

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FAIRFIELD COUNTY

Howard P. King, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRANDON WINGARD,

APPELLANT

APPELLATE CASE NO. 2013-000302

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF FAIRFIELD
4 2012-GS-20-00370, 00371
5

6 State of South Carolina

7 vs.

8 Brandon Wingard
9
10

11 Winnsboro, South Carolina

12 February 4th and 6th, 2013

13 Before the Honorable Howard King
14

15 APPEARANCES

16 For the State: Riley Maxwell

17 For the Defendant: William Frick
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
22
23
24
25

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VOIR DIRE

1 MR. MAXWELL: State calls the case of State versus
2 Brandon C. Wingard, docket number 2012-20-370, receiving
3 stolen goods, and docket number 2012-GS-20-371, violation of
4 the nonferrous metals statute.

5 THE COURT: All right. Would you hand up the
6 indictments, please? All right. Ladies and gentlemen of
7 the jury, give me your attention. What I'm going to tell
8 you now is not evidence in this case, it is simply the
9 allegations of the indictments. The indictments are not
10 evidence of anything, they're simply the allegations that
11 the State makes or has made against this defendant, but I
12 tell you this so you can determine if you know anything
13 about the case or anything that would prevent you from
14 serving as a juror. But the defendant in this case is
15 Brandon C. Wingard and he is charged in indictment number
16 2012-370 with receiving stolen goods. The charge is that he
17 did in Fairfield County on or about August 8th of 2012 buy,
18 receive or possesses certain personal goods, specifically
19 copper of David Brissey at a certain amount and had reason
20 to believe that the property was stolen or -- had reason to
21 believe it was stolen. So the charge is one of receiving
22 stolen goods. The other indictment is indictment number
23 2012-GS-20-371, and it charges that he did on or about
24 August 8th of 2012 obtain a permit to sell and transport
25 nonferrous metals purchase statute that is against the law

VOIR DIRE

1 in this state. To these charges Mr. Wingard has pled not
2 guilty and has asked for a trial. The defendant,
3 Mr. Wingard, is represented by Mr. Frick. Mr. Frick, would
4 you stand, have your client stand, introduce yourself to the
5 jury and introduce him to the jury as well?

6 MR. FRICK: Yes, sir. My name is William Frick, I'm an
7 attorney here in Winnsboro, this is Brandon Wingard.

8 THE COURT: Thank you, you may be seated. The State of
9 South Carolina is represented by Solicitor Barfield and
10 Mr. Maxwell, would each of you please stand and introduce
11 yourselves to the jury? I guess Mr. Maxwell is going to be
12 the lawyer trying the case.

13 MR. MAXWELL: Again, my name is Riley Maxwell, I'm
14 assistant solicitor here in the 6th circuit which includes
15 Fairfield County.

16 MR. BARFIELD: Doug Barfield, solicitor for the 6th
17 Circuit which is Lancaster, Chester and Fairfield Counties,
18 and I come back and forth from Lancaster to Chester and
19 Fairfield County.

20 THE COURT: Thank you. All right. Now, before we
21 select a jury I need to ask you some questions so please
22 give your attention to these questions, if any of them apply
23 then respond accordingly. Is any member of the jury panel
24 related by blood or connected by marriage to the defendant
25 Brandon Wingard? If so, please stand. The following

VOIR DIRE

1 individuals may appear as witnesses in this case and I would
2 ask that they stand when their name is called. Wiley Pope,
3 David Brissey, Curt Richardson, Jeff Talbert of the
4 Fairfield County Sheriff's Office, Jeff Westfall of the
5 Fairfield County Sheriff's Office, and Will Pope. Is any
6 member of the jury panel related by blood or connected to
7 any of the proposed witnesses? If so, please stand. Thank
8 you. Is any member of the jury panel close personal friends
9 with any of the parties, their lawyers or any of the
10 witnesses whom I have read off to you? If so please stand.
11 All right. Your name, please, sir?

12 THE JUROR: Mr. Ronnie Price, Jr.

13 THE COURT: What is your number.

14 THE JUROR: 93.

15 THE COURT: All right, tell me what your situation is.

16 THE JUROR: I'm a close friend of the defendant's
17 mother, I work with her husband.

18 THE COURT: All right. Thank you, sir. Yes, ma'am,
19 your number?

20 THE JUROR: 124.

21 THE COURT: Ms. Turner?

22 THE JUROR: Yes.

23 THE COURT: What is your situation, Ms. Turner?

24 THE JUROR: I'm a friend of Brandon's.

25 THE COURT: Thank you. Other than what has been

VOIR DIRE

1 disclosed to me, does any member of the jury panel know
2 anything about the facts of this case other than as I have
3 briefly recited them to you? If so, please stand. Has any
4 member of the jury panel or a member of your immediate
5 family -- and I define immediate family as spouse, parent,
6 brother, sister or child -- any member of the jury panel or
7 member of your immediate family been the victim of a crime
8 of violence? If so, please stand. Is any member of the
9 jury panel a member of an organization whose primary purpose
10 is the advocating of victims' rights or strengthening
11 criminal penalties? Specific examples would be South
12 Carolina Victims Assistance Network, Mothers Against Drunk
13 Driving, South Carolina Law Enforcement associations, any of
14 those type of organizations -- any member of the jury panel
15 a member of any of those type organizations? If so, please
16 stand. Is any member of the jury panel or a member of your
17 immediate family currently a law enforcement officer or been
18 a law enforcement officer within the last ten years? If so,
19 please stand. Okay. Let's get my list again and find out
20 who those people are. All right. First the lady in pink,
21 your number please?

22 THE JUROR: 107.

23 THE COURT: Ms. Simpson?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. What is your situation,

VOIR DIRE

1 Ms. Simpson?

2 THE JUROR: My husband is a captain with the department
3 of public safety.

4 THE COURT: So he is actually employed by the State; is
5 that right?

6 THE JUROR: Yes, sir.

7 THE COURT: And the department of public safety being
8 troopers?

9 THE JUROR: He is a city police officer here in
10 Winnsboro.

11 THE COURT: City police here in Winnsboro?

12 THE JUROR: Yes, sir.

13 THE COURT: So it is a -- counsel, come up just a
14 moment, please.

15 (Bench conference was held.)

16 THE COURT: Ms. Simpson, this matter is really a matter
17 involving the county officers rather than the city officers
18 so I would ask you, would the fact that your husband is
19 employed with the City of Winnsboro Public Safety
20 Department, would that prevent you from giving to the State
21 and the defendant a fair and impartial trial?

22 THE JUROR: No, sir.

23 THE COURT: Would you be able to set that aside and
24 decide this case based on the evidence that you hear in this
25 courtroom?

VOIR DIRE

1 THE JUROR: Yes, sir.

2 THE COURT: And would you do that?

3 THE JUROR: Yes, sir.

4 THE COURT: Okay. Thank you. Yes, sir, gentleman in
5 the white sweater?

6 THE JUROR: 150.

7 THE COURT: All right. What is your situation, sir?

8 THE JUROR: My son-in-law is a deputy sheriff here in
9 Fairfield County.

10 THE COURT: Your son-in-law is a deputy sheriff in
11 Fairfield or did you say in Lancaster?

12 THE JUROR: Fairfield.

13 THE COURT: Yes, ma'am, lady in the green shaw?

14 THE JUROR: 111.

15 THE COURT: Ms. Spencer?

16 THE JUROR: Yes, sir.

17 THE COURT: All right. What is your situation,
18 Ms. Spencer?

19 THE JUROR: My husband is a corporal with the South
20 Carolina Highway Patrol.

21 THE COURT: I'm sorry, your --

22 THE JUROR: My husband is with the highway patrol.

23 THE COURT: Okay. Would the fact that he is with the
24 South Carolina Highway Patrol as a state trooper, would that
25 prevent you from giving to the State and the defendant a

VOIR DIRE

1 fair and impartial trial in this case knowing that no state
2 troopers are involved in this case?

3 THE JUROR: Yes, sir.

4 THE COURT: Would you be able to put that aside and
5 base a verdict upon the evidence you hear in the courtroom?

6 THE JUROR: Yes, sir.

7 THE COURT: Would you do that?

8 THE JUROR: Yes.

9 THE COURT: Yes, sir?

10 THE JUROR: Number 70. My uncle works for the
11 Fairfield County Sheriff's Department.

12 THE COURT: You are number 70?

13 THE JUROR: Yes, sir.

14 THE COURT: Mr. McDonald?

15 THE JUROR: Yes, sir.

16 THE COURT: And your uncle works for the Fairfield
17 County Sheriff's Department. What does he do there?

18 THE JUROR: I don't know.

19 THE COURT: Is he a deputy? School resource officer?
20 Would that fact prevent you from giving both to the State
21 and the defendant a fair and impartial trial based on the
22 evidence?

23 THE JUROR: Yes, sir.

24 THE COURT: Would you be able to put that aside and
25 decide this case based on the evidence you hear in this

VOIR DIRE

1 courtroom?

2 THE JUROR: I believe so.

3 THE COURT: Would you do that?

4 THE JUROR: Yes, sir.

5 THE COURT: Okay. Thank you, sir. Is any member of
6 the jury panel currently employed, been employed within the
7 last 10 years with the 11th (sic) Circuit Solicitor's
8 Office? If so, please stand. Other than what has been
9 disclosed to you, has any member of the jury panel formed or
10 expressed an opinion as to the guilt or innocence of the
11 defendant, Brandon Wingard? If so, please stand. Other
12 than what has been disclosed to me, is any member of the
13 jury panel aware of any interest, any bias or any prejudice
14 for or against the defendant, Brandon Wingard? If so,
15 please stand.

16 THE JUROR: Your Honor, what if you're a classmate of
17 the defendant's lawyer in the -- with the lawyer and the
18 defendant?

19 THE COURT: I'm going to come back to that in just a
20 minute but I'll ask that question now. Is any member of the
21 jury panel associated with or have any ties with either the
22 defense attorney, Mr. Frick, in this case, or any member of
23 the 7th (sic) Circuit Solicitor Office, Mr. Maxwell, having
24 gone to school with them, social friends or anything of that
25 nature? I think you would fall within that classification;

VOIR DIRE

1 is that right?

2 THE JUROR: Yes, Your Honor. I went to high school
3 with them.

4 THE COURT: With Mr. Frick and the defendant?

5 THE JUROR: Yeah.

6 THE COURT: Give me your name.

7 THE JUROR: Darryl Alexander.

8 THE COURT: What number?

9 THE JUROR: Number one.

10 THE COURT: Mr. Alexander, let me ask you, so you,
11 would that tie that you have with both the defense attorney
12 and the defendant in this case prevent you from giving to
13 both the State and the defendant a fair and impartial trial
14 based on the evidence?

15 THE JUROR: No, it wouldn't.

16 THE COURT: Would you be able to put that aside and
17 decide this case based upon what you hear in this courtroom?

18 THE JUROR: Yes, Your Honor.

19 THE COURT: And would you do that?

20 THE JUROR: Yes, Your Honor.

21 THE COURT: Thank you for standing. Other than what
22 has been disclosed to me, could each member of the jury
23 panel give to the State and the defendant a fair and
24 impartial trial? If not, please stand. Again, other than
25 what has been disclosed to me, does any member of the jury

VOIR DIRE

1 panel know of any reason whatsoever why he or she should not
2 serve as a juror in this case? If so, please stand. Thank
3 you. Are there additional questions on behalf of the State,
4 Mr. Maxwell?

5 MR. MAXWELL: None from the State.

6 THE COURT: All right, Mr. Frick, I have your voir
7 dire, those that I have not asked I have declined to ask and
8 I will give them to the court reporter to be marked as a
9 Court's Exhibit. Other than that, are there any additional
10 questions?

11 MR. FRICK: Nothing additional.

12 THE COURT: Thank you. Come up, please, counsel.

13 (A bench conference was held.)

14 THE COURT: All right. Madam Clerk, if you will give
15 us a jury, please.

16 THE CLERK: Number 67, Marilyn McClurkin. What says
17 the State?

18 MR. MAXWELL: Please present Ms. McClurkin.

19 THE CLERK: What says defense?

20 MR. FRICK: Please seat the juror.

21 THE CLERK: Number 81, Desmon Morrison. What says the
22 State?

23 MR. MAXWELL: Please present Mr. Morrison.

24 THE CLERK: What says the defense?

25 MR. FRICK: Please seat Mr. Morrison.

VOIR DIRE

1 THE CLERK: Number 50, Ray D. Holmes. What says the
2 State?

3 MR. MAXWELL: Please present the juror.

4 THE CLERK: What says defense?

5 MR. FRICK: Please seat Mr. Holmes.

6 THE CLERK: Number 23, Jackie Cook. What says the
7 State?

8 MR. MAXWELL: Please excuse the juror.

9 THE CLERK: Number 109, Jacqueline Smith. What says
10 the State?

11 MR. MAXWELL: Please excuse the juror.

12 THE CLERK: Number 101, Arthenia Robertson. What says
13 the State?

14 MR. MAXWELL: Please present Ms. Robinson.

15 THE CLERK: What says defense?

16 MR. FRICK: Please seat the juror.

17 THE CLERK: Number 32, Marcus Evans. What says the
18 State?

19 MR. MAXWELL: Please excuse the juror.

20 THE CLERK: Number 99, Carroll Roberts. What says the
21 State?

22 MR. MAXWELL: Please present Mr. Robertson.

23 THE CLERK: What says defense?

24 MR. FRICK: Please excuse the juror from the trial of
25 this case.

VOIR DIRE

1 THE CLERK: Number 102, Barbara Robertson. What says
2 the State?

3 MR. MAXWELL: Please present Ms. Robertson.

4 THE CLERK: What says defense?

5 MR. FRICK: Please seat the juror.

6 THE CLERK: Number 69, Andreary McCrory. What says the
7 State?

8 MR. MAXWELL: Please excuse the juror.

9 THE CLERK: Number 70, Jerry McDonald. What says the
10 State?

11 MR. MAXWELL: Please present Mr. McDonald.

12 THE CLERK: What says defense?

13 MR. FRICK: Please seat the juror.

14 THE WITNESS: Number 10, Deeann Simpson. What says the
15 State?

16 MR. MAXWELL: Please present Mrs. Simpson.

17 THE CLERK: What says defense?

18 MR. FRICK: Please excuse the juror from the trial of
19 this case.

20 THE CLERK: Number 90, Bridgette Powell. What says the
21 State?

22 MR. MAXWELL: Please present Mrs. Powell.

23 THE CLERK: What says defense?

24 MR. FRICK: Please excuse the juror from the trial of
25 this case.

VOIR DIRE

1 THE CLERK: Juror 108, Erica Smith. What says the
2 State?

3 MR. MAXWELL: Please present Ms. Smith.

4 THE CLERK: What says defense?

5 MR. FRICK: Please seat the juror.

6 THE CLERK: Number 51, Alice Howard. What says the
7 State?

8 MR. MAXWELL: Please present Ms. Howard.

9 THE CLERK: What says defense?

10 MR. FRICK: Please excuse the juror from the trial of
11 this case.

12 THE CLERK: Number 121, Shawanda Trapp. What says the
13 State?

14 MR. MAXWELL: Please present Ms. Trapp.

15 THE CLERK: What says defense?

16 MR. FRICK: Please seat the juror.

17 THE CLERK: Number 83, Paul Nickoson. What says the
18 State?

19 MR. MAXWELL: Please present Mr. Nickoson.

20 THE CLERK: What says defense?

21 MR. FRICK: Please seat the juror.

22 THE CLERK: Number 134. David Whitaker. What says the
23 State?

24 MR. MAXWELL: Please present Mr. Whittaker.

25 THE CLERK: What says defense?

VOIR DIRE

1 MR. FRICK: Please swear the juror.

2 THE CLERK: Number 28, Deana Dixon. What says the
3 State?

4 MR. MAXWELL: Please present Mrs. Dixon.

5 THE CLERK: What says defense?

6 MR. FRICK: Please seat the juror.

7 THE CLERK: Number 84, Brenda Parnell. What says the
8 State?

9 MR. MAXWELL: Please present Ms. Parnell.

10 THE CLERK: What says defense?

11 MR. FRICK: Please seat the juror.

12 THE COURT: All right. Counsel, one alternate with one
13 strike for the State and two for the defense.

14 THE CLERK: This will be for the first alternate Ronald
15 Gregory. What says the State?

16 MR. MAXWELL: Please present Mr. Gregory.

17 THE CLERK: What says defense?

18 MR. FRICK: Please excuse the juror from the trial of
19 this case.

20 THE CLERK: Number 57, Sheneki Jeter. What says the
21 State?

22 MR. MAXWELL: Please present Ms. Jeter.

23 THE CLERK: What says defense?

24 MR. FRICK: Please seat the juror.

25 THE COURT: Anything with regard to the striking of the

VOIR DIRE

1 jury on behalf of the State, Mr. Solicitor?

2 MR. MAXWELL: None from the State.

3 THE COURT: On behalf of the defense, Mr. Frick?

4 MR. FRICK: Nothing from the defense.

5 THE COURT: All right. All right. Ladies and
6 gentlemen selected in the trial of this case, we wanted to
7 go ahead and get the jury selected today but we're not going
8 to be able to start the trial of this matter until Wednesday
9 morning so I am going to excuse you from any further service
10 today and from having to come back in tomorrow but I will
11 ask that you come back Wednesday morning at 9:30. Do not
12 come to the courtroom but I'm going to let you go with the
13 bailiff and he's going to show you where the jury room is
14 and he's going to show you how to get back into the
15 courthouse Wednesday morning without coming back in the main
16 door of the courtroom and go to your jury room and please be
17 here at 9:30 Wednesday morning and we will be ready to go
18 forward. Just two or three admonitions while you're away
19 from the courthouse. I know you do not know anything about
20 the case except what I told you basically the allegations of
21 the indictment are, but do not discuss the case with anyone
22 while you're away from the courthouse. When you see your
23 family, your friends, you can tell them that you're serving
24 as a juror but don't tell them anything about the case even
25 though you haven't heard any evidence but you do know what

VOIR DIRE

1 the case is about because the Judge told you not to. And
2 the reason for that, you've got to decide the case based on
3 the evidence that you hear in this courtroom and not on the
4 basis of what anyone else might say. So do not discuss the
5 case to them, this will apply throughout this matter until
6 you have been discharged from the case and following the
7 verdict in this matter. So don't discuss it with anyone and
8 don't allow anyone to discuss it with you. If anyone
9 approaches you or tries to talk to you about this case while
10 you're away from the courthouse get their name or their
11 description and report it to the bailiff when you return and
12 I will deal with them. Also I don't think that there will
13 be any news stories or any publicity on this matter, but do
14 not read any news stories or listen to any broadcast media
15 about this matter but if there is anything in the news about
16 this matter simply put those things aside or turn the TV off
17 because again you've got to decide this case based upon what
18 you hear in this courtroom. I would also tell you that
19 later on in the case one of the 12 of you will be selected
20 as a foreperson, I will either allow you to select the
21 foreperson yourself or I will appoint a foreperson, that
22 person will always sit in the first seat on the first row,
23 the rest of the seats in the jury box are not reserved and
24 it does not matter what order you come and go from the
25 courtroom, I would simply ask that you go all of the way

VOIR DIRE

1 down the row and reserve the first seat on the first row for
2 the foreperson when that foreperson is named, and the first
3 seat on the second row for the alternate, she will always
4 sit in that seat. So with those admonitions I will excuse
5 you now and allow you to go about your business for the rest
6 of the day and tomorrow and ask that you go with the bailiff
7 and ask you to be back in the jury room please tomorrow at
8 9:30 Wednesday morning. Thank you, we will see you at that
9 time.

10 (The remaining panel was excused.)

11 THE COURT: Counsel, it was brought to my attention
12 before we drew the jury -- of course, they've not been
13 sworn -- that the two indictments are direct presentment of
14 indictments and the defendant has not been formally served
15 or arraigned on these indictments. Mr. Frick, have you
16 received notice of the indictments or gotten copies of them
17 and waived any formal arraignment?

18 MR. FRICK: Your Honor, from the very first -- in fact,
19 I think it was at the bond hearing on the original charge I
20 think we all agreed that the solicitor was going to go
21 forward on the charges that we have here, or at least by the
22 preliminary hearing I remember that.

23 THE COURT: So you waive any defects as far as -- if
24 there are any as far as formal arraignment or service of
25 these indictments?

VOIR DIRE

1 MR. FRICK: Yes, sir. I believe those are the correct
2 charges.

3 THE COURT: And your client has notice of them?

4 MR. FRICK: Yes, sir. And that's all we've discussed
5 is these particular charges.

6 MR. MAXWELL: Also additionally, Your Honor, as you
7 know there was some other warrants, we're not going forward
8 on that, the incident date for those was the 8th of August,
9 those indictments indicate on or about August 8th, part of
10 what we allege occurred on -- a lot of what we allege
11 happened on August 9th. I discussed this briefly with
12 Mr. Frick, he thinks on or about did include or does include
13 the next day, I would make a motion to clear things up, we
14 are talking about the 8th and the 9th.

15 THE COURT: Do you have any objection to the
16 presentation of evidence that the offense may have occurred
17 on or about the August 8th and that that would include
18 August 9th, Mr. Frick?

19 MR. FRICK: Your Honor, I think I can make all of the
20 arguments I want against it but I think you're going to rule
21 that on or about would include that.

22 THE COURT: I think it would as well and the Court
23 would so order. And I think that you would have notice of
24 the charges and under Gentry that's what the requirement of
25 the indictment is is notice. All right. Are there any

VOIR DIRE

1 other pretrial motions that we need to take up on behalf of
2 the State, Mr. Maxwell?

3 MR. MAXWELL: None from the State.

4 THE COURT: How about from the defense, Mr. Frick?

5 MR. FRICK: Your Honor, I'm not aware of any. The
6 solicitor and I may talk a little bit about the search
7 warrant and whether he's going to introduce the piece of
8 paper but nothing I think will require a pretrial hearing.

9 THE COURT: All right. Is there anything before we
10 recess on this case for the day until Wednesday,
11 Mr. Maxwell, on behalf of the State?

12 MR. MAXWELL: I don't believe so, Your Honor.

13 THE COURT: Do you know of anything further we need to
14 take up, Mr. Frick, until Wednesday?

15 MR. FRICK: Not that I'm aware of, no, sir.

16 THE COURT: Then we will be in recess on this matter
17 until Wednesday morning at 9:30.

18 (Court recessed for the day and resumed on
19 2/6/13 at 9:30 a.m.)

20 THE COURT: Back on the record with regard to the State
21 versus Brandon Wingard. Mr. Wingard is present with his
22 counsel, the State is present and represented by the
23 assistant solicitor. I have been informed that all of the
24 jurors are here. Is there anything before we bring the jury
25 in and have the jury sworn on behalf of the State,

VOIR DIRE

1 Mr. Maxwell?

2 MR. MAXWELL: Just briefly, Your Honor. Me and
3 Mr. Frick did agree on some evidence matters that are being
4 marked for identification purposes right now.

5 THE COURT: Anything else before we bring the jury in,
6 Mr. Frick?

7 MR. FRICK: Your Honor, just what we discussed briefly
8 in chambers, I think there's going to be a Denno matter that
9 we need to deal with that came to the solicitor's attention
10 and my yesterday afternoon, and I think we agreed that we
11 will do that just before that witness comes up.

12 THE COURT: I understand there are a couple of
13 witnesses that will testify before that matter would come up
14 and we will excuse the jury and deal with the Jackson v.
15 Denno matter at the appropriate time. All right. Bring the
16 jury in, please.

17 (The jury returned to the courtroom.)

18 THE COURT: Good morning, ladies and gentlemen. Thank
19 you for your promptness being back here in court this
20 morning on this matter that we drew the jury in on Monday.
21 Madam Clerk, if you would swear the jury, please.

22 (The jury was sworn.)

23 THE COURT: All right, ladies and gentlemen, before we
24 begin the actual trial of this case I thought it might be
25 helpful to you if I told you how a trial proceeds. I know

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1 all of you have seen trials on television but I think you
2 will learn it's more difficult in real life. First of all
3 the State will make an opening statement. An opening
4 statement is not evidence, it is simply an outline to help
5 you understand what the State expects the evidence will
6 show. The defendant may, if he wishes to, present an
7 opening statement but he doesn't have to for reasons that I
8 will explain later. Following the opening statement you
9 will hear the testimony and evidence in this case, this will
10 consist of testimony from the State's witnesses as well as
11 any physical exhibits which may be introduced into evidence.
12 And I will tell you that I know that there will be some
13 physical exhibits introduced into evidence and the lawyers
14 may ask me for permission to publish these exhibits to you,
15 that is simply a legalistic term meaning to show you those
16 exhibits and ask to pass them around to you while you are
17 sitting there in the jury box. Do not be concerned if you
18 do not have as long to look at an exhibit while you are
19 sitting there in the jury box as you would like to because
20 anything that is introduced into evidence will go with you
21 to the jury room when you retire to reach a verdict and you
22 will have ample opportunity to look at it and study that
23 exhibit for as long as you might like. Following the
24 completion of the testimony the attorneys will again have an
25 attorney to make what is called the closing statement or

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1 summation to you. This is an opportunity for the attorneys
2 to summarize the case from their perspective points of view.
3 Again, these arguments are not evidence. Following the
4 closing statements by the attorneys I will instruct you as
5 to the law in South Carolina as it pertains to the issues
6 that have arisen in this case and when I have completed my
7 instructions to you you will be permitted to begin your
8 deliberations in order to reach a verdict. Now, ladies and
9 gentlemen, you are now the jury in this case and I want to
10 take a few minutes to tell you about your duty as jurors and
11 give you some basic instructions. At the end of this trial
12 I will give you more detailed instructions and those
13 instructions will control your deliberations. It will be
14 your duty to decide from the evidence what the facts are and
15 you and you alone are the judges of the facts. You will
16 hear the evidence and decide what the facts are and then
17 apply those facts to the law which I will give to you, that
18 is how you reach a verdict. In doing so you must follow the
19 law whether you agree with it or not. The evidence will
20 consist of testimony of witnesses, documents and other
21 things received in evidence and any facts on which the
22 lawyers agree or which I may instruct you to accept. Now,
23 you should not take anything that I may say during this
24 trial as indicating what I think of the evidence or what
25 your verdict should be, the law does not permit me to have

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1 an opinion about the facts. The same law that makes you the
2 judge of the facts makes me the judge of the law. You must
3 take the law as I give it to you regardless of what you
4 think the law is or ought to be. If I'm wrong on the law
5 there's another time and place for that error to be
6 corrected, but for this case you must accept the law as I
7 charge it to you. Now, this is a criminal case brought by
8 the State of South Carolina. The State charges the
9 defendant with two offenses, one is receiving stolen goods
10 and the other is violation of the nonferrous metals purchase
11 statute. The charges against the defendant are contained in
12 these indictments. The indictments are not evidence of
13 anything, they are simply a description of the charges made
14 by the State against the defendant. The defendant has not
15 pled guilty to these charges and he is presumed innocent
16 unless and until proven guilty beyond a reasonable doubt,
17 and the burden of proof is on the State to prove the guilt
18 of the defendant beyond a reasonable doubt. A reasonable
19 doubt is the kind of doubt that would cause a reasonable
20 person to hesitate to act. The defendant has a right not to
21 testify and never has to prove innocence or present any
22 evidence. The burden of proof is always on the State of
23 South Carolina. Now, there are certain things that are not
24 evidence and you must not consider them as evidence in
25 deciding the facts of this case. Statements and arguments

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1 of the attorneys are not evidence, questions and objections
2 of the attorneys are not evidence and testimony that I
3 instruct you to disregard are not evidence. Evidence must
4 be direct or circumstantial. Direct evidence is testimony
5 by a witness about what that witness personally saw or heard
6 or did. Circumstantial evidence is indirect evidence. The
7 law permits you to give equal weight to both but it is for
8 you to decide how much weight to give any of the evidence.
9 There are rules of evidence which control what can be
10 received into court. If a lawyer asks a question or offers
11 an exhibit into evidence and the lawyer on the other side
12 thinks it is not permitted by the rules that lawyer may
13 object, if I overrule the objection the question may be
14 answered or the exhibit may be received. If I sustain the
15 objection the question cannot be answered or the exhibit
16 cannot be received. Whenever I sustain an objection to a
17 question or deny a motion to admit an exhibit into evidence
18 you must ignore the question or the existence of an exhibit
19 and you must not guess what the answer may have been or what
20 the exhibit would have shown. Sometimes it may be necessary
21 for me to request that you leave the courtroom while I
22 discuss with the attorneys legal questions that come up
23 during the course of the trial. If this occurs you should
24 not speculate on our discussions or the reasons that you are
25 asked to leave the room. This is simply a procedure that

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1 the law requires when certain legal issues arise. There
2 also may be occasions when I ask the attorneys to approach
3 the bench so that I can discuss a legal issue in private. I
4 will do this as often as possible so that you will not be
5 required to leave the courtroom more than is absolutely
6 necessary. Again, if I ask the attorneys to step up to the
7 bench or I ask you to leave the courtroom please don't think
8 that anybody is trying to hide anything from you or keep any
9 evidence from you, this is simply a procedure used by all
10 lawyers and by all courts to determine and to decide legal
11 questions. Now, in deciding the facts of this case you may
12 have to decide which witnesses to believe and which
13 witnesses not to believe, this is called credibility. You
14 may believe everything a witness says or only part of it or
15 none of it. In deciding what to believe you may consider a
16 number of factors including the witness' ability to see or
17 hear or know the things the witness testified to, the
18 quality of the witness' memory, the witness' manner or
19 demeanor while testifying, whether the witness has an
20 interest in the outcome of the case or any motive, bias or
21 prejudice, whether the witness was contradicted by anything
22 that the witness said or wrote before the trial or by other
23 evidence, and how reasonable was the witness' testimony when
24 considered in the light of other evidence which you do
25 believe. Now I want to say just a few words about your

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1 conduct as jurors some of which I have already mentioned to
2 you but they're important enough that they bear repeating.
3 First of all, do not talk to each other about this case
4 until the end of the case when you go to your jury room to
5 decide on your verdict. Any discussion about this case
6 prior to that time would be premature deliberations. Do not
7 talk with anyone else about the case until the trial has
8 ended following your verdict and you've been discharged as
9 jurors, this means do not discuss the case with members of
10 your family or with your friends or with anyone else. You
11 may tell them that you are a juror but don't tell them
12 anything about the case until you have been discharged by
13 me, and the reasons for that are pretty self apparent, you
14 have got to decide this case based upon what you hear in
15 this courtroom and not what anyone else may say. Do not let
16 anyone talk to you about the case, if anyone should approach
17 you or talk to you about this case get their name or their
18 description, report it to the bailiffs, they will report it
19 to me and I will deal with them. Do not read any news
20 stories or articles or listen to any radio or television
21 reports about the case. You are not to consider as evidence
22 anything that you may see or hear when court is not in
23 session. Do not do any research such as consulting
24 dictionaries or reference materials or the internet and do
25 not do any investigation into the case on your own. Now,

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1 finally do not make up your mind about what your verdict
2 should be until you have heard all of the evidence in this
3 case and the instructions on the law by me and the arguments
4 of counsel, the two attorneys. You will be instructed on
5 when to begin your deliberations by either me or the
6 bailiff. Are there any objections to my opening remarks on
7 behalf of the State, Mr. Maxwell?

8 MR. MAXWELL: None from the State.

9 THE COURT: On behalf of the defense, Mr. Frick?

10 MR. FRICK: None from the defense.

11 THE COURT: The first matter, ladies and gentlemen,
12 will be the matter of opening statements, for that purpose
13 the Court will recognize the assistant solicitor,
14 Mr. Maxwell?

15 MR. MAXWELL: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. MAXWELL: Good morning, ladies and gentlemen, my
18 name is Riley Maxwell. Mr. Wingard is on trial for two
19 separate indictments, one of which is receiving stolen goods
20 which is really possessing stolen goods. Did he have goods
21 in his possession, did he know they were stolen and did he
22 have reason to believe they were stolen. The second
23 indictment is for violation of what they call the nonferrous
24 metals statute, that's a fancy way of saying -- nonferrous
25 metals is any metal without iron, includes copper but it's a

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1 fancy way of saying regulating, selling copper to recycling
2 type places, and in this case we're talking about
3 Mid-Carolina Recycling. What occurred in this case is that
4 on August 8, 2012, the victim, Willie Pope who works for
5 Dave Brissey, and you will meet both of them today, gets
6 home from work about 4:30 in the afternoon at his house just
7 a couple of blocks away from here. Mr. Pope does electrical
8 work for Mr. Brissey, he drives a truck with tool bins and a
9 bed in the back which he carries a bunch of tools and a
10 bunch of materials he uses to do his job. He gets home from
11 work about 4:30, parks his truck in his driveway, spends the
12 evening inside his house. The next morning at 6:00 a.m. he
13 gets up to go to work, he arrives at work and finds out that
14 a lot of the tools that were in those bins in the back of
15 his truck and a lot of materials that were in the back of
16 his truck are gone and he contacts law enforcement. So
17 right now at that point in time this step is on the radar of
18 law enforcement, they've got their ears open. Within
19 probably two to three hours there's a phone call to the
20 sheriff's department by Brandon Wingard asking for a permit
21 to sell copper wire at Mid-Carolina Recycling which is just
22 inside -- or a few miles within the Richland County line on
23 321. The nonferrous statute requires somebody that is
24 attempting to sell copper to a recycling place or whatever
25 to obtain a permit from their local sheriff's department, so

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1 that is what Mr. Wingard does. This is within -- we don't
2 know exactly when the theft was, you've got Mr. Pope getting
3 home at 4:30, discovering the theft at 6:00 a.m. more than
4 12 hours later, couple of hours after that Mr. Wingard is
5 attempting to get a permit and does get a permit to sell
6 copper at Mid-Carolina. Word gets out around the sheriff's
7 department that Brandon Wingard is just haphazardly
8 mentioned by the person who answered the phone call from
9 Mr. Wingard, she mentioned it to some investigators that
10 Brandon Wingard just talked about getting a permit and is at
11 Mid-Carolina. Well, the sale goes through at Mid-Carolina,
12 it's my understanding that the sheriff's department is
13 required to give a permit to anybody that asks, it is simply
14 a registration procedure to know who is selling what and
15 where they're selling it and what they're selling.
16 Investigator Talbert and Investigator Westfall, they get
17 this information that Brandon Wingard is down in
18 Mid-Carolina selling copper, they are familiar with some
19 people down there. Investigator Talbert calls somebody at
20 Mid-Carolina, Curt Richardson who you will also hear from
21 today, asked was Brandon Wingard down there, he says yes.
22 "Can you send me what he had, what he sold you?" Curt takes
23 some pictures of what Brandon Wingard had brought to
24 Mid-Carolina earlier that morning, sends them to Jeff
25 Talbert, Jeff Talbert sends them to Willie Pope and says,

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1 "That's my wire," and you will hear from Pope and he will
2 testify through all of that. That happens on the afternoon
3 of the 9th, theft sometime in the middle of the night on the
4 8th, maybe after midnight on the 9th. At Mid-Carolina on
5 the morning of the 9th, mid-morning I believe,
6 identifications are made that, "These are items that belong
7 to me," by Mr. Pope and Mr. Brissey on the afternoon of the
8 9th. On the 10th the sheriff's department executes a search
9 warrant at the home of Mr. Wingard, he is there alone and
10 all of the tools that were taken from Mr. Pope's truck that
11 belonged to either Mr. Pope or Mr. Brissey, because they
12 worked together, they're all over at Mr. Wingard's house.
13 It's a straight forward case and I hope I have kept my
14 comments brief because this is going to be a fairly brief
15 case. We intend to offer evidence that Mr. Wingard
16 possessed stolen items from Mr. Pope, from Mr. Brissey and
17 that he knew they were stolen, or at least he had a reason
18 to believe they were stolen, ask you to apply your common
19 sense and find Mr. Pope -- or Mr. Wingard guilty of these
20 two indictments. I appreciate your time today in the
21 courtroom and your attention in this matter. You're paying
22 a great -- you're doing a great service to your community by
23 being here today and I really do appreciate your time.
24 Thank you, ladies and gentlemen.

25 THE COURT: Mr. Frick, does the defendant care to make

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1 an opening statement?

2 MR. FRICK: Yes, sir, thank you.

3 THE COURT: All right, sir, you may.

4 MR. FRICK: Thank you, Your Honor, Mr. Maxwell. Ladies
5 and gentlemen, good morning, I appreciate y'all being here
6 this morning. I know you probably don't feel like you had a
7 whole lot of options and that's probably more true than you
8 may believe, but it's a great service that you render as has
9 been told to you previously and will probably be told to you
10 again. It has been likened, and I think the Judge illuded
11 to this yesterday, it's the most greatest service that you
12 could provide your community aside from serving in the
13 military. But even I've got to admit that this is clearly
14 something that is devised by somebody like me who apparently
15 can't get an audience to listen to them talk unless they
16 trap them in some little box and don't let them leave, but
17 it is one of our greatest traditions. This is how we solve
18 our disputes whether it be a lawsuit in a car wreck or
19 whether it be a criminal matter, we get folks from the
20 community who are not associated with the matter, who come
21 in with common sense, look at the case and determine what
22 happened, that's how it works. It is not at all like you've
23 seen on TV, you're not going to be done here in an hour, but
24 this is also not one of those cases that you're going to be
25 locked away for a couple of weeks. This likely will be over

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1 by this afternoon and you will likely have done your duty
2 and we all thank you for that. I will agree with the
3 solicitor on one point, it is not a complicated case. The
4 State of South Carolina says Brandon Wingard had stolen
5 stuff, tools and whatnot, that's what they're looking for.
6 There is no dispute that Mr. Pope or Mr. Brissey, whoever it
7 truly belongs to it, was in the possession of Mr. Pope, his
8 stuff went missing. They said that the stuff that went
9 missing ends up at Brandon Wingard's house and down at
10 Mid-Carolina so he's charged with possession or receiving
11 stolen goods. It is a crime to possess stolen goods if you
12 know the stuff you've got is stolen or you've got a reason
13 to believe the stuff is stolen. If you don't know it ain't
14 a crime to have this stuff, it's called a mistake. They
15 also charged him with selling the stolen copper, this is a
16 new statute we came up with fairly recently, devises a whole
17 scheme of criminal penalties for possessing and selling
18 stolen copper. Fine. It also has a provision that says if
19 you're going to sell copper you've got to have a permit to
20 do it, makes sense, kind of eliminates some of these things.
21 So what it requires you to do if you're not a dealer, even
22 if you are a dealer, you've got to get a permanent permit,
23 but if you're just a person who wants to ride down the road
24 and sell some copper like Mr. Wingard did, you've got to
25 call the sheriff's department and say, "Hey, I'm selling

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1 some copper," and they say, "Okay." They just have to issue
2 this permit so you can do that. So what the State alleges
3 is Brandon Wingard has a whole bunch of stolen stuff all
4 over his house and a whole bunch of stolen copper and he
5 drives 22 whole miles down 321 to Mid-Carolina and then
6 calls the sheriff's department and says, "Hey, I want to
7 sell some stolen copper," that's what they allege, ladies
8 and gentlemen, that's what they allege. Now, I too ask you
9 to use your common sense and think, if this is a person who
10 has a bunch of stolen stuff, why in the devil are you going
11 to call the sheriff's department 22 whole miles away and
12 tell them, "I've got this stuff?" Why would you do that?
13 Now, the entire burden is over here, ladies and gentlemen,
14 Mr. Wingard does not have to prove a thing. If you believe
15 the stuff in his house is, in fact, stolen goods he doesn't
16 have to explain where they came from, that's not required by
17 the law. The State has got to prove that they're stolen and
18 he possessed them and had reason to believe or knew that
19 these were, in fact, stolen items. That's solely their
20 burden and they've got to do it beyond a reasonable doubt.
21 Now, that's a somewhat complicated term and I'm sure the
22 Judge will give you an instruction on that at the close of
23 the case, but my assessment of that is they've got to prove
24 to you that there's no other explanation but that the goods
25 that Mr. Wingard had were stolen and he knew it or should

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1 have known it, that is it, no other reasonable explanation.
2 It is not while you sit here and watch this and in this case
3 you're probably going to see a few pictures, you're going to
4 hear the witnesses and you get to weigh their testimony and
5 you get to determine what's the truth and what's not the
6 truth and who you're going to believe or whether you want to
7 believe all of them or not, that's entirely up to you. That
8 is your job as the judge of the facts we call it and nobody
9 will take that away from you, you get to weigh all of that
10 and you get to determine whether there is any other
11 explanation other than what the State is telling you, that's
12 reasonable doubt. It is not, Well, you know, Brandon
13 probably should have known maybe, he probably could have
14 known, he probably -- there's got to be no reasonable doubt,
15 there's got to be no other explanation other than he had to
16 have known or should have known for some reason that these
17 items he possessed were somebody else's. And I suggest to
18 you, ladies and gentlemen, you're going to see that he had a
19 bunch of stuff at his house, you get to determine whether it
20 really was stolen goods or not, but you always get to
21 determine even if there was stolen goods, even if you think
22 that he had goods that were somebody else's, you get to
23 determine whether the State has shown you that he knew that
24 or that he should have known that. It's a high burden, it's
25 not like we have if you have ever been in a civil trial that

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1 it's maybe more likely than not, it's not maybe, it's not
2 probably, it's not could have, it's no other reasonable
3 explanation. And I suggest to you the State is not going to
4 meet that burden. And close don't count, this ain't
5 horseshoes, this is criminal court, and once you go back in
6 that jury room you will determine that the State has not met
7 that burden and Mr. Wingard is not guilty of these charges.
8 Thank you very much for your time, attention and your
9 service.

10 THE COURT: Counsel, let me see you at a side bar in a
11 moment.

12 (A bench conference was held.)

13 THE COURT: All right. You may call your first
14 witness.

15 MR. MAXWELL: State calls Willie Pope.

16 The witness, WILLIE POPE, was first duly sworn
17 and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MR. MAXWELL:

20 THE CLERK: State your name for the record.

21 THE WITNESS: Willie Pope.

22 Q. Mr. Pope, what do you do for a living?

23 A. I'm an electrician.

24 Q. And who do you work for?

25 A. The Electric Company, David Brissey.

TESTIMONY OF WILLIE POPE

1 Q. Does Mr. Brissey own The Electronic Company?

2 A. Yes, sir.

3 Q. Do you have a truck that you use in your job?

4 A. I do.

5 Q. Can you describe the truck to the jury?

6 A. It's just a light Chevrolet pickup with a tool bed on
7 it.

8 Q. What do you keep in your truck?

9 A. All of my tools, all of the company's tools that I am
10 in possession of, wire, that's pretty much it.

11 Q. Were you working for The Electronic Company on
12 August 8th of 2012?

13 A. Yes.

14 Q. What time did you get off of work on the 8th, do you
15 remember?

16 A. We get off about 3:30, I'm home by 4:15 or 4:30
17 everyday.

18 Q. Where do you live?

19 A. [REDACTED] about two blocks away.

20 Q. Is that in Fairfield County?

21 A. It is, yes, sir.

22 Q. Did you drive your truck home, your work truck home
23 that day?

24 A. Yes, sir, everyday.

25 Q. Was there tools and materials in the back of it when

TESTIMONY OF WILLIE POPE

1 you drove it home that day?

2 A. Yes, sir.

3 Q. When you got home that day, when was the next time you
4 were in your truck or at your truck going through your
5 truck?

6 A. The next morning at about 6:30 or 6:40, something like
7 that.

8 Q. What did you discover that morning, or how did you
9 discover it?

10 A. I noticed there was a drop cord laying on the ground
11 and I really didn't think anything of it, I thought maybe I
12 just grabbed something and it fell out.

13 Q. I didn't ask you, let me go back a second, where was
14 your truck parked at when you got home that afternoon?

15 A. It was where I keep it parked everyday, straight up the
16 driveway right beside a little building in the back yard.

17 Q. Not inside a garage or anything like that?

18 A. No, sir..

19 Q. I didn't let you finish, what did you find out the next
20 morning?

21 A. Well, I saw my drop cord laying on the ground and when
22 I got to the end of my driveway I noticed one of my tool
23 bins was open, I just thought maybe I didn't shut it good
24 enough the day before, and that was really it then.

25 Q. What happened next?

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1 A. On the way to work I kind of realized that I hadn't
2 been in that particular bin, and so when I got to work I
3 looked through there and noticed I was missing a drill. I
4 asked the guys that I worked with and my boss if they might
5 have gotten it, they hadn't, and then I started noticing
6 wire was missing, some more drills were missing, some of my
7 tools were missing, some more of Mr. Brissey's tools were
8 missing, and I realized that somebody had stolen them.

9 Q. Do you recall how soon you called law enforcement after
10 discovering the stuff had been taken?

11 A. I want to say I called them 7:30 that morning.

12 Q. Who did you initially call, do you remember?

13 A. The Town of Winnsboro.

14 Q. And did they end up investigating this to the best of
15 your knowledge?

16 A. I don't know how much investigating they did, an
17 officer did come to the house and take a statement.

18 Q. Do you know if word got to the sheriff's department
19 that stuff had been stolen from your truck?

20 A. Yes, I do.

21 Q. Do you know how that happened?

22 A. I called my dad and he called Officer Keith Lewis.

23 Q. Do you remember anything suspicious in your mind that
24 happened in the middle of the night going from the 8th to
25 the 9th?

TESTIMONY OF WILLIE POPE

1 A. No, sir.

2 Q. When was the next contact you had with law enforcement
3 on here after you filled out a report with the officer from
4 Winnsboro Public Safety?

5 A. I talked to officer Talbert probably 2:30 or 3:00 that
6 afternoon.

7 Q. What did y'all discuss?

8 A. He asked me if some wire had been taken and that he had
9 some pictures that he would email me so I could look at them
10 and determine if it was my wire.

11 Q. And did you receive by email some pictures from Jeff
12 Talbert?

13 A. Yes, sir.

14 Q. I'm going to show you what has been marked as State's
15 Exhibit 12. Can you identify that to the Court?

16 A. That is some copper wire off the reels, it is blue,
17 white, red and green.

18 Q. Is that similar to what was taken from your truck?

19 A. Yes, sir.

20 Q. Can you testify any further about if that's the
21 specific wire taken from your truck?

22 A. Well, the fact that it is all curled up suggests that
23 it just came off of the reel instead of being pulled out of
24 somewhere and all of my wire was on reels that was taken.
25 And the work we do we use blue wire and there's not a whole

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1 lot of electricians around here pulling blue wire, they're
2 mostly wire that you see in your houses so that's also what
3 you see on the tipping point.

4 Q. All of that wire from that picture is similar to the
5 wire you use on your job and what you had on your truck?

6 A. Yes, sir.

7 Q. Maybe you just said this, is this copper wire?

8 A. Yes, sir.

9 Q. And is that what you had, you had copper wire?

10 A. Copper wire, that's all we deal with.

11 Q. Did you meet with law enforcement the following day?

12 A. Yes, sir.

13 Q. Where did you meet with law enforcement?

14 A. At the sheriff's department.

15 Q. What was the purpose of you going to the sheriff's
16 department?

17 A. Identify some tools that have been taken from Mr.
18 Wingard's house.

19 Q. Were they your tools, or yours and Mr. Brissey's tools?

20 A. Yes, sir. They had my name, the company name, they
21 were my tools, our tools.

22 Q. I'm not asking you to describe every single item, but
23 what types of tools did you see that day?

24 A. A meter, couple of meters, electrical bolt testers,
25 hammer drills, drills, battery chargers, socket sets, random

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1 material, and that's pretty much about it.

2 MR. MAXWELL: Beg the Court's indulgence for just a
3 moment, Your Honor.

4 THE COURT: Yes, sir.

5 (Break in proceedings.)

6 MR. MAXWELL: No further questions, Your Honor.

7 THE COURT: Cross examination, Mr. Frick?

8 CROSS EXAMINATION

9 BY MR. FRICK:

10 Q. You live in the city?

11 A. Yes, sir.

12 Q. And your first phone call was to the public safety?

13 A. Yes, sir.

14 Q. Okay. But the county is the one who ended up
15 investigating this case?

16 A. Yes, sir.

17 Q. Because Chief Lewis got called?

18 A. Yes, sir.

19 Q. How did he get called?

20 A. My father called him.

21 Q. Why is your dad calling Chief Lewis?

22 A. They're friends.

23 Q. Who is your dad?

24 A. Will Pope.

25 Q. Is that Magistrate Pope?

TESTIMONY OF WILLIE POPE

- 1 A. Yes, sir.
- 2 Q. Did you go down to Mid-Carolina and see this copper
3 wire or did you just see the picture?
- 4 A. I just saw the picture.
- 5 Q. And are there -- are there any labels on the wire that
6 identify it as coming from y'all's particular company or
7 anything like that, any specific identifying marks?
- 8 A. No, sir, there was nothing as to wiring.
- 9 Q. Do you have any identification on them saying it comes
10 from y'all's company?
- 11 A. Yes, sir.
- 12 Q. The tools that y'all had?
- 13 A. Yes, sir.
- 14 Q. Did you have any markings on those tools?
- 15 A. All over the place.
- 16 Q. All over the place?
- 17 A. Yes, sir.
- 18 Q. What was your markings?
- 19 A. It would either be my name, the company's name, my
20 truck is a 2000 model truck so we wrote 2000 on a bunch of
21 the stuff.
- 22 Q. Okay. All right. Had you seen the tools that he got?
- 23 A. I'm in possession of them now.
- 24 Q. Now, you weren't at the scene when they were
25 identified, correct?

TESTIMONY OF WILLIE POPE

1 A. No, sir. I saw them at the sheriff's department.

2 Q. Did you give any -- after your first contact with law
3 enforcement, did they come talk to you anymore about giving
4 a statement or anything like that or did they just go on
5 with the investigation?

6 A. I talked with Officer Talbert off and on and throughout
7 that afternoon and the following day before I claimed my
8 material.

9 Q. I think you said some of the items that you said were
10 missing, you had drills missing?

11 A. Yes, sir.

12 Q. Have you got any idea how many drills you were missing?

13 A. I couldn't tell you right now. I know there was one
14 hammer drill because that was the big ticket item, and then
15 there was another Milwaukee Cordless Drill and then some
16 battery chargers and whatnot.

17 Q. I think you said something about batteries?

18 A. I said battery chargers, I don't know if there was a
19 battery in the drill or not.

20 Q. Okay. Batteries that would have been in the drill.

21 A. Right, in the drill to make the drill work.

22 Q. And specific tools would just be your general
23 electronic type tools?

24 A. Yes, sir.

25 Q. Meter?

TESTIMONY OF WILLIE POPE

1 A. Socket seat for turning sockets.

2 Q. Wire strippers and stuff like that?

3 A. I don't think he got my wire strippers, I had my hand
4 tools in the house with me.

5 Q. Okay.

6 MR. FRICK: Thank you, sir, I believe that's all I got.

7 THE COURT: Redirect?

8 MR. MAXWELL: Briefly.

9 REDIRECT EXAMINATION

10 BY MR. MAXWELL:

11 Q. After you identified these tools at the sheriff's
12 department, did you or Mr. Brissey receive these tools back?

13 A. Yes, sir.

14 MR. MAXWELL: No further questions, Your Honor.

15 THE COURT: Recross?

16 MR. FRICK: None, Your Honor, thank you.

17 THE COURT: Thank you, sir, you may step down. All
18 right, ladies and gentlemen, we have got a matter of law
19 that we need to take up before we can go forward with any
20 further testimony so I'm going to excuse you and ask you to
21 go to your jury room and just relax for a few minutes while
22 we take up these matters of law and then we will send for
23 you. While you're in the jury room do not discuss the cases
24 among yourselves, just relax, talk about anything you want
25 to; children, weather grandchildren or sports but do not

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1 talk about this case at all, thank you and go with your
2 bailiff.

3 (The jury left the courtroom.)

4 THE COURT: All right. Mr. Maxwell, take a minute and
5 allow you to make a phone call, come back here and see what
6 the status of that witness is, so let's take about five
7 minutes. Thank you.

8 (A recess was taken.)

9 THE COURT: I understand there is a matter with regard
10 to an alleged statement made by the defendant and the
11 defense has made a motion to suppress that statement so the
12 burden is on the State to show the statement was made and
13 that it was freely and voluntarily made. All right.
14 Mr. Maxwell?

15 MR. MAXWELL: State calls Jeff Talbert.

16 The witness, JEFF TALBERT, was first duly sworn
17 and testified as follows, on:

18 DIRECT EXAMINATION

19 BY MR. MAXWELL:

20 Q. State your name for the record.

21 A. Jeff Talbert.

22 Q. Investigator Talbert, who are you employed by?

23 A. Fairfield County Sheriff's Office.

24 Q. What is your position?

25 A. Criminal investigator.

JACKSON VS. DENNO HEARING

1 Q. Are you the lead investigator in the case against
2 Brandon Wingard?

3 A. Yes, I am.

4 Q. Were you present during the execution of a search
5 warrant in his home on August 9th of 2012?

6 A. Yes, sir.

7 Q. Where is that residence at?

8 A. It was [REDACTED] in Fairfield County?

9 Q. Was Mr. Wingard home when you arrived?

10 A. He was.

11 Q. What happened as officers arrived and knocked on the
12 door.

13 A. Mr. Wingard came and opened the door.

14 Q. Was he the only one there?

15 A. Yes, sir.

16 Q. What happens next after y'all make contact with him?

17 A. Once we make contact with him we tell him we're there
18 for a search warrant, and we secure a couch that he was
19 going to sit on to make sure there wasn't any weapons there,
20 we put cuffs on him for safety, he was not under arrest at
21 the time. He sat on the couch, we allowed him to smoke
22 cigarettes while he was sitting there and I started reading
23 the search warrant.

24 Q. Did you read the entirety of the search warrant?

25 A. Yes, sir.

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1 Q. Did Mr. Wingard make any types of statements -- any
2 statements while you were reading the search warrant?

3 A. Yes, sir. While I was reading the search warrant he
4 stated that he got the tools from a black guy.

5 Q. Did he say anything else -- at that point in time did
6 he say anything else other than that statement?

7 A. No.

8 Q. What did you do when he said that?

9 A. Kept reading the search warrant.

10 Q. When you finished reading the search warrant what did
11 you do next?

12 A. Read him his rights.

13 Q. Miranda rights?

14 A. Yes, sir.

15 Q. What did you read those rights from?

16 A. From a card that I keep in my wallet.

17 Q. Do you have the card?

18 A. Yes, I do.

19 Q. Will you read from that card?

20 A. It says, "You have the right to remain silent, anything
21 you say can and will be used against you in a court of law.
22 You have the right to speak with an attorney and have the
23 attorney present during any questioning. If you cannot
24 afford a lawyer one will be provided for you at government
25 expense. Knowing and understanding your rights as I

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1 explained them to you, are you willing to answer my
2 questions without an attorney present?"

3 Q. Now, was Mr. Wingard under arrest at that point in
4 time?

5 A. No, he wasn't.

6 Q. But he was cuffed?

7 A. Yes, sir.

8 Q. Was he allowed to go anywhere?

9 A. No, sir. He sat right there on the couch.

10 Q. Did he ask to go to the bathroom?

11 A. No, sir; not to my knowledge.

12 Q. Did he make any requests that were denied like going to
13 the bathroom or getting something to drink or anything like
14 that?

15 A. No, sir.

16 Q. Do you know how long it took for the search warrant to
17 go on?

18 A. I would guess probably around an hour and a half or two
19 hours.

20 Q. Was Mr. Wingard there the whole time?

21 A. Yes, sir.

22 Q. What was he doing during the search?

23 A. Just sitting on the couch in front of a coffee table
24 and he had his ashtray and cigarettes there and we allowed
25 him to smoke while he was sitting there.

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1 Q. He had his cuffs on in front of him?

2 A. Yes, sir.

3 Q. After you finished reading the Miranda did you question
4 Mr. Wingard about what he said when he was reading the
5 search warrant?

6 A. Yes, sir, we did. We questioned him about him stating
7 that he had bought the tools from a black guy, and asked him
8 could he tell us who that black guy was and the only thing
9 he said was that he was a crackhead.

10 Q. Did he give any other statements about meeting this
11 person or getting in contact with this person?

12 A. Yes, sir, he said he met him in town.

13 Q. Anything else?

14 A. That's it.

15 Q. Did at any point in time Mr. Wingard request an
16 attorney?

17 A. No, sir, he didn't.

18 Q. At what point in time was he arrested, officially
19 arrested?

20 A. After we had found all of the tools in the residence,
21 right before we were leaving we did place him under arrest
22 as we were leaving.

23 Q. Were any threats made to Mr. Wingard in order to get
24 him to say any of these statements?

25 A. No, sir.

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1 Q. Do you believe the statements were voluntary?

2 A. Yes, sir.

3 MR. MAXWELL: No further questions, Your Honor, of this
4 witness.

5 THE COURT: Cross examination, Mr. Frick?

6 CROSS EXAMINATION

7 BY MR. FRICK:

8 Q. Y'all got the search warrant, go to the house, right?

9 A. Yes, sir.

10 Q. Knock on the door, any trouble with him letting you in?

11 A. No, sir.

12 Q. Y'all told him why you were there?

13 A. Uh-huh.

14 Q. When did you place cuffs on him?

15 A. Once we got inside the residence we put cuffs on him
16 and secured the couch we were going to sit him on, it was
17 standard the way we do it on a search warrant, we do it for
18 our safety and their safety.

19 Q. Any trouble out of him?

20 A. No, sir.

21 Q. At that point in time if he would have said, "I want to
22 leave," or, "I want y'all to leave," would you have left or
23 would you have let him go?

24 A. No, sir.

25 Q. So while he's not under arrest he's basically in

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1 custody?

2 A. Yes, sir.

3 Q. When he makes this statement of -- what was the first
4 statement he says? I'm sorry.

5 A. That he had gotten the tools from a black guy.

6 Q. Okay. When does he say this? You're reading the
7 search warrant?

8 A. Yes, sir.

9 Q. At what point did he say that?

10 A. During some part of the search warrant, I'm not sure if
11 it was the affidavit -- I'm sure it was the affidavit
12 because that's when we were describing what we were there
13 looking for.

14 Q. Okay. Now, y'all got other officers there, right?

15 A. Yes, sir.

16 Q. At any point did anybody say, "Brandon be quiet, don't
17 say anything," or read him his rights or stop him from
18 talking at that point?

19 A. No, sir.

20 Q. In fact, at that point y'all were really more
21 interested in the search warrant, correct?

22 A. Uh-huh.

23 Q. When was this statement disclosed to the solicitor's
24 office?

25 A. Which statement?

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- 1 Q. Any of what he said? Is any of what he said written in
2 the incident report?
- 3 A. Not in the incident report, no, sir, it's not.
- 4 Q. Was a written statement taken?
- 5 A. No, sir.
- 6 Q. Was a video statement taken?
- 7 A. No, sir.
- 8 Q. When did the solicitor become aware that Mister -- when
9 did Brandon say these things? When did the solicitor know?
- 10 A. I'm not sure.
- 11 Q. Was it before yesterday?
- 12 A. I'm not sure.
- 13 Q. Did y'all have a conversation about this yesterday?
- 14 A. Yes, we did.
- 15 Q. What caused that conversation to occur?
- 16 A. We were reviewing just the facts of the case yesterday.
- 17 Q. Okay. To your knowledge had Mr. Maxwell been told
18 about this statement prior to yesterday?
- 19 A. I can't answer that, I'm not sure if he was or not.
- 20 Q. But you were certainly, because you were present in
21 August, you were aware that the statement had been made,
22 correct?
- 23 A. Yes, sir.
- 24 Q. When would you say that Mr. Wingard was under arrest?
- 25 A. Whenever we were leaving the scene. After we had

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1 gotten all of the tools that belonged to Mr. Pope, when we
2 were fixin' to walk out of the residence we placed him under
3 arrest and took him with us.

4 Q. So in your mind the arrest did not occur until after
5 the search is executed.

6 A. Right.

7 Q. But he is not free to leave and he is, in fact,
8 confined to the couch as soon as y'all come in the door.

9 A. Right.

10 MR. FRICK: Thank you, sir. That's all of the
11 questions I have.

12 THE COURT: Redirect?

13 MR. MAXWELL: Briefly.

14 RECROSS EXAMINATION

15 BY MR. MAXWELL:

16 Q. Do you have your case synopsis in that file?

17 A. Yes, sir, I do.

18 Q. If you would review kind of the bottom of it. Does
19 anything you put in your synopsis refer to one of the
20 statements that Mr. Wingard made?

21 A. It says, "Wingard stated that some black guy brought
22 him the stuff."

23 Q. That was initially put in the file; is that correct?

24 A. Yes, sir, that was.

25 Q. But the part about the crackhead was not initially in

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1 the file.

2 A. Right.

3 MR. MAXWELL: No further questions, Your Honor.

4 MR. FRICK: Just briefly.

5 RECROSS EXAMINATION

6 BY MR. FRICK:

7 Q. We are talking about the case synopsis that y'all
8 always put at the top that says work product.

9 A. Right.

10 Q. And the only thing it says on there is some black guy
11 brought him the stuff.

12 A. Right.

13 Q. The only stuff you talked is he met the guy in town,
14 that's not memorialized anywhere, is it?

15 A. No, sir.

16 MR. FRICK: Nothing further of this witness.

17 MR. MAXWELL: Your Honor, there are additional -- a
18 brief statement that was made in the presence of
19 Investigator Westfall as well.

20 THE COURT: Whatever you want to offer in the way of
21 statements and voluntariness you will go ahead then I will
22 allow Mr. Frick to come back if he thinks it's necessary,
23 it's up to you.

24 MR. MAXWELL: State calls Jeff Westfall.

25 The witness, JEFF WESTPHAL, was first duly

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1 sworn and testified as follows, on:

2 DIRECT EXAMINATION

3 BY MR. MAXWELL:

4 Q. Will you state your name for the record?

5 A. Jeff Westfall.

6 Q. Investigator Westfall, where are you employed?

7 A. Fairfield County Sheriff's Office.

8 Q. What is your position?

9 A. Investigator.

10 Q. Were you involved in the investigation of these tools
11 being taken and Brandon Wingard having taken possession of
12 them?

13 A. Yes, sir.

14 Q. What was your initial main roll in this?

15 A. I obtained the search warrant.

16 Q. Were you the affiant on the search warrant?

17 A. Yes, sir.

18 Q. Did you go along with the other officers to execute the
19 search warrant?

20 A. Yes, sir.

21 Q. Were you present throughout the search and execution of
22 that search warrant?

23 A. Yes, sir.

24 Q. Were you there when Investigator Talbert read the
25 search warrant in its entirety and the Miranda warnings?

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- 1 A. Yes, sir.
- 2 Q. Do you recall what Brandon Wingard said to Investigator
3 Talbert while he was reading the search warrant?
- 4 A. Yes, sir.
- 5 Q. What was that?
- 6 A. He stated that he got it from a black guy he believed
7 to be a crackhead.
- 8 Q. Was Mr. Wingard in cuffs at that time?
- 9 A. Yes, sir.
- 10 Q. Had he been arrested yet?
- 11 A. No, sir.
- 12 Q. What was Mr. Wingard doing while Investigator Talbert
13 was reading the search warrant and the Miranda warnings and
14 during the search?
- 15 A. He was sitting on the edge of the couch smoking a
16 cigarette.
- 17 Q. And that was after the place had been searched for
18 security purposes, not for actual items but for security
19 purposes.
- 20 A. Yes, sir.
- 21 Q. Do you recall saying anything -- any requests that were
22 made like using the bathroom, getting something to drink
23 that were denied by other officers?
- 24 A. No, sir.
- 25 Q. Were you involved in the physical search of the

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1 residence?

2 A. Yes, sir.

3 Q. What specific place in the house did you search?

4 A. Basically I was the first initial investigator there
5 when we were able to conduct the search. I believe it was
6 Jeremy Ashford was in Mr. Wingard's bedroom.

7 Q. Well, where did you search?

8 A. I searched -- Mr. Wingard's told me basically where the
9 stuff was so I looked in the closet in the hallway.

10 Q. Was he prompted by anything to get him to tell you
11 where the stuff was?

12 A. No, sir.

13 Q. Were those statements voluntary?

14 A. Yes, sir.

15 Q. Were they spontaneous?

16 A. Somewhat, yes, sir.

17 Q. Well, explain how he told you where to go.

18 A. Well, when I was told where originally I believe it was
19 a Hilti drill was in Mr. Wingard's bedroom, I walked back
20 there and was able to identify that that was a stolen item.
21 As I walked back up I was telling Jeff, "We found one of the
22 stolen items." He stated -- Mr. Wingard stated then he has
23 got some more in the closet in the hallway, we didn't know
24 about the living room until probably 20 minutes before we
25 left.

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1 Q. What happened in the living room?

2 A. In the living room -- we was missing some drills and we
3 was trying to find the drills, Mr. Wingard stated he's got
4 some drills in the living room closet.

5 Q. Did you go into the closet?

6 A. I went into the closet, there was approximately three
7 or four drills.

8 Q. Did Mr. Wingard say anything as you were going into the
9 closet?

10 A. Yes, sir. As I reached up to get the drills to bring
11 them down he stated that some of the items were his, they
12 weren't stolen.

13 Q. Was stolen the word he used?

14 A. Yes, sir.

15 Q. Were you present when some other officers -- let me go
16 back to that a little bit. Was Mr. Wingard questioned about
17 those tools to make him make that statement?

18 A. No, sir.

19 Q. And this is after Jeff Talbert had already read him
20 Miranda, correct?

21 A. Yes, sir.

22 Q. Did other officers check an outside building that
23 you're aware of?

24 A. Yes, sir.

25 Q. Did they bring some tools inside?

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1 A. They didn't actually physically bring them in, they
2 came in and was telling us what was outside and Mr. Wingard
3 stated that those tools weren't stolen either, that they
4 belonged to him, that he's had them for awhile.

5 Q. Do you know if he used the word stolen in that
6 statement?

7 A. Yes, sir.

8 Q. Basically did the officers make statements to y'all
9 that they had found some other stuff outside, not to Mr.
10 Wingard?

11 A. Yes, sir, and he overheard them telling me.

12 Q. Everybody is in the living room.

13 A. Yes, sir.

14 Q. Is he still on the couch at that point?

15 A. Yes, sir.

16 Q. Just sitting there?

17 A. Yes, sir.

18 Q. Were these statements voluntary by Mr. Wingard?

19 A. Yes, sir.

20 Q. Were these statements other than what Talbert testified
21 to about crackhead and meeting uptown, were they prompted by
22 any type of questioning by Mr. Talbert?

23 A. No, sir.

24 MR. MAXWELL: No further questions, Your Honor.

25 THE COURT: Cross examination, Mr. Frick?

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1 CROSS EXAMINATION

2 BY MR. FRICK:

3 Q. All right. Jeff, you've got to clarify it for me, did
4 he say black guy gave me some stuff or did he say I think
5 that guy was a crackhead? I mean, you heard Talbert say it
6 happened at two different times, was it one time or two
7 different times?

8 A. It was one time.

9 Q. He said it one time?

10 A. Yes, sir.

11 Q. Did you write this down?

12 A. No, sir.

13 Q. It's not on an incident report anywhere?

14 A. No, sir.

15 Q. Do you have any idea whether the solicitor knew about
16 this before yesterday?

17 A. No, sir.

18 Q. Was it disclosed to him yesterday when y'all talked
19 about this case?

20 A. We reviewed the case and we spoke about several
21 different things, I mean, but I don't know if he knew prior
22 to that.

23 Q. Is this just y'all's recollection from being present at
24 the scene or did anybody have notes?

25 A. Minds and recollection.

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1 Q. And his statement was -- of course, you've got an
2 additional statement, you said that he tells you that
3 there's stuff in the living room; is that right?

4 A. Well, we was together, the investigators were together
5 and we was talking about we're still missing some items.
6 Mr. Wingard is sitting on the edge of the couch, he hears us
7 talking and as we was talking we was talking about we're
8 still missing some drills, he says the drills are in the
9 living room closet so I went to the closet --

10 Q. I'm sorry, I don't mean to cut you off there but I just
11 want to clarify, does he say the drills are in the living
12 room closet, is that what he said?

13 A. The drills are in that closet which was in the living
14 room.

15 Q. But that's the words he used, the drills are in the
16 closet.

17 A. Yes, sir.

18 Q. He didn't say my drills, he didn't say the drills you
19 were looking for.

20 A. The drills are in the closet.

21 Q. He said the drills are in the closet.

22 A. Yes, sir.

23 Q. Okay. The stuff in the shed, now obviously as part of
24 the search warrant y'all were looking at everything on the
25 property.

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1 A. Yes, sir.

2 Q. The statement that he makes about that, does he say it
3 when it was brought back in the house or was he outside or
4 what?

5 A. No, sir. What it was was we had several investigators
6 outside searching the property, we was inside searching the
7 property, the investigators came in in the residence as I'm
8 standing in the living room with Investigator Talbert and
9 some other officers, the particular investigator that
10 explained to me they found some more tools in the shed,
11 drills, it was a socket set, a wrench set, it looked --
12 basically it looked fairly brand new. As they was telling
13 me that Mr. Wingard was overhearing them tell me that and
14 that's when he stated those items belonged to him, they
15 weren't stolen, that he's had them for awhile.

16 Q. Okay. I understand it wasn't your incident report, I
17 know you're just the investigator on the scene but you were
18 definitely involved in this case.

19 A. Yes, sir.

20 Q. Wouldn't you agree that what he says is a pretty
21 significant admission?

22 A. As far as?

23 Q. Well, saying I bought some stuff from a crackhead,
24 right?

25 A. He said he got it from a crackhead, he didn't say I

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1 don't remember buying or whatever.

2 Q. So you don't know exactly what he said.

3 A. I know that he said it was -- he got it from a black
4 male who he believed to be a crackhead.

5 Q. And then he says at some point not all of that stuff is
6 stolen.

7 A. Yes, sir.

8 Q. Would indicate that he knew some of the stuff was
9 stolen, right?

10 A. Yes, sir.

11 Q. Here is my point, why doesn't any of that make it into
12 any incident report? He's given you a statement, why didn't
13 anybody write this down?

14 A. I couldn't tell you that.

15 Q. But it's not, is it?

16 A. Not as far as I know.

17 MR. FRICK: Thank you, sir, that's all of the questions
18 I have.

19 THE COURT: Redirect.

20 MR. MAXWELL: Nothing further, Your Honor.

21 THE COURT: All right. Thank you, you may step down.

22 All right. Anything else with regard to alleged statements
23 made by the defendant and their admissibility on behalf of
24 the State, Mr. Maxwell?

25 MR. MAXWELL: No, Your Honor.

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1 THE COURT: All right. Mr. Frick?

2 MR. FRICK: Your Honor, if I may, I have to expand on
3 looking at based on what I'm hearing here at the testimony.
4 We get disclosure of another statement --

5 THE COURT: Wait a minute.

6 MR. FRICK: Yes, sir.

7 THE COURT: All right. At this point we haven't gotten
8 to where we -- I'm in a position to hear arguments. What I
9 was going to say is that your client has the right to
10 present any testimony with regard to the alleged statements
11 without forfeiting his 5th Amendments Rights and you have
12 the right to present any other testimony regarding the
13 voluntariness of these 5th Amendment statements and I need
14 to hear from those. And the way you -- if you want to, the
15 notes that I made indicate that basically we are talking
16 about four statements is the way I see it. One was the
17 alleged statement that was made during the reading of the
18 search warrant, that he got the tools from the black guy.
19 The second would be after the search warrant had been read
20 to him and his Miranda rights were read, then he said he got
21 the tools from a black guy who was a crackhead. The alleged
22 third statement would be that during the course of the
23 search of the house he made the statement that the drills
24 are in the closet, they are not -- some are not stolen or
25 they are not stolen. And the third -- fourth is the report

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1 that they got from the officers who had searched the
2 outbuilding and had seized some drills and he made the
3 statement that those tools are not stolen. Those are the
4 four statements that I believe the State has offered in this
5 case. Would you concur with that?

6 MR. FRICK: Yes, sir, I do.

7 THE COURT: Okay. All right. That being the case then
8 do you wish to present any evidence either on behalf of your
9 client or on behalf of -- or any other evidence with regard
10 to the voluntariness of these statements?

11 MR. FRICK: No, sir. I apologize for jumping the gun
12 on that, I had already made that assumption in my mind.

13 THE COURT: All right. That being the case then I will
14 be glad to hear from you in the way of arguments then.

15 MR. FRICK: Your Honor, first I've got an issue with
16 the statements themselves. Now, I have got one of these
17 statements, it is in the incident report it says work
18 product on it that has been provided to me by the
19 solicitor's office when I asked for discovery.

20 THE COURT: That's the one that he made the statement
21 that he got the tools from a black guy.

22 MR. FRICK: Yes, sir. That's the only statement I'm
23 aware of until I have a conversation with the solicitor
24 yesterday as we were both reviewing the case and I am told
25 there are additional statements, one of them being the one

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1 that he got the stuff from the crackhead and one of them
2 where he says that --

3 THE COURT: The drills were in the closet.

4 MR. FRICK: Yes, sir.

5 THE COURT: The outside drills are not stolen.

6 MR. FRICK: Yes, sir. My concern is those are
7 admissions by my client potentially, they are not disclosed
8 to me until yesterday.

9 THE COURT: So you take the position in addition to the
10 Jackson versus Denno it was a Rule 5 violation?

11 MR. FRICK: Yes, sir. If you want me to argue further
12 on it, that's my argument, it's a Rule 5 violation that
13 should have been disclosed to me sooner.

14 THE COURT: With regard to those three?

15 MR. FRICK: Right. I'm certain that the solicitor is
16 going to say he wasn't aware to me yesterday and as was
17 always told to me when I was a prosecutor any statements are
18 imputed by the State and just --

19 THE COURT: I understand. All right, and I'll hear
20 from Mr. Maxwell in a few minutes on that. Let me hear from
21 you then with regard to the Jackson v. Denno issue.

22 MR. FRICK: Judge, I think clearly he's in custody. As
23 soon as they walk in the door they put cuffs on him, they
24 confine him to the couch. Obviously I think -- they were
25 letting him smoke cigarettes and if he would have wanted a

JACKSON VS. DENNO HEARING

1 glass of water I'm sure they would have let him have it, but
2 as was testified to if Mr. Wingard would have said, "Y'all
3 go away" they weren't going to leave and if he would have
4 said, "I would like to leave," they testified they would not
5 let him go. So he's in custody.

6 THE COURT: Well, even if he is in custody -- and let's
7 say I agree with you that he's in custody from the getgo
8 because they put the cufflinks on him. The first statement
9 about tools from the black guy, that is pre-Miranda
10 warnings, why is that not admissible? Because it's
11 pre-Miranda warnings?

12 MR. FRICK: Yes, sir.

13 THE COURT: How about the fact that it's not in
14 response to interrogation, it was just a voluntary
15 statement?

16 MR. FRICK: I think it is interrogation because they're
17 standing there in his house reading a search warrant about
18 stolen property.

19 THE COURT: They didn't ask him anything, they were
20 just reading the search warrant to him and he blurts it out.

21 MR. FRICK: I understand, but I think that can be
22 inferred as questioning on his behalf.

23 THE COURT: All right. The other two statements, the
24 ones about the drills in the closet and the outside tools
25 were not stolen, again those are after Miranda warnings.

JACKSON VS. DENNO HEARING

1 What is your position with those in mind -- I'm not talking
2 about the Rule 5, I'm talking about the Jackson v. Denno
3 issues.

4 MR. FRICK: Right. Your Honor, obviously I've just got
5 a -- I agree, I think my arguments against those are more
6 with the Rule 5 violation. I do continue my objection based
7 on the violation of his rights, but I certainly understand
8 the strength of my argument there.

9 THE COURT: All right. Mr. Maxwell, let me hear from
10 you.

11 MR. MAXWELL: Your Honor, in regards to the disclosing
12 these statements to Mr. Frick, as the Court is aware the
13 first statement about the black guy stole it was in the file
14 the entire time. Certainly as we get close to trial new
15 details come out, we kind of focus in on what has been
16 presented and that's when these things were discovered in
17 the meetings I had yesterday morning, within 15 or 20
18 minutes of finishing that meeting I called Mr. Frick and let
19 him know I didn't -- there's always the possibility of
20 specifics being left out of a synopsis and that's simply the
21 matter here. A majority of the statements made were to
22 Investigator Westfall and he was not the lead investigator
23 in this case, Investigator Talbert was the one that put the
24 case file together, I'm not sure that Investigator Westfall
25 was aware of the statements, that's why -- and again once we

JACKSON VS. DENNO HEARING

1 realized this case is -- we were going to try this case and
2 sat down and determined some of the particulars of this case
3 until -- I didn't know that these were statements
4 Mr. Wingard made and as soon as I became aware of them I let
5 Mr. Frick know. In regard to the statements, I think
6 clearly all of the statements were voluntary, the
7 pre-Miranda statement was spontaneous, it was not towards
8 questioning, the last three statements he made, two of which
9 were again spontaneous and voluntary, not really prompted by
10 any questions by the investigator, and the question (sic) I
11 got it from the black guy who is a crackhead that I met
12 uptown, was just simply -- they finished the Miranda and
13 they wanted to question him further of what he said during
14 the course of reading the search warrant. They're all
15 admissions against interest, I think they're all voluntary
16 and three of the four aren't prompted by any type of
17 questioning.

18 THE COURT: All right. And reply to that, Mr. Frick?

19 MR. FRICK: None, Your Honor. Thank you.

20 THE COURT: All right. Rule 5 of the South Carolina
21 Rules of Criminal Procedure deals with the disclosure of
22 evidence by the prosecution, specifically Rule 5A-1A deals
23 with the statement of the defendant and reads -- relevant
24 part reads in part -- the relevant portion of that rule
25 reads in part, "Upon request by a defendant the prosecution

JACKSON VS. DENNO HEARING

1 shall permit the defendant to inspect any copy of
2 photographic or photograph" -- not applicable here -- "or
3 any relevant written or recorded statement made by the
4 defendant" -- again, that portion does not apply -- "or
5 copies thereof." But this is the relevant part I think, the
6 substance of any oral statement which the prosecution
7 intends to offer in evidence at the trial made by the
8 defendant whether before or after arrest in response to
9 interrogation by any person then known to the defendant to
10 be a prosecution agent. My view of the Rule 5 is that there
11 is no violation, that there was -- the information regarding
12 the first statement about getting the tools from the black
13 guy was written in the summary that was furnished to the
14 defendant, the other statements were spontaneous statements
15 just made that he was a crackhead and also the drills were
16 in the closet and also the statement about the outside
17 tools, none of them were in response to interrogation by the
18 State and I don't think there was any Rule 5 violation. The
19 defendant did know that he had made an alleged statement.
20 If it was the first he had heard about any kind of a
21 statement that would be one thing, but he did know that
22 there had been a statement made that he got the tools from
23 the black guy, he could have pursued that by talking with
24 the officers involved. I don't think that there's any Rule
25 5 violation. I think that as soon as the State learned of

JACKSON VS. DENNO HEARING

1 the details about the additional statements being made
2 spontaneously that was revealed and I find that there is no
3 Rule 5 violation. With regard to the Jackson versus Denno
4 it's axiomatic. The defendant in a criminal case is
5 entitled to an independent evidentiary hearing to determine
6 the voluntariness of a statement made prior to the
7 submission of such statement to a jury, thus where there's
8 conflicting evidence about the statement the Court must
9 first make a finding as to the validity of the statement and
10 if the statement is found to be valid then it should be
11 submitted to the jury. In making this determination the
12 Court should examine the totality of circumstances including
13 the background, experience and conduct of the accused
14 surrounding the utterance to determine that the State has
15 met its burden of proof and the State does have the burden
16 of proof such as to warrant the admission of the statement.
17 The test of admissibility of a statement is whether it was
18 knowingly, intelligently and voluntarily given. A
19 confessions may not be extracted by any sort of threats or
20 violence or obtained by any kind of direct or implied
21 promise however slight, or by the exertion of any improper
22 influence. Of course, part of the State's burden during the
23 hearing is to prove by a preponderance of the evidence that
24 the statement was voluntarily made and was taken in
25 compliance with Miranda and the State bears this burden of

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1 proof even where the defendant signed the waiver form, but
2 that's not the case in this case as far as the signature on
3 the waiver form. Although custody is a factor to be
4 considered in determining voluntariness, the defendant need
5 not show that he was in custody at the time to request a
6 Miranda hearing. But I would find in this situation there's
7 no question that he was in custody from the very getgo, from
8 the very start of this when the police officers came to his
9 door and told him they had a search warrant and put him in
10 handcuffs he was in custody, so there would be no question
11 in my mind that he was in custody even though he was not
12 under arrest until later on, but he was certainly not free
13 to go. However, the first statement that he got the tools
14 from the black guy was not in response to any interrogation
15 but was a voluntary statement that was, in fact, made during
16 the course of the reading of the search warrant when he just
17 basically said that he got the tools from the black guy. So
18 I don't think that it was in response to any kind of
19 interrogation and therefore would not require Miranda
20 warnings. Thereafter Miranda warnings were given at which
21 time he stated that he got the tools from a black guy,
22 stated again that he got the tools from the black guy and
23 that he was a crackhead. Again, I think that is a voluntary
24 statement made without interrogation, but even so he had
25 been given Miranda warnings. With regard to the latter two

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1 statements about the drills in the closet and the outside
2 tools were not stolen, again he was hearing the conversation
3 among the officers although they were not interrogating him
4 so I think that the statements were made not in response to
5 interrogation, but even if it could be implied that they may
6 have been in response to interrogation they were given after
7 he had been given his Miranda warnings and did not wish to
8 have an attorney or before he said anything else. In my
9 view the Court finds that all of the statements were
10 knowingly and intelligently and voluntarily made, and since
11 in my view the latter three statements -- well, he was in
12 custody the entire time, the first statement being entirely
13 voluntarily on his part, the other statements were given
14 after the Miranda warnings and therefore the Court's ruling
15 would be that all four statements are admissible into
16 evidence. All right. Is your witness here?

17 MR. MAXWELL: Yes, sir.

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

19 (The jury returned to the courtroom.)

20 THE COURT: All right. Thank you, ladies and
21 gentlemen. We do apologize for keeping you waiting in the
22 jury room for a little longer than I anticipated, this
23 matter did take somewhat longer than I had expected but
24 we've taken care of the legal issues that we were involved
25 in and we are now ready to go forward. Mr. Maxwell, you may

TESTIMONY OF CURT RICHARDSON

1 call your next witness.

2 MR. MAXWELL: State calls Curt Richardson.

3 THE COURT: All right. Mr. Richardson, come around,
4 please.

5 The witness, CURT RICHARDSON, was first duly
6 sworn and testified as follows, on:

7 DIRECT EXAMINATION

8 BY MR. MAXWELL:

9 THE CLERK: State your name for the record.

10 THE WITNESS: Curt Richardson.

11 Q. Mr. Richardson, what is your business?

12 A. Scrap metal and recycling.

13 Q. Who do you work for?

14 A. Mid-Carolina Steel and Recycling.

15 Q. What is your position at Mid-Carolina Steel and
16 Recycling?

17 A. I'm the vice president.

18 Q. What is a normal business -- or what does Mid-Carolina
19 Recycling do day to day?

20 A. Purchase scrap metal from the public as well as
21 businesses, process it, sort it and sell it.

22 Q. Do your records show Brandon Wingard coming to
23 Mid-Carolina Recycling on August 9th of 2012?

24 A. Yes, sir.

25 Q. Do you remember dealing with him that day?

TESTIMONY OF CURT RICHARDSON

1 A. Not specifically. I do remember the process of his
2 material.

3 Q. Okay. Was Brandon Wingard at Mid-Carolina on August
4 9th of 2012?

5 A. Yes.

6 Q. If you would just tell the jury, what are you referring
7 to?

8 A. Actually on that day he had to call and get a 48 hour
9 permit from the Fairfield County Sheriff's Department, and
10 when he did that the sheriffs picked up on it and they
11 called down and asked me to set aside the material.

12 Q. We'll get into that in a minute. Do you have to have a
13 permit to sell copper or any other type of metal to your
14 company?

15 A. Yes.

16 Q. Is that under a new state law that recently passed a
17 year or two ago?

18 A. Yes.

19 Q. Is copper a nonferrous metal?

20 A. Yes.

21 Q. What did Brandon bring to Mid-Carolina that day?

22 A. Well, as per the receipt he brought some amounts of
23 insulated wire, number one copper, a little bit of gray
24 copper and a few cans --

25 Q. Would he have shown any type of identification to make

TESTIMONY OF CURT RICHARDSON

1 that sale?

2 A. Yes.

3 Q. Do you remember what he would have shown that day?

4 A. Well, it's required by law that you do show your
5 identification and during our process we usually see the
6 identification three times.

7 Q. Would that occur while he was selling that copper to
8 you on that particular day?

9 A. Yes.

10 Q. And did Mr. Wingard, was he given a receipt or invoice
11 after the purchase was done?

12 A. Yes.

13 Q. I'm going to show you two pieces of paper. Can you
14 identify those for the Court?

15 A. Yes. This is a receipt for Mr. Wingard, this is the
16 top of the check that would match the receipt.

17 Q. How much was he paid for the copper that he brought to
18 you?

19 A. He received a grand total of \$74, copper content would
20 have been \$70.50.

21 Q. In the first paper showing the receipt, does it have a
22 letterhead on top of it?

23 A. Yes.

24 Q. Is that y'all's letterhead at Mid-Carolina?

25 A. Yes.

TESTIMONY OF CURT RICHARDSON

1 Q. And is that y'all's piece of paper that y'all gave him
2 that day and normally give to people who sell copper?

3 A. Yes.

4 Q. A separate portion is a check written from Mid-Carolina
5 to Mr. Wingard, or a check stub?

6 A. Yes.

7 MR. MAXWELL: Your Honor, at this time I just wanted to
8 mark these for identification purposes, they were not
9 previously marked.

10 THE COURT: All right. Put on the record which is
11 which.

12 MR. MAXWELL: Yes, sir. The receipt from Mid-Carolina
13 recycling that indicates what was actually sold, it's
14 State's Exhibit 15, and the check stub is State's Exhibit
15 16.

16 Q. Do you recall being contacted by Jeff Talbert shortly
17 after the transaction by Brandon Wingard?

18 A. I probably was contacted by the Fairfield County
19 Sheriff's Department, yes.

20 Q. What did you do in response to that phone call or that
21 conversation?

22 A. I set aside the material that he brought.

23 Q. Were you still able to identify the material that
24 Brandon Wingard had brought?

25 A. Yes.

TESTIMONY OF CURT RICHARDSON

1 Q. Did you take a picture of it?

2 A. No, not personally. There are pictures available.

3 Q. Did somebody at Mid-Carolina take a picture of it, some
4 other employee?

5 A. Yeah, there was automated pictures taken.

6 Q. Is that normal operating procedure?

7 A. Yes.

8 Q. Did you send those pictures of what Brandon Wingard
9 brought to Investigator Talbert?

10 A. That is a strong possibility.

11 Q. I'm going to show you two pictures, State's Exhibit 12
12 and State's Exhibit 13. Can you identify those for the
13 Court?

14 A. Yeah. These are pictures of insulated wiring that
15 matched the description on his receipt. There's one picture
16 in specific I do remember a small bag of wiring because it
17 was just cut out, it was just such a small bag I wouldn't
18 normally be interested in such a small amount of wiring.

19 Q. You don't know if you sent those to Jeff Talbert or
20 anybody with the sheriff's department or not?

21 A. I really can't remember.

22 MR. MAXWELL: No further questions, Your Honor.

23 THE COURT: Cross-examination, Mr. Frick?

24 MR. FRICK: Thank you, Your Honor.

25 CROSS EXAMINATION

TESTIMONY OF CURT RICHARDSON

1 BY MR. FRICK:

2 Q. The photographs we have here, is this everything that
3 he brought in?

4 A. No, sir.

5 Q. Okay. In fact, there was some -- do you have a copy of
6 it in your hand?

7 A. I have a copy of the receipt.

8 Q. I'm looking at what is State's 15. Is that -- have you
9 got a copy of that there? Is that the same thing?

10 A. Uh-huh.

11 Q. And that is the receipt that he's issued once y'all
12 conduct business.

13 A. Right.

14 Q. Now, when he gets down there he has got to get some
15 type of permit to be able to sell the copper to you, right?

16 A. Yes.

17 Q. How does that -- what happens? How did that happen?

18 A. Well, state law was passed that you have to have a
19 permit to sell scrap, at that time you could call your local
20 sheriff's department and obtain a permit that was good for
21 48 hours.

22 Q. And that's not an investigation by you or anybody to
23 determine whose stuff this is, you've got just to have this
24 permit, right?

25 A. Correct.

TESTIMONY OF CURT RICHARDSON

- 1 Q. Who made that phone call if you recall?
- 2 A. I wasn't a party to that, but --
- 3 Q. Do y'all generally make those phone calls?
- 4 A. No. It would have to be called by the person obtaining
- 5 the permit.
- 6 Q. And who do you have to call? If I wanted to sell you
- 7 copper and you look on my license and I'm from Fairfield
- 8 County who do I have to call to get my permit?
- 9 A. Fairfield County Sheriff's Department.
- 10 Q. So I have to call my home sheriff department?
- 11 A. Yes.
- 12 Q. Look at the receipt. He brought you some aluminum
- 13 cans.
- 14 A. Uh-huh.
- 15 Q. How much aluminum can have you got?
- 16 A. Seven pounds.
- 17 Q. What's that one above that, insulated number one
- 18 copper, what is that about?
- 19 A. The very first item?
- 20 Q. No, sir, just above the aluminum cans.
- 21 A. Number one insulated 70 percent is spaghetti wire which
- 22 is a description of one picture.
- 23 Q. That's it?
- 24 A. Yes, sir.
- 25 Q. That's 30 pounds of wire?

TESTIMONY OF CURT RICHARDSON

- 1 A. Yes.
- 2 Q. The bare bright number one copper just above that,
3 which is that?
- 4 A. That would be the stuff that you would see in the small
5 bag, I believe.
- 6 Q. That's the little bag there? Okay. What is number one
7 copper, got a pound of it?
- 8 A. That could be a piece of tubing or a piece of wire
9 that's not considered bare.
- 10 Q. That's not indicated in these photographs, correct?
- 11 A. No.
- 12 Q. So what is number two insulated copper? We've got five
13 pounds of it.
- 14 A. That would be an insulated wire that's just lower
15 covering, lower copper stuff like an extension cord or
16 something like that.
- 17 Q. Okay. That would be like one of those orange extension
18 cords and stuff like that?
- 19 A. Yes.
- 20 Q. They do come in a lot of different colors, don't they?
- 21 A. Yeah.
- 22 Q. Number one insulated copper, we've got two pounds of
23 it.
- 24 A. That would typically be wire like we use in house
25 wires.

TESTIMONY OF CURT RICHARDSON

1 Q. Explain that to me, I'm slightly familiar but not at
2 all. It has got like a white cover on it and it has got a
3 couple of wires in it?

4 A. Uh-huh.

5 Q. That's not indicated in here now, right?

6 A. No, sir, there's not a picture of it.

7 Q. Did you have any conversation with the Fairfield County
8 Sheriff's Department about what they were looking for?

9 A. Yes.

10 Q. And you were the one who sent them the photographs.

11 A. Like I said, I wasn't specifically -- those obviously
12 were taken by a -- I couldn't take it by myself on camera.

13 Q. Had they indicated to you what they were looking for?

14 A. Not specifically, no.

15 Q. I guess what I'm getting at, you don't send him a
16 picture of aluminum cans.

17 A. No.

18 Q. They weren't looking for aluminum cans.

19 A. I don't know what they were looking for.

20 MR. FRICK: All right. Thank you, sir, that's all of
21 the questions I have.

22 THE COURT: Redirect?

23 MR. MAXWELL: Briefly.

24 REDIRECT EXAMINATION

25 BY MR. MAXWELL:

TESTIMONY OF CURT RICHARDSON

1 Q. Mr. Richardson, do most people -- when the common
2 public comes to sell wire, do they already have a permit in
3 hand or do most people have to make a phone call to the
4 sheriff's department?

5 A. Well, you know, you have a number of people that come
6 regularly that always have a permit in hand and others that
7 weren't aware of the law, the law was passed roughly eight
8 months prior to that date.

9 Q. A lot of people that show up don't really know they're
10 supposed to have a permit, is that your testimony?

11 A. Correct.

12 MR. MAXWELL: No further questions, Your Honor.

13 MR. FRICK: One real quick.

14 THE COURT: Yes, sir.

15 RECROSS EXAMINATION

16 BY MR. FRICK:

17 Q. If I come to your place and I've got some copper wire
18 and say I bring in what we're looking at on number 12 and
19 you go, "I would love to buy that from you but you need to
20 have a permit," right?

21 A. Correct.

22 Q. If I go, "Wow, thanks, Mr. Richardson, I think I'm just
23 going take my stuff back." Could I do that?

24 A. Certainly.

25 Q. You're not going to keep my stuff.

TESTIMONY OF JEFF TALBERT

1 A. No.

2 MR. FRICK: Thank you, sir.

3 THE COURT: All right, sir, thank you, you may step
4 down. Mr. Maxwell, you may call your next witness.

5 MR. MAXWELL: State calls Jeff Talbert.

6 The witness, JEFF TALBERT, was first duly sworn
7 and testified as follows, on:

8 DIRECT EXAMINATION

9 BY MR. MAXWELL:

10 Q. State your name for the record.

11 A. Jeff Talbert.

12 Q. Investigator Talbert, where were you employed?

13 A. Fairfield County Sheriff's Office.

14 Q. What's your position?

15 A. Criminal investigator.

16 Q. What are your normal duties as an investigator?

17 A. Investigate all crimes.

18 Q. Did you investigate this case?

19 A. Yes, sir, I did.

20 Q. How did you first -- well, let me ask you this, couple
21 of questions. How long have you been with the sheriff's
22 department?

23 A. Since 2001.

24 Q. How long have you been a criminal investigator?

25 A. Since 2006.

TESTIMONY OF JEFF TALBERT

1 Q. When did you first learn of items being missing from
2 Mr. Pope's truck?

3 A. The morning of the 9th, August 9th of 2012.

4 Q. Do you remember about what time that morning?

5 A. I'm guessing around 9:30.

6 Q. How did you get that information?

7 A. Chief Lewis came into our office and told us to be on
8 the lookout for any tools or wire because Willie Pope had
9 one of his vehicles -- somebody went in it and took all of
10 his tools and wire.

11 Q. Now, at that point in time was Brandon Wingard being
12 investigated for that particular theft?

13 A. No, he wasn't.

14 Q. At that particular time did you know what had been
15 taken from Mr. Pope's truck?

16 A. Not in detail, just tools and wires.

17 Q. When did you first hear the name Brandon Wingard that
18 particular morning?

19 A. Later on that morning. I'm guessing maybe an hour
20 later one of the secretaries came into our office and asked
21 did Brandon Wingard have a permit to sell copper and I told
22 her I didn't think so because the investigators issued them
23 at the time. She said, "Well, he's on the phone right now,
24 he's down at Mid-Carolina and had some copper that he's
25 trying to sell." So I called Mid-Carolina and asked to see

TESTIMONY OF JEFF TALBERT

1 what he was bringing down.

2 Q. But before then what is the -- can you explain briefly
3 the process of obtaining a permit to sell nonferrous metals?

4 A. You come into the sheriff's office, show your ID and
5 registration of your vehicle and at that time you can get
6 one that will last for one year, you also can get one that
7 was for 48 hours, or if you went to the scrap yard and
8 didn't have one or wanted to call prior to going to the
9 scrap yard you could get a 48 hour permit issued over the
10 phone.

11 Q. Is that what was issued by Brandon Wingard, a 48 hour
12 permit?

13 A. Yes.

14 Q. Do you know if there were any qualifications that
15 somebody must meet in order to get a permit?

16 A. No qualifications other than having an identification
17 card and registration to a vehicle.

18 Q. Did Brandon Wingard get a permit because of that phone
19 call he made to Mid-Carolina?

20 A. Yes, he did.

21 Q. At what point in time did you call Mid-Carolina?

22 A. I called Mid-Carolina as soon as the secretary came
23 into the office and stated that Mr. Wingard was down there
24 trying to sell copper.

25 Q. Who did you speak with, do you remember?

TESTIMONY OF JEFF TALBERT

- 1 A. Curt Richardson.
- 2 Q. And what did you learn from your conversation with
- 3 Mr. Richardson.
- 4 A. He told me that he would email me a picture of the
- 5 items that Mr. Wingard had brought in.
- 6 Q. Did the sells to the best of your knowledge go through
- 7 between Mr. Wingard and Mid-Carolina?
- 8 A. Yes, they did.
- 9 Q. You didn't try to stop that or didn't have the ability
- 10 to stop that.
- 11 A. No, sir, I didn't.
- 12 Q. Did Mr. Richardson email you pictures of what Brandon
- 13 Wingard brought to Mid-Carolina?
- 14 A. Yes, sir, he did.
- 15 Q. Have you viewed those pictures?
- 16 A. I have.
- 17 Q. What did you do with those pictures once you got them
- 18 into your possession and looked at them?
- 19 A. I forwarded them to Mr. Pope and asked him was this the
- 20 type of wire that he was missing and he sent me a reply back
- 21 and said yes.
- 22 Q. I'm going to show you two pictures, State's Exhibit 12
- 23 and State's Exhibit 13. Are those pictures of what
- 24 Mr. Richardson sent you by email?
- 25 A. Yes, sir, they are.

TESTIMONY OF JEFF TALBERT

1 Q. Are those the pictures that you forwarded to Willie
2 Pope?

3 A. Yes, sir.

4 Q. Are those the pictures in which Mr. Pope identified
5 containing the items that were missing from the truck or
6 similar items?

7 A. Yes.

8 MR. MAXWELL: Your Honor, at this time I would offer
9 State's Exhibits 12 and 13 into evidence.

10 THE COURT: Any objection.

11 MR. FRICK: No objection.

12 THE COURT: State's 12 and 13 admitted into evidence
13 without objection.

14 (The photographs were received as State's
15 12-13.)

16 Q. About what part of the day was there a positive
17 identification of those items by Mr. Pope?

18 A. It was later in the afternoon, maybe around 2:00 or
19 3:00 in the afternoon.

20 Q. What was the next thing in the process in looking into
21 this matter that you did -- the sheriff's department did?

22 A. The following morning we spoke to a magistrate about
23 obtaining a search warrant.

24 Q. Do you know who was the affiant on the search warrant?

25 A. Jeff Westfall, Investigator Jeff Westfall.

TESTIMONY OF JEFF TALBERT

1 Q. Where was the -- what was the target location on the
2 search warrant?

3 A. It was the residence on [REDACTED] that Mr. Wingard
4 lived at at the time.

5 Q. What is the specific address?

6 A. [REDACTED] in Winnsboro, it's in Fairfield
7 County.

8 Q. How did you know where Mr. Wingard lived or any other
9 officers know?

10 A. I knew by just patrolling and working the area seeing
11 his vehicle there, just --

12 Q. Officers knew where he lived on [REDACTED].

13 A. Yes.

14 Q. Was there a search warrant issued at Mr. Wingard's
15 residence on this particular day?

16 A. Yes.

17 Q. What day are we talking about, the 10th now; is that
18 right?

19 A. Yes, sir, the 10th.

20 Q. The day after Mr. Wingard was at Mid-Carolina?

21 A. Right.

22 Q. Were you present at the execution of the search
23 warrant?

24 A. Yes, I was.

25 Q. Was there other officers there?

TESTIMONY OF JEFF TALBERT

- 1 A. Yes, sir.
- 2 Q. Do you remember about how many officers went?
- 3 A. Yes, sir, maybe six to eight.
- 4 Q. Did you go to the door --
- 5 A. Yes, sir.
- 6 Q. -- prior to executing the search warrant?
- 7 A. Yes, sir.
- 8 Q. Did you knock on the door or bust the door down?
- 9 A. We knocked on the door.
- 10 Q. How did y'all gain entry?
- 11 A. Mr. Wingard came to the door and let us in.
- 12 Q. What was he doing inside, or could he tell what he was
- 13 doing inside prior to him opening the door?
- 14 A. Looked like he was asleep, or had been asleep.
- 15 Q. Was there anybody else in the residence?
- 16 A. No, sir, there weren't.
- 17 Q. What is the process that the sheriff's department used
- 18 then in order to execute the search warrant?
- 19 A. When we got inside the residence we explained to Mr.
- 20 Wingard that we were there and we had a search warrant to be
- 21 there. At that time we checked him for weapons, we did put
- 22 cuffs on him in front, he was not under arrest at the time.
- 23 And we secured the couch that we were going to sit him on,
- 24 made sure there weren't any weapons there, that's something
- 25 that we do on search warrants for our safety and for the

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- 1 safety of person at the residence.
- 2 Q. Was there a security check at the house?
- 3 A. No, sir.
- 4 Q. Any weapons found?
- 5 A. No, sir.
- 6 Q. What was the next step?
- 7 A. From that point I read the search warrant for Mr.
- 8 Wingard and explained to him why we are there.
- 9 Q. I'm going to show you State's Exhibit 14. And can you
- 10 tell the Court where that is?
- 11 A. Yes, sir. That is the search warrant that we went to
- 12 Mr. Wingard's house with.
- 13 Q. And is his address on the front of that search warrant?
- 14 A. Yes, sir, it is, [REDACTED].
- 15 Q. Again is that where the search warrant was executed at,
- 16 that particular residence?
- 17 A. Yes, sir.
- 18 Q. Is there a return on that search warrant?
- 19 A. Yes, sir, it is.
- 20 Q. What is the return of the search warrant?
- 21 A. A return is a receipt that lists every item that was
- 22 taken from the residence after the search warrant is
- 23 executed.
- 24 Q. And does an officer sign that search warrant?
- 25 A. Yes, sir.

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1 Q. Who signed that search warrant?

2 A. I did.

3 MR. MAXWELL: Your Honor, at this time I would offer
4 the search warrant into evidence as State's Exhibit 14.

5 THE COURT: Any objection, Mr. Frick?

6 MR. FRICK: No objection, Your Honor.

7 THE COURT: States 14 admitted into evidence without
8 objection.

9 (The search warrant was received as State's
10 14.)

11 Q. I think you just stated a second ago you read the
12 entire search warrant to Mr. Wingard?

13 A. Yes, I did.

14 Q. Is there an affidavit portion to that search warrant
15 that tells the person you're reading to or whoever is
16 reading it why officers are there and what they're looking
17 for?

18 A. Yes, sir, there is.

19 Q. Did Mr. Wingard give any statements while you were
20 reading the search warrant?

21 MR. FRICK: Objection, Your Honor, based on -- I'm
22 sorry.

23 THE COURT: Go ahead.

24 MR. FRICK: I was going to object to him making the
25 statement about the statement based on my previous motions.

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1 THE COURT: The objection is noted. Ladies and
2 gentlemen of the jury, let me tell you right now that the
3 State -- or that the Court makes a determination as to the
4 admissibility of any alleged statements, and the Court has
5 already made a determination regarding the admissibility of
6 any alleged statements made by the defendant in this case.
7 But I would tell you that before you can consider any
8 alleged statements made by the defendant you must find
9 beyond a reasonable doubt that the statement was freely and
10 voluntarily made and that the defendant was in custody and
11 that his Miranda warnings were given. In making this
12 decision you should examine the totality of the
13 circumstances. Even if the defendant was in custody, if a
14 defendant makes a spontaneous statement without
15 interrogation Miranda warnings are not necessary, however if
16 the statements were made as a result of interrogation
17 Miranda warnings are required. Miranda warnings are that
18 the defendant was advised prior to any interrogation that he
19 had the right to remain silent, that the defendant was
20 advised prior to interrogation that if he waived his right
21 to remain silent and made a statement that such statement
22 could and would be used against him in a court of law, that
23 the defendant was advised prior to interrogation that he had
24 the right to employ or select an attorney of his own
25 choosing if he did not have one, money for an attorney, that

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1 one would be provided for him and he had the right to have
2 his attorney present at all times during all interviews and
3 interrogations. And that the defendant was advised prior to
4 interrogation that he had the right to consult with his
5 attorney before interrogation and that he could stop the
6 interrogation at any time and not make any further
7 statements. As I said, it would be up to you to determine
8 first of all whether the defendant was in custody when the
9 statements were made, whether the statement was made without
10 interrogation and just simply a voluntary statement made by
11 him without interrogation, but if he did make any statements
12 with -- did make any statements in response to interrogation
13 he would have -- you would have to find beyond a reasonable
14 doubt that the State made the required Miranda warnings. So
15 essentially your job is to determine, first of all, was the
16 alleged statement made, secondly was it freely and
17 voluntarily made, and third was it made in accordance with
18 his Miranda warnings if they were required if it was in
19 result to interrogation. So your job is to find basically
20 the statement is a free, voluntarily and willed expression
21 of the defendant whose will has not been overcome and that
22 the legal requirements have been met before you can consider
23 any alleged statements made by the defendant. All right.

24 Q. Let me go back just a second. What did y'all do with
25 Mr. Wingard when you first made entry into the home?

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1 A. We checked him for weapons for our safety and for his
2 and we placed cuffs on him in front of him.

3 Q. In front of his person and not behind him?

4 A. Yes.

5 Q. And where was he placed?

6 A. After we checked the couch for weapons we made him sit
7 on the couch.

8 Q. At any point during the search, did Mr. Wingard make to
9 you requests to get something to drink, to go to the
10 bathroom that were denied by anybody with the sheriff's
11 department or anybody that was there from law enforcement?

12 A. No, sir. He did ask for cigarettes and we allowed him
13 to sit there and smoke while we were committing the search.

14 Q. Did Mr. Wingard remain on that couch through the
15 entirety of the search warrant?

16 A. Yes, sir.

17 Q. The execution of the search warrant?

18 A. Yes, sir.

19 Q. You stated a second ago you read the entirety of the
20 search warrant to Brandon Wingard.

21 A. Yes, sir.

22 Q. And again, where was he at when you read it to him?

23 A. Sitting on the couch in the living room.

24 Q. After he had been cuffed?

25 A. Right.

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1 Q. But had access to cigarettes?

2 A. Right.

3 Q. What did he say while you were reading it?

4 A. He said that he had gotten the tools from a black guy.

5 Q. Did you stop at that point in time from what you were
6 reading?

7 A. No, sir. I continued to read the search warrant.

8 Q. Was that statement that he made in response to anything
9 or any questioning by you or any other officers?

10 A. No, sir, it wasn't.

11 Q. Do you recall which part of the search warrant -- if
12 you need to review it I'll let you review it?

13 A. I don't recall, I'm not sure if it was during the part
14 when we were describing what we were looking for, if it was
15 during affidavit part when he talked about while we were
16 there and what we were looking for.

17 Q. Was that spontaneous -- was it a spontaneously given
18 statement?

19 A. Yes, it was.

20 Q. After you finished reading the search warrant in its
21 entirety what did you do next?

22 A. I read Mr. Wingard his Miranda rights.

23 Q. Was Mr. Wingard under arrest at that point in time?

24 A. No, sir, he wasn't.

25 Q. Was he detained?

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1 A. Yes, sir, he was.

2 Q. If he would have said, "I want to leave," would y'all
3 have let him go?

4 A. No, sir.

5 Q. If he would have told y'all to leave, would you have
6 left?

7 A. No, sir, we wouldn't.

8 Q. What was the reason for putting him in custody for
9 detainable purposes? Why was he cuffed and not allowed to
10 leave?

11 A. The main reason he was cuffed is for our safety and for
12 the safety of him. Another reason that we wouldn't want him
13 to leave is so that he could actually see what was going on
14 in the residence and what we were doing and what we were
15 doing from there.

16 Q. Now, did he say anything other than I got it or
17 whatever from a black guy while you were reading the search
18 warrant?

19 A. No, sir.

20 Q. Do you remember how you gave him the Miranda warnings?

21 A. Yes, sir.

22 Q. Is that what you always do when you read Miranda
23 warnings?

24 A. Yes, sir.

25 Q. Do you have that card?

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1 A. Yes, sir.

2 Q. Can you read it and cite what you told Brandon Wingard
3 while you were in his living room with him sitting on the
4 couch?

5 A. I read that, "You have the right to remain silent,
6 anything you say can and will be used against you in a court
7 of law. You have the right to speak with an attorney and to
8 have an attorney present during any questioning. If you
9 cannot afford a lawyer one will be provided for you at
10 government expense. Knowing and understanding your rights
11 as I have explained them to you, are you willing to answer
12 my question without an attorney present?"

13 Q. Is that what you read to Brandon Wingard?

14 A. Yes, sir, it is.

15 Q. At any point in time did he request the presence of an
16 attorney?

17 A. No, sir, he didn't.

18 Q. Did at any point in time he refuse to answer any
19 questions?

20 A. No, sir.

21 Q. When you got done reading the Miranda warnings, what
22 did you ask him?

23 A. I asked him who was the black guy that he got the tools
24 from?

25 Q. What was his response to that?

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1 MR. FRICK: Objection based on previous motions.

2 THE COURT: Noted.

3 Q. What did he respond?

4 A. He said it was a black guy that was a crackhead.

5 Q. Did he give anymore detail than that?

6 A. No, sir.

7 Q. Did he say how he got in contact with this person or
8 how he met this person?

9 A. He said something about meeting him in town.

10 Q. Nothing further about where and the type of car or
11 anything like that?

12 A. No, sir.

13 Q. Was he further questioned about that after that brief
14 back and forth, brief Q and A?

15 A. No, sir.

16 Q. Did the search then begin at that point in time?

17 A. Yes, sir.

18 Q. I'm going to show you the return on the search warrant,
19 State's Exhibit 14. Can you recite for the record what was
20 found during the search warrant?

21 A. Yes, sir. Item one was a Hilti Hammer Drill and bits
22 that was in a red case. Item two was a Kobalt socket set.
23 Number three was a Klein Hole Saw. Number four was a Kobalt
24 screw driver set. Number five was a Fluke meter in a black
25 case. Number six was a Greenlee LT-100 tester, it says

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1 times two, it was two of those testers. Number seven was
2 listed as a Brady label machine that was in a black case.
3 Number eight is a V-18 Milwaukee cordless drill and battery.
4 Number nine is a Milwaukee cordless drill. Number ten is
5 a -- it says Milwaukee battery charger times two. Number 11
6 is a Milwaukee flashlight. Number 12 is a cardboard box
7 with electrical supplies, switches, wires, nuts, tapes and
8 connectors. Number 13 is a ground rod. Number 14 is a
9 classic spool. Number 15 is papers where the copper was
10 sold. Number 16 was eight fishing rods. Number 17 was a
11 bag of fish tackle. Number 18 was a soft tackle bag.

12 Q. Let me first just get this out of the way, the fishing
13 rods and fishing tackle that was found, were those taken
14 from Mr. Pope?

15 A. No, sir, they weren't.

16 Q. Do we know who those belong to?

17 A. No, sir.

18 Q. As far as y'all know do they have anything to do with
19 this case other than they were found in the house?

20 A. No, sir.

21 Q. I'm going to show you State's Exhibit 15 and 16. Can
22 you tell the Court what those two pieces of paper are?

23 A. Yes, sir. These pieces of paper was found in the trash
24 can in Mr. Wingard's house, the first one is a receipt from
25 Mid-Carolina and the second one is a check stub from

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1 Mid-Carolina.

2 Q. And those were collected into evidence by the sheriff's
3 department?

4 A. Yes, sir.

5 MR. MAXWELL: At this time I would offer State's
6 Exhibits 15 and 16 into evidence.

7 THE COURT: Any objection.

8 MR. FRICK: That is the receipts, right?

9 MR. MAXWELL: Yes.

10 MR. FRICK: No objection.

11 THE COURT: State's Exhibits 15 and 16 admitted into
12 evidence without objection.

13 (The receipt and check stub were received as
14 State's 15 and 16.)

15 Q. Was all of the evidence that you just listed taken to
16 the sheriff's department?

17 A. Yes, sir.

18 Q. Removed from the home and taken to the sheriff's
19 department?

20 A. Yes, sir.

21 Q. Did you ask Mr. Pope or his boss, Mr. Brissey, to come
22 to the sheriff's office?

23 A. Yes, sir.

24 Q. Was that done -- or how long after the search warrant
25 was done did they come from the sheriff's department?

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1 A. Within two hours.

2 Q. Did they go through a lot of this stuff and identify
3 it?

4 A. Yes, sir, they did.

5 Q. Did they identify it as theirs?

6 A. Yes, sir.

7 Q. Did they identify it as the stuff taken from Willie
8 Pope's truck?

9 A. Yes, sir.

10 Q. Was there any identifying information that you remember
11 on these items, names or any other indications that they
12 belonged to Mr. Pope or Mr. Brissey or Mr. Brissey's
13 company?

14 A. Not to my knowledge, no, sir, I don't have any records
15 of that.

16 Q. Now, look at the search warrant. Did the search
17 warrant itself prior to -- well, did the search warrant
18 indicate what you were looking for as regards to specific
19 tools that were taken from Mr. Pope's truck?

20 A. Yes, sir.

21 Q. What specific identifiers indicated what tools you were
22 looking for?

23 A. We were looking for a red Hilti hammer drill and drill
24 bits inside of a red case. We were looking for a Milwaukee
25 drill, a Milwaukee flashlight, wires, tools, wholesale kit a

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1 and pipe fittings and a ground rod.

2 Q. And were those the majority of what was found during
3 the search?

4 A. Yes, sir.

5 Q. And that information you just read off was gleaned from
6 Mr. Pope or Mr. Brissey prior to going to Mr. Wingard's
7 house to execute the search warrant?

8 A. Yes, sir.

9 Q. Now, the spools, what is the spool for as best you can
10 tell that was found in Mr. Wingard's house?

11 A. That's what the wire comes on from the factory I
12 assume.

13 Q. Was it similar to what -- were you able to match that
14 up or at least connect it to the wire that was sold at
15 Mid-Carolina?

16 A. No way to match it other than the diameter of the
17 spool, it looked like that wire could have been wrapped
18 around it, yeah.

19 Q. Have you dealt with Mid-Carolina before?

20 A. Yes, sir.

21 Q. In what ways have you dealt with Mid-Carolina?

22 A. I have talked with Mr. Richardson several times on
23 other cases. If I ever have a question I can call him and
24 ask him to be on the lookout for certain items, he may email
25 me or text me pictures of things. Sometimes if things come

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1 in that he thinks is suspicious he may send us a message
2 before we even know about it.

3 Q. Do you know if the sheriff's department has recovered
4 items from Mid-Carolina before?

5 A. Yes, sir, I have.

6 Q. Do you know or has the sheriff's department or do you
7 have experience on recovering copper from Mid-Carolina or
8 other recycling places?

9 A. We have recovered some.

10 Q. Do you know if there's a way to specifically identify
11 copper as belonging to a certain batch or a certain
12 individual? Are there any markings or anything like that?

13 A. No, sir.

14 MR. MAXWELL: Beg the Court's indulgence.

15 THE COURT: All right, sir.

16 (Break in proceedings.)

17 MR. MAXWELL: No further questions, Your Honor.

18 THE COURT: Cross examination, Mr. Frick?

19 CROSS EXAMINATION

20 BY MR. FRICK:

21 Q. There's no serial numbers on copper wire, right?

22 A. No, sir.

23 Q. So the picture the solicitor just showed you, or I
24 guess the pictures that you received from Mid-Carolina in 12
25 and 13, all we can definitively say is this is stuff that

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1 looked like what Willie Pope was missing.

2 A. Right.

3 Q. Tell me -- I know solicitor went into it a little bit

4 but let's go back through it briefly. I want a 48 hour

5 permit, what have I got to do? Let's say I'm down at

6 Mid-Carolina, I just find out I'm taking this spool of wire

7 down there and I just find out I've got to call y'all to get

8 a permit.

9 A. Yes, sir. At that time you have to call the sheriff's

10 office in the area that you live.

11 Q. And you said at that time y'all were doing it, the

12 investigators were doing it.

13 A. Right.

14 Q. What information do I have to get you to get one over

15 the phone?

16 A. Driver's license information or identification card

17 information and registration to a vehicle and VIN number.

18 Q. Y'all don't get a faxed copy of this stuff, it's just

19 whatever somebody says over the phone?

20 A. Right.

21 Q. On this day y'all get a phone call that Brandon Wingard

22 is down or I guess what is it, the 9th, is that when he's

23 down there?

24 A. Right.

25 Q. He's down there on the 9th, y'all get a phone call from

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1 him and he is asking for a 48 hour permit?

2 A. Asking for a permit but we only give 48 hours over the
3 phone so that's all we would be able to issue is 48 hours.

4 Q. Y'all got the information you needed?

5 A. Yes, sir.

6 Q. How do you get this information?

7 A. Just over the phone asking the questions that's on the
8 form.

9 Q. Like what, the driver's license number?

10 A. Name, address, phone number, driver's license number, I
11 think it may have been height, weight, tag number to the
12 vehicle, color of the vehicle, VIN number of the vehicle,
13 registered owner of the vehicle and registered owner's
14 address.

15 Q. He satisfied what he needed to do to get a permit.

16 A. Right.

17 Q. And is that just you telling -- I guess at that point
18 what is a permit, is that just you simply telling
19 Mr. Richardson, "Yeah, he can sell you the copper?"

20 A. Basically so, yes, sir.

21 Q. That occurs about what time?

22 A. I'm guessing around lunchtime, I don't know the --

23 Q. And I know -- that's fine. Okay. But it was around
24 you said lunchtime on the 9th.

25 A. Yes, sir.

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1 Q. Do you then contact Mid-Carolina to say, hey, show
2 me -- here is my question, how do we get these pictures, 12
3 and 13?

4 A. They were emailed to me from Mr. Richardson.

5 Q. He doesn't do that in every case, right?

6 A. If I call and ask him what somebody has brought down to
7 me.

8 Q. So Brandon Wingard calls and you want to know what he's
9 taking down there.

10 A. Right.

11 Q. You call Mid-Carolina after the permit is issued.

12 A. I call Mid-Carolina while he's still on hold with the
13 person issuing the permit, or with Ms. Johnnie Freeman who
14 answered the phone.

15 Q. Okay. Do you -- and I know there's more than just you
16 as an investigator, but do y'all get a lot of calls a day
17 for permits a day or weeks?

18 A. At that time we were.

19 Q. You were getting a lot of phone calls.

20 A. Yes, sir.

21 Q. On this particular date, do you remember, was it more
22 than just Mr. Wingard that called?

23 A. I don't know.

24 Q. Is it possible -- or is it likely, possible is to
25 broad -- is it likely more folks had called?

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1 A. Yes, sir.

2 Q. But he's the only one that y'all wanted to know what
3 you had brought down.

4 A. Yes, sir.

5 Q. What do you do with these pictures? Once you get them
6 what do you do?

7 A. Send them to Mr. Pope.

8 Q. Via what method?

9 A. I'm pretty sure it was emailed, it could have been
10 texted but I'm pretty sure it was emailed.

11 Q. It's an electronic method, correct?

12 A. Yes, sir.

13 Q. He don't come over to the sheriff's department or drive
14 down 321.

15 A. No, sir.

16 Q. And this is what he receives, 12 and 13?

17 A. Yes, sir.

18 Q. And he tells y'all, "That looks like my copper wire."

19 A. Yes, sir.

20 Q. And you said that was about what time?

21 A. I'm thinking again it was after lunch because I'm
22 pretty sure that Mr. Richardson didn't email me the pictures
23 until after lunchtime so I'm guessing around 3:00 that
24 afternoon.

25 Q. So in the afternoon of the 9th.

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- 1 A. Right.
- 2 Q. Nothing happened with Mr. Wingard on the 9th.
- 3 A. No, sir.
- 4 Q. Y'all don't get the search warrant, don't go over to
- 5 his house on the 9th?
- 6 A. No, sir.
- 7 Q. Conceivably -- well, not even conceivably, he sold his
- 8 stuff, got his check, went home.
- 9 A. Yes, sir.
- 10 Q. Then once you get to the identification y'all proceed
- 11 with getting the search warrant.
- 12 A. Yes, sir.
- 13 Q. Based on what we've got here.
- 14 A. Yes, sir.
- 15 Q. I'm not trying to trick you on that, this is what y'all
- 16 had to identify, right? I know y'all are looking for
- 17 several other things but this is the thing that had been
- 18 identified.
- 19 A. Yes, sir.
- 20 Q. All right. You then go over on the 10th to his
- 21 residence.
- 22 A. Yes, sir.
- 23 Q. Do you recall about when you went over to this
- 24 residence? I think you got a time on the --
- 25 A. It looks like 12:45 is what it says we went after.

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1 Q. I think that's what's on the return. Of course, is
2 that when y'all go in to execute the warrant or is that when
3 y'all --

4 A. I think that's when we filled out the return, when we
5 write down the things that we take from the house so we
6 probably got there an hour or two prior to 12:45.

7 Q. Okay. So y'all went to his house somewhere around
8 11:00 in the morning.

9 A. Yes, sir.

10 Q. On the 10th.

11 A. Yes, sir.

12 Q. When you walk in you've got the search warrant in your
13 hand?

14 A. Yes, sir.

15 Q. Knock on the door, any trouble getting him to the door?

16 A. It took a while for him to come but he did come and
17 open the door.

18 Q. Did he fuss and argue with you when he came and opened
19 the door?

20 A. No, sir.

21 Q. At what point did y'all put cuffs on him?

22 A. After we checked him for weapons to make sure he didn't
23 have any weapons on him we then placed the cuffs on him.

24 Q. Sit him on his couch?

25 A. Yes, sir.

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- 1 Q. He can't go nowhere.
- 2 A. No, sir.
- 3 Q. You let him smoke some cigarettes, though.
- 4 A. Yes, sir.
- 5 Q. Y'all start going through the house.
- 6 A. After the search warrant was read to him we start going
7 through the house.
- 8 Q. I understand, yes, sir. And y'all find the items on
9 there?
- 10 A. Yes, sir.
- 11 Q. Now, the tools, have they -- are they still in y'all's
12 custody or have they been returned?
- 13 A. They were returned to Mr. Pope and Mr. Brissey.
- 14 Q. What about the wire we're looking at in 12 and 13, did
15 that stay at Mid-Carolina?
- 16 A. Yes, sir.
- 17 Q. Okay. Now, y'all weren't looking for fishing rods and
18 tackle and a bag of worms, were you?
- 19 A. No, sir.
- 20 Q. Why did y'all take that?
- 21 A. We took it because we had had some fish and tackle rods
22 and reels that were stolen from another place and we took it
23 to let the victim from that place look at it to see if that
24 was their stuff.
- 25 Q. In one of these closets you look in at Mr. Wingard's

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1 house you've got I'm guessing more than drills and fishing
2 tackle, right?

3 A. Yes, sir.

4 Q. I mean clothing and shoes are generally in closets,
5 right?

6 A. Yes, sir.

7 Q. Y'all didn't take that stuff, right?

8 A. No, sir. We didn't have any reports of items like that
9 stolen in --

10 Q. Nobody is stealing shoes and clothes in Fairfield
11 County?

12 A. Not in the reports we were working, no, sir.

13 Q. Now, Mr. Wingard also took some more stuff besides the
14 wire, there was some other types of wire he had down there
15 as indicated in State's 15; is that correct?

16 A. Yes, sir.

17 Q. Y'all weren't interested in that.

18 A. Some of the scrap wiring that was there, Mr. Pope did
19 say he had pieces of scrap in the back of the truck but he
20 wasn't sure if that was his or not.

21 Q. He wasn't sure that the scrap wire was his --

22 A. He said some of the scrap the workers could have threw
23 back there but he knew that the reels were the type that
24 he'd had on his truck.

25 Q. He looked at this picture probably over his telephone

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1 and said, "that's my wire," but he couldn't identify the
2 scrap wire.

3 A. Because he didn't put the scrap back there, yes, sir.
4 He said that the workers threw it back there.

5 Q. How about that number one wire Mr. Richardson was
6 talking about, the stuff that was wrapped up, he couldn't
7 identify it either?

8 A. No, sir.

9 Q. One of the statements you asked from the solicitor's
10 question was that the wire looked like it could have been
11 rolled around the spools that y'all find in the house,
12 what's indicated in your search warrant there?

13 A. Yes, sir.

14 Q. How --

15 A. The pictures of the wire if you look at it it has
16 memory, you can see the circular.

17 Q. Right.

18 A. In the spool that we found is about that diameter, it
19 looks like it could have been on a spool that size.

20 Q. I'm looking at 12, what diameter are you talking about?
21 I'm seeing about five different types of diameters, what
22 diameter?

23 A. It looks like it was about six or eight inches but once
24 it comes off it expands.

25 Q. That ain't swole, is it?

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1 A. That's about six or eight inches too.

2 Q. Okay. Are you sure?

3 A. I said about, yes, sir.

4 Q. There ain't really anything to compare anything to in
5 this picture. I don't know how you determining -- you don't
6 know, do you? It's a guess, isn't it?

7 A. That's right. I said it could have came off of the
8 spools that we found at the residence.

9 Q. Could have. This copper could have come from any of
10 those other people that called that day, too, couldn't it
11 have?

12 A. It's possible.

13 MR. FRICK: Thank you, sir, that's all of the questions
14 I have.

15 THE COURT: Redirect?

16 MR. MAXWELL: Briefly.

17 CROSS EXAMINATION

18 BY MR. MAXWELL:

19 Q. Who is the person that Brandon Wingard talked to over
20 the phone to get the permit?

21 A. It was is Johnette Goodman.

22 Q. She's just an administrative person?

23 A. Right.

24 Q. And she just happened to mention to y'all it was
25 Brandon Wingard calling, right?

TESTIMONY OF DAVID BRISSEY

1 A. Right.

2 MR. MAXWELL: No further questions.

3 THE COURT: Recross?

4 RECROSS EXAMINATION

5 BY MR. FRICK:

6 Q. You said something about the statement about him
7 getting the stuff from a black guy or black guy who was a
8 crackhead or something like that, right? Did you prepare an
9 incident report in this case?

10 A. No, sir.

11 MR. MAXWELL: Your Honor, I object to that. I think
12 Mr. Frick had a chance to go through that on direct
13 examination.

14 THE COURT: All right. It is outside the scope of
15 redirect, Mr. Frick.

16 MR. FRICK: I understand, Your Honor.

17 THE COURT: All right, objection sustained.

18 MR. FRICK: Nothing further of this witness.

19 THE COURT: All right. Thank you, you may step down.

20 All right. Mr. Maxwell, you may call your next witness.

21 MR. MAXWELL: State calls David Brissey.

22 The witness, DAVID BRISSEY, was first duly
23 sworn and testified as follows, on:

24 DIRECT EXAMINATION

25 BY MR. MAXWELL:

TESTIMONY OF DAVID BRISSEY

1 THE CLERK: State your name for the record.

2 THE WITNESS: David Brissey.

3 Q. Mr. Brissey, what do you do for a living?

4 A. Electrical contractor.

5 Q. Do you have a company?

6 A. I do.

7 Q. Do you know Willie Pope?

8 A. Yes, sir.

9 Q. And does he work for your company?

10 A. Yes, sir.

11 Q. Does Mr. Pope have a truck he uses to do his work on?

12 A. Yes, sir.

13 Q. And what does he carry around in his truck in order to
14 do his duties?

15 A. Everything needed to do electrical contractor work.

16 Q. Did he have tools in the back of his truck on
17 October 8th of 2012?

18 A. He did not only in the back, he had them in the work
19 box and the side bins and in the front also or in the cab,
20 there was a lock on the work box and in the bed.

21 Q. He was working for you then on the 8th of August?

22 A. Yes, sir.

23 Q. Do you know if he is allowed to take his truck home?

24 A. He is.

25 Q. With the tools and everything else?

TESTIMONY OF DAVID BRISSEY

1 A. Yes, sir.

2 Q. When did you first learn that some things had been
3 missing from that truck?

4 A. It was the next morning, he came on the job and asked
5 me had I borrowed his Hilti gun and put on my truck and I
6 said no. We started looking through his truck and therefore
7 everything was gone off the truck, everything. So
8 immediately I told him to turn back around and call the
9 police.

10 Q. And you mentioned earlier there was side bins in the
11 truck?

12 A. Side bins.

13 Q. Not just a tool box but kind of a utility type truck.

14 A. Yeah, it was a utility, it was a work truck.

15 Q. Did some time after Willie made the report to the
16 police, did you go to the sheriff's department to identify
17 some items?

18 A. I did.

19 Q. Before doing that did you know what items specifically,
20 maybe not everything, but what was missing at that truck?

21 A. We knew the majority of it. There was so much taken
22 but we knew the majority of stuff that was taken.

23 Q. Can you describe the specifics of what was taken?

24 A. Yeah, ask me anything. The Hilti gun, a TE2 electric,
25 had TEC written on it, that's The Electronic Company, that's

TESTIMONY OF DAVID BRISSEY

1 my company. Drill molds, battery operated drill molds,
2 chargers, electrical testers, lightbulb testers. \$200 whole
3 saw kit carbon steel, just on and on, just everything we do
4 to conduct our business.

5 Q. You say TEC was written on that?

6 A. That stands for The Electric Company, we just put TEC,
7 it's short for The Electronic Company just to identify it.

8 Q. Was your name or Willie's name on any of the tools that
9 you can remember?

10 A. Not that I can remember.

11 Q. I'm going to show you some pictures that you've never
12 seen before, State's Exhibits 1, 2, 3, 4, 5, 6 and 11. If
13 you would just take a moment and look at those and see if
14 anything -- if you're familiar with anything in those
15 pictures?

16 A. You want me to call them out now?

17 Q. Just look through them and see if you can identify the
18 items them.

19 A. Yes. Yes. No. Wait a minute -- because this is the
20 same pictures up close. Yes. Yes. Possibly. Yes.

21 Q. All right. What do those pictures show?

22 A. This shows -- this is two light testers and electrical
23 Fluke meter.

24 Q. All of those belong to your company?

25 A. Yes, sir.

TESTIMONY OF DAVID BRISSEY

1 Q. Okay.

2 A. This shows a Hilti gun, it's a electronic hammer drill
3 used to drill masonry, that's mine. This shows a Greenlee
4 knockout cutter.

5 THE COURT: Excuse me, Mr. Maxwell, have him refer to
6 them by number.

7 Q. I'll just hand them to you.

8 A. Well, they're all mine.

9 Q. Let me show you State's Exhibit 1. What is in State's
10 Exhibit 1, that picture?

11 A. That is on 18 volt Milwaukee battery charger, one 18
12 volt flashlight, another 18 volt drill with the 18 volt
13 battery, and is a Dewalt battery, that is not mine.

14 Q. So one of them is not yours but the rest of them are
15 drills from your truck?

16 A. That's right, flashlight and charger.

17 Q. State's Exhibit 2, can you tell what's in that picture?

18 A. I can see -- it's a small picture here, I can't see
19 what's up front but I can see my Hilti gun in the back, it's
20 a electric hammer drill used to drill concrete.

21 Q. Those are things you used in your company?

22 A. That's mine.

23 Q. State's Exhibit 3, what is in that picture?

24 A. That's a carbon steel hole saw kit and a Greenlee
25 knockout cutter, that's mine.

TESTIMONY OF DAVID BRISSEY

1 Q. State's Exhibit 4?

2 A. Same as the front, hole saw kit, knockout cutter set
3 and that's mine.

4 Q. And State's Exhibit 5, that may be a closeup of another
5 picture, but what's in that picture.

6 A. The Hilti gun, the hammer drill, and that's mine.

7 Q. And State's Exhibit 11, what's in that picture?

8 A. That's a Fluke electrical tester amp probe meter,
9 continuity tester, two lightbulb testers, and that's mine.

10 Q. Okay. Now, you mentioned in State's Exhibit 6 you said
11 possibly, but what's in that picture?

12 A. That is -- looks like scrap telephone wire and it looks
13 like a entry rear -- not entry rear, but the number six is
14 turned up and I can't tell because it's in a cardboard box.

15 Q. What do you mean by possible, could have been yours?

16 A. When we tear out jobs, remodel jobs we save the copper
17 for the same purpose or we recycle it too.

18 Q. Is what's in that picture consistent with the materials
19 that you would use in your job?

20 A. Consistent with what we use sometimes and very
21 consistent with what we tear out of buildings.

22 Q. Okay. I'll show you State's Exhibits 12 and 13. Do
23 you know what's in those pictures?

24 A. Number 12 standard wire, blue, white, red and green
25 that's been tore off a reel, and that's mine. This is scrap

TESTIMONY OF DAVID BRISSEY

1 wire, it looks like some has been burned and some hadn't,
2 and I guarantee you without a shadow of a doubt that that
3 black copper wire is mine.

4 Q. Would that stuff have been in the back of Willie Pope's
5 truck?

6 A. Yes, sir.

7 Q. And did you -- when you met with the investigators
8 after they did a search warrant did you identify a lot of
9 these items or all of these items being yours that they
10 showed you?

11 A. I did.

12 Q. Were those items released back to you?

13 A. Yes, sir.

14 Q. And you said some of them did have markings indicating
15 they belonged to you or The Electric Company?

16 A. That's right. Everything was but the wire, it was
17 sold.

18 MR. MAXWELL: Beg the Court's indulgence for just a
19 moment.

20 THE COURT: All right, sir.

21 (Break in proceedings.)

22 MR. MAXWELL: No further questions of Mr. Brissey.

23 THE COURT: Cross examination, Mr. Frick?

24 MR. FRICK: No questions of this witness.

25 THE WITNESS: Oh come on.

TESTIMONY OF DAVID BRISSEY

1 THE COURT: No, sir. You may step down.

2 MR. MAXWELL: May we approach briefly, Your Honor?

3 THE COURT: Yes, sir.

4 (A bench conference was held.)

5 THE COURT: Ladies and gentlemen, I think it is
6 appropriate that we take a break, at this time we'll do that
7 for about ten minutes, please don't discuss the case and
8 then we will be ready to go forward.

9 (A break was taken.)

10 THE COURT: All right. Are you ready to proceed,
11 Mr. Maxwell?

12 MR. MAXWELL: Yes, sir.

13 THE COURT: Mr. Frick?

14 MR. FRICK: Yes, sir.

15 THE COURT: All right. Bring the jury in.

16 (The jury returned to the courtroom.)

17 THE COURT: Thank you, ladies and gentlemen, and thank
18 you for your patience, we had to have another little matter
19 while you were in the jury room, we have been in the
20 courtroom for about the last 15 minutes while we were taking
21 care of that and I do apologize for keeping you waiting in
22 the jury room. But this involved a matter with an inmate
23 from the South Carolina Department of Corrections and I
24 wanted to be able to go ahead and take care of that matter
25 so that state employees could go ahead and take him back.

TESTIMONY OF JEFF WESTFALL

1 But we are ready to go forward at this time, and

2 Mr. Maxwell, you may call your next witness.

3 MR. MAXWELL: State calls Office Jeff Westfall.

4 The witness, JEFF WESTFALL, was first duly

5 sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. MAXWELL:

8 THE CLERK: State your name for the record.

9 THE WITNESS: Jeff Westfall.

10 Q. Investigator Westfall, where do you work at?

11 A. Fairfield County Sheriff's Office.

12 Q. And what is your position?

13 A. Criminal investigator.

14 Q. How long have you been with the sheriff's office?

15 A. Since 2009.

16 Q. How long have you been an investigator?

17 A. Since 2010.

18 Q. Were you involved in the investigation that we are here
19 today for?

20 A. Yes, sir.

21 Q. What was your first role in this investigation?

22 A. Obtaining a search warrant for a residence.

23 Q. When did you obtain that search warrant?

24 A. On August 10th.

25 Q. That was Friday?

TESTIMONY OF JEFF WESTFALL

- 1 A. Yes, sir.
- 2 Q. The day after everything happened at Mid-Carolina?
- 3 A. Yes, sir.
- 4 Q. You're aware of all of that?
- 5 A. Yes, sir.
- 6 Q. And where was the search warrant executed at?
- 7 A. [REDACTED].
- 8 Q. And you were the officer who went before the magistrate
- 9 as the affiant to get the search warrant?
- 10 A. Yes, sir.
- 11 Q. Who lives at [REDACTED]?
- 12 A. Brandon Wingard.
- 13 Q. Did you go on that search warrant?
- 14 A. Yes, sir.
- 15 Q. When you first arrived where was Mr. Wingard and what
- 16 was he doing?
- 17 A. We knocked on the door, I believe he was asleep on the
- 18 couch, he came to the door and answered the door for us.
- 19 Q. Did he open the door for y'all?
- 20 A. Yes, sir.
- 21 Q. What happened when y'all made entry into the home?
- 22 A. Investigator Talbert explained to him what reason --
- 23 Q. Was there a procedure went through in regards to
- 24 securing the residence?
- 25 A. Yes, sir. While Investigator Talbert was explaining to

TESTIMONY OF JEFF WESTFALL

- 1 Mr. Wingard what we was there for, myself and other
2 investigators and other officers searched the residence as
3 far as for safety reasons for any other subjects.
- 4 Q. It wasn't an invasive search at that time looking
5 through stuff and if anything was there, looking for weapons
6 and that sort of thing in plain sight, would that be
7 correct?
- 8 A. Yes, sir.
- 9 Q. Were you in the living room when Brandon Wingard was
10 cuffed --
- 11 A. Yes, sir.
- 12 Q. -- and handcuffs on him. Were his handcuffs in front
13 or back?
- 14 A. On the front.
- 15 Q. Where was Mr. Wingard seated?
- 16 A. On his couch.
- 17 Q. Was the couch already checked for any weapons or
18 anything like that?
- 19 A. Yes, sir.
- 20 Q. Were you present in the living room when Investigator
21 Talbert went through and read the entirety of the search
22 warrant?
- 23 A. Yes, sir.
- 24 Q. Were you able to hear any responses Mr. Wingard made
25 during that time?

TESTIMONY OF JEFF WESTFALL

1 A. Yes, sir.

2 Q. What did Brandon Wingard say during the reading of the
3 search warrant?

4 A. That he had received items from a black guy.

5 MR. FRICK: Your Honor, I object.

6 THE COURT: Objection noted and overruled for the same
7 reasons that it was on the record. Ladies and gentlemen of
8 the jury, you'll recall I told you before that the ultimate
9 -- I have admitted the evidence of any alleged statements
10 into evidence but it will be up to you to determine whether
11 the statements were freely and voluntarily given, any
12 alleged statements were freely and voluntarily given in
13 accordance with the previous instructions that I gave you.

14 MR. FRICK: Judge, I know we've got a couple of other
15 statements, I would just look to go ahead and extend that
16 objection to any other statements that are offered.

17 THE COURT: So noted and the record will so reflect.
18 And the same instructions to the jury would apply, that it
19 will be up to the jury to determine the voluntariness of
20 the -- first to determine whether the statements were made
21 and if made whether they were freely and voluntarily made in
22 accordance with the instructions I gave you. That is as a
23 result of interrogation, if there were results of
24 interrogation then Miranda warnings would have had to have
25 been given and if they were not the result of the

TESTIMONY OF JEFF WESTFALL

1 interrogation they would still have to be freely and
2 voluntarily made.

3 Q. Let me go back to that last question. When
4 Investigator Talbert was reading out the search warrant to
5 Brandon Wingard, what did he say during that reading?

6 A. That he received the items from a black guy.

7 Q. Do you know what exactly or what specifically
8 Investigator Talbert said during reading that search warrant
9 that prompted him to say that?

10 A. No, sir.

11 Q. Was he being questioned at that point in time?

12 A. No, sir.

13 Q. Was it spontaneous when he said that?

14 A. Yes, sir.

15 Q. When Investigator Talbert finished reading the search
16 warrant what did he do next? Investigator Talbert.

17 A. Read Mr. Wingard his Miranda warnings.

18 Q. Were you still present for that?

19 A. Yes, sir. Well, I started going down the hallway, I
20 was stopped between living room and hallway.

21 Q. Did at any point in time to your knowledge Brandon
22 Wingard request anything; a drink of water, did he go to the
23 bathroom but was denied by anybody in law enforcement?

24 A. No, sir.

25 Q. What was he doing during the search, where was he

TESTIMONY OF JEFF WESTFALL

1 placed at and what was he doing?

2 A. He was still on the living room couch smoking a
3 cigarette.

4 Q. He was given access to smoke cigarettes while y'all
5 were doing the search?

6 A. Yes, sir.

7 Q. Were there several officers doing the search?

8 A. Yes, sir.

9 Q. Prior to the search beginning or prior to items being
10 found did Wingard point out where things may be?

11 A. He didn't tell the first officers.

12 Q. All right. Let's go through the search warrant. What
13 was the first item found? Do you have the search warrant
14 available? I can give you this copy. Let me show you the
15 return, it has been marked State's Exhibit 14. If you would
16 just go down the list, or I'll ask you about the list. What
17 was the first item listed, where was that found and found by
18 whom?

19 A. The Hilti hammer drill and bits in a red case, I
20 believe that was found in Mr. Mr. Wingard's bedroom closet.

21 Q. And do you know who found those?

22 A. That was Jeremy Ashford and Ross Sparks.

23 Q. They're also investigators with the sheriff's
24 department?

25 A. Yes, sir.

TESTIMONY OF JEFF WESTFALL

- 1 Q. What was the number two item?
- 2 A. Kolbalt socket set.
- 3 Q. Where was that found at?
- 4 A. Also the bedroom closet.
- 5 Q. Was that in the bedroom closet, not the hallway?
- 6 A. The hallway.
- 7 Q. The hallway closet?
- 8 A. Yes, sir.
- 9 Q. Who found that in the hallway closet?
- 10 A. I did.
- 11 Q. Number three item, Klein hole saws, where were those
- 12 found at?
- 13 A. Those are also -- I believe it was in the hallway
- 14 closet.
- 15 Q. Item number four?
- 16 A. The Brady label machine, that was beside the couch in
- 17 the living room.
- 18 Q. Was that number four?
- 19 A. Klein ten piece screw driver set, that was the living
- 20 room hall, I mean in the --
- 21 Q. Hall closet.
- 22 A. Yes, sir.
- 23 Q. Okay. Number five?
- 24 A. Fluke meter in black case, that was in the bedroom on
- 25 the bed.

TESTIMONY OF JEFF WESTFALL

1 Q. Item number six?

2 A. Greenlee LT100 tester, there was actually two of those
3 and that was located on the bed in Mr. Wingard's bedroom.

4 Q. All right. Number seven?

5 A. The Brady label machine in a black case, I believe that
6 was an item that was beside the couch.

7 Q. In the living room?

8 A. Yes, sir.

9 Q. Number eight.

10 A. Number eight was a Milwaukee cordless drill and
11 battery, that was also in the living room closet.

12 Q. Number nine?

13 A. Milwaukee cordless drill, that was in the closet.

14 Q. Number 10.

15 A. Milwaukee battery chargers, there was two of those
16 items, that was also located in the living room closet.

17 Q. Number 11?

18 A. The Milwaukee flashlight, it was also located in the
19 living room closet.

20 Q. Number 12?

21 A. The cardboard box with electrical supplies, wires, nuts
22 and connectors, that was located in the first bedroom or
23 guest bedroom in the residence.

24 Q. Okay. Number 13?

25 A. The ground rod was located out in the yard.

TESTIMONY OF JEFF WESTFALL

1 Q. Number 14.

2 A. Plastic spool that was also located in the yard. Those
3 were -- I found some in the garbage can and there was others
4 found out in the yard.

5 Q. Was it several different pieces?

6 A. Yes, sir.

7 Q. Number 15?

8 A. The papers which are receipts from the items of the
9 copper wire that was sold was found.

10 Q. I'm going to show you State's Exhibits 15 and 16. Was
11 that the items found in the garbage can?

12 A. Yes, sir.

13 Q. Can you tell the Court what that is?

14 A. That's an end piece to a plastic reel.

15 Q. Was that collected by the Fairfield County Sheriff's
16 Office?

17 A. Yes, sir.

18 MR. MAXWELL: I offer this into evidence as State's
19 Exhibit 17.

20 THE COURT: Any objection?

21 MR. FRICK: No, sir.

22 (The plastic reel was received as State's 17.)

23 Q. And again, can you describe what that exactly is and
24 what it would be used for?

25 A. That's a plastic end piece to a plastic reel that would

TESTIMONY OF JEFF WESTFALL

1 be two, those similar pieces on each side of the reel, and
2 then reels are normally used for copper wire, rope, chain.

3 Q. Let's talk about the items found in the living room
4 closet.

5 A. Yes, sir.

6 Q. How were those items first located?

7 A. I came back into the living room after we located
8 several of these other items, I was explaining to I believe
9 it was Investigator Talbert that we were still missing some
10 items, some drills. Mr. Wingard stated -- or pointed
11 stating there's some drills in the closet.

12 Q. Was he being questioned about pointing there?

13 A. No, sir. He was overhearing me talk to Investigator
14 Talbert.

15 Q. Is he still on the couch?

16 A. Yes, sir.

17 Q. Do you go in the closet?

18 A. Yes, sir.

19 Q. What happens as you go to the closet?

20 A. When I opened up the closet and I seen the items in the
21 closet I took a picture or photograph the items in the
22 closet. As I go to remove the items from the closet
23 Mr. Wingard stated that all of the items -- some of the
24 items in the closet belonged to him, not all of them were
25 stolen.

TESTIMONY OF JEFF WESTFALL

- 1 Q. Did he use the word stolen when he said that?
- 2 A. Yes, sir.
- 3 Q. Did some officers search an outside building or some
- 4 type of shed on the property?
- 5 A. Yes, sir.
- 6 Q. Did you go out there?
- 7 A. No, sir.
- 8 Q. Did those officers after searching that come inside?
- 9 A. Yes, sir.
- 10 Q. Did they come into the living room?
- 11 A. Yes, sir.
- 12 Q. When they came in, were you present?
- 13 A. Yes, sir.
- 14 Q. Was Mr. Wingard present?
- 15 A. Yes, sir.
- 16 Q. What did Mr. Wingard say and what prompted him to say
- 17 it when they came inside?
- 18 A. Mr. Wingard made a statement that the items out in the
- 19 shed belonged to him, that they weren't stolen either.
- 20 Q. Those officers came inside and said what?
- 21 A. The officers came inside and was advising me that they
- 22 had found several tools out in the shed, a socket set that
- 23 to them looked fairly brand new, some more cordless drills,
- 24 some other miscellaneous items. Mr. Wingard heard them
- 25 telling me that and they was trying to find out whether I

TESTIMONY OF JEFF WESTFALL

1 needed those items collected, as we were talking Mr. Wingard
2 stated that those items belonged to him and that they
3 weren't stolen.

4 Q. Did he use the word stolen when he said that?

5 A. Yes, sir.

6 Q. When the other officers found things throughout the
7 house, did they themselves remove those items from closets,
8 bedrooms, whatever?

9 A. No, sir.

10 Q. When they found those items what did they do?

11 A. They advised me or Investigator Talbert where these
12 items were found or where they had seen items.

13 Q. They leave them where they are for the time being.

14 A. Yes, sir.

15 Q. What do you do next? Kind of -- when you know where
16 everything is, what do you do next?

17 A. My process in this particular search warrant was to
18 photograph and collect evidence.

19 Q. Did you go around the house photographing items that
20 were believed to be taken from Mr. Pope around Mr. Wingard's
21 house after other officers may have found them?

22 A. Yes, sir.

23 Q. And did you produce those pictures -- I guess take
24 pictures of those where we can look at them now?

25 A. Yes, sir.

TESTIMONY OF JEFF WESTFALL

1 Q. I'll show you State's Exhibits 1 through -- I believe
2 it's going to be 1 through 11.

3 A. These are the photographs that I have took being taken
4 during that search warrant.

5 Q. Are those photographs an accurate depiction of the
6 state of those items as they were in Brandon Wingard's
7 house?

8 A. Yes, sir.

9 Q. You were the one that took those pictures?

10 A. Yes, sir.

11 MR. MAXWELL: At this time I would offer State's
12 Numbers 1-11 into evidence.

13 THE COURT: Any objection?

14 MR. FRICK: No, Your Honor.

15 THE COURT: Admitted into evidence without objection.

16 (The photos were received as State's 1-11.)

17 Q. Were all of these items found collected by the
18 sheriff's department?

19 A. Yes, sir.

20 Q. And were those items taken to the sheriff's department?

21 A. Yes, sir.

22 Q. Were you present when Mr. Brissey and Mr. Pope came to
23 the sheriff's department to find those items?

24 A. Yes, sir.

25 Q. Did they identify a lot of those items collected from

TESTIMONY OF JEFF WESTFALL

1 the search warrant as items stolen from Mr. Pope's truck?

2 A. Yes, sir.

3 Q. Do you remember any identifying signs, names on any of
4 the equipment?

5 A. At the beginning prior to us doing the search warrant I
6 remember Mr. Pope or Mr. Brissey one had stated that one of
7 the Hilti saw cases was marked with a red marker, I can't
8 remember exactly what marking that was. That's what drew
9 our attention to Jeremy Ashford when he found in Mr. Brandon
10 Wingard the Hilti saw that mark drew his attention to it.

11 MR. MAXWELL: Beg the Court's indulgence for just a
12 moment, Your Honor.

13 (Break in proceedings.)

14 MR. MAXWELL: No further questions, Your Honor.

15 THE COURT: All right. Cross examination, Mr. Frick?

16 CROSS EXAMINATION

17 BY MR. FRICK:

18 Q. All right, Investigator Westfall.

19 A. Yes, sir.

20 Q. Let's start with the statements. You hear Brandon make
21 these statements.

22 A. Yes, sir.

23 Q. Now, you are not the chief investigator on this case
24 but you are an investigator on this case.

25 A. Yes, sir.

TESTIMONY OF JEFF WESTFALL

- 1 Q. Been in law enforcement a long time.
- 2 A. Somewhat.
- 3 Q. Awhile. Probably longer than I've been doing this.
- 4 Generally when y'all go on a call, don't y'all come up with
- 5 some kind of incident report, some statement of this is what
- 6 happened and what we saw?
- 7 A. Yes, sir.
- 8 Q. What we heard?
- 9 A. Sometimes, yes, sir.
- 10 Q. Sometimes. Okay. When Mr. Wingard says, "All that
- 11 stuff ain't stolen," where did that get written down?
- 12 A. It didn't.
- 13 Q. It didn't?
- 14 A. No, sir.
- 15 Q. Did you feel that that was kind of an admission?
- 16 A. Yes, sir.
- 17 Q. But in your years of law enforcement you didn't feel it
- 18 was necessary to write that down?
- 19 A. Not at the time, no, sir.
- 20 Q. In fact, to your knowledge had that information come to
- 21 light at all before this trial is called?
- 22 A. Did it come to light?
- 23 Q. Yes, sir. Did the solicitor know, did I know, did
- 24 anybody know?
- 25 A. I'm not sure.

TESTIMONY OF JEFF WESTFALL

1 Q. Okay. But it was not in any report.

2 A. No, sir.

3 Q. There was no written statement by Mr. Wingard.

4 A. No, sir.

5 Q. There is no recorded statement.

6 A. No, sir.

7 Q. And, in fact, he says he bought the stuff from a black
8 guy; is that correct? Is that the statement?

9 A. Or he got the stuff from a black guy or bought the
10 stuff.

11 Q. Well, whichever. Are we sure which one he said?

12 A. I remember specifically saying he received the items
13 from a black guy.

14 Q. Well, that's different than got.

15 A. Got, received, got the items from a black guy.

16 Q. But as far as what his specific words were we don't
17 know where they are. You know generally but not
18 specifically.

19 A. Generally, yes, sir.

20 Q. When he says that does anybody ask him, "Tell us about
21 this fellow?"

22 A. After Investigator Talbert read him his Miranda rights
23 the investigator had to ask him who this black guy is, and
24 Mr. Wingard's statement after that was it's a black guy he
25 knew or has a acquaintance with, that he believes he was a

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1 crackhead.

2 Q. Okay. Anybody ask any more questions trying to figure
3 out who this guy was?

4 A. I'm not sure because at that time Jeremy Ashford was
5 calling for me.

6 Q. But to your knowledge there's no more pursuit about who
7 this potential purveyor of items is.

8 A. To my knowledge, no, sir.

9 Q. In fact -- now, let's get to the search warrant. Mr.
10 Wingard actually tells y'all where some stuff is.

11 A. Yes, sir.

12 Q. What I want to specifically talk about is stuff you
13 found in the closet. In this particular case this stuff is
14 just in a closet, right?

15 A. Yes, sir.

16 Q. We've got -- there is some stuff in the bedroom?

17 A. There's stuff in the bedroom closet, hallway closet,
18 the first bedroom, like a guest bedroom, garbage can, living
19 room closet beside the couch.

20 Q. This one we'll look at more specifically, I'm looking
21 at State's 1. Those are the drills we're talking about,
22 right?

23 A. Yes, sir.

24 Q. Do you know which closet that is?

25 A. That is the living room closet.

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1 Q. This living room closet. Now, his living room is as
2 soon as you come in the front door?

3 A. Yes, sir.

4 Q. The stuff that was in the shed, y'all looked at it.

5 A. Yes, sir.

6 Q. Determined it wasn't what y'all were looking for.

7 A. Yes, sir.

8 Q. Based on him saying that stuff ain't stolen?

9 A. We didn't have at that time that I know of basically no
10 reason to take it.

11 Q. You were looking for tools, right?

12 A. Yes, sir.

13 Q. You took tools.

14 A. Yes, sir.

15 Q. Took fishing rods.

16 A. Yes, sir.

17 Q. Didn't take these tools.

18 A. No, sir.

19 Q. You're the one that took these photographs.

20 A. Yes, sir.

21 Q. You said what drew I guess Jeremy Ashford's attention
22 was something with red on it?

23 A. Yes, sir. Like I said, I remember Mr. Pope or -- I
24 can't remember the other guy's name, but say something
25 specific about some type of red marking on the bottom, I

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1 can't remember specifically what type of marking that was.
2 But prior to conducting a search warrant we all meet, "these
3 are the items we're looking for, if there's any markings
4 these are the type of markings we are looking for."

5 Q. Y'all found this saw, this particular saw?

6 A. That's the very first thing.

7 Q. It's in these photographs?

8 A. Yes, sir.

9 Q. It is? The red markings are in the photographs?

10 A. I'm not sure what the red markings are.

11 Q. Well here, take a look. Wait a minute, do you have
12 other pictures? These are the same ones we got right here,
13 right?

14 A. Yes, sir. No, sir, I didn't.

15 Q. There's no closeup of that, is there?

16 A. No, sir.

17 Q. I know the difficulty in trying to get these things but
18 you've got a piece of plastic, right?

19 A. Yes, sir.

20 Q. Any attempts to pull any fingerprints, touch DNA,
21 anything off this?

22 A. No, sir.

23 MR. FRICK: Thank you, Investigator Westfall, that's
24 all we've got.

25 THE COURT: Any redirect?

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1 MR. MAXWELL: No, sir.

2 THE COURT: Thank you, sir. All right, Mr. Maxwell?

3 MR. MAXWELL: The State rests.

4 THE COURT: All right. All right, ladies and
5 gentlemen. You have heard the State announce that they have
6 rested their case, that means that you have heard all of the
7 evidence that you will hear from the State at this time, and
8 there are some matters of law which I now need to take up
9 with the attorneys that are involved. It is also nearly the
10 lunch hour so I think that this is a good time for us to
11 recess for lunch and so we are going to do so and I'm going
12 to allow you to go and get your lunch and ask you to come
13 back to your jury room, and please be back in your jury room
14 let's say at 2:15 we will be ready, that's about an hour for
15 you -- that's about an hour and 25 minutes. We will have to
16 do a few things before that and then get a lunch break
17 ourselves, so if you would be back in your jury room,
18 please, at 2:15. Over the lunch recess do not discuss the
19 case with anyone, do not allow anyone to discuss it with you
20 and do not allow you to discuss it amongst yourselves when
21 you do reconvene in the jury room. Once you get everybody
22 there I would ask that the 12 of you who make up the
23 principle jury select one person to be the foreperson of the
24 jury, and when you select that foreperson that foreperson
25 should sit in the first seat on the front row here. Just

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1 advise the bailiff of who you selected to be the foreperson
2 and that person will be the foreperson for the remainder of
3 this case, and, of course, the alternate will sit where
4 she's seated. But if you would when everybody gets back
5 select a foreperson and advise the bailiff of who you have
6 selected. With those admonitions I will excuse you now and
7 allow you to go to lunch and see you at 2:15. Thank you,
8 have a pleasant lunch.

9 (The jury left the courtroom.)

10 THE COURT: All right. Mr. Frick, motions on behalf of
11 the defendant?

12 MR. FRICK: Your Honor, the at this time defendant will
13 make a motion for a directed verdict. When taking the
14 evidence in the light most favorable to the State I don't
15 believe there is enough -- that the case can be decided as a
16 matter of law and does not have sufficient evidence to be
17 sent to the jury. I think the only evidence that we've got
18 to deal with is whether or not my client had knowledge that
19 items were stolen or should have known that items were
20 stolen is just merely speculation and we need more than mere
21 speculation, we must have more than just simply
22 circumstantial evidence.

23 THE COURT: So your motion is to the charge of
24 receiving stolen goods?

25 MR. FRICK: Well, on both of them, I think the other

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1 statute requires knowledge as well. And I don't think that
2 it -- it doesn't specifically say whether you know or should
3 have known. This is an issue that Mr. Maxwell and I have
4 talked about and I know what he is fixing to argue about but
5 I think with any criminal statute there is or must be some
6 type of knowledge or intent, or some type of rule and I
7 think you have to have some kind of knowledge, so that's my
8 argument on both of those. More specifically to the
9 receiving stolen goods, the solicitor -- while we are here
10 on an offense that would be in general sessions court
11 because of my client's prior record, the indictment
12 specifically alleges that the amount of stolen goods equals
13 \$2,000 or more, there has been no specific testimony as to
14 any dollar amounts and I would ask for a directed verdict --

15 THE COURT: I thought the -- I gave the indictment to
16 the clerk -- I thought it says -- the indictment alleges
17 less than \$2,000.

18 MR. FRICK: Yes, sir. If I said that wrong that's what
19 I meant, it's supposed to be \$2,000 or less than \$2,000 or
20 whatever the statute says, I don't see that one frequently
21 enough.

22 THE COURT: There is testimony in the record that it
23 has some value so that is less than \$2,000.

24 MR. FRICK: Just making my argument, Judge.

25 THE COURT: Okay. Mr. Maxwell, let me hear from you

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1 with regard to the receiving stolen goods, and his motion
2 for directed verdict apparently is on the grounds there's no
3 evidence in the record that he knew or should have known
4 that the goods were stolen.

5 MR. MAXWELL: I think there's plenty of evidence he had
6 reason to believe they were stolen. You heard from
7 Investigator Westfall saying when he went to the closet he
8 said, "Not everything up there is stolen." That indicates
9 some type of knowledge that what they were looking for was
10 stolen property and that what he had was stolen property.
11 The time frame I think is important, you've got stuff stolen
12 between 4 p.m. on the 8th and 6:00 a.m. on the 9th. He's at
13 Mid-Carolina with some of the stolen items by 10:00 on the
14 morning of the 9th and he has everything in his house on the
15 10th, I think that is important and I think that indicates
16 some knowledge that the items were stolen. Also certainly I
17 think it's some evidence that he probably stole this stuff
18 or if you believe that the black guy brought it to him, he
19 says the guy is a crackhead, showing up with drills and
20 tools and more specific tools, not just hammers and
21 screwdrivers but drills, stuff very specific to the
22 electrical trade and copper wire. I think it's clear with
23 somebody showing up at your house with this type of material
24 and these type of tools that there's something suspicious
25 about that and I think that clearly indicates a belief that

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1 that item could be stolen.

2 THE COURT: And that same argument would go to the
3 nonferrous materials for attempting to obtain a permit to
4 transport and sell nonferrous materials for the purpose of
5 transporting or selling stolen nonferrous materials?

6 MR. MAXWELL: Your Honor, in regards to that statute, I
7 know we've established that in all likelihood that was the
8 stuff stolen out of Willie Pope's truck, that he attempted
9 to obtain a permit for, he took it down there and sold it,
10 there isn't anything that says that he had to have a basis
11 for it being stolen. I think we've established it was
12 stolen and he obtained a permit to sell it and he did sell
13 it.

14 THE COURT: Let me go back down there and ask you one
15 question before I return to Mr. Frick again. Isn't there
16 also testimony in the record that some of these goods
17 contained markings from the -- by the owner?

18 MR. MAXWELL: Yes, sir. There was some testimony from
19 Mr. Brissey that some of the tools had TEC on them in some
20 type of marker or pen and TEC is the initials for his
21 company, The Electric Company.

22 THE COURT: All right. Mr. Frick, I will be glad to
23 hear from you in reply to what Mr. Maxwell has said if
24 there's anything you want to add.

25 MR. FRICK: I wouldn't have anything further.

1 THE COURT: All right. Under Rule 19 of the South
2 Carolina Rules of Criminal Procedure the rule is that the
3 Court shall direct a verdict in the defendant's favor on any
4 offense charged in the indictment after the evidence on
5 either side is closed if there is a failure of competent
6 evidence tending to prove the charge in the indictment.
7 I've always thought that the use of the word competent in
8 that rule is confusing and misleading and causes people a
9 lot of problems because it implies a weighing of the
10 evidence to determine what is competent, but as used in that
11 rule, competent really means admissible evidence or evidence
12 in the record. When the task force that I headed to redo
13 the criminal rules did our revisions and sent them to the
14 supreme court and that's where they're sitting at this point
15 we did change that so that there would be no confusion as to
16 what the use of the word competent was. But in any event
17 the rule goes on to say in ruling on the motion the trial
18 judge should consider only the existence or nonexistence of
19 the evidence and not its weight. In my view there is
20 evidence in the record that the goods were stolen and I
21 think the timeframe is circumstantial evidence to that
22 affect. I think the statement of the defendant that not all
23 of the goods are stolen is indicated that some of them may
24 have been stolen, and also the markings on the items and
25 identified by the owners, I think there is sufficient

1 evidence in the record. There is evidence in the record,
2 whether it's sufficient or not is for the jury to determine,
3 but there is evidence in the record whereby the jury could
4 conclude that the defendant knew or should have known that
5 the items were stolen. The same would apply to the
6 nonferrous statute. I think there is evidence in the
7 record, albeit circumstantial, that the defendant knew or
8 should have known that the nonferrous materials for which he
9 was trying to obtain a permit were stolen and I would
10 respectfully deny the motions for a directed verdict. Now,,
11 Mr. Wingard, I want to talk to you for just a minute, if you
12 would stand and then I'll let you talk to your lawyer if you
13 need to, but I want to tell you that you may be called as a
14 witness to testify on your own behalf. I advise you that
15 you have the right to invoke the protections given to you by
16 the 5th Amendment to the Constitution of the United States
17 in a similar counterpart by a provision of the Constitution
18 of the State of South Carolina. The 5th Amendment to the
19 Constitution of the United States provides in part that no
20 person shall be compelled in any criminal case to be a
21 witness against himself. This provision of constitutional
22 law means that you cannot be compelled or required to
23 testify in this case. This is a right and a privilege which
24 the law extends to you. It is a personal privilege that no
25 one can waive this right except you. You have the right not

1 to testify but you also have the right to testify. The
2 Court will grant you the right to consult with your lawyer
3 before you make a decision if you elect not to testify.
4 Your failure to testify cannot be used by the jury as an
5 inference of guilt in its deliberations and I would so
6 advise the jury. If you elect to testify and waive the
7 privileges extended to you by the 5th Amendment I advise you
8 that you will then assume the role of a witness in this case
9 and you would waive and give up your constitutional
10 privilege against self-incrimination. This means if you
11 voluntarily take the witness stand and testify you would
12 voluntarily subject yourself to the same rules that govern
13 other witnesses in this case, and you may be examined and
14 cross examined on any relevant issues all of which are
15 subject to the rules of law and the rules of evidence. I
16 would further advise you that if you elect to take the
17 witness stand and testify that this decision on your part
18 must be made freely, voluntarily, intelligently and with
19 knowledge of the protections given to you by the
20 constitution and with knowledge of the consequences of your
21 election to testify. Have you understood what I have told
22 you about your 5th Amendment rights?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you have any questions you want to ask
25 me about your 5th Amendment rights?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you wish to consult with your lawyer
3 about your decision on whether you do or do not wish to
4 testify in this case?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I will give you that opportunity. Before
7 we do that -- you may be seated, we'll have him -- give you
8 over the little lunch recess to make that decision.

9 MR. FRICK: Well, I can tell you what our issue really
10 is, we have discussed it at some time, I think we are close
11 to a decision. Generally in my experience this comes down
12 to what the State will be allowed to talk about on the
13 record.

14 THE COURT: That's what I was getting ready to ask Mr.
15 Maxwell right now. Mr. Maxwell, one of the factors that
16 influences a decision of this nature, of course, is what the
17 State considers impeachable offenses under 608. If you
18 would -- I believe it's 608 or 609, but in any event -- 609.
19 What offenses do you consider would be impeachable offenses
20 under 609?

21 MR. MAXWELL: Your Honor, he's got three counts of
22 petty larceny from 2008, five counts of auto breaking in
23 2008, three counts of petty larceny from 2010, financial
24 card theft from 2010.

25 THE COURT: Just give me the ones you would intend to

1 use.

2 MR. MAXWELL: I would offer all of those.

3 THE COURT: All right. The first count is two counts
4 of petty larceny in 2008, and with five counts of B and E
5 auto?

6 MR. MAXWELL: Yes, sir.

7 THE COURT: And that's in 2008?

8 MR. MAXWELL: Yes, sir.

9 THE COURT: All right, next?

10 MR. MAXWELL: 2010 petty larceny three counts.

11 THE COURT: Petty larceny three counts.

12 MR. MAXWELL: 2010 financial transaction card theft?

13 THE COURT: In 2000, when, ten?

14 MR. MAXWELL: 2010, yes, sir.

15 THE COURT: Petty larceny would be between 30 days and
16 less and wouldn't fall within the one year situation. The
17 breaking and entering auto, of course, would be more than a
18 year, and then you've got your other petty larcenies, then
19 you've got your financial transaction cart theft which just
20 for purposes of looking at what we've got to decide here.

21 MR. MAXWELL: Our argument would be all of those
22 indicate some type of dishonesty under 609A2.

23 THE COURT: Okay. I understand. You take the position
24 they're admissible because they show crimes of dishonesty.

25 MR. MAXWELL: Yes, sir.

1 THE COURT: All right, Mr. Frick?

2 MR. FRICK: Well, Your Honor, my argument -- and
3 Mr. Maxwell and I have talked about this many times before,
4 is under the Bryant case, State versus Bryant -- and I
5 apologize, I don't have a copy of it with me, I can get it
6 for you, and that would be 369SC511, it has a basic
7 statement that a conviction for robbery, burglary, theft,
8 drug possession beyond the basic crime itself is not
9 probative for truthfulness. Obviously the whole intent to
10 see whether or not somebody is telling the truth or not,
11 that's why we are able to cross examine then on the stand.

12 THE COURT: What are you saying Bryant stands for?

13 MR. FRICK: Bryant says those convictions in and of
14 themselves do not equate him with being untruthful.

15 THE COURT: In a trial for drugs.

16 MR. FRICK: No, sir. It basically says a drug
17 conviction or these other convictions are not indicative of
18 his truthfulness in this trial. Additionally, and I think
19 it's still in Bryant where they talk about similar offenses,
20 obviously my client is on trial for a property offense,
21 they're talking about property offenses. My concern would
22 be that property offenses talked about while in a trial for
23 property offenses would be too similar in the situation and
24 should be excluded under that proposition. And just to
25 clarify my issue with the similar -- my argument that those

1 cases are property offenses and this is a property offense
2 trial, those two similarly situated would be under 403
3 analysis saying it's too prejudicial versus probative.

4 THE COURT: Well, that's what I was going to ask
5 Mr. Maxwell. The rule, of course, says that 609.1 provides
6 that as far as a defendant is concerned that an accused has
7 been convicted of such a crime shall be admitted if the
8 Court determines that the probative value of admitting this
9 evidence outweighs its prejudicial affect. And secondly,
10 that the witness -- evidence that witness has been convicted
11 of a crime shall be admitted if it involved dishonesty or
12 false statement regardless of the punishment. And your
13 position is, of course, that it meets the requirements of
14 609.A2. What about 609.A1 about the probative value?

15 MR. MAXWELL: I think the auto breaking carries more
16 than one year, the probative value is if he's going to
17 testify and say I didn't do it then I think it goes to his
18 credibility.

19 THE COURT: Well, he's not testifying though, you want
20 to -- or, you're saying if he testifies and --

21 MR. FRICK: Well, I think under that circumstance then
22 yeah.

23 THE COURT: Wait a minute, I want him to enumerate to
24 what he thinks the -- there are two things that you've got
25 to meet. You don't have to meet the one requirement because

1 there's no question it meets the dishonesty part of it, you
2 don't have to meet the one year so there's no question about
3 that, but you still have got to convince me that the
4 probative value outweighs the prejudicial affect. The
5 probative value can't be that he's more likely to have
6 committed this than he would have otherwise because that's
7 exactly the reason that you don't let it in, that is the
8 prejudicial affect. What's the probative value?

9 MR. MAXWELL: Well, first of all my understanding of
10 the rule would be it would come -- either/or of the two. If
11 there is an and in there -- I think there's two separate
12 tests.

13 THE COURT: No, it's an and. Look at the rule, 609A1,
14 that the probative value of admitting this evidence
15 outweighs the prejudicial affect of the accused and the
16 defendant has been convicted of a crime of dishonesty, it's
17 not an or.

18 MR. MAXWELL: I'm interpreting the and to say these are
19 the things that you can use to attack the credibility of a
20 defendant.

21 THE COURT: You don't think that I've got to make a
22 weighing of the probative value and the prejudicial effect?

23 MR. MAXWELL: Not to dishonesty, I don't believe so.

24 THE COURT: What's your authority for that?

25 MR. MAXWELL: I'm going to look for it but I think I

1 have read something recently in regards to that, I can't
2 point to anything. I would ask for the lunch hour to look
3 for something.

4 THE COURT: Here is what we're going to do, counsel, we
5 will make this decision at 2:00. I want you to see what you
6 can find and hand me any law on that question, and Mr.
7 Frick, I want the same thing, I want a copy of Bryant case.
8 And we will meet back here at 2:00. Thank you.

9 (A lunch break was taken.)

10 THE COURT: Mr. Wingard is present in the courtroom
11 with his counsel, the State is present and represented by
12 Mr. Maxwell. The first matter that we need to address is
13 the defendant's 5th Amendment right. Mr. Wingard, again let
14 me ask you to stand. Over the lunch recess have you had a
15 chance to discuss with your attorney your rights under the
16 5th Amendment and your right to remain silent?

17 THE DEFENDANT: Yes, sir, I have.

18 THE COURT: Have you understood your discussions with
19 him?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions of either him or
22 me regarding your 5th Amendment rights?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you made a decision as to whether you
25 do or do not wish to testify in this case?

1 THE DEFENDANT: I'm not going to testify.

2 THE COURT: Is that decision on your part freely and
3 voluntarily made?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. The Court would find that the
6 defendant after having been advised of his constitutional
7 rights by the Court and his attorney has freely,
8 voluntarily, knowingly and intelligently made a decision to
9 exercise that 5th Amendment right and to remain silent and
10 not testify and the Court will, of course, respect that
11 decision. Thank you, sir, you may be seated. All right.
12 Mr. Frick, that being the case, would the defense have any
13 other testimony that they would wish to present in this
14 matter?

15 MR. FRICK: No, sir.

16 THE COURT: So the defense would rest?

17 MR. FRICK: Yes, sir.

18 THE COURT: We will then, of course, have you do that
19 when the jury comes back in, and that being the case
20 Mr. Maxwell, do you waive opening on the law?

21 MR. MAXWELL: I think I would go first, so yes, sir.

22 THE COURT: Okay. All right. That's right, he has got
23 to argue and you -- he would have the right to require that
24 you open on the law but he's not going to require you to do
25 that. You are going to argue first, Mr. Frick, and then

1 Mr. Maxwell?

2 MR. FRICK: No, sir, I think it's the opposite.

3 THE COURT: That's right, I'm not even thinking, that's
4 right, done this too many times. You didn't put up any
5 evidence, you would have to argue first and then he would go
6 last.

7 MR. FRICK: One thing I want to put on the record is
8 Mr. Maxwell and I agreed to but we've not mentioned is on
9 the search warrant, which is State's Exhibit 14, there is
10 something that's been redacted, that was by agreement.
11 There was a statement about why they sought the search
12 warrant and part of that was my client going to the metal
13 place and because of his criminal history, we agreed by
14 consent to have that blacked out.

15 THE COURT: All right.

16 MR. FRICK: It hasn't been mentioned and I know if it
17 goes further someone is going to ask a question and I just
18 wanted to clarify what's going on there.

19 THE COURT: All right. What about the other exhibits,
20 is everything in evidence? Have y'all checked the exhibits
21 or do you know what they are and is there any that have been
22 identified that were not introduced?

23 MR. MAXWELL: Everything here has been entered into
24 evidence.

25 THE COURT: Bring the jury in please.

1 (The jury returned to the courtroom.)

2 THE COURT: All right. This gentleman here in the red
3 shirt -- excuse me, garnet shirt, seems to be seated in the
4 foreperson's seat. Were you selected as the foreperson of
5 the jury?

6 THE JUROR: Yes, sir.

7 THE COURT: What is your name?

8 THE JUROR: Jerry McDonald.

9 THE COURT: All right, Mr. McDonald. All right, juror
10 number 70, counsel, Mr. McDonald is selected as the
11 foreperson of the jury. And I do know the difference
12 between red and garnet, Mr. McDonald. All right. Thank you
13 for your promptness, ladies and gentlemen, in being back and
14 I appreciate your promptness in being back here, we are
15 ready to go forward. And you heard before lunch that the
16 State had rested their case and the defense will now have
17 the right to present any evidence or testimony to you that
18 they wish to present. Mr. Frick?

19 MR. FRICK: Defense rests, Your Honor.

20 THE COURT: All right. The defense has rested as well.
21 That means, ladies and gentlemen, that you have heard all of
22 the testimony in this case and there are only two things
23 that remain to be done, those are the arguments of counsel
24 and the instructions of the law by the Court. I will tell
25 you now as I did at the beginning of this case that the

1 arguments of counsel are not evidence in this case, they're
2 simply the lawyers' views of what they think the evidence
3 shows. You will decide this case based on the evidence that
4 you have heard in this matter from the witness stand here
5 and from any exhibits that have been introduced into
6 evidence. But the lawyers do have the right and not only
7 the right but the duty on behalf of their clients to address
8 you now and to give you their views of what they think the
9 evidence shows. When they've given you -- when they have
10 completed their closing statements or arguments to you I
11 will then instruct you on the law of South Carolina as it
12 pertains to the facts of this case as you may find those
13 facts to be and then you will be allowed to go to your jury
14 room to deliberate your verdict. You will hear first from
15 Mr. Maxwell on behalf of the State and then from Mr. Frick
16 on behalf of the defendant. Mr. Maxwell?

17 MR. MAXWELL: May it please the Court?

18 THE COURT: Yes, sir.

19 MR. MAXWELL: Afternoon, ladies and gentlemen. Again,
20 let me thank you for your time in this matter and your
21 attention. You're doing a great service to your community,
22 I appreciate it and I want to thank you on behalf of the
23 solicitor's office. Now is my time to go over some things
24 and point out some things from the testimony you've heard.
25 I consider this a brief trial, I will try to keep my

CLOSING ARGUMENTS

1 statements again brief, I don't know how you consider
2 whether it's brief to you or not. This all began starting
3 on August 8th at 4:30 in the afternoon when William Pope
4 gets home from work, he's got all of this stuff on the back
5 of his truck, he parks his truck on his driveway. The next
6 morning he gets up 6:00 or 6:30 in the morning, goes to
7 work, there's some things missing, some things are out of
8 place, I'm talking about a drop cord being out of place
9 maybe in the floorboard somewhere that he thought was odd.
10 He gets to work, then he starts looking for some things,
11 noticed some things are gone, he confers with Mr. Brissey
12 and maybe some other people that are working with The
13 Electronic Company, determines these things are gone, in the
14 time frame of about 14 hours these things are gone. This is
15 about August, it's about 4:30 in the afternoon, it's still
16 daylight, you know how it is, daylight until about 8:30 or
17 so in August. More than likely his stuff was taken some
18 time in the middle of the night, I don't know if it was
19 before midnight or after midnight, but more than likely
20 after normal people go to bed. He gets up the next morning,
21 his stuff is gone, he files a report with the Winnsboro
22 Public Safety, at that point in time he would have no
23 information, law enforcement has no information about
24 Brandon Wingard being involved in this matter. Simply by
25 word of mouth really law enforcement was put on notice that

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1 this stuff was stolen. Judge Pope, William Pope's father,
2 contacts Chief Lewis with the sheriff's department, and
3 says, "This stuff is missing out of my son's truck." That
4 is about 9:30 in the morning when Chief Lewis tells Jeff
5 Talbert and probably some investigators, "Stuff is missing
6 so if you hear about anything, anybody stealing stuff out in
7 the community or if you see somebody pawning stuff or" -- or
8 what exactly happened in this case -- "somebody taking some
9 metal down to Mid-Carolina, keep your ears open." And
10 that's kind of common practice with them, with the
11 investigators, whenever they find out about something they
12 just want to keep their ears open depending on what part of
13 the community it may be in and where these items may end up.
14 And you hear Jeff Talbert, within about a hour of him
15 learning from Chief Lewis this stuff had been taken and he
16 hears about a phone call Brandon Wingard made about getting
17 this permit, this 48 hour permit that apparently anybody can
18 get over the phone, the qualifications you must meet, but it
19 is simply a registration for anybody buying and selling this
20 stuff to cut down on theft, that's why the state passed it,
21 to try and figure to cut down on people doing this and
22 figure out who is doing this stuff. The name Brandon
23 Wingard comes up from that, almost immediately Jeff Talbert
24 calls down to Mid-Carolina Recycling, a place where he's
25 familiar with, a place he has dealt with Curt Richardson, a

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1 place where he has dealt with stolen metal and things like
2 that from there before, talks with Curt Richardson, makes
3 the determination if Brandon Wingard is down there, he's
4 down there. A sell goes through prior to stopping anything,
5 he's probably in a position he can't stop anything, it's not
6 a major emergency where he jumps in his car and flies down
7 there, it's not a major emergency but he's looking into the
8 matter almost immediately before lunchtime on the 9th, well
9 within 24 hours of this stuff being stolen. Curt Richardson
10 sends pictures that Mid-Carolina takes in a normal
11 operating -- standard operating procedure and how they do
12 business, they take pictures of everything and those
13 pictures are sent to Jeff Talbert by Curt Richardson and
14 Jeff Talbert sends those pictures to Willie Pope who almost
15 immediately says, "This is the stuff which was in the back
16 of my truck." That happened I think after 2:00 or 3:00 on
17 the afternoon of the 9th so it takes a couple of hours for
18 communication to go back and forth and everybody will try
19 and get on the same page. So they've got a suspect at that
20 point in time, Mr. Brandon Wingard. Next morning almost at
21 the start of business they have a search warrant -- they go
22 to the magistrate and get a search warrant, Jeff Westfall
23 does that, and they're at Brandon Wingard's house before
24 11:00 a.m. on this particular Friday, this is talking about
25 the 10th now, of August. Wingard is in there, he's home

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1 alone, they wake him up, he let's them in, there's no big
2 action sequence going on, it's fairly calm, no busting down
3 the door or anything like that. They cuff Wingard and they
4 start going through this stuff, and I'll go through some of
5 the things that Brandon Wingard says during the course of
6 that search warrant in just a minute. All of these items
7 were located throughout his house; these drills, these
8 meters and all of these other tools that David Brissey and
9 Will Pope used in their line of business as electricians are
10 found inside Brandon Wingard's house, and they're scattered
11 throughout the house. Some are in the closet in the corner
12 or sitting in the shed, some are deposited in the back,
13 deposited in the hallway, deposited in the living room, some
14 stuff on the bed, some stuff in a second bedroom. All of
15 this stuff is gathered, they collect it, they take it up to
16 the sheriff's department and Mr. Brissey and Mr. Pope say,
17 "All of this stuff is ours." So now we're talking about
18 within 48 hours the majority of this stuff is -- not all of
19 the tools are recovered, the copper stuff and the wiring
20 that was stolen and was sold down at Mid-Carolina is not, a
21 very short timeframe all this occurs in, very, very short
22 and I think that's important of what occurred or what you
23 think or what you can infer happened in this case. Another
24 thing I want to point out, Mr. Brissey said there's some
25 markings on some of the tools, markings of TEC, stands for

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1 The Electric Company. Now, a normal person may look at the
2 letters TEC and not really know exactly what it means, but a
3 normal person may look at a piece of equipment or a tool and
4 see markings on it and realize it belongs to somebody else
5 when there's a name on it or any type of marking. When Jeff
6 Talbert and the other officers are there executing the
7 search warrant, Jeff Talbert is reading the whole thing,
8 there's several pages, and you'll have it back in the jury
9 room if you want to look at it, there's nothing in it really
10 shocking that you'll find, it's just a reason why they're
11 there. And they're reading through that and they're getting
12 through just what -- weren't quite sure when he said it but
13 at some point Jeff Talbert goes by why they're there and
14 what they're looking for and at some point Brandon Wingard
15 says, "The black guy gave it to me." Now, he hasn't been
16 mirandized at that point in time, he's detained but he's not
17 answering any questions at that point. It's a spontaneous
18 voluntary statement he's giving to the investigators and it
19 is really just Jeff Westfall reading something to him aware
20 of why they're there, "Oh, a black guy gave it to me." Jeff
21 Westfall finishes the search warrant, reading it out, he
22 then goes through the Miranda warnings, his right to an
23 attorney, his right to remain silent and let's Mr. Wingard
24 know he can adhere to those or he can talk if he wants to.
25 There's nothing that keeps him from talking if he wants to

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1 talk, they simply ask him, "What black guy are you talking
2 about?" They finally get a chance to go over what they need
3 to go over and Jeff Talbert asked him, "Who is this black
4 guy? I don't know, he's some black guy I see around town, I
5 see from time to time, I think he's a crackhead, I think I
6 met him uptown." Gives no other information. Doesn't
7 volunteer any other information about what kind of car he
8 drives, where he might live, who else might know him. Some
9 black guy, a mysterious black guy. He just says he's a
10 crackhead that gave him this stuff, he doesn't say, "I paid
11 this guy \$100 for it, I gave him \$1,000 for it," doesn't say
12 anything about that. Later during the same search warrant
13 as the investigators are going through the house, at some
14 point Jeff Westfall returns from the back bedroom where they
15 found some stuff in the back bedroom closet, one of the
16 officers mentions, "We haven't found the drills yet." They
17 knew they were looking for the drills. Willie Pope and
18 David Brissey told them that's one of the things they were
19 looking for, that's one of the things they were missing.
20 Well, Brandon Wingard says, "There's some drills in the
21 closet." So they go off to the closet, look in it, Jeff
22 Westfall starts taking stuff down from the closet, there's
23 three or four drills up there and he goes, "Some of those
24 aren't stolen." Again, he's not under questioning, he's
25 not -- he's already been mirandized, he doesn't have a

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1 bright light on him saying, "Where are these from?" He just
2 blurts it out again, "Some of those are mine, some of those
3 aren't stolen." Couple of minutes later some other
4 investigators who are out in an outside building or shed,
5 whatever it may be, comes inside without the tools but say
6 there's some other tools outside and he says, "Those aren't
7 stolen either, those are mine too." Well, if he got these
8 things legitimately and he knew they weren't stolen his
9 statement would have been, "Everything is mine, none of this
10 is suspicious, none of this is stolen, everything is mine,"
11 and that's not what he said. He goes, "Some of that is
12 stuff isn't stolen, some of that stuff is mine, some of it
13 ain't." He knew the stuff wasn't his, he knew he did not
14 have a right to the stuff. Part of me going first means I
15 have to anticipate a little bit what Mr. Frick is going to
16 tell you in just a minute, and he's going to tell you one
17 thing about going down to Mid-Carolina -- about Wingard
18 going down to Mid-Carolina and asking for a permit and what
19 right -- what person in his right mind would come the
20 sheriff's department and say, "I'm down here selling stuff,"
21 and that's going to be an argument, that Wingard didn't know
22 this stuff was stolen but he thought he could go down there
23 and sell it without getting in trouble. Criminals don't
24 always use their common sense, they're not the most
25 intelligent of people, there's a reason why they do the

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1 things they do and there's a reason why they break the law
2 because they don't use common sense and they don't use the
3 judgment and logic that most of us do use. He went down
4 there probably without even thinking, he went down there
5 without the permit and he -- once he got down there he
6 realized, "Oh, I've got to get a permit to get my money."
7 So he calls in and maybe he just hoped the dots weren't
8 going to be crossed and they wouldn't put two and two
9 together, and had Ms. Johnette Freeman who works for the
10 sheriff's department and took that phone call, had she not
11 mentioned something to Jeff Talbert maybe the two dots
12 wouldn't have ever been connected, but she did and then that
13 caused them to get the search warrant and find all of this
14 stuff at his house. The next thing that Mr. Frick is
15 probably going to tell you is we have to prove -- the State
16 has to prove that Brandon Wingard knew this stuff was stolen
17 or had reason to believe it was stolen, that's what the
18 statute says and that's what Judge King will instruct you on
19 in a little bit. If I say anything that contradicts what
20 Judge King tells you, you listen to what Judge King tells
21 you with regards to the law. But the statute reads did the
22 person know that the stuff was stolen, or did they have
23 reason to believe that this stuff was stolen. Now, law
24 enforcement does not quite have the technology to read
25 somebody's mind, they can't tell you exactly what was in

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1 Brandon Wingard's mind. But they can tell you or you can
2 look at the evidence and say what was likely to be in his
3 mind and what he believed at the time. Well, there's two
4 possibilities of what happened, the first of which is it was
5 Brandon Wingard who stole this stuff, and I think that's
6 probably the most likely thing that happened. Now, we don't
7 have any witnesses that were on the street that night that
8 saw anybody that matched his description or matched somebody
9 in the car that may match a car that he drives in the area
10 of Mr. Pope's house that night, don't have Mr. Pope seeing
11 anything, so we don't know exactly what happened when this
12 stuff got stolen, but probably the likely thing that
13 happened was Brandon Wingard stole it. He ended up with the
14 stuff less than 14 hours after Willie Pope had seen it and
15 that was daytime, sunlight still outside at 4:30. More than
16 likely this stuff was taken midnight thereafter and Brandon
17 Wingard has got it down at Mid-Carolina at 10:30 the next
18 morning. The other possibility would be the black guy stole
19 it, this mysterious black guy that Mr. Wingard wants to
20 blame. But Mr. Wingard can't identify, can't give any other
21 information about who this person was, how the police can
22 find him and this black guy who he described as a crackhead
23 to the investigators shows up at his house with all of these
24 tools and all of this wire and apparently just gives it to
25 him. The crackhead -- and he don't know who it is, just

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1 shows up with stuff. Now, salesmen knock on my door all of
2 the time, probably knock on your door from time to time
3 trying to sell you all kinds of things, no salesmen or no
4 guy has ever showed up at my house trying to sell me all of
5 these tools and all of this other stuff that I don't know or
6 doesn't have a business card or doesn't have a business,
7 that in itself would give somebody a reason to believe that
8 this stuff was stolen, or the stuff was hot as a lot of
9 people like to call it. Mr. Wingard wants you to believe
10 that he did not believe -- that he did not know it was
11 stolen or he didn't have a reason to believe it was stolen.
12 I ask you to just use your common sense about that, and if
13 you believe Mr. Wingard's tale I've got an ocean front beach
14 house in the village that I will sell you because it doesn't
15 make sense. He knew it was stolen more than likely because
16 he stole it. Judge King is going to instruct you about
17 reasonable doubt in just a few minutes, and our burden, the
18 State's burden is we must prove this case beyond a
19 reasonable doubt. Now, reasonable doubt does not mean
20 beyond all possible doubt. There's always possibilities
21 that may come in of why you may doubt something, but
22 whatever that doubt is has to be reasonable. There's no
23 reasonable doubt other than Wingard knew this stuff was
24 stolen. All I do is ask you to use your common sense about
25 that and I ask you to return a verdict of guilty on both

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1 charges. Thank you.

2 THE COURT: Mr. Frick?

3 MR. FRICK: Thank you, Your Honor, Mr. Maxwell, ladies
4 and gentlemen of the jury. Two times you really need to be
5 aware is when you hear somebody say "I'm from the government
6 and I'm here to help you," and you hear a lawyer or a
7 politician tell you they're going to be brief, so with that
8 I will tell you I will be brief. Ladies and gentlemen, you
9 heard this is not going to be a complicated case, it's not a
10 complicated case but it does require you to use your common
11 sense that everyone is asking you to do in this case. And
12 how do we get to this point? Willie Pope gets out, looks in
13 his truck, gets to work, realizes some stuff is missing. He
14 lives in the City of Winnsboro, he calls Winnsboro Public
15 Safety and makes a report. He then calls his dad, Judge
16 Pope, who calls his friend, Chief Deputy Keith Lewis, who
17 then tells his investigators to be on the lookout for this
18 stuff. Now, this is their boss saying look out for this
19 stuff. "We have got to close this case quickly, we need to
20 find out what happened and close it quickly, we've got to
21 get this done." It's perfectly understandable. So what
22 happened? This all happens on about the 8th, stuff goes
23 missing on the 8th. Somewhere about the 9th the sheriff's
24 department starts looking for this stuff because that's when
25 they are advised about it some time that morning. Mr.

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1 Wingard over here happens to call in to the sheriff's
2 department with some stuff about the same time they decide
3 they're looking for some stuff, immediately want to find out
4 what Brandon Wingard has taken down there. And this is what
5 we get, folks, and now you get to look at all of this stuff
6 and you will have it back there to look at it as much as you
7 want to, but let me tell you, this is what we've got. This
8 is stuff that's been clearly identified by all of the
9 State's witnesses without a doubt was the stuff that was
10 taken off Willie Pope's truck, the stuff that he took down
11 to Mid-Carolina, the stuff that he must have known, no
12 reasonable person could not have known that this stuff was
13 taken from somebody else, and here is the other stuff. Of
14 course, what they don't want to talk about is the seven
15 pounds of aluminum cans, the five pounds of other metal and
16 I think there was about another pound of other metal that we
17 won't talk about. But we don't want to worry about that
18 stuff, that's not the stuff we're worried about, this is the
19 stuff that we can clearly identify, although no one up there
20 can tell me how they can determine that this is that wire
21 other than it looks like that wire, and it -- well, it come
22 off a spool, and, well, we've got a piece of a spool, right,
23 so is must be it. Okay. Let's talk about what happened
24 down at Mid-Carolina. Brandon Wingard hops in his car and
25 this stuff, all kinds of stuff, drives it down all the

JURY CHARGE

1 way -- the brilliant criminal mind that he is he decides the
2 closer I stayed at home the better this must work out for
3 me, right? Goes all of the way to Mid-Carolina with this
4 stolen stuff, 22 whole miles down the road and he sells it
5 and gets there, either knows and didn't have it or he knows
6 he can get the permit while he is down there, or knows that
7 the law has changed and he needs to get a permit. Upon
8 learning this the criminal mind of Brandon Wingard says, "I
9 will fool them, I will call the Fairfield County Sheriff's
10 Department and let them know I am selling this stuff," so he
11 talks to the Fairfield County Sheriff's Department advising
12 them of what he's doing. Now, the permit doesn't allow for
13 any investigation at that point, their job is to simply
14 someone calls, you issue it. That's what happens. He gets
15 paid and he goes home somewhere -- I think we've determined
16 somewhere around lunchtime on the 9th, goes home with his
17 check from Mid-Carolina. Fairfield County Sheriff's
18 Department knows he's been down there, so what does he do?
19 Apparently he decided to cleverly hide it in his front
20 living room closet all organized. This is the scattered
21 about the house that the solicitor would like you to
22 believe. There it is. But wait, there's more, and more,
23 and more, it's in about two different closets. There was a
24 box in the bedroom with some stuff but all of these tools,
25 all of these tools are in two different closets. What's in

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1 the shed, because you heard SLED went and looked at the
2 SLED. SLED looks in the shed and says oh my goodness, we've
3 got socket wrenches, we've got these other things out here
4 that sound like what they're looking for because right here
5 in the search warrant you have got evidence they're looking
6 for a hammer, drill bits, a Milwaukee Drill, flashlight,
7 wire spools, looking for all kinds of tools. SLED's found
8 tools in Mr. Wingard's backyard in his shed so what do they
9 do with those? Brandon said, "Those weren't stolen," so
10 they left those alone, they apparently believed him at that
11 point. All right. These statements, let's talk about these
12 statements. Now ladies and gentlemen, as the Judge has
13 instructed you previously and is probably going to instruct
14 you again it is now your determination to decide, one,
15 whether these statements actually occurred. Just because
16 somebody gets on the stand whether they're a lay witness,
17 whether they're a police officer, whether they're whomever,
18 just because they get on the stand don't mean that you've
19 got to believe everything they've told you. So first you've
20 got to decide whether these statements really existed. Then
21 two, what were the content of these statements; and three,
22 did he voluntarily give these statements? Now, you heard
23 testimony that whatever statements he did or didn't give he
24 gave after law enforcement had knocked on his front door and
25 said, "We're looking for this stuff," pats him down and

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1 handcuffs him and told him basically -- maybe they told him,
2 maybe they didn't tell him, but you heard testimony that if
3 he would have invited them to leave they would not have left
4 and if he would have asked to leave he could not have gone,
5 so he's in custody. That is a factor for you to consider
6 whether these statements are voluntary if they did or did
7 not exist. But what does he say? Some black guy sold them
8 to me or bought them. Well, what did he sell him?
9 Remember, I asked Jeff Westfall, I said bought, he said,
10 "Well, I don't know that he said bought. Well, what did he
11 say? Well, I think he said he had received them. Well,
12 wait a minute, Jeff, is it got or received? Well" -- we
13 really don't know what Brandon Wingard said. One of these
14 statements is, "No, not all of those things are stolen,"
15 which would imply he's saying some of them are. What do we
16 do in this case when we've got a criminal confessing to a
17 crime? We tell the solicitor the day before trial, not
18 written down one single place, you have nobody tell you they
19 have recorded it in any way. Again, it's up for you to
20 decide whether these statements are really what really
21 happened. And take them -- I'm not saying that you should,
22 but if you do -- I'm going to go down to Mid-Carolina and
23 I'm going to sell stuff, part of this cash of stolen goods
24 that I have and I'm going to sell part of it. I have
25 notified the Fairfield County Sheriff's Department that I

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1 have these items and they know where I live, you heard
2 testimony, they know where Brandon Wingard lives and they
3 had his address from the application, and then I'm going to
4 go home and wait for the sheriff's department to come arrest
5 me for having these stolen items. They don't get the search
6 warrant until August 10th, they don't execute it until 24
7 hours near about after he has already been to Mid-Carolina.
8 So yeah, I'm going to stand up here and tell you what kind
9 of fool is going to call the sheriff's department and say,
10 "Hey, I'm selling some copper." But add that to and then
11 I'm going to go home and sit on my couch for another day to
12 wait for you to come find the rest of this stuff in my
13 closet. Does that make any sense, ladies and gentlemen?
14 Folks, there's an easy way to determine whether what I'm
15 telling you is what you can decide is the truth or not. We
16 heard there are markings. These items have markings on them
17 so we can conclusively say that those are the items that
18 came off of the Willie Pope's truck, got no reasonable doubt
19 at all, got these markings. Of course Willie Pope told that
20 you, yeah, they're marked with TEC, they've got my name on
21 some of them. I drive a 2000 truck and we wrote 2000 on
22 some of those. Mr. Brissey got up here and said, nope, the
23 only thing that's written on there is TEC. Okay, fine.
24 Well, whatever. Ignore the inconsistencies on how these
25 things are marked, but pray tell show me where we have these

JURY CHARGE

1 markings. Surely this saw box with TEC written on it in
2 brazened on it found in Mr. Wingard's closet in his living
3 room, surely we have a photograph of it. Well, good luck,
4 ladies and gentlemen. It ain't in here. Jeff Westfall told
5 you it wasn't up here and he's the one that took the
6 pictures. So we have all of these items that have these
7 markings and not one picture, not one anything that shows
8 you yeah, these are the things that have it on there. So
9 they can't prove these are actually the things that were
10 missing. The items aren't here, the photographs aren't
11 here. Just take their word for it, we got it, don't worry
12 about it, we have got it, we have got it. Okay. Let's go
13 back to the statement about this guy who brought, sold,
14 conveyed, whatever, put in your own verb as to whatever he
15 did to provide these items to Mr. Wingard if this is in fact
16 what he said. He didn't withhold the information, they
17 didn't ask him, "Who is this guy?" The only thing we hear
18 is I see some guy uptown every now and then, he might be a
19 crackhead. You may recall I asked did you ask him anymore
20 about that? No. No. Ladies and gentlemen, they needed to
21 solve a case, they had a suspect, they had stuff, it was Mr.
22 Wingard, case closed. We don't need to worry about it
23 anymore, it is done, we've got him down there with the
24 stuff, he called us, we used that, there is your
25 investigation. He says somebody gave, sold, brought,

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1 whatever. Okay. Who was that guy? We don't need to worry
2 about that, no need to worry about that. And you may be
3 wondering about this little piece right here. The solicitor
4 put it into evidence and you saw it, I didn't object to it,
5 here is a little tiny plastic they found that said it's one
6 of those little spools off of Willie Pope's truck. From
7 what you've heard today three people had to have touched
8 this thing, had to have, Willie Pope, Brandon Wingard and
9 whoever the dude is that brought it to him. It's a piece of
10 plastic, ladies and gentlemen, not one single attempt to do
11 anything with it, didn't even try to see if they could
12 support or disprove what Mr. Wingard is telling you. They
13 had already decided that he's the one who had these stolen
14 goods, that he knew they were stolen, that he is the one
15 that goes down there and sold them, has to be him, case
16 closed, don't need to look anymore. Come on folks, is that
17 really enough? Is that enough evidence? You're going to go
18 sell stolen stuff, sit at home and wait for the police to
19 come find this stuff and you will see it is not scattered,
20 it is not scattered about at all. Well, these are the tools
21 we're looking for, not these tools over here and some
22 fishing rods. I don't know, whatever you want to do with
23 that, but they did take eight fishing rods, a bag of fishing
24 tackle and some soft tackle while they were looking for
25 drills, flashlights, saw, I don't know what they're going to

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1 do with that. But take it for what it is worth, ladies and
2 gentlemen. There's no identification of these things.
3 There is no way that the State can show you that Mr. Wingard
4 knew that he had anything that was stolen, and I suggest to
5 you him not knowing is collaborated fully by the fact that
6 he notifies the sheriff's department, that he had stuff and
7 then waits, waits, didn't hide the stuff in the shed, didn't
8 hide it in the woods, hid it in his living room closet and
9 according to their statement told them that's where it was.
10 That makes no sense, ladies and gentlemen. He had no
11 knowledge that this stuff was stolen or should have known it
12 was stolen and that's what this case is about. We're not
13 trying Brandon Wingard for stealing anything. In fact, what
14 you're going to hear in a moment is if you believe he is the
15 one that took it then you've got to acquit him for having
16 it, it's two separate offenses. We ain't trying him for
17 stealing it, we're trying him for having it, two different
18 things. So if you believe that is what the State is showing
19 you, which is what the State suggested up here a minute ago,
20 then you must acquit him on possessing it. Now, I'm not
21 saying that it is all what happened. Mr. Wingard had the
22 stuff in his house, stuff that came from some place else,
23 they can't identify what it is. But say it is Willie
24 Pope's, again, it's not here, you can't see it, you're not
25 going to see it here, but we have got stuff in the house

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1 that we take that says that's what it is, they still have
2 not proven to you beyond a reasonable doubt, beyond a
3 reasonable doubt that he had any knowledge or should have
4 known. Just because some dude comes to your front door and
5 knocks on the front door and you decide to get some stuff
6 from him don't mean it is stolen, that means that you can
7 think that maybe it's odd, maybe he didn't know the guy,
8 maybe he didn't want to tell the cops anything but we don't
9 know, they didn't record anything, they didn't write down
10 anything, we have no idea what that conversation was if any.
11 No way to prove knowledge, none, none, and I tell you again
12 the way you can support that is by Brandon Wingard's action.
13 I guess I'm asking you to apply the reasonable criminal
14 standard, what reasonable criminal is going to notify the
15 sheriff's department that they have stolen goods and then
16 wait a day for them to come find it? None. They're
17 certainly not going to stack it neatly in the closet and
18 wait for them to show up. Reasonable doubt. Not I think
19 Brandon bought some stolen goods, not it looks like Brandon
20 probably bought some stolen goods, it's is there any other
21 reasonable explanation than the stuff that they saved in
22 this house, one, belonged to Willie Pope, and two, that he
23 had any reason, is there any other explanation? Yeah. He
24 thought it was okay. Might not be your preferred method of
25 buying something, might not be the solicitor's preferred

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1 method of buying something, but that doesn't mean that it's
2 wrong. They still have to prove that there was criminal
3 intent there and they can't. When you go back there I ask
4 you to use your common sense on that. Nobody is going to
5 call the sheriff's office and wait for them to come find the
6 stuff stacked neatly in two closets. Brandon Wingard is not
7 guilty. Thank you.

8 THE COURT: All right. Mr. Foreman and ladies and
9 gentlemen of the jury, if you would give me your attention.
10 You have followed very patiently and listened very
11 attentively to the presentation of the evidence in this case
12 and to the able arguments made by the solicitor, Mr. Maxwell
13 on behalf of the State, and Mr. Frick on behalf of the
14 defendant and I thank you for that. It now becomes the duty
15 of the trial judge under the constitution of this state to
16 charge and instruct you on the law applicable to this case,
17 and it is your duty as jurors to accept and apply the law as
18 the Court will now state it to you. And as jurors it is
19 your exclusive duty to decide all of the issues of fact in
20 this case, and for that purpose to determine the effect, the
21 value, the weight and the truth of the evidence. Both the
22 State and the defendant have the right to expect that you
23 will conscientiously consider and evaluate the evidence and
24 apply the law of the case thereto to the end that both the
25 State of South Carolina and the defendant will attain a fair

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1 and impartial trial. When I use the word defendant I refer,
2 of course, to Mr. Wingard. The State of South Carolina by
3 the bill of indictments in case, and there are two of them,
4 charge the defendant with two offenses. In indictment
5 number 370 they charge the defendant with receiving stolen
6 goods, alleging that Mr. Brandon C. Wingard did in Fairfield
7 County on or about August the 8th of 2012 buy, receive or
8 possess certain personal goods, specifically copper, of
9 David Brissey valued at less than a certain amount of money
10 and having reason to believe the property was stolen, and
11 the charge is one for receiving stolen goods. The other
12 indictment, which is indictment 371, charges that Brandon C.
13 Wingard did in Fairfield County on or about August 8th of
14 2012 obtain a permit to transport and sell stolen nonferrous
15 metals. Now, to these charges and to these indictments the
16 defendant has entered a plea of not guilty. This plea of
17 not guilty by the defendant places the burden of proof on
18 the State to prove by evidence the guilt of the defendant
19 beyond a reasonable doubt before you, the jury, can find the
20 defendant guilty. The defendant, Mr. Wingard, is presumed
21 in the law innocent of the charges contained in both of
22 these indictments. It is a cardinal and fundamental rule of
23 the law of evidence that a defendant irrespective of the
24 enormity of the charges against them will always be presumed
25 innocent of the crimes for which he is indicted unless and

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1 until the guilt of the defendant has been proven by evidence
2 which satisfies you, the jury, of his guilt beyond a
3 reasonable doubt. The presumption of innocence is not a
4 mere legal theory, it is not just a legal phrase, the
5 presumption of innocence is a substantial right to which
6 every accused is entitled. Our supreme court has declared
7 that the presumption of innocence is like a robe of
8 righteousness placed about the shoulders of this defendant
9 and it remains with him and assigns to him that class of
10 innocence until that presumptive robe of righteousness has
11 been stripped from his person by evidence satisfying you,
12 the jury, of his guilt beyond a reasonable doubt. The
13 presumption of innocence accompanies the defendant from the
14 time of his arraignment and appearance in this court and
15 continues with the defendant after you retire to the jury
16 room to deliberate your verdict. The presumption of
17 innocence remains in affect for the defendant and continues
18 in existence to his benefit until you, the jury, reach the
19 conclusion that the State has proven the guilt of the
20 defendant beyond a reasonable doubt. Now, the State is not
21 required to prove the guilt of a defendant beyond all doubt
22 or beyond every doubt but beyond a reasonable doubt. What
23 is a reasonable doubt? It is not an imaginary or fanciful
24 doubt or a weak doubt, it is a substantial doubt, it is a
25 doubt which the words imply, a doubt for which you can give

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1 or assign a reason based on the testimony and evidence in a
2 case. A reasonable doubt is not any sort of doubt. You and
3 I know from everyday life experiences that you may have a
4 sort of a doubt about any matter that arises no matter how
5 trivial it may be or how serious it may be. A reasonable
6 doubt is a doubt which makes an honest, sincere,
7 conscientious juror in search of the truth hesitate to act.
8 Proof beyond a reasonable doubt is proof which leaves you
9 firmly convinced of the defendant's guilt. If you have a
10 doubt for which you could give or assign a reason as to the
11 guilt of the defendant then he is entitled to that
12 reasonable doubt and a verdict of not guilty. Reasonable
13 doubt may arise from the evidence which is in the case or
14 from the lack of evidence in the case. You, the jury, must
15 make the determination of whether or not reasonable doubt
16 exists as to the guilt of this defendant. The very fact,
17 however, that the jury engages in a full and free discussion
18 of the issue of guilt or non-guilt with the normal
19 conversational issues of ebb and flow on these issues does
20 not automatically mean that reasonable doubt exists in this
21 case or in any other case. I charge you that the defendant
22 is entitled to every reasonable doubt arising in the whole
23 case. If upon any issue of fact essential to conviction and
24 a verdict of guilty you have a reasonable doubt as to how
25 that issue should be resolved, it would be your duty to

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1 resolve that issue in favor of the defendant. A defendant,
2 ladies and gentlemen, is not required to prove his innocence
3 but the State is required by law to prove every essential
4 element of the offense charged against the defendant by
5 evidence which satisfies you, the jury, of the guilt of the
6 defendant beyond a reasonable doubt before you can convict
7 the defendant and find him guilty. If then upon the whole
8 case you have a reasonable doubt as to the guilt or
9 innocence of the defendant he is entitled to that reasonable
10 doubt and would be entitled to an acquittal and a verdict of
11 not guilty. But on the other hand if upon the whole case
12 you find that the State has proven by evidence that
13 satisfies you, the jury, of the guilt of the defendant
14 beyond a reasonable doubt then in such circumstances it
15 would equally be your duty to convict the defendant and find
16 him guilty. Now, I instruct you that the indictments in
17 this case which I hold in my hand are not evidence as I told
18 you at the first of this case, they are not to be considered
19 by you as evidence of anything. They are simply the formal
20 written instruments which contain the charges against the
21 defendant and they serve as the formal documents by which
22 this case is brought to trial. During this trial each of
23 us, you and I, have certain duties to perform. As the trial
24 judge it is my responsibility to preside over the trial of
25 this case and I also have the duty to rule upon or pass upon

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1 the admissibility of evidence offered during the progress of
2 the trial. You are to consider only the competent evidence
3 before you and you are to disregard and disabuse from your
4 mind any testimony ordered stricken from the record of this
5 case during the course of this trial if there be any, and
6 you are to consider only the testimony which has been
7 presented from the witness stand together with any exhibits
8 admitted into the record of this case and any stipulations
9 of counsel made into the record if there are any. I have
10 the additional duty to charge you the applicable law in this
11 case. As the presiding judge I am the sole judge of the law
12 in this case and it is your duty to accept and apply the law
13 as I now state it to you. If you have a preconceived idea
14 on what the law is or what the law ought to be and it does
15 not agree with what I tell you the law is you are obligated
16 under your oath to abandon this preconception on your part
17 because you are sworn to accept the law precisely as I now
18 state it to you. In every case tried in this court before a
19 jury the jury becomes the sole and exclusive judge of the
20 facts of the case. You, the jury, are the judge of the
21 facts in this case. The Court is the judge of the law. The
22 constitution of this state has declared that the trial judge
23 shall not intimate, state, comment upon or make any
24 statement to a trial jury about the facts of the case.
25 Since you are the sole judge of the facts you are not to

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1 infer from anything that I have said during the progress of
2 this trial in ruling upon the admissibility of the evidence
3 or otherwise or anything that I say to you now during the
4 course of this charge to you that I have any opinion about
5 the facts of this case, I do not. The law does not permit
6 me to have an opinion about the facts. This is a matter
7 solely for you, the jury, to determine. As jurors then it
8 is your duty to determine, as I have stated, the effect, the
9 value, the weight and the truth of the evidence presented
10 during the course of this trial. Necessarily then you must
11 assess the credibility of the witnesses who have testified
12 in this case. Credibility is simply a legalistic term
13 meaning believability. It becomes your duty then to analyze
14 and evaluate the evidence and to determine that evidence
15 which convinces you of its truth. I charge you that in
16 determining the question of credibility or believability of
17 the witnesses you may believe one witness as against several
18 witnesses, or several witnesses as against one. You may
19 believe a part of the testimony of a witness and reject the
20 remaining part of the testimony of that same witness. You
21 may believe the testimony of a witness in its entirety or
22 you may reject the testimony of a witness in its entirety.
23 You may consider whether any witness has exhibited any
24 interest, any bias or any prejudice in the case, and you may
25 consider the demeanor of a witness, that is the appearance

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1 of a witness from the witness stand, and you may consider
2 the opportunity for knowledge concerning those things about
3 which a witness testified. These considerations you do not
4 exercise arbitrarily but if in your good judgment there is
5 sound reason in the record for so doing, because your
6 objective, ladies and gentlemen, is to find the truth
7 whether it comes from one or more witnesses, and in doing so
8 in exercising your mental processes and in determining what
9 you consider to be true the law simply requires that you
10 exercise your good judgment, your common sense, your sense
11 of logic and reason and your experiences in life. You then
12 apply these attributes of ability to the evidence and
13 determine what you consider to be the truthful evidence and
14 in these true state of facts as determined by you, the jury,
15 you take and apply it to the law as I will now state it to
16 you and thus arrive at a verdict in this case. Now, as I
17 have said the defendant is charged with two separate crimes,
18 the first is receiving stolen goods and I will now define
19 that offense to you. Section 16-13-180 of the Code of Laws
20 of South Carolina provides it is unlawful for a person to
21 buy, receive or possess stolen goods, chattels or other
22 property if the person knows or has reason to believe the
23 goods, chattels or property is stolen. A person is guilty
24 of this offense whether or not anyone is convicted of the
25 theft of the property. To convict one of receiving stolen

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1 goods the State must prove three elements beyond a
2 reasonable doubt. Number one, the goods, chattels or
3 property were previously stolen by another. Number two, the
4 defendant bought, received or possessed the stolen goods,
5 chattels or other property. And three, at the time the
6 defendant bought, received or possessed the goods he knew or
7 had reason to believe that they had been stolen. So first
8 the State must show the goods, chattels or property were
9 previously stolen by another. Second, the State must prove
10 the defendant bought, received or possessed the stolen
11 goods, chattels or property. And third, the State must
12 demonstrate that at the time the defendant bought, received
13 or possessed the goods, chattels or property he knew or had
14 reason to believe that they had been stolen. The law states
15 the defendant must know or have reason to know or believe
16 that the property was stolen. This requirement is satisfied
17 by either a subjective or an objective state of mind. One
18 who knows or believes the property is stolen meets the
19 subjective standard. One who neither knows nor believes the
20 property to be stolen but who ought to have so known or
21 believed meets the alternative objective standard and is
22 equally guilty. The phrase or has reason to believe refers
23 to the objective reasonable person standard. If a defendant
24 is in possession of recently stolen property there may be a
25 permissive inference of guilt from the possession. This

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1 permissive inference is from an evidentiary nature. The
2 permissive inference only permits rather than requires the
3 jury to infer guilt. This inference is only an evidentiary
4 fact to be taken into account by a jury along with all of
5 the other evidence in the case and is to be given such
6 weight as the jury deems proper. Any inference of guilt for
7 possession is only permissive, that is you are free to
8 accept or reject the inference regardless of whether the
9 defendant presents any evidence. The inference is merely
10 one more fact for you to consider, hence it may be accepted
11 or rejected without regard to whether the defendant presents
12 any evidence on this point. The defendant does not have to
13 present any evidence whatsoever in explaining how he came
14 into possession of the recently stolen property. The burden
15 of proof remains on the State to prove the defendant guilty
16 beyond a reasonable doubt. Now, the second charge against
17 the defendant in the other indictment is the violation of
18 nonferrous metals purchase statute, and that statute is a
19 rather extensive statute but only a small part of the
20 statute actually applies here. But section 16-17-680,
21 subsection C2A provides as follows: It is unlawful for a
22 person to obtain a permit to transport and sell nonferrous
23 metals for the purpose of transporting or selling stolen
24 nonferrous metals. Now ladies and gentlemen, there are
25 generally two types of evidence that are presented in any

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1 case, direct evidence and circumstantial evidence. Direct
2 evidence is testimony of a person who asserts or claims to
3 have actual knowledge of a fact such as an eye witness.
4 Circumstantial evidence is proof of a chain of facts and
5 circumstances indicating the existence of a fact. The law
6 makes absolutely no distinction between the weight or value
7 to be given to either direct or circumstantial evidence, nor
8 is a greater degree of certainty required of circumstantial
9 evidence than is required of direct evidence. You should
10 weigh all of the evidence in the case and after weighing all
11 of the evidence if you are not convinced of the guilt of the
12 defendant beyond a reasonable doubt you would find the
13 defendant not guilty. Now ladies and gentlemen, you'll
14 recall that we had some discussions about some alleged
15 statements that were made and I want to charge you again on
16 the law regarding any alleged statements made by the
17 defendant. While the Court determines the admissibility of
18 evidence you, the jury, must determine the existence,
19 voluntariness and weight of any alleged statements made by
20 the defendant. You must make the ultimate determination of
21 whether or not the defendant, in fact, made the alleged
22 statements. If you determine that the defendant made the
23 statements you must then determine whether the statements
24 were made voluntarily. Finally you will decide whether what
25 weight, if any, should be given to any alleged statements.

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1 You must determine whether the alleged statements were a
2 product of an essentially free and unconstrained choice by
3 the maker. The State must prove the voluntariness of the
4 statement beyond a reasonable doubt. If you determine
5 beyond a reasonable doubt that the statement was given
6 freely and voluntarily then you may give the statement such
7 further consideration as you deem proper. If you determine
8 that the alleged statement was not the free and voluntary
9 willed expression of the defendant then you should not
10 consider the statement as evidence. In determining whether
11 the defendant's will was overcome in obtaining the statement
12 the law requires you to consider what is known as the
13 totality of the circumstances. You should consider both the
14 characteristics of the defendant and the circumstances
15 surrounding any questioning or interrogation. In
16 determining the voluntaries of the alleged statement you
17 should consider whether the defendant was advised of and
18 understood his constitutional rights. The law requires that
19 before any interrogation or questioning of a person in
20 custody may begin, law enforcement must advise the accused
21 of his Miranda rights. This means that the authorities must
22 advise the accused that the accused has the right to remain
23 silent, that any statement could be used against him in a
24 court of law, that the accused has the right to have a
25 lawyer present, that if the accused cannot afford a lawyer

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1 then a lawyer would be appointed for him to represent him
2 without cost, and that the accused can stop making a
3 statement at any time. Other factors to be considered are
4 the place and length of any detention and the nature of the
5 questioning. You must carefully scrutinize all of the other
6 surrounding circumstances before you give any weight to an
7 alleged statement. You must be satisfied beyond a
8 reasonable doubt that the statement was made by the
9 defendant uninfluenced by promise or reward or threat of
10 harm. If you find beyond a reasonable doubt that the
11 alleged statement or statements were given voluntarily then
12 you must decide what weight if any should be given to these
13 statements. If you find the statements were not voluntary
14 then -- were not given voluntarily then in that event you
15 must not consider the statement as evidence for any purpose.
16 Now ladies and gentlemen, I want to tell you and emphasize
17 this fact to you, the defendant in this case has not
18 testified. This is his constitutional right. It is not a
19 circumstance that you can take into consideration or even
20 allow to enter into your discussions in the jury room.
21 Under the constitution of the State of South Carolina and
22 the United States it is a defendant's constitutional right
23 not to testify. The burden of proof is upon the State to
24 establish his guilt by competent evidence beyond a
25 reasonable doubt. The fact that the defendant did not take

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1 the witness stand and testify in his own behalf does not
2 create any inference against him and the jury must not
3 permit that fact to weigh in the slightest degree against
4 the defendant, nor should that fact enter into the
5 discussions or deliberations in the jury room. Now ladies
6 and gentlemen, I have just about finished my instructions to
7 you, but I would tell you that you are not partisans or
8 advocates for the State of South Carolina or for this
9 defendant. It has been obviously said -- it has been often
10 said that you do not serve on the jury to reward your
11 friends or punish your enemies, obviously such a perverted
12 system of justice would be intolerable. You have been
13 selected by both the State of South Carolina and this
14 defendant as fair and impartial jurors. It is your duty by
15 your joint deliberations to determine the truth in this case
16 giving to the defendant the benefit of every reasonable
17 doubt on each and every issue, and then to the fact which
18 you determine to be true. You then take and apply the law
19 which the Court has given to you and arrive at a verdict in
20 this case. The word verdict, ladies and gentlemen, has a
21 Latin derivative which means to speak the truth or truth
22 saying. When you've accomplished these responsibilities you
23 will have set aside your oath as jurors and you will have
24 discharged your duty to this court. Now, I want to instruct
25 you on your forms of verdict in this case. If the State has

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1 failed to prove the guilt of the defendant on either one or
2 both of the charges beyond a reasonable doubt your verdict
3 would be two words, not guilty. If the State has proven the
4 verdict of guilt beyond a reasonable doubt on either charge
5 or both charges your verdict would be one word, guilty. The
6 verdict that you render in this case must be the verdict of
7 each and every juror, it must be your unanimous verdict, all
8 12 of you must agree on the verdict which you authorize the
9 foreman to write. Now, Mr. Foreman, I have prepared some
10 verdict forms for your use on a sheet of paper, one for each
11 charge against the defendant and I would tell you that the
12 sequence in which I have stated the possible verdict forms
13 on this verdict has absolutely no significance whatsoever.
14 You should not infer from the order in which I have written
15 the possible verdicts on these verdict forms that I have any
16 opinion on what your verdict should be, I do not. As I
17 said, the law does not allow me to have an opinion. But
18 obviously in putting something down on paper I had to put
19 something first and something second, but it is solely for
20 you to determine what the appropriate verdict is. Now,
21 across the top up here, Mr. Foreman, this is just simply the
22 county and the name of the case, the State versus Brandon
23 Wingard, verdict, and the case number, and on the receiving
24 stolen goods, we the jury find the defendant, Brandon C.
25 Wingard on the charge of receiving stolen goods either

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1 guilty or not guilty, either put a check or X mark, sign
2 your name, date it and you will have reached a verdict in
3 that case. The other jury verdict form is the same thing
4 except this is we the jury by unanimous agreement find the
5 defendant, Brandon C. Wingard on the charge of purchase of
6 nonferrous purchase statute guilty or not guilty, again
7 check or X mark, sign your name, date it and we will return
8 you to the courtroom as soon as possible. Now, I'm going to
9 send you to your jury room, though I ask that you not begin
10 your deliberations just yet, the law does require that I
11 take up certain matters of law with the attorneys involved,
12 if it is not necessary for me to bring you back for
13 additional instructions the bailiff will bring you the jury
14 forms and the exhibits and instruct you to begin your
15 deliberations. When you reach a verdict simply knock on the
16 door and we will return you to the courtroom as quickly as
17 possible. I think that's all I need to tell you, just
18 simply do not begin your deliberations just yet until you
19 are told to begin your deliberations but we will bring these
20 things to you in just a few minutes and I am going to ask
21 everyone but the alternate to go to the jury room and I will
22 ask the alternate if you will stay in here with me please,
23 ma'am. Thank you, you may go with the bailiff.

24 (The jury left the courtroom.)

25 THE COURT: Any additions or exceptions on behalf of

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1 the State, Mr. Maxwell?

2 MR. MAXWELL: None from the State.

3 THE COURT: On behalf of the defendant?

4 MR. FRICK: None from the defense, Your Honor.

5 (The jury began deliberations.)

6 THE COURT: We had a note from the jury which I will
7 give to the court reporter and mark as a Court's Exhibit to
8 make it a part of the record. The question which I shared
9 with the counsel was, "What kind of work does Wingard do?"
10 Wingard being, of course, the defendant. With counsels'
11 permission I went to the jury room door and told them that
12 that was a factual question that I could not answer and they
13 would have to make their decision based upon what evidence
14 was in the record. Any objection to that procedure,
15 Mr. Maxwell?

16 MR. FRICK: None from the State.

17 THE COURT: Mr. Frick?

18 MR. FRICK: None from the defense.

19 (The jury resumed deliberations.)

20 THE COURT: Back on the record with regard to the case
21 of State vs. Brandon Wingard. Mr. Wingard is present with
22 his attorney Mr. Frick, along with the attorney for the
23 state, Mr. Maxwell. Counsel, I understand the jury has
24 reached a verdict, anything before we bring the jury in on
25 behalf of the State, Mr. Maxwell?

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1 MR. MAXWELL: Not from the State.

2 THE COURT: Mr. Frick?

3 MR. FRICK: I just can't remember what your preference,
4 we can remain seated while the verdict is read?

5 THE COURT: I will ask you to stand but I will tell you
6 when. All right. Bring the jury in, please.

7 (The jury returned to the courtroom.)

8 THE COURT: Mr. Foreman, I understand you have reached
9 a verdict; is that correct?

10 THE JUROR: Yes, sir, we have.

11 THE COURT: Would you hand it up to the bailiff,
12 please? All right. From the standpoint of form the verdict
13 appears to be correct. Madam Clerk, you may publish the
14 verdict. Mr. Frick, would you and your client stand,
15 please.

16 THE CLERK: State of South Carolina versus Brandon C.
17 Wingard, 2012-GS-20-370, we the jury by unanimous agreement
18 find the defendant, Brandon C. Wingard, on the charge of
19 receiving stolen goods guilty. Signed, Jerry McDonald,
20 foreperson of the jury, dated February 6, 2013.

21 2012-GS-20-371, State of South Carolina versus Brandon C.
22 Wingard we the jury by unanimous agreement find the
23 defendant, Brandon C. Wingard on the charge of violation of
24 nonferrous metals purchase statute, not guilty. Signed by
25 Jerry McDonald, foreperson of the jury, dated February 6,

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1 2013. Ladies and gentlemen, if this was your verdict and
2 still now your verdict please signify by raising your right
3 hand. Let the record reflect all jurors raised their right
4 hand. Verdict stands as read.

5 THE COURT: Thank you, you may be seated. Mr. Wingard
6 and Mr. Frick, anything before the jury is discharged from
7 Mr. Frick?

8 MR. FRICK: Request polling.

9 THE COURT: All right, Madam Clerk.

10 THE CLERK: Marilyn McClurkin, if this was your verdict
11 and still now verdict please signify by raising your right
12 hand. Desmon Morrison, if this was your verdict and is
13 still now your verdict please signify by raising your right
14 hand. Ray Holmes, if this was your verdict and still now
15 your verdict please signify by raising your right hand.
16 Arthenia Robertson, if this was your verdict and still now
17 your verdict please signify by raising your right hand.
18 Barbara Robinson, if this was your verdict and still now
19 your verdict please signify by raising your right hand.
20 Jerry McDonald, if this was your verdict and still now your
21 verdict please signify by raising your right hand. Eric
22 Smith, if this was your verdict and still now your verdict
23 please signify by raising your right hand. Shawanda Trapp,
24 if this was your verdict and still now your verdict please
25 signify by raising your right hand. Paul Nickoson, Jr. if

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1 this was your verdict and still now your verdict please
2 signify by raising your right hand. David Whitaker, if this
3 was your verdict and still now your verdict please signify
4 by raising your right hand. Deana Dixon, if this was your
5 verdict and still now your verdict please signify by raising
6 your right hand. Brenda Parnell, if this was your verdict
7 and still now your verdict please signify by raising your
8 right hand. All jurors raised their right hand, verdict
9 stands as read. Thank you.

10 THE COURT: All right, thank you. Mr. Frick, anything
11 before the jury is discharged?

12 MR. FRICK: No, sir.

13 (The jury was dismissed.)

14 THE COURT: Motions, Mr. Frick?

15 MR. FRICK: Your Honor, at this time the defense would
16 ask for a motion for a new trial based on the objections
17 that we had, most specifically our objection on the
18 admission of the statement of my client on the grounds
19 previously stated. One, we were not told of the statements
20 until yesterday about noon I believe is when the solicitor
21 told me about it, and, of course, it was a little bit more
22 testimony elicited here so I think it was a violation of
23 Rule 5 as I stated previously and a violation of my client's
24 rights under Miranda as has already been dealt with. And,
25 of course, any other objections I made I carry forward.

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1 THE COURT: All right. I would respectfully deny those
2 motions. I feel that the rulings that were made by the
3 Court at the time of the hearing on the admissibility of the
4 statements are correct, I think that the Rule 5 rulings were
5 correct at that time and are still correct. The same as
6 Miranda, I think that the statements were made both at the
7 Miranda warnings and after the Miranda warnings were
8 voluntary from the standpoint of admissibility and the jury
9 was charged with the responsibility of also determining what
10 weight -- whether they were voluntary and what weight to be
11 given to them so I would respectfully deny the motion.

12 MR. FRICK: Your Honor, I have one additional motion
13 that I usually made in these cases, I'm still not clear how
14 it applies but I always make this motion for the Judge to
15 set aside the verdict according to the 13th Juror Doctrine.
16 I know it's well settled in civil law and I think there's
17 some question of criminal law whether it applies but I think
18 there's an argument that it does. My motion in this case is
19 we've got inconsistent verdicts. I think it's -- the two
20 cases are very similar and they find him guilty on one and
21 not guilty on the other one and I have trouble with the
22 inconsistent verdicts and ask you in your role as the 13th
23 juror to set the verdict aside and direct a verdict for my
24 client.

25 THE COURT: All right, sir. First of all let me

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1 comment and give you my view of the role of the Court is on
2 the 13th juror. I think that the motion is actually as you
3 have made new trial or judgment in arrest of verdict is --
4 instead of judgment NOV, JNOV is the civil side, judgment in
5 arrest of verdict is the criminal side, and I think that
6 there probably is some authority for the Court setting aside
7 a criminal conviction. But I again would respectfully deny
8 that motion, I do not think it is appropriate in this case.
9 And there's also cases on the fact that a jury can reach
10 inconsistent verdicts, but in my view there's not any
11 inconsistent verdicts here. You've got entirely different
12 charges, they could have found him guilty of receiving the
13 stolen goods with regard to the tools, the drills and the
14 things of that nature but did not find him guilty of selling
15 or trying to sell nonferrous materials so I don't think that
16 they're necessarily inconsistent. But even if they were
17 there is plenty of authority for the fact that the jury can
18 return inconsistent verdicts and I think they had the law
19 and the facts before them and reached a verdict that they
20 thought was just and appropriate and so I would again
21 respectfully deny that motion.

22 MR. FRICK: I understand.

23 THE COURT: All right. Mr. Maxwell, again, let's go
24 back over the criminal record. I believe the first thing I
25 remember were three petty larcenies in 2008.

SENTENCING HEARING

1 MR. MAXWELL: There were a couple of other things, I
2 can --

3 THE COURT: Go ahead and give me his criminal record.

4 MR. MAXWELL: In 2008 he had a possession of cocaine
5 base, received a probationary sentence then. Also in 2008
6 he had three counts of petty larceny, five counts of auto
7 tampering, I think earlier I said auto breaking, it was auto
8 tampering, and one count of a stolen pistol, received a six
9 month sentence concurrent on those charges. And in 2010 he
10 received -- or was convicted of three counts of petty
11 larceny, one count of financial transaction card theft and
12 another count of a stolen pistol, received a split sentence
13 of one year active and two years probation then. In 2012 he
14 had a distribution of a controlled substance and two counts
15 of possession of a controlled substance, that is from I
16 believe August 6th, 2012, and I do want to check on that.

17 THE COURT: What was the sentence on those?

18 MR. MAXWELL: He received a 26 month suspended sentence
19 to one year of probation. He was currently on probation.
20 That plea was on Tuesday morning maybe the 7th of August.
21 The State recommended an active sentence at that point in
22 time. Mr. Wingard and his lawyer -- well, his lawyer argued
23 for leniency, Judge Burch gave him the probationary
24 sentence, this is the incident that took place the next
25 night, I think I'm correct, I know it was the same week, it

SENTENCING HEARING

1 was Monday or Tuesday when he pled and then the stuff got
2 missing on Wednesday night.

3 THE COURT: So that week he had just been placed on
4 probation and then --

5 MR. MAXWELL: That's correct. Judge Burch did -- after
6 learning of this on Thursday or Friday of that week did file
7 his own motion or file his own order saying he has retained
8 jurisdiction over the probation matter and I think I have
9 that in the file, it should be in one of files in the
10 clerk's office.

11 THE COURT: All right. Let me ask the probation
12 department, he's not here. Mr. Frick maybe you can tell me,
13 I'm curious, I notice he did have probation in 2008 on the
14 possession of cocaine and the petty larceny and then in 2010
15 he got another split sentence with probation. Did he
16 complete those probations or were any of them revoked?

17 MR. MAXWELL: Your Honor, if I may interject, I
18 believe, and I'm going from recollection, he pled to the
19 possession of cocaine, was placed on probation and then a
20 later date pled to the petty larcenies, auto tampering and
21 stolen pistol, and what likely happened is when he got a six
22 month active sentence it was all taken care of at one time
23 with the probation either run concurrent or terminated.

24 THE COURT: Okay.

25 MR. FRICK: I can't dispute that, Your Honor, that may

SENTENCING HEARING

1 have very well been the case. It may have been one of those
2 situations where the probation got dealt with first and the
3 other stuff got dealt with subsequent to that.

4 THE COURT: But the fact that he is on probation now
5 for the 2012 case is not before me and is not to be dealt
6 with as to whether it is or is not a violation because Judge
7 Burch has retained jurisdiction on that; is that correct?

8 MR. MAXWELL: That's correct.

9 MR. FRICK: I've seen the order, I respectfully dispute
10 that --

11 THE COURT: Well, I wish the probation agent were here
12 to serve him with the citation anyhow, I couldn't do
13 anything with it at this point.

14 MR. FRICK: I would ask the Court to consider that. I
15 don't know when Judge Burch is going to be back in Fairfield
16 County and I believe we have a right to have the matter
17 handled in Fairfield County, that would be my only argument
18 on that but I certainly understand the Court's ruling.

19 THE COURT: As I say, regardless of what the order says
20 with regard to Judge Burch until the probation department
21 decides to take some action and serve him with a citation
22 and warrant I really don't have anything I can do. Anything
23 else from you, Mr. Maxwell?

24 MR. MAXWELL: Your Honor, our recommendation is that
25 you sentence him to the maximum ten years. All of these

SENTENCING HEARING

1 prior incidents, the petty larcenies and auto tampering all
2 involved Mr. Wingard going in cars, he's just walking down
3 the road, going in cars taking things. This is -- while
4 he's not convicted of actually stealing this stuff it's just
5 a similar occurrence, the third time it's happening. All of
6 these -- a lot of the accounts took place on the same night,
7 it took place in the same year at least. He's been given
8 break after break after break to try to straighten himself
9 out, he has failed to do so, I think a ten year sentence is
10 appropriate.

11 THE COURT: All right, thank you, sir. All right,
12 Mr. Frick.

13 MR. FRICK: Well, Your Honor, I would certainly dispute
14 that. I understand he's got stuff on his record, he's got
15 property offenses on his record, this is -- and he has been
16 in general sessions I believe with the financial card fraud
17 and the possession of drugs he had back in 2008. Of course,
18 I think the Court is aware but -- and I think the solicitor
19 did finally illude to it that many of these events he's got
20 were during one string of events, I think there were
21 probably two different string of events. But the
22 culmination of it, I don't want the Court to think that he
23 pleads to a couple of property offenses here and he picks up
24 these --

25 THE COURT: Well, I'm troubled by the fact that he was

SENTENCING HEARING

1 on probation and put on probation that week when this came
2 up.

3 MR. FRICK: And please let me speak to that. I did not
4 represent him at that but I was present in the courtroom
5 when that occurred. What he was charged with at the time
6 was a distribution of some kind of controlled substance, it
7 was a pill, and then possession of controlled substance.
8 The controlled substance that he was in possession of was
9 Soboxone and Methadone which are the two medications that
10 you use to get off of opiate addiction. Now, he didn't have
11 a prescription, he wasn't going to the methadone clinic,
12 didn't have prescription for Soboxone so it was illegal for
13 him to possess it, but I think that is telling that those
14 are the things that he has got.

15 THE COURT: Well, that may be what he has got but the
16 fact of the matter remains that Judge Burch put him on
17 probation, when he's on probation he is supposed to be on
18 his best behavior, he is not supposed to be in any kind of
19 trouble and he didn't make it through the week.

20 MR. FRICK: I understand that, Your Honor. And the
21 idea was he was going to get those issues dealt with, he did
22 not deal with those issues, this popped up just before that.
23 Of course, obviously we dispute what the jury said as far as
24 the knowledge of the stolen goods, whether he really knew
25 that those items were hot or not. My conversations with him

SENTENCING HEARING

1 was he paid some \$500 for these things, while we did not put
2 that on the stand, maybe I'll have to pay for that later,
3 this is not one of those situations where somebody comes by
4 and drops off what is too good of a deal, might have been a
5 good deal but it wasn't too good of a deal. I would just
6 ask you to take all of that in consideration.

7 THE COURT: How long has he been in the detention
8 center?

9 MR. FRICK: He has been in the detention center since
10 his arrest on August 10th of last year.

11 THE COURT: Okay. All right, Mr. Wingard, what would
12 you like to tell me?

13 THE DEFENDANT: Well, Your Honor, I would just ask that
14 the Court show a little lenience on me. But Judge Burch did
15 recommend intense drug counseling along with probation and I
16 think that's what I really need to do to get that problem
17 straight. That's what I was trying to do with the Soboxone
18 myself was trying to take care of it myself, but he
19 recommended intense drug testing and I think I need that to
20 help get this behind me and to get my life on the right
21 track, Your Honor. I had some problems, I divorced my wife
22 and I've got two little kids and that's when this stuff all
23 started when I wasn't around my kids anymore, I couldn't see
24 my kids and it did bring on some drug problems. And I
25 recently tried to reconcile with my kids and talk to my

SENTENCING HEARING

1 ex-wife and work things out. I'm really trying to get on
2 the right track and I want to be there for my kids and pay
3 child support and help raise them, they're young kids and I
4 just ask that the Court just take a little bit of
5 consideration into some of that, Your Honor.

6 THE COURT: All right, sir.

7 MR. FRICK: And Your Honor -- I apologize.

8 THE COURT: Go ahead.

9 MR. FRICK: I just want to -- as he illuded to, trouble
10 started when he had family stuff, doesn't make anything he
11 did right, but his record begins in 2008. This is a man who
12 is 38 years old and didn't start getting in trouble until he
13 was well along in life past the time that most folks start
14 getting in trouble, I do think that leads some credence to
15 our statement about the drug addiction and his need to get
16 away from it.

17 THE COURT: All right, sir. Mr. Wingard, you've been
18 at the department of correction before apparently on how
19 many occasions, two?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And one was a six month sentence. How much
22 time did you do in SCDC at that time?

23 THE DEFENDANT: I did --

24 THE COURT: The first time.

25 THE DEFENDANT: For the six months, I think I did three

SENTENCING HEARING

1 in the county and then I went to processing for a month.

2 THE COURT: And turned around and came back. All
3 right. What about the 2010 sentence that was suspended?

4 THE DEFENDANT: I did six months in the county and
5 about a month and a half in processing. Your Honor, I just
6 want you to please look at this case for what it is, it's
7 receiving stolen goods. I'm not out being a menace trying
8 to sell drugs or shoot at people.

9 THE COURT: No, you just have a problem with other
10 people's property. You know, I look back and I see you've
11 got five counts of tampering with autos, whatever that was,
12 and then six counts of -- you had some previous petty
13 larcenies and financial transaction card frauds. I realize
14 that they are financial crimes or drug crimes but at the
15 same time you still don't have much respect for other
16 people's property and nobody seems to have gotten your
17 attention that you can't just help yourself to whatever you
18 want.

19 THE DEFENDANT: Your Honor, I wasn't -- I was not aware
20 that these things were stolen. I do electrical work myself,
21 that's what I do, the guy that I got them from, he told me
22 he was trying to finish up a job and needed some money. I
23 had no idea that this was somebody else's property that I
24 was receiving. I just want you to be fair, don't keep me
25 away from my kids and family any longer than I have to be

SENTENCING HEARING

1 and --

2 THE COURT: I understand.

3 THE DEFENDANT: -- get on the right track.

4 THE COURT: I don't think it's a case that needs
5 maximum punishment but I do think you need to go down and
6 spend a little bit of time in the department of corrections
7 and know what it's like down there so that maybe you'll get
8 straightened out a little bit. But it's not going to --

9 THE DEFENDANT: Your Honor, I --

10 THE COURT: I've heard enough.

11 THE DEFENDANT: Okay. Sorry.

12 THE COURT: I do think you don't have much respect for
13 other people's property, over the last five or six years you
14 seem to have stayed in some kind of trouble. And one of the
15 things that I told Mr. Frick that really does bother me is
16 when you have somebody that appears up here before a circuit
17 court judge, in this case Judge Burch, who put you on
18 probation and then right as soon as -- the week doesn't get
19 by and you're back in trouble again and that causes me some
20 trouble. So the sentence of the court is the defendant is
21 sentenced to the state department of corrections for a term
22 of five years, give him credit for the time he has served
23 since August 10th of 2012. I will recommend ATU at the
24 South Carolina Department of Corrections, I don't know
25 whether they've got any funds at this time, Mr. Frick.

SENTENCING HEARING

1 Maybe he can get some treatment for his drug problem and do
2 the time he has got on this and get this behind him when he
3 gets out. But you need to see what the inside of the
4 department of corrections is like and if you continue to
5 commit property crimes that's what the enhanced statute is
6 for. I could have given you ten but I gave you half of
7 that.

8 (END OF TRIAL PROCEEDINGS.)

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JURY VERDICT FORMIN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

State of South Carolina)

PLAINTIFF)

vs)

Brandon C. Wingard)

DEFENDANT)

VERDICT

Case # 2012-GS-20-371

We the Jury by unanimous agreement find the Defendant, Brandon C. Wingard, on the charge of Violation of Nonferrous Metals Purchase Statute:

_____ GUILTY

✓ _____ NOT GUILTY

Jay P. McDonald
Foreperson of the Jury

February 6, 2013
Winnsboro, SC

WITNESSES

7
Talbert-FCSO

2
Burrage

ARREST WARRANT NUMBER/DOA

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

11/27/12

Foreperson of Grand Jury
Date:

VERDICT

DOCKET NO. 2012-GS-20-370

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2012

**THE STATE
vs.**

Brandon C. Wingard

Indictment for

**Receiving Stolen Goods \$2,000 or Less
Third Offense Property Crime**

SC Code: § 16-13-180(A), (B)(1), 16-01-57
CDR Code: 2367
Class: Felony, E

2012 NOV 27 A 11: 50
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

INDICTMENT

At a Court of General Sessions, convened on November 27, 2012, the Grand Jurors of Fairfield County present upon their oath:

Receiving Stolen Goods \$2,000 or Less Third Offense Property Crime

That Brandon c. Wingard did in Fairfield County on or about August 8, 2012, buy, receive, or possess certain personal goods, Copper, of David Brissey valued at less than \$2,000, knowing or having reason to believe that the property was stolen the defendant having been twice or more previously convicted of a property crime the term of imprisonment for which was contingent upon the value of the property involved in violation of §16-13-0180(A), (B)(1) and § 16-01-0057 *Code of Laws of South Carolina, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

9
Talbert-FCSO

2
Burrighs

ARREST WARRANT NUMBER/DOA

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

11/27

2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-20-371

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2012

THE STATE

vs.

Brandon C. Wingard

Indictment for

Violation of Nonferrous Metals Purchase
Statute

SC Code: § 16-17-680 (C)(2)

CDR Code: 3568

Class:

2012 NOV 27 A 11:50

FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF FAIRFIELD)

At a Court of General Sessions, convened on November 27, 2012, the Grand Jurors of Fairfield County present upon their oath:

Violation of Nonferrous Metals Purchase Statute

That Brandon C. Wingard did in Fairfield County on or about August 8, 2012, obtain a permit to transport and sell stolen nonferrous metals, in violation of Section §16-17-680(C)(2) of the Code of Laws of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Douglas A. Barfield, Jr., SOLICITOR

Office of the Public Defender
Sixth Judicial Circuit
PO Box 637
Winnsboro, SC 29180

August 30, 2012

Mr. Riley Maxwell, Esquire
Assistant Solicitor
Sixth Judicial Circuit
P.O. Box 1085
Winnsboro, South Carolina 29180

RE: Notice of Representation and Request for Discovery Materials
The State v. Brandon Wingard
Warrant(s): 2012A2010100068, 69, & 70

Dear Mr. Maxwell:

Please be advised that the 6th Circuit Public Defender's Office has been appointed to represent the above referenced defendant in the above referenced charges. **Mr. William P. Frick** is the attorney assigned to this case.

Please also accept this notice as our request for all discovery materials in this matter pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure, any materials pursuant to Maryland v. Brady or any other provisions of United State or South Carolina law. Additionally, in applicable cases, the defense requests the appearance at trial of all necessary persons involved in any chain of custody and or chemical analyst pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact our office at (803) 815-0796.

With kindest regards, I am,
Sincerely,

s/William P. Frick

William P. Frick
Attorney
Office of the Public Defender
6th Judicial Circuit

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FAIRFIELD COUNTY
Court of General Sessions

Howard P. King, Circuit Court Judge

Case No(s): 2012-GS-20-370

The State of South Carolina,

Respondent.

Brandon C. Wingard,

v.

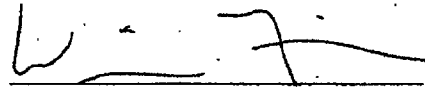
Appellant.

NOTICE OF APPEAL

Brandon C. Wingard appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Howard P. King on February 6, 2013.

PLEASE TAKE FURTHER NOTICE THAT this appeal shall be upon a case and exceptions to be served upon you and filed hereafter in accordance with the rules of the court and laws in such cases made and provided.

Date: February 8, 2013



William Frick, Esq.
Public Defender
Post Office Box 637
Winnsboro, SC 29180

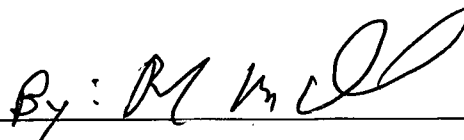
Other Counsel of Record:
Riley Maxwell, Assistant Solicitor
Office of the Solicitor
6th Judicial Circuit
Post Office 1085
Winnsboro, SC 29180

2013 FEB 11
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BESHAR
RECEIVED
FEB 12 2013

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Record on Appeal complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

By: 

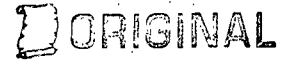
Perry B. DeLoach, Jr.
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Attorneys for Appellant

May 12th, 2014

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Fairfield County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

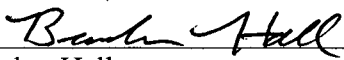
V.

BRANDON WINGARD,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Mary Frances Jowers, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of May, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 12th day of May, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

RECEIVED
MAY 12 2014
SC Court of Appeals