresh cookie,
24 that's from this morning, but there was enough evidence there,
25 little bits and pieces, the crumbs, crumbs around his mouth,

1 he was in his room hiding, crumbs on his face. He also had a
2 swollen belly because he had eaten a sleeve of cookies.
3 Something told me he's the culprit. That's what we've got
4 here. That's circumstantial evidence, folks, that's what we
5 have. I told you from the get-go, this is a circumstantial
6 evidence case.

7 We've got the Defendant charged with receiving stolen
8 goods, receiving and possession. In this case, he attempted
9 to sell those stolen goods right here in Horry County. You
10 just heard the Judge's charge. He told you the burden is on
11 the State. I've got to give you evidence, evidence that
12 leaves you firmly convinced of the Defendant's guilt. That's
13 what reasonable doubt is. It's not removing every bit of
14 doubt; it's leaving you firmly convinced that the Defendant
15 had the stolen property and knew or should've known, had
16 reason to know that the property was stolen. That's my job.
17 My job is not to hoodoo you, ask misleading questions, try and
18 play hide the ball, put in irrelevant evidence or statements
19 or inadmissible evidence or statements. I've got one and only
20 one job, to give you the evidence that helps you render a true
21 and just verdict. And that's what we've done. I'm not gonna
22 take you down a rabbit hole and get you lost; that's not my
23 job. To give you the relevant and competent and admissible
24 evidence that helps you make your decision.

25 So, let's examine that evidence. You heard from Mr.

1 Dayne Dukes and we heard from him for a while. He's in charge
2 of loss prevention for Airgas National Welders. You heard
3 from him and he told you about the break-in that occurred on
4 June 24th, 2011 up in Wilson, North Carolina. Told you he's
5 got a whole list of items that were stolen. He went and he
6 verified those, everything that was stolen. And then he took
7 steps with his company and his employees to say, we need to
8 try and track this down. So, they started doing an internet
9 search. They plug in key words, they know what equipment is
10 stolen and they start finding things. They don't start until
11 July the 1st in their investigation. July 4th, they find
12 State's Number Two, Craig's List. They find right here a
13 posting dated June 26th, two days, less than 48 hours after
14 the burglary, equipment matching the description. Now, it
15 doesn't have serial numbers in the description. That'd be
16 convenient, wish it was there but it doesn't, but it matches
17 the equipment and it's within a 200-mile radius. So, they
18 start looking. It's not, okay, let's go lock the seller up
19 right now; it's let's go continue the investigation. They
20 also find a Millermatic 144 welder, that was stolen from that
21 store; Milwaukee cordless combination kit, also dated June
22 26th, stuff stolen from the store.

23 Now, Mr. Bellamy wants to point out some other ads that
24 appear June 21st, two of them, for other equipment, Lincoln
25 Power MIGs, both of them, two of them brand new. There was

1 some other items posted. Mr. Dukes told you, they had other
2 stores broken into prior the 24th. They have a thousand
3 locations but they had several in the Raleigh, North Carolina
4 area, Wilson area.

5 I'm not saying that these two pieces of equipment were
6 stolen on the 24th, maybe earlier. But what you do need to
7 look at when we're looking at State's Number Two, is the same
8 number is used every time, call Matt, 919-349-1916 or email
9 him. Mr. Dukes told you that's what he started trying to do,
10 he started trying to do the email and contact Matt. No avail,
11 Craig's List had been taken down by that point so that was
12 old, they -- but the investigation didn't end. They got a tip
13 that there was another Craig's List posting up in the Myrtle
14 Beach area. And they got it, State's Number Three. Once
15 again, one brand new ESAB PowerCut 900 plasma cutter, retail
16 22 -- \$2300; selling for only \$1600. That's a MIG Caddy
17 welder. Where is the PowerCut -- right there, PowerCut 900 on
18 State's Number Six, matching the exact description to what was
19 stolen on the 24th out of Cary, North Carolina. They contact
20 through email -- they use dummy email accounts; of course,
21 they don't want to use an email that says Dayne Dukes, at
22 Dukes Limited Security Company or at Airgas National. They're
23 trying to trick a thief, dealing in stolen goods. They use a
24 dummy email account; he gets a track phone, minute phone.
25 Sometimes I've heard it call and chat-n-chunk. They get a

1 phone number for Conway and they start making contact with the
2 seller via email and the seller calls back and what number
3 does he call back from? 919-349-1916. They track the number
4 and that comes back to Marquis Evans. And then when a person
5 calls him on this phone registered to Marquis Evans, he says,
6 this is Danny Miller, before he said Matt. Why not use your
7 real name if you're doing legitimate business? Because you're
8 not doing a legitimate business. But they start making
9 contact, I believe he said on July 11th, 2011. Contact back
10 and forth trying to work out a price. They finally come to an
11 agreement. Hey, we're gonna buy this equipment from you down
12 in Myrtle Beach. My name is Mike. Mr. Dukes is using a
13 little bit of trickery too. They call and he comes down to
14 the Myrtle Beach area, he deals -- he's gonna buy the
15 equipment in Myrtle Beach. That's not gonna work so they come
16 back over to Conway. They meet with Captain Buchanan and
17 Detective Kathman and some other detectives and they come up
18 with a plan. They've already made the arrangements of what's
19 gonna happen. Mr. Dukes told you the plan was, with the
20 product, that he was gonna meet with Danny Miller, in a gold
21 Lexus, at Big Lots to buy this equipment. They'd even worked
22 out some of the prices. You can get nice discounts on this;
23 stuff that still brand new in the box. We're getting good
24 discounts. So, they worked everything out -- and the plan was
25 made. Captain Buchanan happened to show up, very fortunate.

1 He had his old truck, middle-aged white guy, sounds like could
2 be Mike. So, he drives over to Big Lots. He poses as Mike.
3 He sits for a little while. Mr. Dukes told you he had talked
4 to Danny Miller, told Danny I'll be in a Carolina Blue truck,
5 aged, older. And as he sits there, Captain Buchanan tells
6 you, he sees a gold Lexus pull in behind him up on the
7 passenger side of the truck. Lo and behold, who's in the
8 Lexus? Mr. Evans. He gets out. Captain Buchanan says, hi,
9 I'm Mike. Are you Danny? And he says uh-huh (affirmative
10 response). Once again, folks, why keep up the charade? Why
11 say, my name is Mike. Why come from North Carolina down to
12 Myrtle Beach to do business. Got to get away from home,
13 that's where the stuff was stolen. Captain Buchanan says you
14 can see plainly, especially when he opens the door that
15 there's power equipment in the back of a Lexus. Now, I submit
16 to you, I don't own a Lexus but I dare say, if I did, I don't
17 know if I'd be putting a Caddy welder, or Power MIGs or any
18 saws in the back, maybe in the trunk. There was some
19 equipment in the trunk too. But they find it all right there.

20 Mr. Bellamy wants to make hay with Mr. Evans didn't run.
21 Folks, we was surrounded by police. He couldn't get back into
22 the driver's seat. The passenger side rear door was open. I
23 can't walk through that wall and I doubt Mr. Evans would walk
24 through a car door.

25 He gives them consent to search; might as well, they've

1 already seen the equipment right there. They're gonna get a
2 tow inventory. They have everything listed.

3 When you're looking at the evidence, you look -- Mr.
4 Bellamy wants to talk -- I believe in opening he said
5 something about the State's got to bring all this forward and
6 look at what they're leaving out. Folks, my job isn't to put
7 everything in and the kitchen sink; it's to give you that
8 clear and convincing evidence that leaves you firmly
9 convinced. That's what I've done.

10 Mr. Bellamy wants to talk about the statement that was
11 taken. The statement has nothing in it; certainly, it's not
12 going in. No need to waste your time.

13 And when Mr. Dukes was on the stand, Mr. Bellamy wanted
14 to talk to him about serial numbers and wasn't there some
15 confusion. Folks, that's trying to wrap you around and get
16 you lost. Mr. Dukes said he was able to identify the serial
17 number. We saw no evidence of any other confusion on the
18 serial numbers. There were numerous facts to support it. You
19 heard Captain Buchanan, Horry County Police Department policy,
20 they're not gonna release any evidence unless they can
21 identify it. They had been satisfied -- Captain Buchanan told
22 you he looked at invoice slips, reports and an -- showing that
23 -- to identify those items as being the ones stolen from the
24 Cary, North Carolina store. State's Number Four, the Caddy
25 welder stolen from Wilson, North Carolina. Number Six, Steel

1 Max blades; five, Steel Max saw, that's one of the things
2 advertised on Craig's List; a Power Max 30; there's that
3 regulator flowmeter, all in that Lexus. Mr. Bellamy talked
4 about the fact that only one or two things, maybe three
5 things, had serial numbers they could identify. Folks, that's
6 true, those things couldn't be identified because someone had
7 gone to great trouble to remove those serial plates for some
8 reason because they didn't want them identified. Had a hidden
9 serial number on one of them and that's how they were able to
10 identify one. And you look to see what else is around, see
11 what else links up. This isn't a game where one of these is
12 not like the other. This is, hey, this piece we can readily
13 identify and we know it was stolen on the 24th. This piece is
14 exactly like what was stolen on the 24th. We can identify it.
15 It goes together. This goes together. Saws that were inside
16 the package, they all go together. Folks, it's a combination
17 of things. It's not any one thing, not any one thing; it's a
18 combination of them all.

19 Mr. Bellamy wants to talk about -- Mr. Bellamy talked
20 about we've got to prove that the Defendant knew it. I submit
21 to you that he did know it but what the law is, he either knew
22 or had reason to know and he showed that by the great pains he
23 took to use false names, misleading information. I'm in
24 Atlanta. I live in the Myrtle Beach area; I'll be happy to
25 sell it to you there. Taking down a sale site in one place

1 and putting it up another and not doing it at home. But also,
2 he had a reason know.

3 Mr. Bellamy talked about some kind of match box and if
4 you opened up a matchbox after shaking, there might be matches
5 there but there might be paperclips. Well sure, if somebody
6 took out all the matches just it's like somebody took off the
7 serial numbers. Somebody manipulates the system, it's gonna
8 change things.

9 Folks, we've given you what we've got. You have to
10 follow the chain. It is circumstantial evidence but it's
11 strong circumstantial evidence. You have brand new equipment.
12 Mr. Bellamy wants to talk about is somebody insurance in dire
13 need, might they sell stuff. He wants to talk about people of
14 course are gonna sell stuff for less on Craig's List. Yes,
15 they're gonna sell stuff for less. When you steal something,
16 every cent you get off it is profit. Gasoline to get down to
17 North Myrtle Beach from North Carolina is a small price. But
18 here we're talking about cutters retailing around \$1200 now
19 for 750; PowerCut, 2300 selling for 16; cutter retail price
20 1100, selling for 650; brand new steel max, 14-inch metal
21 cutting chopsaw, normally 625 and now only 325, dirt cheap,
22 still in package. This is stuff that is advertised on the
23 24th, two days after the robbery and here in Myrtle Beach.
24 Folks, it is what it is. He's using modern-day technology and
25 Craig's List. Thankfully, we have this modern-day technology

1 to catch him.

2 I just ask you to look at the evidence. You look at it
3 and see where it all does come together. In a moment, Mr.
4 Bellamy may get up here and may try and tell you it's a couple
5 of strings and may try to talk about what we didn't put into
6 evidence; but, folks, what we didn't come into evidence is not
7 evidence. The evidence is what you heard from the witness
8 stand, what you see with your eyes, the answers you get,
9 because that's the evidence we have here and that's what
10 you're left with.

11 I appreciate your time and ask now that you do your job
12 and weigh the evidence and return a verdict of guilty because
13 the Defendant did possess stolen goods and he knew it or he
14 had reason to know that it was stolen. He showed it by his
15 concealment of his identity, Matt and Danny; selling at cut-
16 rate prices; meeting in Big Lots parking lot.

17 He's guilty, folks, find him so.

18 THE COURT: Thank you, counsel.

19 Mr. Bellamy?

20 DEFENDANT'S CLOSING BY MR. BELLAMY

21 MR. BELLAMY: May it please the Court. Madame Forelady,
22 ladies and gentlemen of the jury, I'm gonna start this off
23 kind of how it started off on opening, he's guilty, convict
24 him, he's guilty. He's here in Horry County; there's
25 something in his car that's stolen; he's guilty. I asked you

1 to consider and listen for things from the beginning, listen -
2 for things that indicated -- we never contested and told you
3 from the beginning he was here, these things were in his car.
4 That's never been an issue. The question is, Has the State
5 met their burden? Burden, not that he was here, not that
6 there was something in his car; the burden is, did he know
7 those items were stolen and that's their burden to prove to
8 you that he did. Keeping in mind where the presumption of
9 innocence lies, innocence lies with Mr. Evans and how I talked
10 about that in the beginning. In keeping in mind, the State
11 has to prove him guilty beyond, beyond a reasonable doubt, not
12 mere suspicion, not assuming, but beyond a reasonable doubt.
13 And if you conjure up this rail here as -- this being guilty,
14 and the middle being we don't know, and this being innocent,
15 you start right here at innocent. And the State has to lay
16 brick by brick, stick by stick, pieces of evidence that link
17 perfectly together because this is not direct evidence, it's
18 circumstantial. And you must begin with what have they shown.
19 Let's go through the evidence. Let's go through also the lack
20 of evidence. They brought you Mr. Dukes, who sits here in the
21 courtroom, he works for Airgas. He's not the police. He has
22 a vested interest in them getting their stuff. And when he
23 came to Horry County, he was coming to get their stuff, he
24 thought, he thinks, believes maybe but what did he do? What
25 did he do? What evidence did he give you that Mr. Evans knew

1 or had reason to know that this stolen. Was he able to tell
2 you, link in any way, with his testimony, Mr. Evans to
3 somebody breaking in there? No. And I think I asked him,
4 what evidence do you have that links my client, other than
5 something was in his car, anything to do with him knowing --
6 but it was in his car, it was in his car. And as I go through
7 that, what was presented, I want to talk about what wasn't
8 presented. You see any policemen from Wilson, North Carolina
9 come here and tell you about their investigation into that
10 burglary? And the list, remember the list, we don't know
11 what's on that list from Wilson, North Carolina because nobody
12 from Wilson, North Carolina came today to tell us what was on
13 it. Did Mr. Dukes bring you that piece of equipment in -- let
14 me back up -- there was one piece of equipment, he asserts
15 with any certainly at all, that was stolen. Everything else
16 is the same model and we've got 1100 of those stores and we
17 can buy it a Lowe's and if you can buy it Lowe's you know you
18 can buy it at Home Depot; if you can buy it at Home Depot,
19 there's probably some stores elsewhere. Thousands, tens of
20 thousands of these pieces of equipment out there and only one
21 does he say that this serial number match and it took him a
22 while to try to figure all that out. And he says I got that
23 piece of equipment in North Carolina in shrink wrap right now.
24 It ain't in Horry County, is it, so you can see it and look at
25 the serial number and we can bring somebody from that store in

1 Wilson and say, yes, here's the serial number of the things
2 that were taken. We're relying on Mr. Dukes who doesn't work
3 in that store to try to match these things up. Where is this
4 piece of -- he couldn't tell me the name of it, he's having to
5 dig through and then he's trying to figure out numbers. Where
6 is it? Did they take a picture of it at least so they could
7 bring you the serial number? No.

8 You -- the Solicitor tells you he brings you what he
9 thinks is relevant. But folks, what's relevant -- it ain't
10 what Scott Bellamy thinks is relevant and it ain't what Brad
11 Richardson thinks is relevant; it's what you twelve people
12 think is relevant. Wouldn't you liked to've heard from
13 somebody in Wilson, North Carolina from the store or the
14 police department tell you what's on that list of things? And
15 it's -- it's his burden to bring that to you, to clear up
16 those issues beyond a reasonable doubt. And to the point
17 about that one piece of equipment, everything else got
18 returned. The Solicitor made a big deal with Captain
19 Buchanan, he'd been around forty years, it's been a long time.
20 Our policy is not to give it back to them unless it's theirs
21 and that all sounds good and he's a good man but what -- and
22 he said, did you follow-up everything? Yep, we followed
23 things up. What did you follow up? What did you do? Give us
24 the facts. Don't summarize it and say, we investigated it and
25 concluded that Mr. Evans was guilty, so we arrested him.

1 Well, what was the investigation? You've got to give us the
2 details and exactly what you did to follow up. All he said
3 was we followed up. Sure, you've got somebody out there
4 raising sand, wanting their stuff. They don't want to keep
5 it, they give it back. They say it's theirs. Give us the
6 facts, who did what?

7 Then we had Detective Kathman testify. What did he tell
8 us? He pulled up, Mr. Evans is there, he didn't run, he
9 didn't do anything, cooperates, and I took some pictures. Not
10 of the serial number of anything like that but I took some
11 pictures that you've seen. Okay. Does he give you any
12 evidence that my client is guilty of anything, did anything,
13 knew anything? He just tells you he was there and had a
14 credit card in there. We don't deny that it's him and that
15 he's here.

16 Well, who else was out there? Well, the lead detective
17 Jonathon Rabon, testified to by Captain Buchanan, he's not
18 here this week. He's the lead detective and he's not here?
19 It's their burden. They call the cases, folks, they decide
20 when this is tried, not me. Wouldn't you -- where is he?
21 He's the lead guy. Captain Buchanan, he might be the Captain
22 but he's didn't lead this investigation.

23 Where is Detective Kluska? He took a written statement
24 from this man, my client, Marquis Evans and he is here, he
25 ain't on vacation. Why didn't they put him up to tell you

1 what Mr. Evans said? Because they don't -- and I told you
2 from the very beginning, I hope they'll put up everything
3 including my client, what my client said. What you bet if he
4 said he did it, they'd put that up, wouldn't they? Well, why
5 didn't they put up him and put up in that statement, it's
6 admissible, they got it, I showed it to the Captain. And that
7 Detective was here; why didn't he testify? It's their burden
8 to bring you the evidence and that's evidence. What Mr. Evans
9 said that day is evidence. Now, he doesn't have to bring it
10 to you. As His Honor has told you, the Defendant is never,
11 never required to testify. It's the State's burden to prove it
12 and they've got a statement of what he says but you won't see
13 it. Hold their feet to the fire.

14 Now, Mr. Dukes, I'm gonna get back to him in a minute.
15 But right now, he talked about this stuff was stolen June
16 24th. My client is posting stuff for sale on June 21st. He
17 testified specifically the things they're saying he had in his
18 possession came from the Wilson, North Carolina store on June
19 24th. But yet on June 21st -- now he didn't -- when Mr.
20 Richardson was talking, he didn't mention those other dates,
21 the 21st, until I got up and happen to ask him. Then he begun
22 to squirm a little bit, well, there's other stores, two other
23 ones have got this one and that could be this, that -- ain't
24 nobody -- but there's no evidence linking my client to
25 anything to do with breaking in these places or they can't

1 tell you when my client received anything. They can't tell
2 you from whom, where, nothing. All they will say is in July
3 he's in Horry County and there's one item that they say --
4 although we don't know from the Wilson people that can verify
5 this with Mr. Dukes, he's looking at things and there's a sign
6 -- where's the evidence, evidence? We don't assume things.

7 I guess -- you know, I've got three children -- he's got
8 two, I got three -- I go to figuring out what my youngins are
9 doing, too. Of course, I had three so I can have two to fight
10 and one to tell. He needs to have one more and then he can
11 figure out what the truth is. But we ain't figuring out which
12 kid ate the cookies, folks. We're figuring out where Mr.
13 Evans is going to spend some time, with his family or in
14 prison. So, while I appreciate the analogy and the example
15 Mr. Richardson gave, this is a whole lot more important than
16 that. We're in a courtroom.

17 As His Honor, Judge Cottingham, told you by being in this
18 courtroom today, Marquis Evans is -- it's just as if he stood
19 up and looked at you in the eye, each of you, and said I am
20 not guilty because that's what he's done, I want a trial.

21 I ask you, where is the evidence that my client knew that
22 these items or any item was stolen? Did he cooperate? Did he
23 open his trunk? He didn't have to. Captain Buchanan said he
24 didn't have to do nothing. We couldn't arrest him and we had
25 no search warrant; he didn't have to do anything. He fully

1 cooperated, he opened everything and he talked to them and
2 gave a statement. Where is that evidence that he knew or had
3 a reason to know? Where is it? We can't connect him at all
4 to anything to do with these break-ins, how he got them, where
5 he got them, nothing. And they want you to convict him and
6 say they've proven this beyond a reasonable doubt. And we've
7 decided what you people need to hear and we ain't gonna bring
8 in any type of statement, people who investigated in North
9 Carolina, the lead detective. We'll decide what's important
10 for you. Well, for the twelve of you, I suggest you look back
11 and say, no, these are things that are important to us and we
12 wish we had heard.

13 Folks, that proof beyond a reasonable doubt, that's a
14 significant burden of proof and I have many times heard from
15 judges, when I first started, from older lawyers, certainly we
16 can't prove everything beyond any doubt in the world but it's
17 that kind of doubt which causes a reasonable person to
18 hesitate to act. So, when you walk in that jury room and you
19 sit down, if for that moment, you say, but I don't -- and you
20 hesitate, that's reasonable doubt, folks. That is reasonable
21 doubt. The State has the burden of proof. And every benefit
22 of the doubt should be given to Mr. Evans. He's entitled to
23 it. You're trying the State of South Carolina and have they
24 met that burden, that high burden to overcome presumption of
25 innocence? And I say they haven't done it. The evidence is

1 not there. The evidence that is there is insufficient. The
2 burden is not proven and therefore he's not guilty.

3 Thank you.

4 THE COURT: Thank you, Mr. Bellamy. Thank you, counsel
5 for the State.

6 Ladies and gentlemen, you've heard the testimony and the
7 evidence in this case. You've heard the final summation of
8 distinguished counsel. I have given you the instruction in
9 the law. It now behooves you to deliberate as the finders of
10 the facts and reach a unanimous verdict of either not guilty
11 or guilty upon these two forms that I hold in my hand.

12 I'm going to send you to jury room. Do not begin
13 deliberations until these documents come in along with the
14 evidence. And thank you so much. I'll be sending it in in
15 just a moment.

16 Remove the alternates for me, please.

17 (REPORTER'S NOTE: The following takes place outside the
18 presence of the jury.)

19 THE COURT: The charge was previously agreed to but,
20 however, I need the record to reflect, any exceptions or
21 additions? What say the State?

22 MR. RICHARDSON: Your Honor, the only thing I picked up
23 on at that point was the receiving stolen goods talks about
24 receiving stolen goods, the indictment talks about value, 2 to
25 \$10,000. That's the only thing and I don't know if it needs

1 to be covered or what.

2 THE COURT: I don't -- the evidence clearly says it was
3 more than \$2,000.

4 MR. RICHARDSON: Certainly, Your Honor.

5 THE COURT: I don't view that as a problem. Do you, Mr.
6 Bellamy?

7 MR. BELLAMY: I don't think so, Judge.

8 MR. RICHARDSON: And, Your Honor, I don't think that's

9 ---

10 THE COURT: I don't think it ---

11 MR. BELLAMY: I don't think so.

12 THE COURT: No, the evidence is it was more than \$2,000,
13 that's what the indictment -- other than that, any additions
14 or exceptions?

15 MR. BELLAMY: No, sir, Your Honor.

16 THE COURT: All right. Come and agree what's going into
17 evidence and here's the ---

18 MR. RICHARDSON: I believe we already have, Your Honor.

19 MR. BELLAMY: We've agreed, Judge.

20 THE COURT: All right. Send it in.

21 Tell them to begin deliberation.

22 MR. RICHARDSON: Your Honor, the only problem with the
23 indictment going back is it does have the third or subsequent
24 language on it. We want to send a copy back with that portion
25 redacted?

1 THE COURT: No. I'm not gonna do that. I'm gonna send
2 that back and then I'll let them ---

3 MR. BELLAMY: Execute it.

4 THE COURT: --- execute it. No, that would be improper.

5 MR. RICHARDSON: Thank you.

6 THE COURT: Thank you for calling that to our attention
7 though.

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: Counsel -- just tell them to write the
10 verdict of not guilty or guilty on that document. I'm not
11 sending the indictment back.

12 (REPORTER'S NOTE: Deliberation begins at 3:26 P.M.)

13 *****OFF THE RECORD*****

14 (On the Record.)

15 (REPORTER'S NOTE: The following takes place outside the
16 presence of the jury.)

17 THE COURT: I understand we have a verdict. Bring the
18 jury out. I'm gonna have the verdict read on the sheet that I
19 sent in and then I'll let them write it on the back of the
20 indictment which we didn't send in by consent. You understand
21 that?

22 MR. RICHARDSON: Yes, sir.

23 MR. BELLAMY: Yes, sir, Your Honor.

24 THE COURT: All right.

25 (REPORTER'S NOTE: The following takes place inside the

1 presence of the jury at 4:03 P.M.)

2 THE COURT: Madame Foreman, I did not send this
3 indictment in. If the jury has -- if the jury has reached a
4 unanimous verdict, please signify by raising your right hand.
5 (REPORTER'S NOTE: Jurors unanimously affirm by raising right
6 hands.)

7 THE COURT: Mr. Bailiff come here and ask the foreman to
8 write whatever the verdict is under the word verdict and sign
9 her name.

10 DEPUTY: Yes, Your Honor.

11 THE COURT: All right. Madame Clerk, please accept the
12 verdict if she has finished writing the verdict on the back of
13 the indictment.

14 Publish the verdict.

15 VERDICT OF THE JURY

16 CLERK: State of South Carolina, County of Horry, versus
17 Marquis T. Evans, as to indictment number 2012-GS-26-4650,
18 receiving stolen goods, we the jury unanimously find the
19 Defendant Marquis T. Evans guilty of receiving stolen goods.
20 Dated January 10th, 2013, signed by foreperson Linda Bratcher.

21 Ladies and gentlemen of the jury, if this is your
22 verdict, so signify by raising your right hand.

23 (REPORTER'S NOTE: Jury unanimously indicates by raising right
24 hands.)

25 THE COURT: Solicitor, give me the prior record of this

1 Defendant if any, please.

2 MR. RICHARDSON: Your Honor, this Defendant has -- he's
3 got convictions, if I'm reading the NCIC correctly, 1994 ---

4 THE COURT: Now, wait a minute. Don't use numbers --
5 NCIC, they have no idea in the world what that means.

6 MR. RICHARDSON: We speak in lawyer speak here.

7 THE COURT: They don't speak in judge's language though.
8 Go ahead.

9 MR. RICHARDSON: National Criminal Intelligence Computer
10 or something like that, a rap sheet.

11 THE COURT: Thank you.

12 MR. RICHARDSON: He's got convictions in 1994 for
13 breaking and entering a motor vehicle, breaking and entering;
14 those are up in North Carolina. It looks like he got a
15 sentence in prison on that. Charged for burning of a school
16 house; '96 possession of stolen goods, he got some time on
17 that, he got paroled in '99; violation in 2000; possession of
18 stolen vehicle in 2000; financial identity fraud and obtaining
19 goods by false pretenses in '01; and an escape charge in 2002.

20 THE COURT: You had indicated that he had two prior
21 property crime charges, what were they?

22 MR. RICHARDSON: Possession of stolen vehicle, obtaining
23 goods by false pretenses and I believe there's misdemeanor
24 possession of stolen goods, Your Honor. I have the certified
25 convictions for those.

1 THE COURT: All right, fine.

2 Madame Foreman, I want to thank all of you for your
3 services in this case. You may have wondered why you didn't
4 have the benefit of that prior record and, under our laws,
5 it's just simply not permitted unless the Defendant testifies.
6 If he testifies, his prior record is admitted as to his
7 credibility and believability but not as to any guilt in this
8 case. Quite often jurors call me the next day and say, Judge,
9 we found this fellow not guilty and he's been convicted ten
10 separate times. Why didn't you tell us? The law doesn't
11 permit me to do that. So now I always let a jury know what
12 the prior record was in case you read it in the paper tomorrow
13 and wonder why I didn't let you have it. It just was not
14 admissible under the law.

15 You've been a very wonderful group to work with all week.
16 It's been my pleasure. I wish I could take you all with me
17 for my next term of court somewhere but I want to thank all
18 you. You are now dismissed for the day and for week. Thank
19 you.

20 (REPORTER'S NOTE: The jury is dismissed and exits courtroom.)

21 MR. EVANS: (Crying) One time I didn't do anything.

22 THE COURT: All right. Let's come to -- let's get some
23 order here in this courtroom. This is not your first rodeo.
24 Let's have some decorum here.

25 Bring the Defendant before me, please.

1 MR. RICHARDSON: Your Honor, I'm gonna pass up to the
2 Court at this time the sentencing sheet and the two certified
3 convictions that are needed.

4 THE COURT: Mr. Bellamy, let me hear any motions at this
5 time. I'll never know more about the case than I know I know
6 right now.

7 MOTIONS:

8 MR. BELLAMY: Your Honor, we would renew the motions that
9 we have previously ---

10 MR. EVANS: Could I seen my son, please, before I leave,
11 please.

12 THE COURT: Sir?

13 MR. EVANS: Could I see my son before I leave, please?

14 THE COURT: Let me hear from your lawyer first.

15 MR. BELLAMY: We would renew the motions made at the end
16 of the State's case and when the Defense rest for a new trial.
17 At this time would make a motion for new trial in that we do
18 not believe that the verdict is supported by the evidence and
19 based on things other than the evidence in the record and
20 would ask the Court to set aside the verdict and give him a
21 new trial.

22 THE COURT: Solicitor, you want to respond to that,
23 please, for the record?

24 MR. RICHARDSON: Your Honor ---

25 MR. EVAN: (Crying.)

1 THE COURT: All right. Let's come to order here. This
2 is ridiculous.

3 MR. RICHARDSON: Your Honor, certainly if there was
4 sufficient evidence to move forward for -- to direct a
5 verdict, there's no new evidence to give a new trial. There's
6 not been anything else produced since the State's case and the
7 jury has rendered their verdict.

8 THE COURT: Mr. Bellamy, it was a question for the jury
9 to determine but when an individual has that much merchandise
10 still packaged in its original form, selling it at a
11 considerable price less than the going price, there is an
12 absolute inference to be derived that the property was stolen.
13 And that, plus the other facts in the case, in my view, would
14 substantiate the verdict of guilty.

15 MR. BELLAMY: I understand, Your Honor.

16 THE COURT: And your motions are respectfully denied.

17 MR. BELLAMY: Judge, might I be heard just briefly in
18 mitigation?

19 THE COURT: Sure.

20 MR. BELLAMY: Judge, the Solicitor reeled off a number of
21 convictions. However, what I would point out to the Court
22 that he has had no trouble in the last ten years. He had some
23 trouble as a very -- he's thirty-six years old, Judge, he's
24 got a little boy that, I guess, about two years old. He
25 works, does computer work and stuff; he's made a good living.

1 And as I've said, he's had no trouble in ten -- a decade,
2 Judge. We disagree with the verdict but we don't argue
3 certainly the jury's rendering of the verdict. There's a wide
4 range of sentencing here, Judge.

5 This -- and let me say this, Judge, and you heard the
6 case, this was not a case that we went into and said, you
7 know, the evidence is so overwhelming nobody would ever find
8 us not guilty. We believe it was a legitimate issue to be
9 litigated.

10 THE COURT: Oh, I think -- I agree with you. It wasn't
11 -- the jury could've easily found him not guilty based on the
12 evidence in the case. I agree with that.

13 MR. BELLAMY: So, Judge, at thirty-six years old, no
14 record in ten years and a small child that he supports, his
15 girlfriend is here with him. We would ask that you have as
16 much leniency and mercy based on his lack of record for ten
17 years and his small child, if nothing else, for that child.
18 He could be ---

19 THE COURT: Well, of course, I'm not gonna do that, I
20 could sentence him up to ten years on the basis this is a
21 third property charge.

22 MR. BELLAMY: I understand, Judge.

23 THE COURT: I'm not gonna do that but I cannot ignore the
24 fact that he's got these property crimes and he's done it
25 before --- MR. EVANS: That was when I was so young and I

1 was ---

2 SENTENCE OF THE COURT:

3 THE COURT: This is not a situation -- the evidence is
4 clear to me and the jury found it out when somebody has that
5 kind of merchandise still packaged in the original box,
6 selling it a tremendous discount price, most people would
7 understand it's stolen and the evidence is such that it is.
8 I'm going to sentence him to three years, not gonna give him
9 five, not gonna give him ten, but I am going to sentence him
10 to three years.

11 Thank you.

12 MR. RICHARDSON: Thank you, Your Honor.

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14 (Adjourned.)

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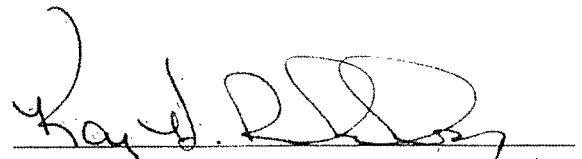
State v. Marquis T. Evans - 2012-GS-26-04650
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Marquis T. Evans, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on January 10, 2013.

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



Kay H. Richardson, CVR

Official Reporter

January 27, 2013.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Edward B Cottingham, Sr., Circuit Court Judge

Appellate Case No.: 2013-000197

THE STATE.....Respondent

v.

MARQUIS T EVANS.....Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 211(b),
SCACR.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Edward B Cottingham, Sr., Circuit Court Judge

Appellate Case No.: 2013-000197

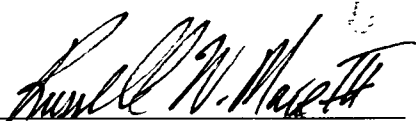
THE STATE.....Respondent

v.

MARQUIS T EVANS.....Appellant

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant and Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esq. at P.O. Box 11549, Columbia, SC 29211 on this 22nd day of May, 2013.



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