STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable J. Michael Baxley, Circuit Court Judge
Appellate Case No. 2012-211727

THE STATE,

Respondent,

vs.

ROBERT TIMOTHY ARTIS,

Appellant.

FINAL BRIEF OF RESPONDENT

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II.

The trial judge properly denied Appellant's directed verdict motion because the jury could fairly and logically find Appellant guilty beyond a reasonable doubt of each element of the offense of petit larceny based on the evidence and testimony presented during trial, which established Appellant was in possession of recently-stolen property and sold the stolen property for a sum far below its actual value.

STATEMENT OF THE CASE

In April of 2011, Appellant Robert Timothy Artis was arrested following an investigation into the theft of a piece of aluminum from a business in Rock Hill, South Carolina. In August of 2011, the York County grand jury indicted Appellant for one count of receiving stolen property. In March of 2012, the York County grand jury additionally indicted Appellant for one count of petit larceny. On April 16, 2012, a jury trial was commenced in the York County court of general sessions with the Honorable J. Michael Baxley, circuit court judge, presiding. During trial, the trial judge granted Appellant's directed verdict motion as to the receiving stolen property charge. At the conclusion of trial, the jury convicted Appellant of petit larceny. Following the verdict, the trial judge sentenced Appellant pursuant to S.C. Code Ann. § 16-1-57 to a seven-year term of imprisonment based on Appellant's prior property crime convictions. Subsequently, Appellant filed a timely notice of appeal.

STATEMENT OF FACTS

On March 28, 2011, James Fanning, the owner and operator of a body shop and machine shop in Rock Hill, South Carolina, came into work and noticed a piece of aluminum stored at the business was missing. (R. pp. 43-44; pp. 46-47; p. 51; p. 62; p. 65). The aluminum piece was a one-inch-thick square metal sheet painted turquoise on one side and had an estimated value of $300 to $500. (R. pp. 47-48). After discovering the aluminum sheet was missing, Fanning reported the theft to the authorities and began trying to locate the sheet at nearby salvage yards. (R. pp. 50-51).

On the following morning, Appellant Robert Timothy Artis went to Palmetto Recycling, a salvage yard located a short distance away from Fanning's business, to sell various metal items as scrap, including the turquoise aluminum sheet taken from Fanning's business. (R. pp. 52-54; p. 85; p. 88; p. 97). Appellant was recorded on the salvage yard's surveillance system with Fanning's aluminum sheet and presented his driver's license in order to complete the transaction. (R. pp. 51-54; pp. 73-74; pp. 83-84). After presenting his driver's license and turning over the stolen piece of aluminum, Appellant was paid $26.95, which was the recycling value of the metal as opposed to the sheet's actual retail value. (R. pp. 83-84; pp. 87-89).

Later that day, Fanning went to Palmetto Recycling and met with Terry Taylor, the general manager of the salvage yard. (R. pp. 51-52; p. 65; pp. 72-73). After meeting with Taylor, Fanning reviewed the surveillance footage recently recorded at the salvage yard and observed Appellant bring in the stolen piece of aluminum. (R. pp. 52-54). Fanning recognized Appellant in the surveillance footage because Appellant was renting an apartment directly next to Fanning's business at that time. (R. p. 49; p. 55; p. 57). Upon recognizing Appellant, Fanning contacted the police about his discovery, and

Appellant was arrested for the theft at his apartment on April 4, 2011.[1] (R. p. 52; pp. 95-97; pp. 99-101).

Following his arrest, Appellant was indicted for one count of receiving stolen property and one count of petit larceny, and he proceeded to trial. (R. p. 4; pp. 162-165). At the outset of trial, defense counsel asked the trial judge to force the solicitor to elect which of the charges to bring forth to trial, arguing it would be unfairly prejudicial for Appellant to be prosecuted for both charges in a single trial due to the fact Appellant could not be guilty of both offenses. (R. pp. 5-6). In response, the solicitor asserted both charges could properly be tried together even though Appellant could only be convicted of one of the charges and noted the trial judge could grant a directed verdict during trial if the evidence proved to be insufficient in regard to either charge. (R. pp. 6-7). After considering the arguments of counsel, the trial judge determined the solicitor could proceed to trial on both charges while indicating the evidence presented during trial would ultimately determine what charge or charges would be submitted to the jury. (R. p. 13; p. 15).

Subsequently, a jury was selected, and the trial judge presented a preliminarily instruction to the jury regarding the two charges, instructing:

> The burden of proof is going to remain with the State throughout this trial. Now, as you are aware, the defendant, you heard the case called, is charged with two – has allegations of two criminal charges against him. And one of these is for petit larceny, that is the taking and carrying away of goods and the other is for receiving stolen goods which is, to have in your possession stolen goods, or to have received those stolen goods that you know or should have known, were stolen.
>
> I will tell you that again, the defendant is charged with two separate crimes which arise from the same alleged incident. In other words, out of the same core set of facts and circumstances the State has brought two

[1] The stolen piece of aluminum was never recovered. (R. pp. 70-71; p. 89; pp. 105-106).

> charges against the defendant. I also charge you and tell you under South Carolina Law and the allegations of these particular cases that the defendant may not be convicted, can not be convicted of both of these charges. And further the defendant may not be convicted of either charge, unless and until the elements of that particular charge are proved to you by the State beyond a reasonable doubt.

(R. pp. 23-24). Additionally, the trial judge instructed the jury that the indictments were simply charging documents and were not to be accepted as evidence and further explained:

> [N]ever do I rule on some objection in front of me to somehow send you a message about how I feel about an issue or feel about the facts. I will tell you now, I don't have a position on the facts. And the reason I don't, is because you're the judge of the facts. Not me. I would be invading your providence if I took a position on the facts. So please understand and take no inference from any ruling I make, other than the fact that I rule on the issue that was presented to the Court during the course of this trial.

(R. p. 22; pp. 29-30).

Thereafter, during trial, the solicitor presented testimony and evidence establishing Appellant was in possession of and sold Fanning's piece of aluminum for far less than it was worth shortly after it was discovered stolen and was recorded on surveillance footage conducting the sale of the stolen property. (R. p. 47; pp. 51-54; p. 65; pp. 83-85; pp. 87-89; pp. 97-98). Following the presentation of that testimony and evidence, the State rested its case, and defense counsel moved for a directed verdict on both indicted offenses. (R. p. 109). In support of the directed verdict motion on the receiving stolen property charge, defense counsel asserted Appellant could not be guilty of receiving stolen property if the evidence showed he stole the piece of aluminum. (R. pp. 110-111). In arguing Appellant was entitled to a directed verdict on the petit larceny charge, defense counsel argued the evidence establishing Appellant's guilt for that offense was purely circumstantial and did not rise to the level of substantial

circumstantial evidence. (R. pp. 111-114). In response, the solicitor argued the evidence presented during trial raised a question of fact for the jury to resolve regarding whether Appellant stole the aluminum sheet or received it from another person. (R. p. 116). The solicitor further noted the evidence indisputably established Fanning's aluminum sheet was stolen and Appellant was in possession of it. (R. p. 116). After considering the arguments of counsel, the trial judge granted the directed verdict motion as to the receiving stolen property charge after finding no evidence was presented to establish a person other than Appellant stole the aluminum sheet. (R. pp. 119-120). However, the trial judge denied the directed verdict motion as to the petit larceny charge, finding the evidence that established Appellant possessed and sold a recently-stolen item was sufficient to satisfy the elements of the offense. (R. pp. 120-121).

Subsequently, the solicitor and defense counsel presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law. (R. pp. 126-149). As part of the jury charge, the trial judge specifically instructed the jury that the indictment was merely an accusation and was not evidence, that Appellant was presumed innocent and could only be convicted upon proof establishing his guilt beyond a reasonable doubt, and that the two choices for a verdict were either not guilty or guilty of petit larceny. (R. pp. 135-137; p. 140; p. 147). Thereafter, at the conclusion of trial, the jury convicted Appellant of petit larceny. (R. p. 152). Following the verdict, the trial judge sentenced Appellant to a seven-year term of imprisonment based on Appellant's numerous prior convictions for property crimes, including grand larceny, petit larceny, and receiving stolen goods. (R. pp. 155-156; p. 159).

ARGUMENT

I.

The trial judge committed no error in denying Appellant's motion to require the solicitor to elect between going to trial on either the petit larceny charge or the receiving stolen property charge because those charges were of the same general nature, were closely connected to one another, were proven by the same evidence, and would not result in any prejudice to Appellant when tried together. However, even if the trial judge did somehow err in denying Appellant's motion to require the solicitor to elect between the charges, Appellant did not suffer any prejudice from the error and the error was entirely harmless due to the fact that the trial judge granted a directed verdict on the receiving stolen property charge and only submitted the petit larceny charge to the jury.

Appellant contends the trial judge erred in denying his motion to require the solicitor to elect whether to proceed to trial on the petit larceny charge or the receiving stolen property charge. In support of that contention, Appellant maintains the offenses did not arise out of a single chain of circumstances, the offenses were not proven by the same evidence, and the joinder of the offenses "would be highly prejudicial to [him] because it would improperly infer to the jury that [he] is guilty of at least one of the charges[.]" (App. Br. p. 15). To the contrary, the trial judge properly denied Appellant's motion to require the solicitor to elect between the charges because the charges, which were both related to the theft of the victim's aluminum sheet and Appellant's subsequent possession and sale of that recently-stolen property, were of the same general nature, were closely connected to one another, were proven by the same evidence, and would not result in any prejudice to Appellant when tried together. However, even assuming the trial judge somehow erred in denying Appellant's motion to require election, any error was entirely harmless in light of the fact that the trial judge granted Appellant's directed verdict motion as to the receiving stolen property charge during trial and only submitted the petit larceny charge to the jury. Appellant's conviction should be affirmed.

A defendant has "no inalienable right" to be tried separately for each indicted offense when charged with multiple crimes. McCrary v. State, 249 S.C. 14, 38, 152 S.E.2d 235, 247 (1967). In cases where a defendant is charged with multiple offenses, decisions regarding whether to require the solicitor to elect which of several indictments to proceed to trial on fall within the discretion of the trial judge. State v. Love, 275 S.C. 55, 64, 271 S.E.2d 110, 114 (1980); see State v. Sheppard, 54 S.C. 178, 181, 32 S.E. 146, 147 (1899) (" 'A motion to compel the State to elect upon which count it will proceed is addressed to the sound discretion of the Court, as a general rule, and its action thereon will not be interfered with unless the discretion has been used to the manifest injury of the defendant.' " (citation omitted)). The trial judge's ruling on a motion to require the solicitor to elect between multiple charges will not be disturbed on appeal absent a manifest abuse of discretion. Sheppard, 54 S.C. at 181, 32 S.C. at 147; see also State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996) ("A motion for severance is addressed to the trial court and should not be disturbed unless an abuse of discretion is shown."). An abuse of discretion occurs when the trial judge's decision is unsupported by the evidence or controlled by an error of law. State v. Rice, 368 S.C. 610, 613, 629 S.E.2d 393, 395 (Ct. App. 2006).

When separately-indicted offenses are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has the discretion to order the indictments be tried together, but only so long as the defendant's substantive rights are not prejudiced. State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005); see Tucker, 324 S.C. at 164, 478 S.E.2d at 265 ("Charges can be joined in the same indictment and tried together where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature,

and (4) no real right of the defendant has been prejudiced."); State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996) ("Joinder is proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) require the same or similar proof." (citing City of Greenville v. Chapman, 210 S.C. 157, 41 S.E.2d 865 (1947))). Interconnected offenses are considered to be of the same general nature. State v. Jones, 325 S.C. 310, 315, 479 S.E.2d 517, 519 (Ct. App. 1996). Conversely, offenses which are of the same nature but which do not arise out of a single chain of circumstances and are not provable by the same evidence cannot properly be tried together. State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002).

Significantly, in State v. Lee, 147 S.C. 480, 482, 145 S.E. 285, 286 (1928), Lee was charged with grand larceny and receiving stolen goods in connection to the theft of bales of cotton from the victim. Prior to trial, Lee moved for the trial judge to require the solicitor to elect which of the charges to proceed to trial on, and the trial judge denied the motion. Id. at 483, 145 S.E.2d at 286. The jury then acquitted Lee of grand larceny and convicted Lee of receiving stolen goods, and he appealed his conviction, arguing the trial judge erred in denying his motion to require election. Id. at 482-483, 145 S.E. at 286. On appeal, the Supreme Court discussed the rule regarding trials involving more than one offense, instructing:

> The rule in this State is that distinct offenses – felonies or misdemeanors – may be charged in separate counts of the same indictment, whether growing out of the same transaction or not. If the several offenses charged do not grow out of the same transaction, then the proper practice is to require the prosecuting officer to elect upon which count he will proceed. But, when several offenses charged grow out of the same transaction, then the prosecuting officer is not required to elect, and the Court instructs the jury to pass upon the several counts separately, and write their verdict accordingly.

Id. at 483, 145 S.E. at 286. The Supreme Court then applied that rule to Lee's case and found no error on the part of the trial judge in proceeding to trial on both the grand larceny charge and receiving stolen property charge, explaining: "There being no question that the offenses charged in the two counts of the indictment grew out of the same transaction, the Court properly refused to require the State to elect, and submitted the case to the jury on both counts under appropriate instructions as to each." Id. at 483-484, 145 S.E. at 286.

In the case sub judice, the trial judge committed no error in denying Appellant's motion to require the solicitor to elect whether to proceed to trial on either the petit larceny charge or the receiving stolen property charge because those offenses were of the same general nature, were closely connected to one another, were proven by the same evidence, and would not result in any prejudice to Appellant when tried together. Critically, both of the indicted charges stemmed from the theft of the aluminum sheet from the victim and Appellant's subsequent possession and sale of that stolen property and, thus, were interconnected and of the same general nature. See State v. Grace, 350 S.C. 19, 23, 564 S.E.2d 331, 333 (Ct. App. 2002) ("When offenses are interconnected they are considered to be of the same general nature."); see also Love, 275 S.C. at 64, 271 S.E.2d at 114 ("The indictments alleged separate offenses growing out of the same transaction – the illegal fixing of the driving record of Mr. Dennis – and, under these circumstances, there was no requirement that the State elect."). Additionally, the State sought to prove both offenses with the same evidence related to the theft of the victim's aluminum piece and Appellant's subsequent possession and sale of that stolen property a short time later. See Tucker, 324 S.C. at 164, 478 S.E.2d at 264 (finding the

requirements for consolidation were met where the charges arose out of the same chain of circumstances and would be proved by the same evidence); see also State v. Caldwell, 378 S.C. 268, 278, 662 S.E.2d 474, 479-480 (Ct. App. 2008) ("While the alleged crimes involved pertained to three separate children necessitating some individual evidence as to each of the charges, much of the evidence produced at trial pertained to each of the separate charges. Thus, the separate offenses are proved by the same evidence. We find the fact that some additional evidence from the individual victims may be necessary to prove the individual crimes is not fatal to the joinder of the charges."). Furthermore, Appellant suffered no meaningful or articulable prejudice as a result of both charges being tried together in light of the trial judge's thorough instructions to the jurors informing them that the State was required to prove each element of each offense before Appellant could be convicted and that Appellant could **not** be guilty of both of the indicted offenses. See State v. Harry, 321 S.C. 273, 279, 468 S.E.2d 76, 80 (Ct. App. 1996) (finding no abuse of discretion in the trial judge's determination that the charges should have been jointly tried where "[t]he trial judge went to great lengths to fully instruct the jury that the state had the burden of proving each element of each crime"). As a result, the trial judge committed no error in denying Appellant's motion to require the solicitor to elect whether to proceed to trial on the petit larceny charge or the receiving stolen property charge. See State v. Hamilton, 172 S.C. 453, 455, 174 S.E. 396, 396-397 (1934) (recognizing that Hamilton could properly be charged with both larceny and receiving stolen property but finding he was entitled to have the jury instructed that he could not be convicted of both); see also Chapman, 210 S.C. at 161-162, 41 S.E.2d at 867 ("No sound reason can be advanced why different misdemeanors charged in one warrant, arising out of a single chain of circumstances, should not be tried

together, where they are proved by the same evidence and are all of the same general nature. Where it does not appear that any real right of the defendant has been jeopardized, it would be a refinement not demanded by the law or by justice to require in all instances a separate trial. We think the interest of the public and the right of the defendant will be better subserved in general by permitting as matter of law a single trial under such conditions, leaving it to the sound discretion of the trial court to order separate trials when the rights of either the commonwealth or of the defendant appear to require it."); see, e.g., State v. Blakely, 402 S.C. 650, 665, 742 S.E.2d 29, 37 (Ct. App. 2013) (recognizing nothing prohibits the State from asserting two different legal theories based on the evidence presented during trial).

However, even assuming the trial judge somehow erred in denying Appellant's motion to require election, any error was entirely harmless and resulted in no prejudice to Appellant. See State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991) ("[An appellate court] will not set aside a conviction due to insubstantial errors not affecting the result."). Critically, no evidence specifically related to one of the charges but not the other was presented during trial, which eliminated any potential prejudice that could have resulted from the presentation of evidence during the joint trial. Furthermore, notwithstanding the fact that the trial judge preliminarily instructed the jury that the State was required to prove Appellant's guilt for each offense beyond a reasonable doubt and that Appellant could **not** be convicted of both of the indicted offenses, the trial judge granted Appellant's directed verdict motion on the receiving stolen property charge before the case was submitted to the jury. Cf. Sheppard, 54 S.C. at 182, 32 S.E. at 147 ("Besides, as the two defendants, who are prosecuting this appeal (the defendant, Sheppard, having abandoned his appeal) were convicted under the third count in the

indictment only, the practical effect, as to them, [resulting from the trial judge's alleged error in refusing their motion to require the solicitor to elect upon which count he would proceed] is the same as if there were no other count in the indictment; and hence they have no reason to complain."). As a result, the jury was not asked to decide if Appellant was guilty of receiving stolen property and, instead, was only asked to determine if Appellant was not guilty or guilty of petit larceny. Accordingly, since no evidence was presented during trial unrelated to the only charge actually submitted to the jury, Appellant suffered no actual prejudice from the denial of his motion to require the solicitor to elect which charge to proceed to trial on, and any possible error that could have resulted from the denial of his motion was, therefore, entirely harmless. See State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 285, 288 (1947) ("It is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him."). Appellant's conviction should be affirmed.

II.

The trial judge properly denied Appellant's directed verdict motion because the jury could fairly and logically find Appellant guilty beyond a reasonable doubt of each element of the offense of petit larceny based on the evidence and testimony presented during trial, which established Appellant was in possession of recently-stolen property and sold the stolen property for a sum far below its actual value.

Appellant contends the trial judge erred in denying his directed verdict motion as to the petit larceny charge. In support of that contention, Appellant maintains the evidence presented during trial was not substantial circumstantial evidence and, instead, only raised a mere suspicion of his guilt for petit larceny. To the contrary, the evidence and testimony presented during trial constituted substantial evidence of Appellant's guilt for petit larceny because it established Appellant was in possession of a recently-stolen and uniquely-identifiable aluminum sheet and sold that stolen property for far less than it was actually worth. Based on those established facts, the jury could fairly and logically find Appellant guilty of taking and carrying away the victim's property without the victim's consent and convict him of petit larceny. Therefore, the trial judge properly denied Appellant's directed verdict motion and submitted the petit larceny charge to the jury. Appellant's conviction should be affirmed.

When presented with a motion for a directed verdict, the trial judge is concerned with the existence or non-existence of evidence and not its weight. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997). The trial judge should deny a directed verdict motion and submit the case to the jury if there is any substantial evidence reasonably tending to prove the guilt of the accused or from which guilt may be fairly or logically deduced. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 319 (1992). On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C.

279, 292, 625 S.E.2d 641, 648 (2006). If there is **any** direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must affirm the trial judge's ruling. State v. Cherry, 361 S.C. 588, 593-594, 606 S.E.2d 475, 478 (2004). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002). "[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without the owner's consent. State v. Condrey, 349 S.C. 184, 191, 562 S.E.2d 320, 323 (Ct. App. 2002). "In common parlance[,] larceny is just plain stealing[.]" State v. Roof, 196 S.C. 204, 209, 12 S.E.2d 705, 707 (1941). If the value of the goods unlawfully taken and carried away during a theft is less than $2,000, the theft constitutes the offense of petit larceny. See S.C. Code Ann. § 16-13-30(A) ("Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of two thousand dollars or less, is petit larceny[.]"). However, so long as the stolen property has some intrinsic worth, specific proof of the value of the property is not necessary to establish guilt for petit larceny. See State v. Slack, 17 S.C.L. (1 Bail.) 330, 333 (1829) ("Where the article is of intrinsic worth, proof of the value is not absolutely necessary, for the jury cannot go wrong on the subject, where they find the defendant guilty of petit larceny: if the article be of any value, it is the subject of petit larceny.").

In larceny cases, proof that the defendant was in possession of recently-stolen property supports an inference that the defendant was the person who stole the property and creates a question of fact for the jury to resolve. State v. Lyles, 211 S.C. 334, 339, 45 S.E.2d 181, 183 (1947); see State v. Cooper, 279 S.C. 301, 302, 306 S.E.2d 598, 599 (1983) (instructing that the inference to be drawn from recent possession of stolen property is an evidentiary fact as opposed to a rebuttable presumption and constitutes circumstantial evidence of guilt). Demonstrating that principle, in State v. DeWitt, 254 S.C. 527, 529, 176 S.E.2d 143, 144 (1970), DeWitt was arrested after officers discovered a grain drill that had been stolen from a farm two months earlier in DeWitt's possession. Following his arrest, DeWitt claimed he had purchased the grain drill from another man after it was stolen, and testimony was subsequently presented during trial corroborating DeWitt's claim. Id. at 532, 176 S.E.2d at 145-146. Nonetheless, DeWitt was convicted and appealed, arguing the evidence presented was insufficient to sustain his conviction. Id. at 529, 176 S.E.2d at 144-145. Subsequently, the Supreme Court affirmed DeWitt's conviction. Id. at 534, 176 S.E.2d at 147. In reaching that decision, the Supreme Court determined the evidence of DeWitt's possession of the stolen property was sufficient to submit the case to the jury because DeWitt's theft of the grain drill was reasonably inferable under the circumstances despite the fact that the grain drill had been stolen two months earlier. Id. at 533, 176 S.E.2d at 146-147.

Similarly, in State v. Irvin, 270 S.C. 539, 542, 243 S.E.2d 195, 196 (1978), Irvin and an accomplice were arrested and charged with housebreaking and grand larceny after a person found to be in possession of property taken in a home invasion approximately one month earlier informed the police that he had purchased the stolen property from Irvin and the accomplice. During trial, no direct evidence of Irvin and his accomplice's

guilt was presented, but the evidence and testimony introduced by the State established the following facts: (1) the victim's home was broken into and his property was taken; (2) Irvin and his accomplice sold the victim's property to another person for less than the property's actual value; and (3) the victim's property was seen in Irvin and his accomplice's car on one earlier occasion. Id. Despite the lack of any direct evidence, the trial judge denied Irvin and his accomplice's directed verdict motion, and they were convicted. Id. They then appealed their convictions, arguing the trial judge erred in denying their directed verdict motion because the evidence allegedly only raised a mere suspicion of their guilt. Id. at 543, 243 S.E.2d at 196-197. Thereafter, the Supreme Court affirmed their convictions, instructing that the testimony establishing the housebreaking and larceny occurred coupled with the testimony establishing Irvin and his accomplice were in possession of the victim's property "formed a sufficient basis from which [Irvin and his accomplice's] guilt could be fairly and logically deduced, thus requiring the submission of the case to the jury." Id. at 543, 243 S.E.2d at 197.

In the case at bar, the trial judge properly denied Appellant's directed verdict motion because substantial evidence was presented establishing Appellant's guilt for each element of petit larceny. Specifically, evidence and testimony was presented establishing: (1) a uniquely-identifiable aluminum sheet was stolen from the victim's business; (2) Appellant, who lived directly next to where the property was stolen from, was in possession of the aluminum sheet shortly after it was stolen; and (3) Appellant personally sold the same aluminum sheet for less than $27 even though its actual value was between $300 and $500. See State v. Baker, 208 S.C. 195, 200, 37 S.E.2d 525, 527 (1946) (finding a directed verdict motion was properly denied when the defendant was in possession of recently stolen goods), abrogated on other grounds by State v. Grippon, 327

S.C. 79, 489 S.E.2d 462 (1997). Based on Appellant's recent possession of stolen property, conversion of the property to his own use, and sale of the property for far less than its actual value, the jury could fairly and logically find and did find Appellant guilty of taking and carrying away the victim's property without the victim's consent. See State v. Miller, 287 S.C. 280, 284, 337 S.E.2d 883, 886 (1985) (finding Miller's recent possession of stolen property was "competent circumstantial evidence of larceny" and further finding the fact that Miller sold the stolen property for a fraction of its actual value supported the jury's guilty verdict); Baker, 208 S.C. at 200, 37 S.E.2d at 527 ("In view of the peculiar earmarks of the oats stolen in the instant case, the recency of the possession, and all the surrounding circumstances, we think the evidence was sufficient to warrant the jury in drawing the conclusion that the oats found in [Baker]'s possession were those stolen from the prosecuting witness. The motion for a directed verdict of acquittal was, therefore, properly refused."); State v. Hamilton, 77 S.C. 383, 385, 57 S.E. 1098, 1099 (1907) ("The possession of stolen property, coupled with a sale of it at much less than its value, is certainly some evidence from which guilt may be inferred."); see also Barnes v. United States, 412 U.S. 837, 845-846 (1973) (approving of a jury instruction allowing for the jury to infer the defendant's guilt from his unexplained possession of recently stolen property and recognizing common sense and experience support such an inference). As a result, the trial judge properly denied Appellant's directed verdict and submitted the case to the jury. See Nix, 288 S.C. at 496, 343 S.E.2d at 629 ("[U]nless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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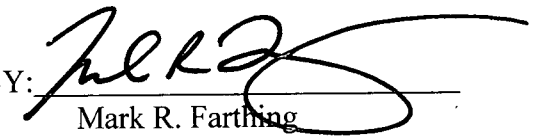
BY: 
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ATTORNEYS FOR RESPONDENT

August 26, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Honorable J. Michael Baxley, Circuit Court Judge
Appellate Case No. 2012-211727

THE STATE,

Respondent,

vs.

ROBERT TIMOTHY ARTIS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

BY: 
Mark R. Farthing

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Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 26th day of August, 2013.

Ellen R. DuBois

ELLEN R. DuBOIS
Legal Assistant

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Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

August 26, 2013

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

RE: State v. Robert Timothy Artis – Appellate Case No. 2012-211727

Dear Ms. Ganjehsani:

I am enclosing two (2) copies of the Final Brief of Respondent, along with proof of service, in the above-referenced case.

Sincerely,

Mark R. Farthing
Assistant Attorney General
Bar Number 76901

MRF/
Enclosures

cc: Honorable Jenny A. Kitchings (original and nine enclosed)
Victim Services

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