

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from York County

S.C. Supreme Court

John C. Hayes, III, Circuit Court Judge

JOHNNY CROCKETT,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2014- 000957

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
FINAL ANDERS BRIEF OF APPELLANT	180
OPINION OF THE COURT OF APPEALS	193
REMITTITUR	195
APPLICATION FOR POST-CONVICTION RELIEF	196
RETURN	202
POST-CONVICTION RELIEF HEARING TRANSCRIPT	208
ORDER OF DISMISSAL	244
CLERK OF COURT RECORDS	250

INDEX

<u>WITNESSES</u>	<u>PAGE</u>
JERRY WALDROP	
(IN CAMERA) DIRECT EXAMINATION BY SOLICITOR SIKORA	6
(IN CAMERA) CROSS EXAMINATION BY MR. SULLIVAN	10
BILL DUANE TEMPLETON	
DIRECT EXAMINATION BY SOLICITOR SIKORA	37
CROSS EXAMINATION BY MR. MCKINNON	51
REDIRECT EXAMINATION BY SOLICITOR SIKORA	67
JOHNNY FLEMING	
DIRECT EXAMINATION BY SOLICITOR SIKORA	70
CROSS EXAMINATION BY MR. SULLIVAN	86
JERRY WALDROP	
DIRECT EXAMINATION BY SOLICITOR SIKORA	110
CROSS EXAMINATION BY MR. SULLIVAN	118
REDIRECT EXAMINATION BY SOLICITOR SIKORA	139
RECROSS EXAMINATION BY MR. SULLIVAN	142
CLOSING ARGUMENTS	
BY SOLICITOR SIKORA	145
BY MR. SULLIVAN	154
JURY CHARGE	162
VERDICT OF THE JURY	173
SENTENCE OF THE COURT	178

2-B

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	TICKET	3	77
S-2	PHOTOS	3	47
S-3	PHOTOS	3	47
S-4	PHOTOS	3	47
S-5	PHOTOS	3	47
S-6	PHOTOS	3	39
S-7	PHOTOS	3	39
S-8	PHOTOS	3	39
S-9	MATERIALS SOLD BY MR. CROCKETT	3	113
S-10	MATERIALS SOLD BY MR. CROCKETT	3	113
S-11	MATERIALS SOLD BY MR. CROCKETT	3	113
S-12	MATERIALS SOLD BY MR. CROCKETT	3	113
S-13	MATERIALS SOLD BY MR. CROCKETT	3	113
S-14	MR. CROCKETT'S SC OF MOTOR VEHICLE ID CARD	139	140

1 (WHEREUPON, State's Exhibits Nos. 1-13 were marked
2 for identification only.)

3 SOLICITOR SIKORA: The State's ready, Your Honor.

4 THE COURT: Call your case.

5 SOLICITOR SIKORA: The State calls the case of State versus Johnny
6 William Crockett on the charge of possession of stolen goods, value of
7 over \$5,000. He is being charged as indictment reflects pursuant to
8 Enhancement Statute. This being at least – that he has at least two
9 prior convictions for which the term of imprisonment is contingent upon
10 the value of property involved. Your Honor, this indictment is direct
11 indictment. I believe the Defendant wishes to be arraigned on this
12 charge. Defense ready.

13 MR. SULLIVAN: Defense is ready.

14 SOLICITOR SIKORA: Johnny William Crockett, if you answer by that
15 name, please raise your right hand. Indictment number 2011-GS-46-00625.
16 The State against Mr. Johnny William Crockett for the charge of possession
17 of stolen goods pursuant to Enhancement Statute hereby reads that the
18 Defendant, Johnny William Crockett, did in York county South Carolina on
19 or about February 23rd through February 27th of 2010 did buy, receive and
20 or possess stolen goods valued at more than \$2,000 described as follows:
21 various metal fittings, valves, pipes and other metal items belonging to
22 CTR Incorporated with the value of approximately \$5,500, and the said
23 Defendant knew or had reason to believe that such goods has been stolen.
24 Furthermore, the Defendant has at least two prior convictions for which
25 the term of imprisonment is contingent upon the value of the property

1 involved. All in violation of section 16-13-180 and section 16-157 Code
2 of Laws of South Carolina 1976 as amended. Said indictment being true
3 billed by the Grand Jury on February the 17, 2011. What say you
4 Mr. Johnny William Crockett? Are you guilt or not guilty of the felony
5 wherein you stand indicted?

6 MR. CROCKETT: Not guilty.

7 SOLICITOR SIKORA: How shall you be tried?

8 MR. CROCKETT: By God and my country.

9 SOLICITOR SIKORA: These good and lawful jurors will pass between you
10 and the State upon the trial of this case. If you challenge that or any
11 of them, you will do so as each is called to the bar to be sworn and
12 before he or she is sworn. May God grant you a just deliverance.

13 THE COURT: Thank you very much. You maybe seated. All right,
14 before we get started, anything the Court can do assist you in maybe
15 resolving this case in any form or fashion?

16 SOLICITOR SIKORA: I would defer to defense counsel on that one, Your
17 Honor.

18 MR. SULLIVAN: Your Honor, my client indicates that he still wishes
19 to go forward with trial.

20 THE COURT: Anything before we bring the jury in as far as getting
21 the jury selected?

22 SOLICITOR SIKORA: Yes, Your Honor. There are I believe in are a few
23 things. The State has handed up a copy of the State's witness list. Do
24 you have that up there?

25 THE COURT: Yes.

1 SOLICITOR SIKORA: I have talked with defense counsel, Your Honor,
2 about what we are going to call the charge in front of the jury. We had
3 decided and I believe Mr. Sullivan will confirm that we're going to refer
4 to it as possession of stolen goods as the charge in this case. I have
5 provided defense counsel with three certified prior convictions for which
6 the punishment was contingent upon the value of the property involved and
7 he is aware that we're going forward under that and has received proof of
8 the underlying conviction. And that the State in this case given the fact
9 that we're proceeding under 16-157 would not have to prove value of the
10 goods in this particular case as an element of the offense. Did I
11 understand that correctly, Mr. Sullivan?

12 MR. SULLIVAN: That's correct.

13 THE COURT: All right. All of Rule Five has been met?

14 SOLICITOR SIKORA: Yes, Your Honor, it has.

15 THE COURT: How about Jackson and Denno issue, has all of that been
16 resolved or do we have to go through any of that?

17 SOLICITOR SIKORA: In an abundance of caution, Your Honor, I believe
18 we may have to do a Jackson v. Denno hearing. There was one brief
19 statement made by the Defendant after he was arrested. I believe the
20 defense agrees with me to proceed with that hearing.

21 MR. SULLIVAN: Your Honor, it really comes down well to whether the
22 State wishes to introduce it. I don't think it's anything really
23 inculpatory, but out of abundance of caution, I think we probably should
24 have it. It just depends upon the State intends to introduce that
25 statement.

1 SOLICITOR SIKORA: I'm ready to proceed with Jackson v. Denno, Your
2 Honor.

3 THE COURT: Okay.

4 SOLICITOR SIKORA: The State calls Jerry Waldrop to the stand.

5 JERRY WALDROP, after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 Q Detective, please state your full name for the record?

8 A Jerry W. Waldrop.

9 Q Where do you work?

10 A Rock Hill Police Department.

11 Q What's your position with the police department?

12 A At this time Detective.

13 Q Were you involved in the investigation of this case against
14 Mr. Crockett?

15 A I was.

16 Q And pursuant to that investigation did you ultimately arrest
17 Mr. Crockett on or about March 15 of 2010?

18 A I did.

19 Q Okay. After you arrested Mr. -- where did you arrest him? Do you
20 remember?

21 A It was in the parking lot of Carolina Salvage doing business as
22 Palmetto Recycling.

23 Q In Rock Hill?

24 A Rock Hill, South Carolina.

25 Q Where did you take Mr. Crockett after he was arrested?

1 A To the police station at 120 East Black Street.

2 Q Did you advise him what he's being charged with?

3 A I did.

4 Q Did you read him his Miranda Rights?

5 A I did.

6 Q Could you tell the Court what those Miranda Rights would have been
7 that you explained to the Defendant?

8 A I told him he had a right to remain silent, anything he said --
9 anything he said could and would be used against him in a Court of law.
10 He had the right to have an attorney present for questioning. If can not
11 afford one, one would be appointed to you by the Court at a later date.
12 You had the right to have this attorney present for questioning, and you
13 could stop questions at any time you so desire.

14 Q Where were you when you gave Mr. Crockett his Miranda Rights?

15 A In the interview room in the police station.

16 Q Who else was in there with you if anyone?

17 A No one.

18 Q Just you and Mr. Crockett?

19 A Just me and him.

20 Q How were you dressed at that time?

21 A Shirt and tie.

22 Q Did you have a gun?

23 A Yes.

24 Q Where was your gun?

25 A On my side.

1 Q Okay. Did you ever pull your gun out for any reason?

2 A No, ma'am.

3 Q Did Mr. Crockett indicated to you whether or not he understood those
4 Miranda Rights?

5 A He did.

6 Q Did you ever threaten Mr. Crockett in anyway?

7 A No.

8 Q At that point after you mirandized him at the interview room, did you
9 ask Mr. Crockett any questions?

10 A Any specific questions, no. I made the comment to him that we had
11 him. He was under arrest. I had the documentation that he had provided.
12 I asked him if he wanted to tell me about it. At what point he made a two
13 word statement to me.

14 Q You said documentation that he had provided. Did Mr. Crockett give
15 you something?

16 A No, that he had provided to Palmetto Recycling. I told him we had
17 copies of his ID and all that he had used at Palmetto Recycling.

18 Q Okay. And you asked him if he wished to say anything?

19 A I asked him if he wanted to tell me what happened.

20 Q Did he say anything in response to your inquiry?

21 A Two words.

22 Q What were they?

23 A He told me to fuck off.

24 Q Okay. Did you ever threaten Mr. Crockett in anyway?

25 A No, ma'am.

1 Q Did you ever tell him that he had to give you a statement?

2 A No, ma'am.

3 Q That he had to cooperate with you in any way?

4 A No, ma'am.

5 Q After that conversation you had with Mr. Crockett was he booked in at
6 some point after that?

7 A He was. He was taken directly back to the jail and booked.

8 Q Okay. Were you the officer that booked him in that day?

9 A Our correctional officers do the actual booking, but I was back there
10 when he was being booked in.

11 Q Okay. Did you have the occasion to ask Mr. Crockett as part of the
12 booking process whether or not he was employed?

13 A He did -- she did asked him that.

14 Q Who?

15 A The correctional officer that actually fills out the booking slip and
16 his reply was that he was unemployed.

17 Q Okay. Are you saying that because someone told you that or were you
18 actually there, present when Mr. Crockett made that---

19 A No, I was there when he made that statement.

20 Q Okay. How long were you in the interview room as you called it with
21 Mr. Crockett before he was booked in? How long did that whole
22 conversation take?

23 A It wasn't long.

24 Q Okay.

25 A He may have been sitting in there for some time before I actually got

1 to the station. But when I actually went in with him -- because patrol
2 officers transported him to police station.

3 Q Okay. When you stay it wasn't long, was it a half hour, was it more
4 than a half hour?

5 A It wouldn't have been an half hour. It wasn't long at all once I got
6 there. Because when he told me that, I took him straight to the back.

7 Q So I'm just trying to get ball park estimate so?

8 A Probably ten minutes.

9 Q Probably ten minutes?

10 A Yeah, if that long.

11 Q Did you ever display your weapon at any time during the course of
12 that conversation?

13 A Oh no.

14 Q Nothing further. Please answer any questions defense counsel has.

15 MR. SULLIVAN: Very briefly.

16 CROSS-EXAMINATION

17 BY MR. SULLIVAN:

18 Q Detective Waldrop, you indicated that you arrested Mr. Crockett in
19 the parking lot of Carolina Salvage; is that correct?

20 A That's correct.

21 Q But you were not the officer that actually transported him to the
22 police department?

23 A That's correct.

24 Q And prior to putting him in the patrol car, did you mirandize him at
25 that point?

1 A No, I did not.

2 Q You actually mirandized him once you---

3 A Got---

4 Q ---once you got to the interview room at the police station?

5 A That's correct.

6 Q Okay. Prior to placing him in the patrol vehicle, did he make any
7 other type of statements that day?

8 A No, sir.

9 Q Did he make any other type of statements to you in the interview
10 room?

11 A No, sir.

12 Q Okay.

13 MR. SULLIVAN: Your Honor, we have no additional questions and do not
14 have any motions at this time.

15 THE COURT: You may step down. All right. Pursuant to State vs.
16 Child, there's no conflicting testimony here. It's not a confession, but
17 it's a statement, but it's certainly admissible since all Miranda Rights
18 were apparently met. I so find.

19 SOLICITOR SIKORA: Thank you, Your Honor. The next issue that the
20 State would like to bring up and we have also I believe reached an
21 agreement with defense counsel on this one. This charge we have before
22 you is obviously a direct indictment. Initially Mr. Crockett was arrested
23 for the charges of grand larceny and burglary of the same victim. That
24 case went through the Preliminary Hearing process and was dismissed by the
25 Magistrate. At which point, he was directly indicted for this particular

1 charge. The State does not intend to make any mention whatsoever of those
2 prior charges or the fact that it was dismissed by the Magistrate or the
3 fact that this particular case that he's on trial for today is, in fact, a
4 direct indictment given the fact that it's completely irrelevant to what
5 we have going on today. I believe defense counsel has agreed to that.

6 MR. SULLIVAN: That's correct, Your Honor.

7 THE COURT: Thank y'all.

8 SOLICITOR SIKORA: The parties have also agreed to the stipulation,
9 Your Honor, whenever we have the salvage guy out there testifying,
10 Mr. Fleming, there is a driver's license number noted on the ticket that
11 he will testify was given -- you know that he got from Mr. Crockett's ID.
12 We did provide defense counsel with a certified copy of the Defendant's
13 driving record, but rather than introducing that into evidence, the
14 parties have agreed to stipulate that if that is, in fact, his driver's
15 license number, which is 100748326.

16 MR. SULLIVAN: That's correct, Your Honor. We would stipulate to
17 that. Obviously, we would not desire that his driving record be admitted
18 into evidence, so we'll stipulate that number cited by Ms. Sikora is
19 actually my client's driver license number.

20 THE COURT: Y'all don't forget to do it in front of the jury now.

21 SOLICITOR SIKORA: I'm sorry?

22 THE COURT: Don't forget to do it in front of the jury.

23 SOLICITOR SIKORA: I was going to say when we reach that point of the
24 trial with Mr. Fleming's testifying, how does Your Honor wish prefer to do
25 it? I know some judges, we will to you and you advise the jury that we

1 have come to that stipulation and what a stipulation is. How did you want
2 to handle it?

3 THE COURT: You just go ahead and handle it.

4 SOLICITOR SIKORA: You're okay with me doing that, okay. With
5 respect to prior records of the witnesses that are expected to testify, we
6 have provided defense counsel with all the rap sheets of all the lay
7 witnesses that are listed on our witness list. Honestly, Your Honor, I
8 don't expect to be calling nearly the amount of people that are on our
9 witness list. We will be calling Johnny Fleming. We have given the
10 defense a copy of his rap sheet. I believe that we agreed his impeachable
11 prior convictions would be a 1994 assault and battery with intent to kill
12 and a 2008 unlawful possession of a pistol.

13 MR. SULLIVAN: That's correct, Your Honor.

14 SOLICITOR SIKORA: With respect to the Defendant's impeachable
15 convictions should he decide to testify in this case, Your Honor, I
16 believe we also have an agreement on that. They would include a July 20
17 of 2010 counts of petit larceny, a 2009 conviction for receiving stolen
18 goods valued at \$5,000 or more, a 2004 false information to police, a 2001
19 distribution of crack and related proximity charge, and in 1997, he had
20 four counts of forgery, no dollar amount, for which he was sentenced and
21 then put on a subsequent probationary sentence, which was revoked in
22 November of 2001, which has been provided to defense counsel.

23 MR. SULLIVAN: We take no issues with those, Your Honor. We have
24 been provided with certified copies of all convictions and we do agree
25 that should my client take the stand, those should be impeachable

1 offenses.

2 THE COURT: All right.

3 SOLICITOR SIKORA: We're easy today, aren't we? I would ask – I
4 don't know if the Court would be more comfortable with me doing it, but
5 Detective Waldrop in this case is actually going to be multi-tasking
6 today, Your Honor. He's with us for our trial this morning. There is
7 actually another trial starting this afternoon in front of Judge Alford
8 for which he is the case agent in that as well. I expect to finish, as it
9 will be very brief, Detective Waldrop's testimony this morning, but I
10 would like to let the jury know that he is going to be going back and
11 forth in between two courtrooms, so they're not perceiving that as him not
12 caring because typically the police are here throughout the whole time.

13 THE COURT: That's fine.

14 SOLICITOR SIKORA: Defense?

15 MR. SULLIVAN: We have no problems that, Your Honor.

16 SOLICITOR SIKORA: I have advised defense counsel, Your Honor, the
17 prior conviction that we spoke of from 2009 that Mr. Crockett has, the
18 possession of stolen good value of \$5,000 or more, that particular
19 incident, the victim in that case was CTR, which is also the victim in our
20 present case. The State at this time does not intend to go into any
21 details about that particular conviction, that it is the same victim.
22 However, given I don't know what the defense is going to be in the case,
23 but given that one of the elements the State is required to prove in this
24 case is guilty knowledge, intent. He knew the stuff was stolen. He had
25 reason to believe it was stolen. It wasn't any type of mistake or

1 accident on his part. If the defense is going into that area, the State
2 believes that they have opened the door. We will want to address that
3 issue again as to whether or not the State would be allowed to bring in
4 the fact that the victim in that prior crime was also CTR. It was scrap
5 metal just like this case. We're to put the defense on notice of that.
6 That issue may arise.

7 MR. SULLIVAN: Your Honor, certainly we did put that as part of our
8 Motions in Limine. At this point, obviously we can't anticipate what's
9 going to be testified to at trial with respect to any type of mistakes or
10 accident, Your Honor. So I guess if Your Honor prefer to elicit or
11 proffer that testimony, should we open that door at that point, or if Your
12 Honor wishes address it now, we're prepared.

13 THE COURT: We'll cross that bridge when we get to it. We may not
14 get to it.

15 SOLICITOR SIKORA: Lastly, Your Honor, there has been some
16 discussions, I don't know if defense counsel intends to go any third party
17 guilt arguments, the State would request if they have any intention of
18 casting a suspicion that somebody else did it, or presenting evidence of
19 someone else's involvement would be inconsistent with the Defendant's
20 guilt, the State would like that testimony to be proffered prior to any of
21 those comments or testimony being elicited in front of the jury, Your
22 Honor.

23 MR. SULLIVAN: We don't anticipate going there.

24 SOLICITOR SIKORA: That's it from the State, Your Honor.

25 MR. SULLIVAN: The only final thing, Your Honor, would just be of

1 course a motion -- defense would have a motion to sequester the witnesses.
2 I don't see Mr. Fleming in here right now. I just want to make sure he
3 does stays outside of the courtroom during the duration of the trial.

4 THE COURT: Any problem with that?

5 SOLICITOR SIKORA: No, Your Honor. The State would just ask that
6 case agent be allowed to stay while he's able and the victim in this case
7 from CTR, Mr. Templeton.

8 THE COURT: No problem. I think the defense is interested in
9 Mr. Fleming, right?

10 MR. SULLIVAN: Yes.

11 THE COURT: All right. Let's fetch the jury. While -- let's see, we
12 hadn't -- really hadn't had a break this morning with all the pleas and
13 extra work that we've had, we haven't had a break. Let's take about ten
14 minutes while we get the jury up here.

15 SOLICITOR SIKORA: Okay.

16 MR. SULLIVAN: Did Your Honor get a copy of the voir dire?

17 THE COURT: I did not. I've got a witness list and the motion.

18 MR. SULLIVAN: Okay.

19 THE COURT: Wait a minute. Wait a minute. I may be telling you a
20 story. I've got it. It was put to the side.

21 SOLICITOR SIKORA: The State has no objection to any of the
22 Defendant's voir dire, requested voir dire, Your Honor.

23 THE COURT: And I've got the witness list too.

24 (Break)

25 (Whereupon, the jury was brought in at 11:32 a.m.)

1 THE COURT: Good morning, ladies and gentlemen. Apologize for
2 playing musical chairs with you a few minutes ago. Just as soon as we're
3 asking you to come up, the other jury reached a verdict, so we had to
4 bring them in and take care of that. How many of y'all were on the panel
5 yesterday that was up here? Any of you? Okay. Several of you were. But
6 those that weren't, I'm Paul Birch. I'm a Resident Circuit Judge over the
7 Fourth Circuit. I'm from Chesterfield County. Specifically from
8 Pageland. I'm sure all of you know where Pageland is. It's right below
9 Charlotte on the other side of Lancaster. We're affectionately known as
10 the watermelon capital of the world. So if you need any watermelon around
11 here, chances are it comes from Chesterfield County.

12 Also, we're home of Van Lingle Mungo. How many of you know who Van
13 Lingle Mungo was? Shame. He past away about 12 years ago, but he was our
14 favorite son. He was a fastball pitcher for the Brooklyn Dodgers. When
15 the Dodgers used to play in New York back in the '30's. He was very close
16 friends with Babe Ruth and Earnest Hemmingway. Spent a lot of time with
17 Earnest Hemmingway, especially in Cuba. He came back to Pageland after
18 his pitching career and opened a clothing store and served in years as
19 the Chairman of the Election Commission over there. That's where I got to
20 meet him. He was a unique individual. There's recently been a book
21 written about him. Very interesting book and the library has it. And if
22 you have a chance, get it and read it. It's not a whole lot of famous
23 baseball players come from South Carolina. Some that we did have didn't
24 do too well and made a bad reputation, but he had fairly good reputation.

25 So anyway, that's who I am and where I'm from and it's a pleasure to

1 be back over here. Over 20 years I've been here many times and got a lot
2 of kin people live in York. Got several nieces and a lot of cousins. So
3 sort of extension of being at home when I'm sent to York County.

4 Now the State's called a case for trial we're going need your help
5 on. And that means I'm going to have to ask you some additional
6 questions. Those of you who were here yesterday basically know what's
7 coming. We just need you to respond to them as needed. The particular
8 case we have is entitled the State versus Johnny William Crockett, who is
9 present in Court, and he's charged with the offense of possession of
10 stolen goods. And, Mr. Crockett, so I can ask if anybody is kin to you, I
11 need you to stand and face the jury so they can see you. Thank you, sir.
12 You maybe seated. That is the first question. Anybody on the panel
13 related by blood or connected by marriage or have any business, social
14 religious relationship with Johnny William Crockett? If so, we need you
15 to stand at this time. (no response)

16 Same question, any relationship either by blood or by marriage or any
17 business, social or religious relationship with any of these individuals?
18 If they're present in Court, I'm going to ask them to stand. Jerry
19 Waldrop with the Rock Hill PD, Gerald Maury, Rock Hill PD, Mark Motz,
20 Jonathan Moseley, Duane Templeton, Jim Payne, Johnny Fleming, Terry
21 Taylor. If so, we need you to stand at this time. Yes, sir?

22 UNIDENTIFIED MAN: I know Jerry Waldrop. I have a side job where I
23 transport with York County Coroner's Office, so I see him at certain
24 scenes.

25 THE COURT: You work for the Coroner?

1 UNIDENTIFIED MAN: I transport on the side. My side job is
2 transport.

3 THE COURT: Okay. Would your relationship -- if you were to be
4 seated on this jury, could you be both fair to the State and to the
5 Defendant?

6 UNIDENTIFIED MAN: Yes, sir.

7 THE COURT: Thank you, sir. We do need your name and number.

8 MR. BALLARD: Number seven, Joseph Ballard.

9 THE COURT: Looking at the indictment it alleges that this offense
10 occurred in York County, on or about February the 23rd through the 27th of
11 February, 2010 year, of course, in York County. It just says possession
12 of stolen goods. It looks like it was various fittings, values, pipes and
13 other metal items belonging to the CTR Incorporated. That's the
14 allegations. Does anybody have any personal knowledge or developed any
15 opinion about the guilt or innocence of the Defendant in this matter? If
16 so, we need you to stand, but don't make any comment. (no response)

17 Does anybody know of any reason, any prejudice or bias or any moral
18 reason you may have that you couldn't be both fair to the State and to the
19 Defendant? If so, we need you to stand at this time. (no response)

20 Anybody on the panel or immediate family member or very close
21 personal friend presently employed or employed in the past by any law
22 enforcement agency or by the Solicitor's Office? We need your name and
23 number and just tell us how that applies.

24 MR. EDWARDS: Robert Edward, number 75. My son-in-law is a Charlotte
25 Mecklenburg Police Officer.

1 THE COURT: Thank you, sir.

2 MS. MCADAMS: Janice McAdams, number 151. My nephew is a South
3 Carolina Highway Patrolman stationed in York County.

4 THE COURT: Thank you.

5 MR. FANTA: David Fanta, number 78. My father retired from the
6 Highway Patrol. My brother is a Lieutenant Police Officer in Wilmington.

7 THE COURT: Where is that?

8 MR. FANTA: Wilmington.

9 THE COURT: Wilmington, North Carolina. Thank you, sir.

10 MR. LAFORTUNE: My name is Robert Lafortune, 135. I was a police
11 officer for nine years in Kingston, Massachusetts for the Massachusetts
12 Police.

13 THE COURT: Any member of the panel a member of any group such as
14 Mother's Against Drunk Drivers, Student Against Drunk Driving, KAB or any
15 other association that lobbies on behalf of victim's rights or for tougher
16 penalties in the Criminal Justice System, things like that? If so, we
17 need you to stand. (no response)

18 Any of you contribute to the Trooper's Association, the Law
19 Enforcement Association, Sheriff's, Fraternal Order of Police, Sheriff's
20 Association or any support organizations for law enforcement? If so,
21 please stand. We need name and how that applies.

22 MR. EDWARDS: Robert Edwards, number 75, Fraternal Order of Police.

23 THE COURT: You're a contributor or a member?

24 MR. EDWARDS: Sir?

25 THE COURT: Are you a contributor or member?

1 MR. EDWARDS: Contributor.

2 MS. MCCONNELL: Sheryl McConnell, 153. I contribute to the Sheriff's
3 Department.

4 THE COURT: Thank you.

5 MR. FANTA: David Fanta, number 78. I've given to the Sheriff's
6 charities depending on where I live.

7 THE COURT: Do any of you or any family member own their own
8 business? If you would stand and tell us what that business is please.

9 MR. EDWARDS: Robert Edwards, number 75. Edwards Lawn Care in Fort
10 Mill.

11 MR. LAFORTUNE: Robert Lafortune, 135, Extreme Wood Products, Cabinet
12 Company.

13 THE COURT: Yes.

14 MS. MILLER: Lee Miller, 165. I have my own personal history
15 business.

16 MRS. REYNOLDS: Ann Reynolds, 194. My husband owns Go Green Lawn
17 Care.

18 THE COURT: Lawn care?

19 MRS. REYNOLDS: Yes.

20 THE COURT: Yes?

21 MS. KEEN: Joyce Keen, number 130. I have a private practice.

22 THE COURT: Yes?

23 MRS. COPE: Fran Cope, 52. My husband owns Jay and Cope
24 Construction.

25 THE COURT: Thank you.

1 MR. HICKLIN: Jonathan Hicklin, 109. I'm a physician and own Rock
2 Hill Eye Center.

3 THE COURT: Thank you. Anybody on the panel ever been employed by
4 Carolina Salvage or any scrap metal business? (no response)

5 Now this is a qualified question because I'm sure many of you
6 probably have been the victim of a crime, possibly violent or petit, but
7 it's qualified, so please listen to it carefully. If you or immediate
8 family member or very close friend have been the victim of a theft related
9 crime and you feel that because of that, that you cannot be fair and
10 impartial to this case toward both the State and the Defendant, we need to
11 know about that. But if you would, we just need you to stand. Don't make
12 any comment until I ask you to. (no response)

13 Anybody on the panel presently represented by the Solicitor's Office
14 or by the Public Defender's Office or represented in the past by either?
15 (no response)

16 Does anybody on the panel know of any reason whatsoever why you feel
17 like that you could not be a fair and an impartial juror in this case? We
18 need you to stand at this time. (no response)

19 Any further inquires from either side?

20 SOLICITOR SIKORA: None from the State, Your Honor.

21 MR. SULLIVAN: None from the Defense, Your Honor.

22 THE COURT: All right. Strikes are five and five. Ladies and
23 gentlemen, I'm going to turn it over to the Clerk's Office. You will be
24 called by a list to come down. Please bring your personal belongings with
25 you in case you're seated on the jury.

1 CLERK OF COURT: Number 135 Robert Lafortune. (White male coming
2 forward.) What say you for the State?
3 SOLICITOR SIKORA: Please present this juror.
4 CLERK OF COURT: Defense?
5 MR. SULLIVAN: Madam Clerk, please excuse him.
6 CLERK OF COURT: You may return to your seat. Number 82, Kyle
7 Foreman. (White male coming forward.) What say you for the State?
8 SOLICITOR SIKORA: Please present this juror.
9 CLERK OF COURT: Defense?
10 MR. SULLIVAN: Madam Clerk, please seat the juror.
11 CLERK OF COURT: Have a seat in the jury box. Number 53, Charles
12 Cote. (White male coming forward.) What say you for the State?
13 SOLICITOR SIKORA: Please present this juror.
14 CLERK OF COURT: Defense?
15 MR. SULLIVAN: Please seat the juror.
16 CLERK OF COURT: Have a seat in the jury box. Number 76, Eric Ernst.
17 (White male coming forward.) What say you for the State?
18 SOLICITOR SIKORA: Please present this juror.
19 CLERK OF COURT: Defense?
20 MR. SULLIVAN: Please excuse the juror.
21 CLERK OF COURT: Please return to your seat. Number 194, Ann
22 Reynolds. (White female coming forward.) What say you for the State?
23 SOLICITOR SIKORA: Please present this juror.
24 CLERK OF COURT: Defense?
25 MR. SULLIVAN: Please seat the juror.

1 CLERK OF COURT: You may have a seat in the jury box. Number 130,
2 Joyce Keen. (White female coming forward.) What say you for the State?

3 SOLICITOR SIKORA: Please excuse this juror.

4 CLERK OF COURT: You may return to your seat. Number 216, Porsche
5 Smith. (Black female coming forward.) What say you for the State?

6 SOLICITOR SIKORA: Please present this juror.

7 CLERK OF COURT: Defense?

8 MR. SULLIVAN: Please seat the juror.

9 CLERK OF COURT: You may have a seat in the jury box. Number 35,
10 Rhonda Buckner. (White female coming forward.) What say you for the
11 State?

12 SOLICITOR SIKORA: Please present this juror.

13 CLERK OF COURT: Defense?

14 MR. SULLIVAN: Please excuse the juror.

15 CLERK OF COURT: You may return to your seat. Number 92, Maria
16 Gomez. (White female coming forward.) What say you for the State?

17 SOLICITOR SIKORA: Please present this juror.

18 CLERK OF COURT: Defense?

19 MR. SULLIVAN: Please seat the juror.

20 CLERK OF COURT: Have a seat in the jury box. Number 149, Alvaro
21 Martinez. (White male coming forward.) What say you for the State?

22 SOLICITOR SIKORA: Please present this juror.

23 CLERK OF COURT: Defense?

24 MR. SULLIVAN: Please seat the juror.

25 CLERK OF COURT: Have a seat in the jury box. Number 14, Susan Bell.

1 (White female coming forward.) What say you for the State?

2 SOLICITOR SIKORA: Please present this juror.

3 CLERK OF COURT: Defense?

4 MR. SULLIVAN: Please seat the juror.

5 CLERK OF COURT: Have a seat in the jury box. Number 218, John

6 Stefan. (White male coming forward). What say you for the State?

7 SOLICITOR SIKORA: Please present this juror.

8 CLERK OF COURT: Defense?

9 MR. SULLIVAN: Please seat the juror.

10 CLERK OF COURT: Have a seat in the jury box. Number 148, Angela

11 Martin. (White female coming forward.) What say you for the State?

12 SOLICITOR SIKORA: Please present this juror.

13 CLERK OF COURT: Defense?

14 MR. SULLIVAN: Please seat the juror.

15 CLERK OF COURT: You may have a seat in the jury box. Number 244,

16 Benjamin Williams. (White male coming forward.) Say you for the state?

17 SOLICITOR SIKORA: Please excuse this juror.

18 CLERK OF COURT: You may return to your seat. Number 52, Frances

19 Cope. (White female coming forward.) What say you for the State?

20 SOLICITOR SIKORA: Please present this juror.

21 CLERK OF COURT: Defense?

22 MR. SULLIVAN: Please excuse the juror.

23 CLERK OF COURT: You may return to your seat. Number 75, Robert

24 Edwards. (White male coming forward).

25 SOLICITOR SIKORA: Please present this juror.

1 CLERK OF COURT: Defense?

2 MR. SULLIVAN: Please excuse the juror.

3 CLERK OF COURT: You may return to your seat. Strikes are State two;
4 Defense, five. Number 110 Theresa Higgins. (White female coming
5 forward.) Say you for the State?

6 SOLICITOR SIKORA: Please present this juror.

7 CLERK OF COURT: Defense?

8 MR. SULLIVAN: Please seat the juror.

9 CLERK OF COURT: You may have a seat in the jury box. Number 173,
10 Donald Norris. (White male coming forward.) What say you for the State?

11 SOLICITOR SIKORA: Please excuse the juror.

12 CLERK OF COURT: You may return to your seat. Number 25, Mindy
13 Blitzer. (White female coming forward.) What say you for the State?

14 SOLICITOR SIKORA: Please present this juror.

15 CLERK OF COURT: Defense?

16 MR. SULLIVAN: Please seat the juror.

17 CLERK OF COURT: Number one, Habiba Abdallah. (Black female coming
18 forward). Say you for the State?

19 SOLICITOR SIKORA: Please excuse this juror.

20 CLERK OF COURT: You may return to your seat. Number 182, Vickie
21 Pennington (White female coming forward.) Say you for the State?

22 SOLICITOR SIKORA: Please present this juror.

23 CLERK OF COURT: Defense?

24 MR. SULLIVAN: Receive the juror.

25 CLERK OF COURT: Have a seat in the jury box.

1 THE COURT: We'll receive one alternate.

2 CLERK OF COURT: Number 153, Sheryl McConnell. (White female coming
3 forward.) Say you for the State?

4 SOLICITOR SIKORA: Please present this juror.

5 CLERK OF COURT: Defense?

6 MR. SULLIVAN: Please excuse the juror.

7 CLERK OF COURT: You may return to your seat. Number 93, Gary
8 Goodson. (White male coming forward.) Say you for the state?

9 SOLICITOR SIKORA: Please present this juror.

10 CLERK OF COURT: Defense?

11 MR. SULLIVAN: Please seat the juror.

12 CLERK OF COURT: Have a seat in the jury box.

13 THE COURT: Any motion considering the jury selection at this time?

14 SOLICITOR SIKORA: Nothing from the State, Your Honor.

15 MR. SULLIVAN: Nothing from Defense.

16 THE COURT: Thank you very much. Ladies and gentlemen that remain on
17 the panel in gallery area back there, we thank you for coming up and
18 taking part and being willing to serve. Good news, it looks like you're
19 going to get the afternoon off; and the bad news is, you need to call in
20 at seven tonight. Thanks. Dismissed for the day. Any matters before we
21 swear the jury?

22 SOLICITOR SIKORA: May we approach just briefly, Your Honor?

23 (Whereupon a bench conference at 12:02 p.m. off the record and out of
24 hearing of the jury.)

25 THE COURT: I apologize. Juror 149, do you pronounce your name

1 Martinez or Martinez?

2 MR. MARTINEZ: Martinez, sir.

3 THE COURT: I'm going to appoint you foreperson of the jury, so if
4 you'll keep that seat that you're in for the duration of the trial. The
5 rest of you can sit wherever you want to when you come back in, but the
6 foreperson needs to keep that same seat. All right, Madam Clerk.

7 CLERK OF COURT: Please stand and raise your right hands.

8 (WHEREUPON, the jury was sworn at 12:03 p.m.)

9 THE COURT: It's a little after 12. We're going to go ahead and make
10 some preliminary remarks to you. I'm going to let you know how we're
11 going to proceed in this trial and the phases that we go through, then
12 before we begin testimony, we'll break for lunch then come back. I don't
13 want to work way into the lunch hour or have to skip lunch.

14 As you have heard and already know, we're trying a criminal cases
15 this week. This is a criminal allegation and an indictment has been
16 issued against Mr. Crockett. He's entered a plea of not guilty. And that
17 puts the burden on the State of South Carolina to prove his guilt. Any
18 criminal case in this state, in order to get a conviction, the State must
19 prove guilt beyond a reasonable doubt. All defendants, including this
20 Defendant, when they come in this courtroom are presumed innocence. That
21 presumption stays with them throughout any trial and only ends if and when
22 the jury reaches a verdict based on proof beyond a reasonable doubt.

23 Both sides will be allowed to make opening statements to you. It's
24 not mandatory, but in most cases they do, and it will be a brief opening
25 statement to let you know how they're going to proceed in the case. In

1 other words, it's basically an outline as to what they will be presenting
2 to you.

3 After that will come the evidentiary portion of the trial where you
4 will receive the evidence. It is crucial that you listen and observe the
5 evidence because you are the triers of the facts in this case. South
6 Carolina trial judge is a neutral referee in effect. I do not get
7 involved in the fact finding. I am the judge of the law. You are the
8 sole finders of the facts.

9 The end result of any trial in a case is to reach a verdict. The
10 verdict is Latin derivative word, which means a true saying or can be said
11 as a search for the truth. So it can be said that the trial is the search
12 for truth. How do you reach a verdict? You listen to all the evidence
13 that's presented by both sides. You sort that evidence out. And you
14 figure out what you believe to be true. That true state of facts as you
15 find it, you'll apply the law of the case that I provide to you during my
16 judge's charge to those facts and thus reach a verdict.

17 From time to time, I'll have to rule on admissibility of evidence or
18 possible procedure violations, which are called to my attention by
19 objections. Do not feel that I favor one side or the other how I may rule
20 on such an objection. I have to go by the Rules of Evidence to best of my
21 knowledge and I in no way am getting involved in the facts and rendering
22 an opinion when that happens. So please keep that in mind.

23 Since you are the finders of the facts, during that evidentiary
24 portion of the trial, please don't fall asleep on us. I know after lunch
25 that's tempting to do. If you feel like that you're going to doze off,

1 let us know we'll take a coffee break. Okay?

2 Now after the evidentiary portion of the trial will come the closing
3 arguments of the trial where both sides will be given ample opportunity to
4 argue their position to you to try to see the evidence as they see it.
5 What the attorneys state to you is not evidence. They may repeat the
6 evidence or quote the evidence or refer back to the evidence, but what
7 they say is not the evidence. The evidence is what you received from this
8 witness stand. They may take different forums. It maybe testimony. It
9 can be photographs, documents, other physical type items. So it's a vast
10 array of things that maybe evidence.

11 All right, after the closing arguments will come the time for the
12 judge's charge of the law where I'll give the law to you to apply to the
13 facts that you find. Only after all those phases are completed will you
14 be asked to deliberate this case. So in saying that, I ask you and
15 instruct you at this time do not discuss this case with anyone. Don't
16 even discuss amongst yourselves until you're asked to deliberate. Should
17 anybody try to approach you during Court or during a break, they try to
18 discuss this case with you in any form or fashion, do not communicate with
19 them and immediately let me know if it's during Court hours or law
20 enforcement know should somebody try to attempt that. It would be highly
21 improper. Very seldom happens, but I do need to talk with you about that
22 in case somebody were pulled -- or try to pull something like that.

23 Whenever you are asked to reach a verdict, it will have to be a
24 unanimous verdict. All 12 deliberating jurors will have to be in
25 agreement on that particular verdict. Some judges don't allow note

1 taking. I don't mind if you want the keep notes, but personally if I were
2 on jury, I would not do it. Because I often thing back to college days.
3 Quite often you would be there in class listening to the professor and you
4 try to write down something he was saying and while you're writing down
5 what you want to write down, you miss something else he says. Some of you
6 maybe capable of hearing two or three people at one time and keeping it
7 all in track, but I don't have that ability, so that's one weakness that
8 we as humans have that quite often you get locked in on one thing and you
9 miss something that you may want to hear on another aspect. So if you
10 keep notes, keep that in mind. And also keep in mind that you can't share
11 them with anybody else. It's strictly for your personal use. I think
12 that's all I need to tell you now. I'll have other instructions later on
13 when we get further into the case. The State, as I told you, has the
14 burden of proof in the case, so they get to go first. Madam Solicitor.

15 SOLICITOR SIKORA: Thank you, Your Honor, may it please the Court.
16 Good afternoon. I know lunch is approaching. I will keep that in mind
17 and try to be brief with y'all today. This case all began back on
18 February 24th of 2010 last year. Mr. Templeton who you see seated there
19 in the jacket, got up for work just like any other day, headed in. But
20 when we got to work, he realizes this wasn't going to be a typical day for
21 him on the job. Mr. Templeton works for a company called CTR. They're
22 over on Porter Road in Rock Hill. CTR works in cryogenic technology. Now
23 I went to law school for a reason. I'm not good on the science and
24 engineering, so Mr. Templeton is going to be talking to you more about
25 what cryogenics means. But basically if you were to go out to CTR's

1 property, you would see they have these big huge metal tanks that looks
2 like a lot like giant waterheaters and they have these pipes and valves
3 and fittings that are attached those tanks. So when Mr. Templeton gets to
4 work that day, he realizes a bunch of those pipes and valves and pieces of
5 metal that are attached to the outside of these giant tanks are gone. So
6 he calls the police. Rock Hill police come out. They make a report of
7 the theft. Fast forward, three days later down to February 27th of last
8 year. There's another business on Porter Road. Some people refer it to
9 as Carolina Salvage. Some people call it Palmetto Recycling. I'm sure
10 you'll hear the witnesses in the case as both Carolina and Palmetto both
11 ways. They're practically right next door to the CTR business. And on
12 February 27th, the gentleman comes in to Carolina or Palmetto Salvage with
13 some scrap metal to sell. That's the business that Carolina/Palmetto is
14 in. And that gentleman you will hear from testimony from one of the
15 employees of Carolina Palmetto was Mr. Johnny Crockett, the Defendant.
16 The employee took a look at what Mr. Crockett had brought into sell as
17 scrap metal. He believed he kind of recognized those materials and that
18 they looked familiar to him. Ultimately the police were called out to
19 Carolina/Palmetto Salvage. Mr. Fleming alerted the police to the fact
20 that he believed he recognized these good as being goods from CTR, the
21 business right down the road. Mr. Templeton, the employee from CTR also
22 came down to Carolina/Palmetto Salvage and was able to identify these
23 items as the items which had been taken from the business just three days
24 before.

25 Now Mr. Crockett is charged with possession of stolen goods. And

1 this are two basic things that the State needs to prove that encompass
2 that charge. The first of those would be it is against the law for a
3 person to buy, receive or possession stolen property. The second of those
4 is that the person has to know and in this case that would be Mr. Crockett
5 that the goods were stolen or have reason to believe that the goods were
6 stolen. It doesn't matter whether anyone was ever convicted of the actual
7 theft of these good themselves. That's irrelevant in what we're looking
8 at today. It is the State's job in this case to prove Mr. Crockett's
9 guilt beyond a reasonable doubt. And I'm sure if any of you have ever
10 watched any type of criminal TV show or courtroom drama, you have heard
11 that phrase, "proof beyond a reasonable doubt," many times before. But
12 now that you're actually sitting here on a jury in a real criminal case,
13 what does that mean? The judge is going talk to you more about that at
14 the end of this trial. But I'm going to touch on it briefly with you here
15 now. One definition of proof beyond a reasonable doubt is the kind of
16 proof that leaves you firmly convinced after you have heard all of the
17 evidence at the end of this case of Mr. Crockett's guilt. It is going to
18 be your job as jurors in this case to decide the facts. You're going to
19 hear testimony from a few witnesses. The good news is I don't expect this
20 trial to be very long. And whenever you're listening to the evidence in
21 this case and observing the evidence in this case, you're going to use
22 your common sense to help you make that decision about Mr. Crockett's
23 guilt or innocence at the end of this case. Just like you would use your
24 common sense in your every day life to help you make those decisions. At
25 the end of the case, I'm going stand back before you in closing arguments

1 and ask you to find the verdict that speaks the truth and that verdict is
2 guilty. Thank you.

3 THE COURT: Thank you, Solicitor.

4 MR. MCKINNON: Ladies and gentlemen, I'll also be very brief. I know
5 we are hungry. As the judge said, as Solicitor said, we are participating
6 in a criminal trial. The State will attempt to prove that my client
7 Mr. Crockett possessed stolen property. That is they need to prove that
8 he, in fact, possessed such material. That material was, in fact, stolen
9 and he had knowledge that it was stolen at the time or he should have
10 known it was stolen. As they're trying to prove these elements as we call
11 them, I want you to keep in mind a few legal principals. One, I think the
12 judge has already touched on, that Mr. Crockett is absolutely presumed
13 innocent throughout this entire process. I think that is very important
14 to let that sink in. As the State is presenting their case, as the
15 Defense is presenting theirs, as you're being addressed by the judge, at
16 all times Mr. Crockett is innocent. Only if and until you all go back to
17 your deliberations, only then and if then you decide he is, in fact,
18 guilty, that is when that shifts. Until then, absolute presumption of
19 innocence. Okay?

20 Second, and this goes hand and hand with that presumption is the
21 State has this burden of proof. What that means is Mr. Crockett doesn't
22 have to do anything, say anything, present any evidence whatsoever to
23 convinced you of his innocence, nothing. As we just stated, it ties into
24 his presumption of innocence, he remains innocent. The State has every
25 burden to overcome that. And they must present you enough evidence,

1 enough testimony that convinces you that he is guilty beyond a reasonable
2 doubt.

3 Again, that's the third principle that I want to talk to you about.
4 You also heard that this morning. Mrs. Sikora, the Solicitor, gave you
5 one definition. It's been defined many different ways over the years by
6 legal scholars. I'll give you another definition. That is that
7 reasonable doubt is doubt that would make a reasonable person hesitate to
8 act. I'll give you one more I guess a illustrative definition, if that
9 will help some people in a more graphical sentence. If you can picture
10 the proverbial Scales of Justice, as they sit on the table, they started
11 out pretty even as they begin the case. Nobody knows what's going to
12 happen. Let's say you came on a different court week and instead you were
13 down town in the Civil Court. That is you were hearing a lawsuit. One
14 side would have to type those scales just a hair. We called that
15 preponderance of the evidence. Just a hair, to convinced you that one
16 side had the correct version. And that's fine for a case like that. The
17 stakes pretty much are generally property. That's how our systems works
18 in that way. Here in the criminal system, the stakes are much higher.
19 Possibly our most cherish liberty, our most cherished right, that is
20 liberty could possibly be at stake. So in a criminal case, those scales,
21 the State to prove his guilt must shift them much further. If that helps,
22 I hope it does. This is not all doubt must be erased, but all reasonable
23 doubt. And, again, you've heard several difference definitions, but if
24 that will help you, I hope it does. Again as the State presents its case,
25 I just want you to think about those principals, how that applies to this

1 case, how it applies to my client, how it applies to the facts. Okay.
2 And at the end of the day, I hope you all reach the same conclusion that
3 he is in fact not guilty. Thank you.

4 THE COURT: Thank you, counsel. Okay. We're going to break for
5 lunch. You're all familiar with the area. Restaurants across. There's
6 one across the road and several back in toward York. We need you back
7 here at 2:00 o'clock. Y'all have a good lunch.

8 (Jury out for lunch at 12:20 p.m.)

9 THE COURT: We're in recess for lunch.

10 (Lunch break at 2:20 p.m.)

11 (Back on the record at 2:04 p.m.)

12 THE COURT: You may be seated. Thank you.

13 (Jury back in at 2:07 p.m.)

14 THE COURT: Solicitor, everyone is accounted for. You may call your
15 first witness.

16 SOLICITOR SIKORA: Thank you, Your Honor. I did want to make the
17 Court aware that in the other courtroom, they have started the second
18 criminal trial we discussed earlier. So Detective Waldrop, since he's
19 also involved in that case, will be going back and forth in between the
20 courtroom.

21 THE COURT: That will be fine.

22 SOLICITOR SIKORA: The State calls Wayne Templeton to the stand.
23 Mr. Templeton, if you'll come right up here with me and madam clerk will
24 swear you in. And after she does, if you'll have a seat in the witness
25 box.

1 BILL DUANE TEMPLETON, after being duly sworn, testified as
2 follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR SIKORA:

5 Q Good afternoon. Could you please state your full name for the
6 record?

7 A Bill Duane Templeton.

8 Q Where do you work?

9 A CTR.

10 Q And how long have you worked for them?

11 A I have been there for ten years.

12 Q And what is your current position with CTR?

13 A My position is Department Supervisor for the trailer and the bulk
14 tank division.

15 Q Okay. Could you tell us what CTR stands for?

16 A Cryogenic Technical Resources.

17 Q Could you explain to the jury what exactly it is that CTR does?

18 A We build and manufacture equipment that most of it will be installed
19 in hospitals. They are cryogenic liquid storage tanks. Liquid oxygen,
20 argon, nitrogen. And one of our tanks could be installed at a hospital.
21 Most of them are. They will supply an entire hospital with oxygen vapor.

22 Q So about how big would an average tank be?

23 A Our tanks range in size from 150 liters, about the size of a
24 refrigerator to a 13,000 gallon vessel, which is over 50-foot tall.

25 Q So it is fair to say -- you correct me if I'm wrong -- these tanks

1 hold either a liquid or some type of gas?

2 A All of these tanks hold both. The bottom section of the vessel is
3 cryogenic liquid, the top portion is the vapor. A small ounce of that
4 liquid makes eight times that in vapor.

5 Q Is there anything attached to the outside of these tanks?

6 A There's quite a bit of things that are attached to outside. The tank
7 itself is just a storage tank. We have a large amount of copper piping,
8 stainless steel piping, tubing, valves that actually produce that liquid
9 into a vapor. It doesn't automatically do it on its own. So the parts
10 have to be put into place to accomplish this.

11 Q I am handing you what's been marked for identification purposes
12 State's Exhibits Six, Seven and Eight. Would you please take a moment and
13 look at those photographs.

14 A Well should I—

15 Q Don't talk about what's in them just yet.

16 A Okay.

17 Q Do you recognize those photographs?

18 A Absolutely. The photos that I'm looking at—

19 Q Okay, before you talk about what you're seeing, you recognize
20 what's—

21 A Absolutely—

22 Q What is in six, seven and eight?

23 A I do, that's correct.

24 Q The items that are depicted in those photographs, will they assist
25 you in explaining what these tanks that we're talking about look like when

1 you're talking to the jury?

2 A They will.

3 Q At this time, the State would like to offer into evidence exhibits
4 six, seven and eight.

5 MR. SULLIVAN: No objection.

6 (WHEREUPON, State's Exhibits Nos. SIX, SEVEN, AND
7 EIGHT were received into evidence.)

8 SOLICITOR SIKORA: Permission to publish to the jury, Your Honor?

9 THE COURT: Yes.

10 SOLICITOR SIKORA: We're going to put them on a big projector so
11 everyone can see what we're talking about. It will take just a second to
12 bring them up. Madam Clerk, would you please dim the lights for us some.

13 DIRECT EXAMINATION RESUMED

14 BY SOLICITOR SIKORA:

15 Q Okay, what we are looking at now is State's Exhibit Number Six.
16 Could you describe what we're seeing in this picture?

17 A That picture there is a picture of what we call the main tank safety
18 release. Those are two pieces that will -- basically that tank at any
19 time can over-pressurize, which makes it's like a bomb literally. Those
20 safeties are put into place to relieve the head pressure off of that
21 vessel in a safely manner.

22 Q So is it fair to say in layman's terms, because I've already warned
23 science is not my thing, all these pipes that we see in this exhibit, do
24 those valves and pipes help control the pressure inside the tank?

25 A They do. The copper tubing that's sticking in the air is actually

1 meant to be pointed in the downward position, so when this tank does blow
2 off, that the vapor actually blows downward instead of up or towards any
3 personnel that may be in or around the tank.

4 Q Okay. Are all the tanks that are at CTR, would all of them typically
5 have this type of -- some type of metal or valving attached to it?

6 A Every tank, piping, everything that we do has some sort of safety in
7 place.

8 Q Which would be similar to what we're looking at here?

9 A Absolutely.

10 Q Okay. Can you go to the next photograph? We are now looking at
11 State's Exhibit Number Seven. Would this also be a representation of a
12 typical tank and pressure system that would be found at CTR?

13 A Yes, ma'am, absolutely same set up.

14 Q Are you able to see this photograph---

15 A I am---

16 Q ---pretty well?

17 A Uh-huh (affirmative response).

18 Q Could you tell me what this little tag with numbers on it symbolize?

19 I believe there's one down here. Can you see where I'm pointing?

20 A Yes, I see them. That -- those are -- those belong to well let me
21 back up. One of our major customer is a customer called Air Products
22 Incorporated. Air Products specifically sends those valve tags to CTR to
23 be installed on their equipment. What they are is identification tags
24 that will let any service technician know and be able to identify what
25 those valves are for.

1 Q Can you buy these type of tags at your local hardware store?

2 A You cannot, no.

3 Q And if we can forward to the next exhibit, please. For purposes of
4 the record, this would be State's Exhibit Number Eight that we're looking
5 at. And in this particular photograph, are those tags similar to what
6 you're discussing?

7 A Yes, identical.

8 Q Would those tags be found anywhere else that you're aware of?

9 A No.

10 Q Other than at CTC (sic: CTR)?

11 A No, absolutely not.

12 Q Thank you. If you could please bring up the lights again, Madam
13 Clerk. Could you just describe for the jury generally if you were to go
14 to CTR, what is the general layout of the property?

15 A We have about a 20,000 square foot building that we have several
16 departments throughout the building. On the outside of the building, we
17 have about 500 -- literally 500 of those bulk tanks that you just saw
18 pictures of. Most of them are either waiting to be worked on or have
19 already been worked on and is now a finished product and all the customer
20 has to do is call and say, hey, we need such and such tank delivered to
21 such and such hospital.

22 Q Now are you aware of any other company in Rock Hill that does the
23 kind of work that you do?

24 A No. The facility that I work for, there's only five in the whole
25 United States.

1 Q Do you remember were you working back on February 24th of 2010?

2 A Sorry, say that again.

3 Q Where you working at CTR---

4 A Yes, absolutely---

5 Q ---on February the 24th of 2010?

6 A Yes.

7 Q I'm going to ask you just because Madam Court Reporter has to take
8 down everything that we're saying so it is much easier for her, even if
9 you kind of know where I'm going, to wait until I finish the question.

10 A Okay.

11 Q So she can take down one at a time. So to back up, you were working
12 on February the 24th?

13 A Yes.

14 Q Okay. Do you remember anything unusual that might have happened that
15 day?

16 A Yes. We noticed that there was quite a few parts missing from quite
17 a few of our bulk tanks in the backyard, yes.

18 Q What -- could you describe what kind of parts you're talking about?

19 A Basically all of the parts that you guys have seen photos of here
20 today. A lot of copper piping, tubing, stainless steel piping and tubing,
21 heavy brass valves and regulators and safeties that were installed on our
22 tanks.

23 Q Would these parts that were missing, would they have been attached to
24 the tank or loose in the yard or where would they have been?

25 A They're all attached to the tanks, yeah.

1 Q Now you had worked the day before, February 23, of 2010?

2 A I did, yes.

3 Q When you were working the day before, were these parts that you were
4 describing, these metal parts, were they attached to the tanks that day,
5 the day before?

6 A They were, yes.

7 Q What time did you leave that day, the 23rd?

8 A It's probably five or 5:30.

9 Q About what time would you have come in on February 24th?

10 A 6:30.

11 Q And do you recall about how many tanks had these metal pieces missing
12 off of them?

13 A I think we counted about 30.

14 Q I know we have discussed the metal tags. What about the other piping
15 we had seen in State's Exhibits Six, Seven and Eight? Is that the type of
16 pipe that I can just go to Home Depot and purchase?

17 A Absolutely not. All the piping and tubing and valves that we use are
18 very specific to our industry. It's mainly because of the PSI rating for
19 all of them. If cryogenic liquid sits in a valve, it's starts to boil off
20 at ambient temperature, which is basically your outside temperature, and
21 that valve can over-pressurize. It boils off into a vapor. So all of our
22 parts have to be rated for 450 PSI and higher. Nothing that you'll ever
23 find in a hardware store or Lowe's or Home Depot.

24 Q Can you tell me what PSI means?

25 A Pounds per square inch. How much the part itself will hold. It will

1 contaminate or I mean contain until it will actually explode.

2 Q So when you say pounds per square inch, are we talking about pounds
3 of pressure? Am I understanding that correctly?

4 A Pressure, uh-huh (affirmative response).

5 Q That it's passing through these parts?

6 A Yes, right.

7 Q Okay. While -- when you got there on the 24th and you realized this
8 stuff was gone, was this reported to police?

9 A It was, yes.

10 Q Can you tell us the stuff that was missing back on
11 February 24th about how much that would cost you in terms of dollars to
12 replace?

13 A Well it's hard to put an exact number on it, but just the parts alone
14 were over \$5,000. The time and material that it would take to repair all
15 that could exceed well over ten to \$12,000. Not to mention a lot of those
16 tanks were finished product tanks. If a customer had an install
17 scheduled, you know, we basically had to call our customer, you know, to
18 cancel their installs on their tanks because we had to do a lot of back
19 tracking and basically fix all the repairs.

20 Q Did you give anyone permission to remove these items from these
21 tanks?

22 A Absolutely not, no, ma'am.

23 Q Are you aware of anyone else from CTR that might have given
24 permission to remove these---

25 A Absolutely not, no.

1 Q Would there have been any logical business reason for CTR to remove
2 these items from the tanks?

3 A No.

4 Q And were you able to tell just from looking at the tanks when you
5 came in that day how these items were removed?

6 A Yes. Most of them were cut off by either a reciprocating sawzall
7 blade or either grabbed and just kind of bent until they finally just
8 broke off.

9 Q What makes you think a reciprocating saw blade may have done that?

10 A Well you can tell by the jagged edges. The sharp jagged edges when
11 they start to cut through the material that it leaves.

12 Q So the police made a report of this theft?

13 A Correct.

14 Q And do you know if the police were ever able to recover any of the
15 items that were reported in the theft—

16 A They were---

17 Q ---of February 24?

18 A Correct, they were.

19 Court Reporter: You're going to have to wait on her question.
20 You're answering over the top of a question.

21 A All right.

22 Court Reporter: Thank you.

23 Q So just to clarify for purposes of the record, do you know if the
24 police were ever able to recover any of the items that were reported
25 missing on February 24th?

1 A Yes.

2 Q Now have you ever heard of a company called Carolina or Palmetto
3 Salvage?

4 A Yes.

5 Q Do you know where it is?

6 A Right next door to our facility.

7 Q Would that be in York County, South Carolina?

8 A Yes.

9 Q Were you ever asked to identify any scrap metal that was taken to
10 Carolina or Palmetto Salvage?

11 A Yes, I was.

12 Q And were you able to identify what you were shown there as being
13 metal that belonged to CTR?

14 A Yes.

15 Q Was it the same metal what had been taken from CTR on or about
16 February 24?

17 A Yes, it was.

18 Q I'm handing -- oh, excuse me. The Court's indulgence just a minute.

19 (Pause) I am handing you what's been marked for State's Identification
20 purposes as Exhibit Two, Three, Four and Five. Now I don't want you to
21 say anything yet. I just want you to go ahead and take a look at those.

22 Is what's depicted in those exhibits, it is familiar to you?

23 A Yes.

24 Q Do you recognize what it is?

25 A I do.

1 Q Could you tell us what we see in those photographs?

2 A These are all parts that came off of our tanks.

3 Q Have you ever seen the stuff that is depicted in State's Exhibit Two,
4 Three, Four and Five before?

5 A Yes.

6 Q Is that what police showed you or the people at Carolina Salvage back
7 on February 27th that they recovered from the salvage yard?

8 A Yes.

9 Q Did the pictures show you anything different other than what you
10 identified back on 2/27?

11 A No.

12 Q Steal those back from you.

13 SOLICITOR SIKORA: At this time, Your Honor, the State would ask to
14 move in State's Exhibit Two, Three, Four and Five.

15 MR. MCKINNON: Without objection.

16 THE COURT: Without objection.

17 SOLICITOR SIKORA: Permission to publish to the jury, Your Honor?

18 THE COURT: Yes.

19 DIRECT EXAMINATION RESUMED

20 BY SOLICITOR SIKORA:

21 Q This would be for the purposes of the record State's Exhibit Number
22 Five. Can you describe what we're seeing here in this picture Mr.
23 Templeton?

24 A That is one inch, half-inch copper tubing and brass valves.

25 Q And what do you see in State's Exhibits Number Five that tell us you

1 that those are CTR's materials?

2 A Well, again, the valves. Only we use those valves and the copper
3 tubing.

4 Q And could you forward on to the next exhibit please. For purposes of
5 the record, we're now looking at State's Exhibit Number Four. Could you
6 describe for us generally what we're looking at in this picture?

7 A Well in this particular picture there's quite a few different items.
8 We're looking at a brass mula flanges, brass valves, valve handles,
9 tubing. The larger item is a brass regulator with two mula flanges
10 attached to both ends.

11 Q Right where she kind of has the mouse right now?

12 A Yes, that's correct.

13 Q Just like you did for the last exhibit, with respect to this exhibit,
14 State's Number Four, can you tell me what it is from looking at these that
15 tells you that these materials were from CTR?

16 A Well, again, they're the items that we use on a regular basis to pipe
17 our tanks with.

18 Q If we can go on to next exhibit please. Okay. This is State's
19 Exhibit Number Three. What is that?

20 A That is a stainless steel cart that we use to maneuver smaller liquid
21 cylinders around our facilities. Somebody has removed the caster wheels
22 from it.

23 Q Is that white thing that we're seeing in State's Exhibit three part
24 of this cart that you were describing?

25 A No, it's not. The white piece is actually a painted stainless steel

1 bracket. It's actually welded onto the tank itself to support some of the
2 piping.

3 Q I know we had talked where some of the piping and valves come from.
4 Where would you get this cart that we're seeing in State's Exhibit Number
5 Three?

6 A If you wanted to purchase a cart like that, you would probably have
7 to purchase it from the folks that actually manufacture the liquid
8 cylinders themselves. The closest one to us is a company called Taylor
9 Wharton, which is actually in Georgia.

10 Q I believe there's one more exhibit. And this would be State's
11 Exhibit Number Two for the record. What are we looking at here?

12 A In this photo there seems to be a lot of the heavy brass to top left
13 is part of a part that we called a field module. There's also quite a few
14 of the Air Products identification tags on some of these valve stems and
15 parts that, again, just reassures me that these items came from our
16 facility.

17 Q Okay. Would you be able to point out where you see in the
18 photographs these specific tags?

19 A Yes.

20 SOLICITOR SIKORA: Your Honor, may he step down off the jury box --
21 I'm sorry, off the witness box to do that?

22 THE COURT: Yes.

23 A These are the tags that our customers send us to identify each of
24 their typing and valve components for their tanks.

25 Q Okay. Thank you. You may go ahead and take your seat.

1 Mr. Templeton, do you know Johnny William Crockett?

2 A I do, yes.

3 Q And how do you know him?

4 A He's worked for CTR for a short period of time back in I believe it
5 was '07.

6 Q And do you know what his job duties were when he would have worked at
7 CTR?

8 A Yes. When he was employed at CTR, he worked more the crane crew. He
9 was a helper rigging the tanks with the crane crew.

10 Q Okay. What does the crane crew do?

11 A The crane crew — actually we have a hundred and ten ton crawler
12 crane that actually maneuverers these tanks around our yard for us. So we
13 have a crane operator, then we have two guys that actually go up in a man
14 basket and actually rig the tanks up to be lifted onto trailers that we
15 use to maneuverer them around the yard.

16 Q Okay. So when the crane crew is working with a particular tank with
17 the metal fittings and pipes and valves that we have seen throughout the
18 course of your testimony, would they be attached to the tanks at the time
19 the crane crew is dealing with them or not?

20 A Yes.

21 Q Do you know if Mr. Crockett quit CTR, or was he fired, or under what
22 circumstances did he leave?

23 A I believe that he was fired.

24 Q And do you see the man that you known as Johnny William Crockett that
25 previously worked at CTR in the courtroom here today?

1 A Yes.

2 Q Could you please point him out to the jury?

3 A (witness pointing)

4 Q Is he gentleman one, two, or three?

5 A Three, far right.

6 Q Let the record reflect that Mr. Templeton has, in fact, identified
7 the Defendant. And, Mr. Templeton, all the exhibits that we have looked
8 at today specifically State's Exhibits Two, Three, Four and Five, which
9 I'm going to walk back up to you, tell me how sure are you that the stuff
10 depicted in those pictures, that metal, came from CTR?

11 A I am a hundred percent sure without a shadow of a doubt that all of
12 this belonged to CTR.

13 Q And how sure are you that that metal is the same metal that was
14 stolen from CTR about February the 24th of 2010?

15 A Also very sure.

16 Q Thank you. Please answer any questions defense counsel has.

17 CROSS-EXAMINATION

18 BY MR. MCKINNON:

19 Q Mr. Templeton you said your position with CTR was supervisor of the
20 tank division?

21 A Tank and trailer division.

22 Q As that supervisor, would you be the one to place orders for parts
23 from your vendors and also to make sales to your customers?

24 A I place orders from time to time, but it's mainly through our
25 purchasing department.

1 Q Now I know you testified to what you guys do there. But I guess to
2 be more specific, do you purchase valves, tubing, attenuators, all
3 different things that you mentioned to Ms. Sikora from other vendors?

4 A Absolutely, yes.

5 Q Okay. So you do not manufacture or smelt those production on site?

6 A No.

7 Q When you received those products, you then take tanks also from other
8 customers and put them on them; correct?

9 A Correct.

10 Q Okay. Then you send those tanks with the new attenuators, valves,
11 all that stuff that you put on there? You send that back as a fixed
12 repaired product; correct?

13 A Correct.

14 Q Now these tanks that you deal with, as well as the piping, the
15 valves, all that stuff, you said they're rated for up to 400 – at least
16 400 PSI; correct?

17 A Yes.

18 Q And these are used for cryogenic purposes, which means very, very low
19 freezing temperature or essentially liquid matter that essentially
20 normally gaseous, like nitrogen, methane?

21 A Absolutely, minus 320 degrees.

22 Q Right. That's very, very cold; right? That's Fahrenheit. Okay.
23 That extreme low temperature would you say that that has tendency to erode
24 or stress the products? I mean, I'm sorry, the valves, the attenuators,
25 the tubing?

1 A Not necessarily. The parts are designed to withstand those
2 temperatures and those PSI ratings.

3 Q Right. But over time, they can wear out?

4 A You have -- not the casting themselves. Like a valve body casting,
5 it's not going to give out on you.

6 Q Okay.

7 A Some of the seals and teflon---

8 Q But you replace those, do you not?

9 A Not all of them. Not all the time.

10 Q Not all of them but?

11 A It depends on -- it depends on what the customer asked for.

12 Q Now when you are repairing these products, I assume the better the
13 product you put on there, the better the finished product is going to be?

14 And as far as the actual useable tank, that's going to its final
15 destination, going to be at a hospital or wherever you're talking about,
16 it's going to perform better with better products that you put on there?

17 Is that fair to say?

18 A Uh-huh (affirmative response).

19 Q So you're going to want to put on there as good or pristine quality
20 of product to make your customers happy?

21 A We put on what the customer asked for. It's not up to CTR what we do
22 per tank. A customer sends their---

23 Q They don't have give you a work-order then?

24 A No. Each of our customers has their own specifications as to how
25 their tanks are to be piped, what valves to use, what piping to use. We

1 don't have a say in that. They just say, hey, we need this tank. We need
2 this work scope done to this tank.

3 Q Okay. Can you tell us some of these companies that hire you to
4 repair their tanks?

5 A Our main customer is Air Products Incorporated.

6 Q Okay.

7 A Air Gas, National Welder, BOC, Lendy, Tri-gas, just to name a few.

8 Q Now Air Gas, you mentioned that as one of your customers?

9 A Uh-huh (affirmative response).

10 Q Are you familiar with where their facilities are located?

11 A I'm familiar with a couple.

12 Q Okay. Have you ever ordered from there?

13 A I have not.

14 Q Or would you be surprised to know what they claim as far as their
15 locations in the area? You don't have any idea?

16 A I'm not sure what you're asking me actually.

17 Q Do they have a facility in Charlotte?

18 A They do.

19 Q Okay. How about three facilities in Charlotte?

20 A I've only know of one. It's on Old Dowd Road next to the airport.

21 Q How about in Gastonia?

22 A Not aware of it.

23 Q Not aware of that one?

24 A Huh-huh (negative response).

25 Q Concord?

1 A Not aware of.

2 Q Greenwood?

3 A Not aware of it.

4 Q Rock Hill?

5 A They have a -- they have -- the Rock Hill plant is a liquid -- an air
6 separation plant. Yes, it's on Eden Terrace.

7 Q Spartanburg?

8 A Not aware of.

9 Q Sumter?

10 A Not aware of it.

11 Q Augusta?

12 A Not aware of it.

13 Q What about other places you order from? Can you tell us some of
14 those companies -- the parts that you order to place on the tanks?

15 A That personally I don't know a lot about.

16 Q You don't know a lot about that?

17 A I don't. Like I said, we have our own Purchasing Department. When I
18 need material, I relay it to our Purchasing Department and those are the
19 folks that get it from wherever we need to. And we never get it from the
20 same place depending on prices.

21 Q Okay. So if I held you up a piece of this property that you claim is
22 yours, you couldn't tell me who manufactured it?

23 A Oh, I can, yes.

24 Q Okay. You just said that you didn't know who you bought it from?

25 A That don't mean where we actually purchased a part from. I can tell

1 you the manufacturer. That regulator is probably a Cash Acme, some of
2 those valves—

3 Q What are you pointing at?

4 A This one right here on top.

5 Q How about this one?

6 A That's a Powell valve handle.

7 Q Valve handle?

8 A Yeah. Powell makes that valve handle.

9 Q Right. It says it right here?

10 A Right.

11 Q Can you tell me what it's made out of?

12 A Cast iron.

13 Q Right.

14 SOLICITOR SIKORA: Objection, Your Honor. If he's going to be
15 showing the witness stuff from these particular exhibits, they're not in
16 evidence yet, so I would ask that he move them into evidence before he's
17 showing them to the jury.

18 MR. MCKINNON: Beg the Court's indulgence. (pause)

19 CROSS EXAMINATION RESUMED

20 BY MR. MCKINNON:

21 Q We'll continue this questioning with what has been introduced into
22 evidence. This Powell piece right here.

23 A Uh-huh (affirmative response).

24 Q What other types of valves does Powell make?

25 SOLICITOR SIKORA: Can we get which exhibit we're referring to?

1 MR. MCKINNON: I'm sorry. This is exhibit two, State's Exhibit Two.

2 SOLICITOR SIKORA: Thank you.

3 A All of their valves are cryogenic compressed gas valves. Now they---

4 Q Are you sure about that?

5 A Yes. They make a large variation of sizes in different PSI rates.

6 Q Have you looked at the Powell catalog?

7 A I have not. I'm not in Purchasing.

8 Q Would you care to look at the Powell catalog now?

9 A If you feel like I need to.

10 SOLICITOR SIKORA: Objection, Your Honor, relevance to this.

11 MR. MCKINNON: Your Honor, there is a point.

12 THE COURT: What's that?

13 MR. MCKINNON: He says that Powell only makes cryogenic parts. And
14 using that to identify this part as cryogenic in nature.

15 SOLICITOR SIKORA: Objection. Could I see what he's approaching the
16 witness with? May we approach, Your Honor?

17 (Bench conference out of the hearing of the jury at 2:43 p.m.)

18 CROSS-EXAMINATION

19 BY MR. MCKINNON:

20 Q Mr. Templeton, what does this appear to be to you?

21 A It's looks like a Powell Catalog.

22 Q Okay. You want to open it up?

23 A Any page in particular?

24 Q Just the table of contents I guess would be fine for now.

25 A All right.

1 Q Do you see the various sections? They separate out?

2 A Uh-huh (affirmative response).

3 Q I think that's a diagram page.

4 SOLICITOR SIKORA: Does defense counsel have another copy of this so
5 we can follow along? Although, I have had the chance to look at it, I did
6 not afford what seems to be a mass amount of paper---

7 MR. MCKINNON: We did not. It's very lengthy---

8 SOLICITOR SIKORA: ---or commit it to memory in the 30 seconds I had
9 to take---

10 A Is this where you want me to be?

11 Q The contents does not seem to be in here. That's just a figure index
12 to locate various diagrams. If I could find you -- here we are. What
13 page is that on?

14 A 105.

15 Q What is that section about?

16 A It's says cryogenic values, bronze and stainless.

17 Q How far does that go in the catalog by page number?

18 A It looks like it goes from 106 to 133.

19 Q Could you flip to 134?

20 A All right.

21 Q Okay. What do we have on that page?

22 A It looks like a some type of actuated. This is a class 150 cast
23 steel gate valve with adapto-gear actuator.

24 Q Right. Does it say what it's rated for?

25 A Well first off, we don't use these valves.

1 Q You don't?

2 A We do not.

3 Q That's interesting.

4 A We don't use this particular valve.

5 Q It therefore is used for what? Or maybe you don't know that. I'm
6 sorry. I'll take that back. Presumably other companies would use that
7 for other purposes?

8 A This valve?

9 Q Yeah.

10 A I'm sure they do, but we don't.

11 Q You want to flip to the next section?

12 A Steel. Again, two more valves that we do not use.

13 Q Okay. Move to the next.

14 A Hydraulic or pneumatic actuated valves, no.

15 Q All right. Page 14, here at the beginning. What is this valve?

16 A That is bronze globe valve, which is a quarter-inch. Quarter-inch
17 bronze threaded globe valve.

18 Q Do you use that one?

19 A Yes. Hold on, let me see. Class two, yes, we do. Yep, yep, class
20 200 to 300. Each of these valves has a stamp on it, 200 or 300. The 200
21 and 300 let's you know the PSI rating for each valve.

22 Q So that PSI, you would be to use that for cryogenic purposes?

23 A Maybe not on some of the tanks. But we also build hospital final
24 lines that are at low temperatures, which they could possibly use this
25 valve for.

1 Q How about a globe valve, bronze?

2 A Yeah.

3 Q How about cast steel valves, do you use those?

4 SOLICITOR SIKORA: Objection, Your Honor. Are we going to be going
5 through the entire catalog? And what is the relevance to this case?

6 MR. MCKINNON: The relevance will become apparent, but we don't
7 necessarily have to go through the whole catalog. Obviously, I'll leave
8 that up to Your Honor.

9 THE COURT: If you feel it's relevant and it ties in, that's one
10 thing, but if we're on fishing expedition, that's another thing.

11 MR. MCKINNON: No, sir.

12 SOLICITOR SIKORA: The State's position would be if he's going to be
13 continuing to ask Mr. Templeton about this, I would like to have a copy
14 because I have absolutely no idea what they're talking about without
15 having -- being able to see this document. We're not referring to page
16 numbers specifically every time. I have no idea what we're talking about.

17 THE COURT: All right. I'll simplify this thing. If it's not
18 alleged to have been involved in this crime, it's irrelevant. Does that
19 help you?

20 SOLICITOR SIKORA: Thank you, Your Honor.

21 MR. MCKINNON: I'll simply try to -- hold on. I'll try to shorten
22 this up then.

23 CROSS EXAMINATION RESUMED

24 BY MR. MCKINNON:

25 Q Of these valves we looked at, did you notice what the hand -- is that

1 called the hand wheel?

2 A Hand wheel.

3 Q It's made out of?

4 A It's should be cast iron or carbon steel.

5 Q Right. So all of them?

6 A Are all of the handles?

7 Q Right.

8 A Not necessarily—

9 Q Well that you looked at. Obviously you didn't look through the whole
10 catalog?

11 A No, right.

12 Q So?

13 A Yes.

14 Q Yes. Your Honor, I'll leave the catalog out if that's satisfactory
15 at this point. Okay, Mr. Templeton, I think you said you came over to
16 Palmetto Recycling and you identified these parts as CTR property?

17 A Yes.

18 Q Okay. I think these were your words, I think you said because only
19 we use these valves and copper tubing?

20 A Correct.

21 Q You also said that you buy these valves and copper tubes from a
22 variety of different manufacturers?

23 A That's correct.

24 Q And you put them on tanks and send them out to all your various
25 customers?

1 A Correct.

2 Q So don't your manufacturers and customers use these parts too?

3 A Yes.

4 Q If I could look at if this again briefly. Now, Mr. Templeton, I'm
5 looking at State's Exhibit Eight. You said you could tell that these were
6 from CTR based on these tags here; correct?

7 A That's correct.

8 Q And you said that these come from the customers?

9 A Correct.

10 Q To let you know what they need?

11 A Uh-huh (affirmative response).

12 Q Okay. Is it not correct that these codes that are on these plates
13 are industry standard terminology?

14 A They are industry standard for that particular customer.

15 Q For?

16 A Air Products Incorporated.

17 Q Nobody else uses these codes?

18 A Absolutely not.

19 Q So—

20 A Each customer has their own specific valve tag that they put on their
21 parts. And some of them even asked CTR to make valve tags for them to put
22 on their parts.

23 Q So you're saying that these tanks don't tell you the type of valve,
24 just the type of—

25 A It does. It also tells you what the part is.

1 Q So -- okay. In looking at the numbering and lettering here,
2 specifically if you just read that?

3 A This is a -- this is HCV 22 V PSI test valve. It's this valve right
4 here.

5 Q Right. Now if you just saw that without that under there, you could
6 not tell what that is based on the HCV?

7 A Sometimes I can. You know, you have to -- you have to be up to speed
8 on the terminology.

9 Q So if you go to State's Exhibit Seven, this tag?

10 A Uh-huh (affirmative response).

11 Q Same thing, only used by that same company?

12 A Correct.

13 Q That's in eight?

14 A Correct.

15 Q So, Mr. Templeton, you said one of your customers was Lendy?

16 A Yes.

17 Q Do they not use the same exact terminology?

18 A It maybe similar. It shouldn't be exact.

19 Q You tell me is that not exact?

20 SOLICITOR SIKORA: What are referring to now?

21 (Document shown to Mrs. Sikora.)

22 SOLICITOR SIKORA: Your Honor, the State would have the same
23 objection. We don't have anybody authenticating what he's trying to
24 question the witness with. It's not documents from CTR. I mean I have no
25 idea where this came from. There's been absolutely no foundation or

1 anybody brought in to authenticate what they're cross examining him with.

2 And, again, I don't have a copies of this to follow along again either.

3 MR. MCKINNON: Your Honor, may we approach again?

4 (Bench conference at 3:00 o'clock, off the record and out of the
5 hearing of the jury.)

6 CROSS-EXAMINATION

7 BY MR. MCKINNON:

8 Q Mr. Templeton, as we were talking about, you had said that that those
9 codes were -- originally, I think you said they were unique to Air
10 Company?

11 A Air Products.

12 Q Air products, I'm sorry. Then you said they might be similar to
13 Lendy, another company, but you said they wouldn't be identical?

14 A All of them have a variation, like HCV1, HCV2 and I'm sure you're
15 looking at that now, but none of them are as technical as the AP. And the
16 AP has that very specific design. I could bring -- I could come in here
17 today with ten different set of valve tags from different customers and
18 they're not going to be the same. Some of the nomenclature on it, again
19 is going to be similar. Like I said, HCV1, HCV2, but nothing like the AP
20 tags.

21 Q The AP tags meaning these--

22 A Right, the silver with the green writing.

23 Q Let's say we just compare what is here to what Lendy says?

24 SOLICITOR SIKORA: Which exhibit are we looking at now?

25 MR. MCKINNON: Sorry. This was number eight again.

1 A See, they're totally -- they're totally opposite. They don't mean
2 the same thing. They say the same thing, HCV 22, this says had HCV 22-B
3 test valve, axillary vapor.

4 Q But that's with a B.

5 A This is with a B. This does is not a B.

6 Q Right. So therefore they're different?

7 A Right, they're different.

8 Q I'm trying to find one that is the same so we can compare. Okay,
9 Mr. Templeton, we'll try to wrap this up. When you came over and
10 identified these pieces, did you match these up to any serial numbers that
11 you had on record at CTR as far as actual pieces to your invoices, your
12 manifests, your purchase orders, any of those things?

13 A No, I did not because we don't we don't hold onto that.

14 Q You don't keep financial records?

15 A In Accounting. I'm not going to thumb through Accounting to try to
16 identify a part that I know belongs to us.

17 Q But—

18 A And Accounting is not going to have a serial number from a safety
19 relief valve in it. It's going to have the dollar amount attached to it.

20 Q But any other company that uses these parts might very well have that
21 in their records?

22 A Buddy, that's two or three different jobs to keep up with all of
23 that. You'd have to employ three different people to keep up with all
24 that information.

25 Q So you're saying that—

1 A We don't do it. No.

2 Q You could not cross check an order with a part?

3 A Not necessarily. Not the way you're thinking.

4 Q So when we're looking at a -- any of the metal in exhibit four, which
5 is -- is that a representation of what's---

6 A Uh-huh (affirmative response).

7 Q Okay. Can any of these pieces be identified?

8 A Other than -- other than my knowledge?

9 Q Right.

10 A No.

11 Q By serial number?

12 A We don't record any numbers that are on those valves. When we
13 receive that stuff in from Purchasing, we don't have a guy that writes
14 down serial numbers. And to back up, there are no serial numbers. This
15 particular valve is going to have the same stamp number on it. You could
16 buy a hundred of them, they're all going to have the same stamp number on
17 them. Each one of them does not have their own specific serial number.

18 Q Okay. Well did you match these up to the tanks that you said they
19 were taken from. These parts? Take them back there to see if they fit?

20 A How could I take them back? The police have them.

21 Q Did you look at the photographs to see if they could match up?

22 A That's kind of hard to do, look to photograph and hold it up to a
23 tank and see if it matches.

24 Q Well you've got the pieces that you claim can rebuild these tanks
25 right here; right? You couldn't look at these photographs you saw -- you

1 said you looked at all tanks that had things missing. Can this---

2 A Well half of that tubing has been---

3 Q Again, this is five and eight -- sorry, five and four.

4 A Could I look at those pictures---

5 Q Yeah---

6 A And know---

7 Q ---yeah, and say these are the parts that were missing? And if these
8 were back attached to the tanks, they would be whole?

9 A It's impossible.

10 MR. MCKINNON: That's all the questions I have, Your Honor.

11 THE COURT: Any redirect?

12 SOLICITOR SIKORA: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY SOLICITOR SIKORA:

15 Q Okay. This Powell document that defense counsel has been showing
16 you, do you work for the Powell Company?

17 A I do not.

18 Q Did you write this manual?

19 A I did not.

20 Q Do you have any idea where it came from?

21 A I do not.

22 Q Is it fair to say that it seems to be just a bunch of loose papers?

23 A Well he obviously downloaded it from some website. Now which website
24 that was from, I do not know.

25 Q Did you assist in drafting the content of that website?

1 A I did not.

2 Q Can you in anyway verify any information and its accuracy that's
3 contained in these pages?

4 A I cannot.

5 Q What about the other paperwork he brought you which -- you tell me,
6 does this also appear to be downloaded from a website, Lindeman, Canada?

7 A I don't know. I didn't get a good look at it. Well obviously this
8 is from Canada.

9 Q Okay.

10 A It doesn't pertain to us at all.

11 Q Do you work for Lendy, Canada?

12 A No.

13 Q Did you assist in the development of their internet site?

14 A I did not.

15 Q Can you verify the accuracy of the information that is on Lendy's
16 internet site?

17 A No.

18 Q Thank you.

19 SOLICITOR SIKORA: The State has no further questions, Your Honor.

20 THE COURT: Anything else?

21 MR. MCKINNON: No, Your Honor.

22 THE COURT: You may step down.

23 SOLICITOR SIKORA: Your Honor, may Mr. Templeton be excused if he
24 wishes at this time.

25 THE COURT: Problem, counsel?

1 MR. MCKINNON: No objection, Your Honor.

2 THE COURT: Witness be excused if he so desires.

3 SOLICITOR SIKORA: Are you ready for a break or do you want me to
4 call another witness?

5 THE COURT: Let me defer to the jury. How long is the next witness
6 going to be?

7 SOLICITOR SIKORA: Well I didn't think he would be very long, but I'm
8 not sure right now, Your Honor.

9 THE COURT: Everybody need a brief recess? Okay, we'll take ten
10 minutes and welcome back.

11 (Whereupon, the jury and Court were in recess at 3:10 p.m.)

12 (Back on the record at 3:30 p.m.)

13 THE COURT: You may be seated.

14 SOLICITOR SIKORA: May we approach, Your Honor, or actually just come
15 talk to you?

16 (Bench conference)

17 THE COURT: Are you ready?

18 SOLICITOR SIKORA: Yes, the State is ready to proceed, Your Honor.

19 (Whereupon, the jury was brought back in at 3:33 p.m.)

20 THE COURT: All right.

21 SOLICITOR SIKORA: May it please the Court, the State calls Johnny
22 Fleming. Mr. Bailiff, can you call the name of Johnny Fleming in the
23 hallway? He's been sequestered. (pause) Mr. Fleming, come up to our
24 nice Madam Clerk here and let her have you sworn in.

25 JOHNNY FLEMING, after being duly sworn, testified as follows:

1 CLERK OF COURT: Thank you. Please have a seat.

2 DIRECT EXAMINATION

3 BY SOLICITOR SIKORA:

4 Q Mr. Fleming, could you please state your full name for the record?

5 A Johnny Robert Fleming.

6 Q Where do you work?

7 A I work at Palmetto Recycling.

8 Q Is Palmetto recycling also known as Carolina Salvage?

9 A Yes, ma'am. It's a DBA of Carolina Salvage. We own multiple
10 companies.

11 Q What does DBA mean?

12 A Just when they went and incorporated because we had Carolina Salvage,
13 Palmetto Recycling, You Pull It, Standards Junk Yard in Shelby and Morris
14 Metals in Kings Mountain. It's just a subgroup of it.

15 Q Like a different name?

16 A Yeah.

17 Q Okay. Where is the Palmetto Recycling and Carolina Salvage located?

18 A It's right on the corner of Porter Road.

19 Q Do you know what the address is there?

20 A I think it's 234.

21 Q Is that in York County, South Carolina?

22 A Yes, ma'am.

23 Q And how long have you worked there?

24 A I've worked there for about two years. I come to work at Palmetto
25 Recycling right when it opened up.

1 Q What do you do for them?

2 A Right now I'm Assistant Manager.

3 Q Okay. So what are some of your duties when you go to work? What are
4 the types of things you do every day?

5 A I'm over the scales. I'm over all shipping, receiving. I oversee
6 everything that's brought in. I have to get the trucks ready to go out.

7 Load trucks. Make sure checks are right and turned in. And make sure we
8 have enough money for the day.

9 Q Is it fair to say your company purchases scrap metal?

10 A Yes, ma'am.

11 Q Before working at Palmetto Recycling or Carolina Salvage, have you
12 ever worked at any other scrapyards before?

13 A Yes, ma'am. I worked at Floyd's Metal Recycling at Rock Hill. I
14 work for Steve Goldcoat, which used to be here in Rock Hill. I work with
15 Smith for a while. I also worked at Mid-Carolina in Columbia.

16 Q So if someone from the public comes in with some metal to scrap,
17 would you be one of the people they talk to or would you not be one of the
18 people they talk to?

19 A Yes, ma'am. I would be the person you would talk to. I've been in
20 scrap metal just about my whole life.

21 Q How old are you?

22 A I'm 43 years old.

23 Q I'm going to ask you about your prior criminal record now. Were you
24 convicted of unlawful possession of a pistol back in 2008?

25 A Yes, ma'am.

1 Q Were you also convicted of assault and battery with intent to kill
2 back in '94?

3 A Yes, ma'am.

4 Q Do you know Johnny Crockett?

5 A Yes, ma'am.

6 Q And how do you know him?

7 A He was a regular at Palmetto Recycling. He come in from time to time
8 and sold items to us.

9 Q Do you remember were you working back on February 27th of 2010 at
10 Palmetto Recycling?

11 A Yes, ma'am. I was over at the little scales. I was writing tickets.

12 Q What do you mean when you say writing tickets?

13 A When you brought any kind of nonferrous metals in, which is copper,
14 brass, aluminum, stainless, can, batteries, I would take your metal and
15 write you out a ticket for it.

16 Q Is that kind of like a receipt?

17 A Yes, ma'am. It's actually give you a piece of paper. We weigh it
18 up, tell you how many pounds it is and how much you'll get for it and then
19 we'll send you up front to collect your money.

20 Q Okay. Do you recall seeing Mr. Crockett at Palmetto Recycling back
21 on February the 27th of last year?

22 A Yes, ma'am.

23 Q And what was he there -- what was he doing when you saw him?

24 A He had come in. It was kind of early in the day. It was about
25 10:00 o'clock because I remember that part because it was the same day

1 that battery man come. We was in the process of loading batteries. He
2 drove in and had -- he had a good bit of quantity of copper and brass and
3 some stainless. He had it in five gallon buckets. It was old values and
4 stuff.

5 Q Did you have the opportunity to talk to Mr. Crockett about the items
6 he had brought in?

7 A Yes, ma'am. At the time, Shawn Stone was out there with me. When
8 the valves come in, he had to come get me from unloading a truck to give
9 him a price on it because the valves wasn't clean. They were brass
10 values, but it had some stainless steel and stuff like that on it. I had
11 to give him a price on it.

12 Q Okay. I'm going back you up just a little bit here. You said he
13 came and got you. We talked about a couple of he's. Did Mr. Crockett
14 come and get you or Mr. Stone?

15 A Shawn Stone.

16 Q Is Mr. Stone someone that was an employee at Palmetto Recycling?

17 A Yes, ma'am. At the time, he was running the big scale house while I
18 was running -- while I was running -- while I was loading the battery
19 truck, he was trying to run the big scale house and the little scale
20 house. He was watching my job for me while I was in the process of
21 loading Ed up with the batteries.

22 Q So to make sure I understand you, it was about 10:00 o'clock in the
23 morning of February the 27th of last year; is that right?

24 A Yes, ma'am.

25 Q Okay. You were working with another gentleman named Shane Stone?

1 A Yes, ma'am.

2 Q And it was about that time that you remember that Mr. Crockett coming
3 in?

4 A Yes, ma'am.

5 Q And you said something about the items not being clean. Can you
6 explained to me what you mean by that?

7 A Yes, ma'am. If you bring in clean yellow brass, say clean yellow
8 brass is running a dollar or a dollar sixty a pound, I'll pay you for the
9 item that's been cleaned. If it's got iron or stainless steel or anything
10 like that, the price would go to an irony price, which is less expensive.
11 If it's got like brass and copper on something that I can take apart and
12 upgrade where my company could make more money, I kind of determine how
13 much trouble it's going to be cleaning it, how long it's going to take me
14 because, you know, you have to pay me to clean it before we can sell it
15 and I usually kind of go about to figure out what kind of ball park price
16 I can give you for it.

17 Q Okay. So if I'm understanding you correctly, cleanliness in this
18 case has nothing to do with how dirty something is?

19 A No, ma'am. It just depends on what other type of metals is in there
20 with it.

21 Q Okay. So tell me if I'm understanding you correctly. If something
22 is clean, does that mean it's made only of one type of metal?

23 A Yes, ma'am.

24 Q And if something is not clean in scrap yard terms does that mean—

25 A It will have two types of metal in it.

1 Q Okay. So you testified Mr. Crockett came in on February 27th, and
2 you assisted him with coming up with a price for what he brought in?

3 A Yes, ma'am.

4 Q Do you remember what kind of items he had brought in to sell?

5 A Yes, ma'am. It was brass valves. The valves had look like somebody
6 took a sawzall and took the handles off of them. They had stainless steel
7 rods still going into it. So at the time, brass was running about a
8 dollar and a half a pound. I think I gave him a dollar a pound on it
9 because at the time the stainless that I would pull out, we was only
10 getting like 80 cents a pound for it, but there was more brass there than
11 stainless. It was items that we would have to clean up. And some of the
12 items had copper on it.

13 Q Did he -- you said he brought in a bucket. Did he bring in one
14 bucket or more than that?

15 A He brought in I'm thinking it was -- if I'm not mistaken, it was like
16 four, five gallon buckets that had miscellaneous items on it. We had to
17 pour them out and had to separate them.

18 Q Is this anything that struck you being unusual about the type of
19 items he brought in?

20 A Yes, ma'am. Prior to the items coming in, the manager from CTR had
21 actually brought me some pictures over and told me to be on the look out
22 for some valves he had---

23 MR. SULLIVAN: Objection, Your Honor. Move to strike that portion of
24 his testimony related to the hearsay.

25 THE COURT: You need to be careful with hearsay.

1 SOLICITOR SIKORA: I'm sorry, Your Honor?

2 THE COURT: Can't get into what anybody else said now.

3 SOLICITOR SIKORA: Yes, Your Honor.

4 DIRECT EXAMINATION RESUMED

5 BY SOLICITOR SIKORA:

6 Q Let me -- without telling me what anybody else may have said to you,
7 just -- can you say how common is it for people to bring in this type of
8 material to Palmetto Recycling or any of the other salvage yards you may
9 have worked at?

10 A It's not common. You very rarely ever see any of it.

11 Q Have you ever seen photos -- I'm sorry. Have you ever seen items
12 like that before--

13 A Yes, ma'am, I had--

14 Q --before he brought them into the scrapyard? And just a yes or no
15 answer. Did you believe there was anything unusual about the items that
16 Mr. Crockett had brought in?

17 A Yes, ma'am.

18 Q Okay. Did anything look familiar to you about these particular good?

19 A Yes, ma'am.

20 Q I'm approaching you with what's been labeled State's Exhibit Number
21 One. If you could just take a look at that for a second. And then after
22 you've had the chance to review it, could you tell me if you recognize
23 what I just handed you?

24 A Yes, ma'am. This is actually a copy of a receipt that I wrote. This
25 was actually a copy of the items that Mr. Crockett brought in that day. I

1 actually wrote this ticket right here.

2 Q That ticket is in your handwriting?

3 A Yes, ma'am.

4 Q What's the date on that ticket?

5 A The date on it is the 27th.

6 Q Does that ticket look just like it did the day you wrote it out?

7 A Yes, ma'am.

8 SOLICITOR SIKORA: Your Honor, at this time, the State asked to move
9 Exhibit Number One into evidence?

10 MR. SULLIVAN: Without objection, Your Honor.

11 (WHEREUPON, State's Exhibit No. one was admitted into
12 evidence.)

13 SOLICITOR SIKORA: Permission to publish to the jury?

14 THE COURT: Yes. I may have cut you off a little bit early while ago
15 now. The hearsay objection, if it involved something that the Defendant
16 said, it could be admissible.

17 SOLICITOR SIKORA: I understand that, Your Honor.

18 THE COURT: If you wanted to be heard on that, that's fine. I just
19 want to be straight with you about that.

20 SOLICITOR SIKORA: Yes, Your Honor. I appreciate that. It'll just
21 take a second for the screen to warm back up again.

22 DIRECT EXAMINATION RESUMED

23 BY SOLICITOR SIKORA:

24 Q Okay. While it's warming up, I'm going to ask you the easy questions
25 about this ticket, so I'm going to give you back State's Exhibit Number

1 One and ask you about what you see on the top there. Is there a customer
2 name listed on the top of that ticket?

3 A It's William Crockett.

4 Q Is there a number about three lines down from where his name is on
5 that ticket that starts with a one?

6 A Yes, ma'am.

7 Q And what does that number mean?

8 A This number right here when items -- any time a large quantity of
9 copper or brass or anything comes in, when I take your South Carolina
10 Driver's License, I write down your name, address and where it's got date
11 of transaction on here with the numbers 100748326, that's his ID number.

12 Q Okay. When you say ID number, did you check Mr. Crockett's ID when
13 he came in that day?

14 A Yes, ma'am.

15 Q What kind of ID are we talking about?

16 A This right here come off of South Carolina Driver's License.

17 Q Like a photo ID?

18 A Yes, ma'am, come off like a photo ID.

19 Q And is it your normal practice to check the driver's license of
20 customers that bring in metal?

21 A Yes, ma'am.

22 Q And when a customer or specifically in this case, Mr. Crockett, when
23 he presented you with a photo ID, did you look at the picture on the photo
24 ID and compared it to the gentleman that was standing there in front of
25 you?

1 A Yes, ma'am, I did.

2 Q Did they appear to be the same person?

3 A Yes, ma'am. Not only do you have to present your ID to me, you also
4 have to present it up at the pay-out window in order to get your monies
5 because we write a ticket in the back, then send it up front to have it --
6 to have it took care of. You know, paid out. Like if you was to come in
7 and sell items, we wouldn't -- your husband or somebody couldn't take your
8 copy of your ticket and cash it in. Whoever it's wrote to has to be --
9 has to cash it.

10 Q It appears that our equipment is now functioning again properly.
11 Madam Clerk, would you dim the lights a little bit for us please? Okay.
12 So what we're just talking about on State's Exhibit One, the address of
13 the person that brought in metal on the 27th, Mr. Crockett, and then that
14 100748326 number was the driver's license number you spoke of?

15 A Yes, ma'am, that was his ID that he used.

16 Q And then whose handwriting is that below that where it starts I and
17 then there's an X and a signature? Is that your signature?

18 A No, ma'am. Mr. Crockett signed that right there. You have to sign
19 it to get your ticket. That right there just shows that you have the
20 right and are of legal age to sell items to us.

21 Q Then there's a description of what he brought in; is that fair to
22 say?

23 A Yes, ma'am. Those were what the items was he got paid for, how many
24 pounds of what.

25 Q So when it says quantity, like the first line for example, the first

1 number we see is 16. Does that mean 16 pieces or 16 pounds?

2 A 16 pounds. He got 16 pounds of number two copper, 2.30 a pound.

3 Q Would that be true for everything below it? Would the 72 represent
4 72 pounds?

5 A Yes, ma'am. Second one -- if you notice, I've got brass, yellow
6 brass on there twice, that was when we -- we had went through and after I
7 went through and bought the items in, there was a few piece there's that I
8 wasn't sure of and I had to spark test and I was still able to put it in
9 brass. That's why I give him brass price for it instead of -- that's why
10 it had 14 down below it. But like the 16, the seven, the two, the four,
11 the three and the 14 are all pounds.

12 Q So if, and I know I'm kind of putting you on the spot here, but if we
13 added up all those numbers on left-hand quality -- I'm sorry, in the
14 left-hand column that's labeled quantity, about how many pounds are we
15 talking about here? Over a hundred?

16 A Yes, ma'am. Well over a hundred.

17 Q If we could kind of scrawl down on Exhibit Number One please.
18 Signature of person issuing ticket, then there's some handwriting. What
19 is that?

20 A That right there is just each one of us has got our own little way of
21 initialing papers to know who done what. That way just in case, like if I
22 was out, and somebody else was writing tickets, we just -- we just
23 scribble different ways just to identify who it is.

24 Q Okay. So what does that handwriting there at the bottom on that last
25 line of State's Exhibit Number One mean?

1 A That right there has got that SS on it for Shawn Stone.

2 Q Okay.

3 A Shawn started writing the ticket on bottom then when the items came
4 in, he didn't know what to pay him for, so then he had to come get me.

5 Q Okay.

6 A Then I started writing the ticket then.

7 Q Okay. So everything other than that SS at the bottom that we have
8 seen that we can kind of zoom out and see the overall picture---

9 A But if you go to the top of it, right up next to where the 6644 is,
10 those are my marks right there I put for my papers.

11 Q Okay. If we can zoom back out until we see the whole thing in one
12 picture please.

13 A That's why it's got Shawn's initials on the bottom, but it's got my
14 mark on the top of it because two of us wrote on that ticket.

15 Q So everything other than SS at the bottom and Mr. Crockett's
16 signature, all that other writing you see---

17 A That's my handwriting---

18 Q ---whose handwriting is that?

19 A That's my handwriting.

20 Q Okay. Now let me just ask that for the sake of our poor court
21 reporter, who has been so patient today, that you wait until I finish
22 asking the question before you answer because she can't take down what
23 both of us are saying if we're both talking at the same time.

24 A Okay.

25 Q I know you know where I'm going, but you just wait for me to finish.

1 Thank you. Okay. So even though Shawn Stone was working with you that
2 day, did you actually see with your own eyes Mr. Crockett?

3 A Yes, ma'am.

4 Q Did you see Mr. Crockett bring this metal in?

5 A Yes, ma'am.

6 Q You can bring the lights back up again. I believe you testified
7 earlier that it wasn't that common to see this type of metal that he
8 brought in that day, Mr. Crockett on the 27th?

9 A Yes, ma'am.

10 Q Had you ever seen that type of materials or fittings or whatever you
11 want to call them?

12 MR. SULLIVAN: Objection, asked and answered.

13 SOLICITOR SIKORA: I don't believe it has been, Your Honor.

14 THE COURT: Ask the question again.

15 SOLICITOR SIKORA: I said you previously testified that he had seen
16 -- that it wasn't very common for these types of items to be brought into
17 a scrapyard and he said yes. So then I followed up with the question that
18 I believe defense counsel has objected to. Have you ever seen these types
19 of items -- now I'm losing my train of thought backing up. You
20 testified -- I'm sorry, have you ever seen these particular type of items
21 before?

22 THE COURT: Overruled. Go ahead.

23 DIRECT EXAMINATION RESUMED

24 BY SOLICITOR SIKORA:

25 Q You may answer the question.

1 A Yes, ma'am, I've seen them before.

2 Q Did you pay Mr. Crockett for the items he brought in?

3 A Yes, ma'am.

4 Q Did the police end up at Palmetto Recycling later that same day on
5 February the 27th?

6 A Yes, ma'am.

7 Q And why were the police there?

8 A I actually called them.

9 Q And why did you call the police there?

10 A I had two days prior to this, I had actually got photos from CTR,
11 they were missing some items. And the items fit what I had bought in that
12 day.

13 Q So is it fair to say you suspected the items that Mr. Crockett
14 brought in might be stolen?

15 A Yes, ma'am.

16 Q And then you thought the items might belong to CTR?

17 A Yes, ma'am.

18 Q Let me ask you this, if you thought the items that Mr. Crockett
19 brought in to sell for scrap metal were stolen, why did you take them?

20 A At the time, the plant manager at CTR told me to take them if they
21 come in.

22 Q And did anybody from Rock Hill Police Department come out that day?

23 A Yes, ma'am. The police come out from -- the police come out. They
24 took pictures of the items and confiscated the items as evidence.

25 Q And can you be more specific? When you're saying the word items,

1 that's very general. Are you referring to the stuff that Mr. Crockett had
2 brought in?

3 A Yes, ma'am. After he had come in, I actually put all the items in a
4 trash can and slide it to the side.

5 Q I'm going to hand you what's been previously admitted as State's
6 Exhibit Two, Three, Four and Five. I can take that ticket back from you.
7 If you'll just take a moment to look at those for me please. Let me know
8 when you've had a chance to take a look at all of those. Do you recognize
9 what's in two, three, four and five?

10 A Yes, ma'am. These were the pictures that the officers took.

11 Q Let me steal these back from you here. We have them on big screen
12 now so everyone knows what we're talking about at the same time. This
13 would be State's Exhibit Number Two. What are we looking at here?

14 A Those were the items that Mr. Crockett brought in that I poured into
15 a trash can to hold back for the officer to look at.

16 Q And if we can scrowl onto the next one. This is State's Exhibits
17 Number Three. What is this?

18 A That was one of the items that Mr. Crockett brought in.

19 Q And onto the next one. This would be State's Exhibits Number Four?

20 A Okay, those items right there---

21 Q Yes---

22 A ---was pictures that was taken at CTR and given to me what to look
23 out for.

24 Q Okay.

25 A If you look, you'll see the corner board and all going around like it

1 was took in an office. Those are laid out on the floor.

2 Q You're talking about what's on the outside of the pictures?

3 A Yes, ma'am.

4 Q Not the materials themselves?

5 A Yes, ma'am. That wasn't took at the scrapyard. That was on a
6 previous picture that was showed to me prior to Mr. Crockett bringing
7 these items in.

8 Q Okay. You can bring the lights back up please, Madam Clerk. So did
9 the officer take everything that Mr. Crockett brought in with them that
10 day or did you keep any of it?

11 A As far as I can remember, the officers took everything that was
12 brought in.

13 Q And you said Shawn Stone works at CTR -- I'm sorry, at Palmetto.
14 Does he still work there?

15 A No, ma'am. Shawn Stone he left and went to work with Randy -- with
16 Randy Tillman. He used to be -- he used to be the general manager. After
17 Randy left, Mr. Taylor come to work and Shawn Stone left and went with
18 Randy.

19 Q Do you see the gentleman sitting in the courtroom today, the
20 Mr. Crockett that brought this metal to you back on February the 27th of
21 2010?

22 A Yes, ma'am.

23 Q Could you please point him out for the jury where he is seated?

24 A Right over here.

25 Q The gentleman to far left at that table?

1 A Yes, ma'am.

2 SOLICITOR SIKORA: Please let the record reflect that Mr. Fleming has
3 identified the Defendant. I would also bring to Court's attention, at
4 this time, in the interest of speeding things along, defense counsel and I
5 prior to beginning of this trial have stipulated, which simply means
6 agreed to the fact, that the number 100748326 that is on State's Exhibit
7 Number One is, in fact, his client's Mr. Crockett's driver's license
8 number. Rather than bringing somebody in DMV, we've already agreed that's
9 the case. Thank you. Please answer any questions defense counsel has.

10 CROSS-EXAMINATION

11 BY MR. SULLIVAN:

12 Q Mr. Fleming, you're employed at Carolina Salvage; correct?

13 A Yes, sir.

14 Q You testified that you are an Assistant Manager there?

15 A Yes, sir.

16 Q And you have been employed at Carolina Salvage for two years now?

17 A Yes, sir.

18 Q Okay. Now Carolina Salvage is a scrap metal company; right?

19 A Yes, sir, Palmetto part of it is.

20 Q Okay. But the Carolina Salvage portion of that is basically one
21 component that falls under the Palmetto Recycling Services, LLC?

22 A Well it's actually Carolina Salvage and Palmetto is just a small sub-
23 group of it. Carolina Salvage is the home office.

24 Q Okay. Carolina Salvage is located in Rock Hill; right?

25 A Yes, sir.

1 Q Carolina Salvage, the purpose of the business is that you buy scrap
2 metal from individuals at a reduced price and then resell it to another
3 company who melts it down?

4 A Yes, sir.

5 Q That's what you do; right?

6 A That's what I do.

7 Q And that's essentially how your business or the business that you
8 work for makes money?

9 A That's right.

10 Q Buying low, selling high basically? Fair enough?

11 A Yeah.

12 Q And I believe you testified there's some other components to the
13 Carolina Salvage. One of those components deals in car parts?

14 A Yes, sir.

15 Q Used car parts?

16 A Yes, sir.

17 Q And then Carolina Salvage also has a recycling component; right?

18 A Yes, sir.

19 Q It's fair to say that Carolina Salvage is a fairly large operation?

20 A Yes, sir, it is.

21 Q And I believe on the website it says it's over 20 acres; right?

22 A That's a good guess. We have a little more property than that
23 that's, you know, still wooded that we got room to expand out. That we
24 got intentions of expand this year.

25 Q But it is a substantial operation?

- 1 A Yes, sir.
- 2 Q And you deal with a lot of customers?
- 3 A Yes, sir.
- 4 Q Right. You interact with a lot of people on a daily basis?
- 5 A Yes, sir.
- 6 Q And I believe you testified that you're out on the scales -- you're
- 7 out -- I guess that particular day, you're out in the little scale?
- 8 A Yes, sir.
- 9 Q And by being out on the scale, basically you're purchasing a lot of
- 10 metal; right?
- 11 A Yes, sir, I purchase all the metal.
- 12 Q All the metal that comes into Carolina Salvage?
- 13 A Uh-huh (affirmative response).
- 14 Q Right?
- 15 A Yes, sir.
- 16 Q And metal comes in to Carolina Salvage essentially on a daily basis;
- 17 right?
- 18 A Yes, sir.
- 19 Q And on a particular day you might handle anything from brass; right?
- 20 A Uh-huh (affirmative response).
- 21 Q Copper; right?
- 22 A Yes, sir.
- 23 Q Steel?
- 24 A Yes, sir.
- 25 Q Bronze?

- 1 A Same as brass, yeah.
- 2 Q Aluminum?
- 3 A Yeah.
- 4 Q Tin cans?
- 5 A Yes, sir.
- 6 Q Those are all times of items that you buy from customers on a daily
- 7 basis?
- 8 A All day long.
- 9 Q All day long. You work from what hours?
- 10 A I work in the morning from seven to about five in the evening.
- 11 Q So you work about a ten hour day, probably half an hour for lunch?
- 12 A Yes.
- 13 Q How many customer would you estimate comes in on a daily basis?
- 14 A 200 or better. That's the number of tickets I handwrite a day.
- 15 Q Certain metals -- we're talking about four or five different metals.
- 16 Certain metals are more valuable than others; right?
- 17 A Yes, sir.
- 18 Q Some metals are brought to you in good shape or new shape; right?
- 19 A Yes, sir.
- 20 Q And then other metals are brought to you in an unclean state---
- 21 A Yes, sir---
- 22 Q ---right? And obviously the newer stuff, which is sold to you and
- 23 brought to you, that's more valuable; right?
- 24 A No, sir, not really, just depends on what it is and what grade of the
- 25 metal it is. It could still be the same price whether it was used or new.

1 Q Okay. That kind of goes back to what you testified with Ms. Sikora
2 as far as whether or not it's clean, whether or not there are other metals
3 and things like that; right?

4 A Yes, sir.

5 Q Something that's clean, you'll get more money for that?

6 A Yes, sir.

7 Q And the person who brings that in would get more money than that –
8 than somebody who brings in a piece of metal that unclean?

9 A That's right.

10 Q So your primary responsibility, other than writing tickets, is
11 receiving the metal?

12 A That's right.

13 Q You identify it; right?

14 A Yes, sir.

15 Q You weigh it?

16 A Yes, sir.

17 Q Right. And after you weigh it, you throw it into one of the bins
18 that's scattered near the scales; is that right?

19 A Yes, sir.

20 Q How many bins do you have there?

21 A I have a total of seven bins there. Once those bins are full, I
22 carry them to the copper room to be resorted again.

23 Q So you have seven – a total of seven bins?

24 A Yes, sir. You have a bin for each thing. You might have one for
25 copper, one for aluminum, one for stainless, one unclean stainless, one

1 for steel, and one for batteries.

2 Q Okay. Once those bins are filled up, you then take that to a
3 separate room on facility?

4 A Yes, sir.

5 Q And then you dump it all out? What happens when you take it to that
6 room?

7 A When I take it through that room, I go through it and clean it, grade
8 it, and put it in a Gaylord box of whatever grade it is. The different
9 grades depending on how much monies you can receive back out of it.

10 Q How big are these bins?

11 A They're probably 80, 90 gallons.

12 Q How many times during the day do these bins fill up?

13 A Average of probably four times a day.

14 Q Okay. So there's lots of metals in these bins?

15 A Yes, sir.

16 Q Then lots of metals that go into that room; right?

17 A Yes, sir.

18 Q And you are also responsible for filling out the tickets that you
19 give to customers; right?

20 A Yes, sir.

21 Q You give a ticket to every customer who brings metal into Carolina
22 Salvage?

23 A Yes, sir.

24 Q Are you the only person responsible for giving those tickets?

25 A Yes, sir.

1 Q But in this particular instance, to some extent Mr. Stone was
2 involved in that as well?

3 A Yes, sir, he's watching the scales while I was loading -- while I was
4 taking the forklift and loading the batteries there. We load our
5 batteries right there beside our scales. So he was just kind of watching
6 it. Usually why I say watching it, sometimes we keep non-ferrous metals
7 there that we haven't dragged into the bin, into the building, and that
8 just keeps the customer from picking it up and trying resell it back to
9 us.

10 Q So you're not the individual at Carolina Salvage that pays the
11 various customers? That's someone else at the window?

12 A Yes, sir, it's a whole separate part. That's actually in front of
13 Carolina Salvage itself. You have to come Palmetto Recycling. You weigh
14 your stuff. You get a ticket for it. Then you have to drive around to
15 Carolina Salvage, present your ID again to get your monies.

16 Q So once you give a particular customer a ticket, your interaction
17 with that person is finished at that point?

18 A I'm done.

19 Q Okay. And the person who works the window is named what?

20 A At the time when -- at the time when Mr. Crockett come in, we had we
21 had a lady working up there. Her name was Tamara.

22 Q Tamara?

23 A Yeah.

24 Q Now you testified on direct examination that Mr. Crockett was paid
25 for this metal that he allegedly brought in on the 27th?

1 A Yes, sir.

2 Q Right. And he would have been paid by Tamara?

3 A Yeah. When I write out a ticket, that ticket has got three copies to
4 it. I keep the original top copy. I give a pink and yellow back to the
5 customer. They carry it around to the front. Then it's stamped paid when
6 you get paid and you get a copy back and they keep a copy at the service
7 window. Then at the end of the day, we match up the white copy and our
8 yellow copy back together.

9 Q So any time any individual gets paid, you say it's marked paid on the
10 receipt?

11 A Yeah, on the second copy.

12 Q Okay.

13 A That's the original copy you got in your hand.

14 Q Okay.

15 A That's the first copy. That's the copy there that I write. The paid
16 copy stamped onto it.

17 Q So these receipts, it's not a carbon copy?

18 A Yes, sir. It's just -- what it is, we don't actually put carbons in
19 between it. You write on the top one and it goes through three. It's
20 three papers at one time. I have to pull -- tear the bottom two out. I
21 keep the master copy where I'm at and send the customer back with two
22 copies.

23 Q The master copy would be the copy that is on the front?

24 A That's right.

25 Q Then you would send any customer with the other two receipts?

1 A That's right.

2 Q I assume one of those receipts they give to the person at window, the
3 other receipt goes back with them?

4 A Goes back with the customer that sold the items. That way the
5 customer has an item, the pay window has an item, and I have a copy of the
6 item at Palmetto.

7 Q They mark paid on the top one?

8 A No, sir, the second copy. That's just the one at the pay window
9 showing what monies was paid out because we pay cash.

10 Q Okay.

11 A That's just our way of keeping up with it. Most scrap companies pay
12 checks, but we're one of the few companies that is left that pays cash.

13 Q Okay. You testified earlier that my client Johnny Crockett came to
14 Carolina Salvage on February the 27th. Correct?

15 A Yes, sir.

16 Q And your estimation it was about 10:00 o'clock in the morning?

17 A Yes, sir.

18 Q You remember it was 10:00 o'clock in the morning because that's the
19 same day and the same time when the battery man comes?

20 A Yes, sir.

21 Q You testified that Mr. Crockett sold you some miscellaneous metals
22 that day?

23 A Yes, sir.

24 Q You testified when you're reviewing the ticket, although it says
25 quantity on that salvage ticket, that doesn't represents the number of

1 items that somebody sells?

2 A No, that represents pounds.

3 Q Do you keep track of the number of items that somebody sells?

4 A Yes, sir. What we do is at the end of the day, we actually --
5 everything is entered into a computer like you could come to Carolina
6 Salvage and I could run your name and it would show up every transaction
7 you've ever made.

8 Q Okay. Let me stop you right there. I think you're kind of confusing
9 me a little bit. If somebody comes -- say I have 35 pieces of metal and I
10 want to come and sell at Carolina Salvage and I meet you on the little
11 scale, and you fill out a ticket, is that 35 going to be put on that
12 ticket somewhere?

13 A Well what it would be is if you got 35 items, I'll go through that 35
14 items and we'll separate it out. I'll put the copper in one pile, brass
15 in one pile, stainless. If it's regular steel, put it in one, then we'll
16 weigh each pile up separately and put it on a ticket.

17 Q So really basically the number of items that is reflected on the
18 ticket could more or less be the number of metals or the difference types
19 of metals that somebody brings in?

20 A That's right.

21 Q But it's not part of the regular course of business? You don't at
22 any point keep track of the total number of items that somebody brings in?

23 A No, sir. The main thing we deal with is pounds. We buy by weight.
24 We sell by weight.

25 Q Let me ask you this question. If you don't keep track of that, the

1 number of items that are brought in supposedly in poundage, how do you
2 insure that nobody steals from you?

3 A That's why we have self-dumping hoppers. As it comes off, any kind
4 of copper or anything right there goes into the trash can. When I fill it
5 up, I drag it inside the building. The building is secure. It has
6 cameras inside. Couldn't take nothing out of there. It's just the way we
7 separate it and store it.

8 Q Are these bins locked up?

9 A Yes, sir, they locked in the warehouse.

10 Q The bins at the scale?

11 A No. The bins at the scale is sitting right there at my view.
12 They're sitting right here beside me at the scale. When it comes off the
13 scale, it goes into the bin.

14 Q You testified that Mr. Crockett brought in -- I think in your
15 words -- well over a hundred pounds; is that right?

16 A Yes, sir.

17 Q According to that ticket you filled out, there were 16 pounds of
18 number two copper?

19 A Yes, sir.

20 Q And number two copper is what you refer to as copper that's not
21 clean?

22 A Yes, sir. Anything with solder on it or paint, anything like that,
23 any kind of contaminants. The only way you can take that number two
24 copper and make number one out of it is if you take and cut the solder
25 joints off, then you would have number one and number two copper. That's

1 what we would do inside the warehouse. We'll just try to clean it up a
2 little bit. See if we can make more out of it.

3 Q You brought in according your ticket 72 pounds of yellow brass is
4 that---

5 A Yes, sir. He actually had two different -- two different grades of
6 brass there. And one was yellow brass and one was a hard brass. We just
7 went and wrote yellow on both of them. I just went on and paid him for
8 yellow on all of it. It should be -- the second item should be yellow
9 brass and the bottom item on there should be yellow brass.

10 Q What's the difference between yellow brass and hard brass?

11 A The only difference is just the texture into it. You have different
12 grades of brass. You have a yellow brass, a red brass, hard brass
13 plumber's brass. You have just different grades.

14 Q Which one is more valuable?

15 A Red. Red brass has copper mixed in with it.

16 Q Which is more valuable, yellow brass or hard brass?

17 A Hard brass would, in my opinion, would be more valuable. You just
18 don't see much of it. Some hard brass you can mix in with your red brass.
19 That's where you get back into your bronze.

20 Q But in this instance, even though some of this was yellow brass and
21 some of it was hard brass, you treated it the same? Your priced it out
22 the same?

23 A Yeah. It was a better grade of brass, but it had had some stainless
24 steel inside of it, but it was a better grade than what some of the other
25 was.

1 Q Now I was a little bit confused as to your role and Mr. Stone's role
2 with respect to this ticket. Is it my understanding that Mr. Stone signed
3 his initials, but didn't fill out the top portion?

4 A That's right.

5 Q Is that what I understand?

6 A That's correct. Mr. Stone actually signed his initials on it, then
7 when he seen the items come out of the car, he didn't know how to grade
8 it, so he had to come get me. When I come to it, I started the ticket
9 out, then I initialed it out again at the top.

10 Q So Mr. Stone would have been responsible for identifying this metal?

11 A Yes and no. Shawn could write tickets if I'm not there if it's a
12 metal that she was sure of. But any time copper, brass, catalytic
13 converters, anything that's a high dollar item, you have to see me.

14 Q He's new; correct?

15 A Shawn?

16 Q Is he new?

17 A No. Shawn had actually been working there for about a year.

18 Q Okay. He just---

19 A At the time---

20 Q I'm sorry. Go ahead.

21 A Shawn had actually been working at Palmetto Recycling for about a
22 year before this ticket was wrote up.

23 Q But he just didn't have the experience that you had in identifying
24 the metal?

25 A That's right.

1 Q Okay.

2 A Shawn basically worked in the big scale house. That's where we weigh
3 our cars and stuff like that and truck loads of stuff.

4 Q Why was Shawn the first person -- were you unavailable I guess?

5 A Yeah. I was loading the battery truck.

6 Q You were loading the battery truck?

7 A Yeah. I was on the forklift putting pallets of batteries on Ed's
8 truck.

9 Q You're unloading the battery truck when Shawn Stone took these items
10 of metal into custody?

11 A No, sir. No, sir. I was loading the batteries up and when Shawn --
12 when Shawn undone -- when Mr. Crockett undone the trunk of his car and
13 Shawn seen the items, he knew he couldn't identify what they was, so he
14 radioed me. I come on over to the scale house to the finish out the
15 ticket. Sometimes if a truck comes in, we have to kind of cover each
16 others jobs until we can get that truck out of there. Our trucks are
17 priority one. If we're not selling, then we don't have any money to buy
18 material with.

19 Q But after -- so did Shawn assist you in getting the metal out of the
20 trunk?

21 A Yes, sir. He sit there and watched me because I was trying to
22 explain to him what metals were. I had been trying to train him to kind
23 of help me more. Any time I can train somebody to help do my job it frees
24 me up to do other things.

25 Q So after you and Shawn took this metal out of the trunk, that's when

1 you proceeded to write the ticket up?

2 A Yes, sir.

3 Q And this is a trunk of a Accura; right?

4 A No, sir.

5 Q You don't recall?

6 A No, it wasn't no Accura. This was -- this was an older car. It was
7 like a Buick or something like that right there. It was old Buick or old
8 Chevrolet, some kind of old General Motors car.

9 Q And after you gave the ticket to Mr. Crockett, you stayed at the
10 scale, is your testimony he went and got paid at the window?

11 A Yes, sir. After I give him the ticket and while he was going around
12 front to get the money, I actually drug the items that I had purchased
13 from him inside the copper building, set it down besides the main office
14 and radioed Randy to call CTR.

15 Q So you dragged them out of the bins? You dragged them out of the
16 bins?

17 A No, sir. No, sir. Any kind of copper or brass, it's put in
18 trashcans like that there. We've got bins sitting there for stainless
19 steel and bigger items. When those items come in, they were put in those
20 containers right there and they were drug inside. I drug them inside
21 myself. Radioed Randy. Randy called the police. And called the manager
22 at CTR to come over.

23 Q So in addition to the bins, I guess you're kind of putting metals in
24 two places, basically putting big items in the bins and other items in
25 trashcans?

1 A Yeah. It depends on what it is. Like stainless steel and stuff like
2 that I call that throwing it in a bin. We dump it in a small bin with
3 electric motors or anything like that. Then we've got 30 and 60-yard
4 rolloff containers. We take those small self-dumping hoopers and dump it
5 in it. When we fill those up, we send them out. Copper, brass,
6 radiators, ACR's, anything like that is taken inside there to be
7 reprocessed. That goes in the copper building itself.

8 Q I want to get back to the ticket for just a little bit. You
9 completed this ticket each and every time Carolina Salvage purchases
10 metals from an individual?

11 A Yes, sir.

12 Q You give this particular form to the customer?

13 A Yes, sir. Two copies.

14 THE COURT: Asked and answered three or four times. Move on now,
15 counsel.

16 Q You testified you filled this ticket out on February 27th; right?

17 A Yes, sir.

18 Q This ticket I believe we saw it up here, it includes a section for
19 quantity; right?

20 A Yes, sir.

21 Q That's the poundage?

22 A Yes, sir.

23 Q It includes a section for description of the materials?

24 A Yes, sir.

25 Q It includes a section for the price per pound; right?

1 A Yes, sir. Then out beside that is a total per pound.

2 Q And you recall that two — that the main ticket item was the yellow
3 brass; right?

4 A Yes, sir.

5 Q And a lot of the other things that Mr. Crockett allegedly brought in
6 that day was worth very little; correct?

7 A Just small pieces like copper, some stainless steel, which was cut
8 off of the yellow valves. Just had stainless steel shafts with handles on
9 them, just pieces like that.

10 MR. SULLIVAN: Your Honor, may I approach the witness, Your Honor?

11 THE COURT: Yes.

12 CROSS EXAMINATION RESUMED

13 BY MR. SULLIVAN:

14 Q Mr. Fleming, I'm showing you what's marked as State's Exhibits Number
15 One, which of course you recognize as being that ticket; right?

16 A Yes, sir.

17 Q On the first line, that's listed as number two copper; right?

18 A Yes, sir.

19 Q The total value that you paid to Mr. Crockett on that day, the total
20 value you put on the ticket \$36.80?

21 A Yes, sir, just for the copper.

22 Q With respect to the brass, that would be items number two and items
23 number five on that ticket; right?

24 A Yes, sir.

25 Q And the total price that you paid or that the Carolina Salvage paid

1 for that brass was in excess of a hundred dollars or a hundred fifteen
2 dollars or something like that?

3 A Somewhere around in there.

4 Q The total amount of this ticket was only \$155; right?

5 A Yes, sir.

6 Q So the other two items really weren't worth a whole lot; right?

7 A No, sir. That was the stainless steel and the short steel.

8 Q Okay. When Mr. Crockett was speaking with you, he did not try to
9 conceal his identity; right?

10 A No, sir. He was a regular customer.

11 Q But he provided you with contact information?

12 A Yes, sir. I always asked for ID any time a purchase is made.

13 Q And he provided you with his name?

14 A Well I already knew his name, but he always hands me his ID.

15 Q He provided you by virtue of the ID with his address?

16 A That's right.

17 Q And that's the information that you used to put on the salvage
18 ticket; right?

19 A Yes, sir.

20 Q And you testified on direct that Mr. Crockett also signed this
21 ticket; right?

22 A Yes, sir.

23 Q Signed it William Crockett?

24 A Yes, sir.

25 Q Which is his name?

1 A Yes, sir.

2 Q So you knew this stuff was stolen; is that right?

3 A Well I wasn't a hundred percent sure. I had the manager from CTR
4 showed me pictures of items that were taken. And the items that
5 Mr. Crockett come in with to me looked like what he was looking for.

6 Q So you had a suspicion that theses items might be stolen?

7 A Yes, sir.

8 Q Is that fair to say?

9 A Yes, sir. The reason why I knew that was some of the items was
10 caring little tags on the side of them that CTR uses.

11 Q Once you developed this suspicion, that's when you contacted law
12 enforcement?

13 A Yes, sir.

14 Q And these pictures that CTR provided to you, that's what you used to
15 compare the metal?

16 A Yes, sir.

17 Q CTR had not provided you with any type of serial numbers?

18 A No, sir.

19 Q They did not provide you with any type of manufacturing numbers for
20 this metal?

21 A No, sir.

22 Q They did not provide you with any other type of business records
23 showing that they actually owned this metal?

24 A No, sir.

25 Q Now you -- so you contacted law enforcement on the 27th; right?

1 A Yes, sir.

2 Q Then you meet with Detective Waldrop on March the 4th?

3 A That sounds about right. It took a couple of days. If I'm not
4 mistaken, officers come down twice on this right here because first time
5 the officers come down, they come down and looked at the items and they
6 needed to get -- they needed to talk to CTR. They had me to hold the
7 items. Then they come back again, took pictures of the items, then took
8 the items.

9 Q But you did have a conversation with Detective Waldrop?

10 A Yeah.

11 Q You had a conversation about the metal that my client supposedly
12 brought in on the 27th?

13 A Yes, sir.

14 Q You told him everything you're telling the Court today about this
15 metal; right?

16 A Yes, sir.

17 Q And about what transpired that day?

18 A Yes, sir. I just told him that Mr. Crockett brought the items in. I
19 had received photos of the exact same items, you know, and I needed to
20 talk to CTR.

21 Q So you told him what happened, when it happened and how it happened?

22 A Yes, sir.

23 Q And Detective Waldrop gave you the opportunity to tell him everything
24 that you wanted to tell him about this case?

25 A Well---

1 Q Correct?

2 A All I knew about it was Mr. Crockett brought the items in, you know.

3 Q Well at no point during your conversation with Detective Waldrop did
4 you tell him that you had a criminal history?

5 A Sir?

6 Q At no point during your conversation with Detective Waldrop did you
7 tell him about your criminal history?

8 A My criminal history?

9 Q Yes, sir.

10 A I didn't really see where it was any of his concern.

11 Q Okay.

12 A I was not wanted for anything.

13 Q At no point during your conversation did you tell Detective Waldrop
14 that you had multiple felonies on your record?

15 A No, sir.

16 Q At no point did you tell him about the assault and battery with
17 intent to kill conviction in 1994?

18 A No, sir.

19 SOLICITOR SIKORA: I think that this has been asked and answer
20 several times, Your Honor.

21 A I really didn't even see where it was even relevant. I made
22 mistakes. I paid for my crimes. It's over with. I never denied anything
23 I've ever done.

24 Q And you didn't tell him about the possession of stolen goods --
25 possession of stolen fire arm in 2008?

1 A I didn't have a possession of stolen fire arm. I was in possession
2 of a fire arm. It wasn't stolen.

3 Q Okay.

4 A I still had some fire arms left around the house when I come out of
5 prison. When I come out of prison, I was underneath the 1968 South
6 Carolina Gun Act. They did not reamend it until after I was out. Then
7 that put me in category where I could not have fire arms.

8 Q That was because you had been convicted of felonies?

9 A That's right. So when they come in, they took most of my fire arms.
10 They actually took 14 guns out of my house and had to give me three of
11 them back because they were black pattern flint lock. I still have those.
12 I can have those. They charged me with one, give me six months probation.
13 You know because it wasn't like I was out committing a crime or something
14 another with them. I never hid them. When the officer actually come to
15 my house, he asked me did I have any fire arms in the house and I said
16 yes.

17 Q Carolina Salvage had some problems in the past with its employees
18 stealing; right?

19 A Yes, sir.

20 Q Some of those employees were placed on leave of absence?

21 A Yes, sir. I actually was working with them when Carolina Salvage got
22 embezzled for over \$250,000. I actually turned the people in that was
23 doing it.

24 Q When was that?

25 A That---

1 SOLICITOR SIKORA: Objection, Your Honor. Where are we going in
2 terms---

3 THE COURT: I'm trying to figure that out too.

4 A That was over a year ago.

5 SOLICITOR SIKORA: I'm sorry?

6 THE COURT: Objection?

7 SOLICITOR SIKORA: Yes.

8 THE COURT: Sustained.

9 CROSS EXAMINATION RESUMED

10 BY MR. SULLIVAN:

11 Q Some of the Carolina Salvage's employees were not only placed on a
12 leave of absence, some of them were terminated because they were stealing;
13 right?

14 SOLICITOR SIKORA: Objection, Your Honor. I think this is---

15 THE COURT: Sustained.

16 Q No further questions. Thank you, Mr. Fleming.

17 SOLICITOR SIKORA: I have nothing further. May this witness be
18 excused, Your Honor?

19 THE COURT: What say the Defense?

20 SOLICITOR SIKORA: Mr. Sullivan?

21 MR. SULLIVAN: I'm sorry, no further questions.

22 THE COURT: May he be excused?

23 MR. SULLIVAN: Yes, sir, Your Honor.

24 THE COURT: You're welcome to stay if you'd like.

25 MS. SIKORA: I know it's getting late, Your Honor, and the witnesses

1 seems to be taking longer---

2 THE COURT: We better stop or we're going to be here late. Ladies
3 and gentlemen of the jury, we'll see you back here at 9:30 in the morning.
4 Do not discuss this case with anyone should anybody attempt to do so.
5 Remember my instructions. Have a good night.

6 (Whereupon, the jury was dismissed for the day at 4:30 p.m.)

7 THE COURT: I'm beginning to wonder if this is a trial or if this is
8 Metal Learning 101 and I'm back in college or something. My goodness
9 folks. Let's stick to what this trial is all about. See y'all in the
10 morning.

11 SOLICITOR SIKORA: Thank you.

12 (Whereupon, court recessed for the day at 4:32 p.m.)

13 (March 17, 2011, back on the record at 9:38 a.m.)

14 THE COURT: Thank you. You may be seated. Okay. We've got
15 everybody. I assume all of them reported back?

16 BAILIFF: Yeah, they did.

17 (Whereupon, the jury returned back at 9:40 a.m.)

18 THE COURT: Good morning and Happy Saint Patrick's Day. Those of you
19 that didn't wear green today, at first break, you can line up and get
20 pinched or you have the choice of singing "O Danny Boy." Those of you
21 wearing Gamecock colors though, we'll excuse you. I hope everybody had a
22 good night and ready to get back to trial. Solicitor, you can call your
23 next witness.

24 SOLICITOR SIKORA: Thank you, Your Honor. May it please the Court,
25 the State calls Jerry Waldrop.

1 JERRY WALDROP, after being duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR SIKORA:

4 Q Good morning. Could you please state your full name for the record?

5 A Jerry W. Waldrop.

6 Q Where do you work?

7 A Rock Hill Police Department.

8 Q How long have you worked there?

9 A Thirty-seven years.

10 Q And what is your position at the Rock Hill Police Department?

11 A At the present time I'm a detective.

12 Q Do you work with specific type of crime or unit within the Rock Hill
13 Police Department?

14 A At the moment, I'm assigned to the Person's Crimes Unit. But prior
15 to a few months ago, I was in the Property Crime Section.

16 Q And can you just give me a general brief overview of any of the
17 training you've had in relation to your law enforcement career?

18 A That would take a while, but numerous hours of training as far as
19 interview interrogation. I'm a graduate of the FBI National Academy,
20 Quantico, Virginia. I'm also a graduate of the IPTM in Jacksonville,
21 Florida, which is the Institute of Police Technology and Management. And
22 last count, over eighteen hundred and something hours of various training.

23 Q So if somebody calls the Rock Hill Police Department looking for
24 assistance, would it be a detective be the person that responds?

25 A Normally not. Our department's normal procedure is that a patrol

1 officer responds to all requests for calls for service. Completes the
2 initial investigation or the report. And then it's forwarded to the
3 Detective Division if it requires a follow-up.

4 Q Is it fair to say a patrol officer is someone in traditional police
5 uniform and the police car with the lights on it?

6 A That's correct.

7 Q So how does a detective become involved in a case?

8 A After the initial report is done, say it's done on Monday morning,
9 when we come in on Tuesday morning, the detective supervisors go through
10 all of the reports, pick out the ones that require follow-up, such as
11 grand larcenies, homicides. Or homicide, it's handled right then. Armed
12 robberies, grand larceny autos, anything that requires a follow-up, then
13 the supervisor assigns a detective to that case and it handed to him to
14 follow up on.

15 Q So would it be fair to say every call that comes into the police or
16 every case that Rock Hill has is not necessarily handled by a detective?

17 A Not by a detective, no, ma'am.

18 Q And were you involved in the investigation of this case against
19 Mr. Crockett?

20 A I was.

21 Q Were you the officer that initially responded back on February 24 to
22 CTR when the theft was first reported?

23 A I was not.

24 Q So how did you become involved in this case?

25 A It was assigned to me the following morning for follow-up.

1 Q Did you have occasion to go out to Carolina or Palmetto Salvage as
2 part of your investigation?

3 A I did.

4 Q And were you able to obtain any evidence there as part of your
5 investigation?

6 A On the initial call involving Mr. Crockett, I went out and met with
7 the employees of Palmetto Recycling and also responded to CTR and talked
8 to the manager there, looked at the site, took some pictures of the damage
9 done to the tanks. Also recovered some brass fittings, pipes, valves,
10 that kind of stuff from Palmetto. They were taken and put into warehouse
11 for storage.

12 Q Did you talk with Mr. Fleming when you were at Palmetto?

13 A I did.

14 Q Was Mr. Fleming the one that gave you the items that you recovered?

15 A He did.

16 Q And you said you took them to a warehouse. Can you describe that
17 facility for us? Where would this stuff have been placed in this
18 warehouse?

19 A Due to the size and nature of this evidence, it is not able to be
20 placed in our normal evidence room at the police station, which is semi-
21 small. We have a warehouse on Columbia Avenue that is city property that
22 has a enclosed cage that has complete security. It's surrounded and
23 secured by a lock that we take evidence that's not or oversized or
24 something that can't be put into the regular evidence room.

25 Q Okay. Since you first took that evidence to this locked cage in the

1 warehouse, is that where it's remained until this trial?

2 A That's correct.

3 Q I'm going to refer you to exhibits which have been marked for ID
4 purposes only as 9, 10, 11, 12 and 13, which is basically the stuff that's
5 sitting right before me. Have you had a chance to look at this stuff?

6 A Several times.

7 Q Okay. Does it look familiar to you?

8 A It has been mixed up now that we've -- y'all have gone through it
9 here in Court. But that's the items that were picked up on two different
10 occasions at Palmetto with Mr. Crockett's ID and all as having brought in
11 for sale.

12 Q Are these the same items that have been locked in the cage at the
13 warehouse?

14 A That's correct.

15 Q Did any -- other than possible rearrangement that you mentioned from
16 the attorneys looking at the evidence, is there anything else difference
17 about it from when you first picked it up from Palmetto?

18 A No, ma'am.

19 SOLICITOR SIKORA: At this time, Your Honor, the State would ask that
20 State's Exhibits 9, 10, 11, 12 and 13 be moved into evidence?

21 MR. SULLIVAN: Without objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibits Nos. 9, 10, 11, 12, AND
24 13 were received into evidence.)

25 DIRECT EXAMINATION RESUMED

1 BY SOLICITOR SIKORA:

2 Q I'm going to try to pick something light. State's Exhibit Number Ten
3 for the record. I'm holding in my hand a pipe from State's Exhibit Ten.
4 Have you seen this before?

5 A Yes, ma'am.

6 Q Could you describe what the edge of this looks like?

7 A It's a piece of raw copper that has been cut from a fitting or an
8 extension of that pipe. It appears to have been cut with sawzall type of
9 saw.

10 Q Would you please describe the end of this as smooth or jagged?

11 A Oh, no, it's definitely jagged.

12 Q Thank you. And this would be State's Exhibit Number 13. I've got
13 the magic gloves on. They're very thick. Thank God. This tag that we
14 see on this pipe that I pulled out off State's Exhibit 13, was that there
15 whenever you removed it from Palmetto Salvage?

16 A It was. There's several of those.

17 Q Thank you. And is Palmetto Salvage located here in York County?

18 A It is, on Porter Road inside the city limits of Rock Hill. I think
19 the actual address is on Flint Street Extension, corner of Flint and
20 Porter Road.

21 Q Which would still be York County?

22 A And inside the City Limits of Rock Hill.

23 Q Okay. I'm going to hand you State's Exhibits Number One. If you
24 would just take a quick look at that for me. Does that look familiar to
25 you, Detective?

1 A That's correct.

2 Q And what is that that you're holding in your hand?

3 A It's the copy of the ticket that I was given by Palmetto at the time
4 this stuff, along with his ID and this evidence was collected at Palmetto.

5 Q Okay. Is that ticket part of your police file?

6 A That's correct.

7 Q Does that ticket correspond to what we see before us as State's
8 exhibits 9 through 13?

9 A Yes, it does.

10 Q Could you tell me the name on that ticket again?

11 A William Crockett.

12 Q Thank you. Did you ultimately arrest Mr. Crockett?

13 A I did.

14 Q And in your conversations with CTR, did CTR ever identify State's
15 Exhibits 9 through 13 as their property?

16 A They did on two different occasions.

17 Q How sure did they seem in speaking with the gentleman from CTR that
18 this was, in fact, CTR property?

19 A A hundred percent sure.

20 Q After you arrested Mr. Crockett, did you do what we call mirandize
21 him?

22 A I did.

23 Q Can you explain what that is?

24 A The Miranda Warning is the warnings that are required before you
25 interrogate an individual or ask him questions pertaining to a certain or

1 particular crime. He was mirandized and given his Miranda Warnings.

2 Q Okay. Would you just recite those Miranda Warnings for us here
3 today?

4 A He was told that you had a right to remain silent. Anything you say
5 can and will be used against you in a Court of Law. You have the right to
6 have an attorney present for questioning and have him with you during
7 questioning, but if you cannot afford one, one will be appointed to you by
8 the Court's at a later date. You can stop answering questions at any time
9 you so desire.

10 Q It is normal practice for you when you're investigating a case after
11 a suspect has been mirandized to ask them if they wish to talk to you
12 about the charges?

13 A Yes, ma'am.

14 Q Did you do that in this particular case?

15 A I did.

16 Q And did Mr. Crockett give you any statement?

17 A He did.

18 Q And would you tell us what that is?

19 A After mirandizing Mr. Crockett at the police station in the interview
20 room, I asked him if he wanted to talk to me about the metal and how he
21 got it. He made two word statement. And excuse me, but he said, "Fuck
22 off."

23 Q Were you also present for the booking process of Mr. Crockett?

24 A I was.

25 Q And can you just explain briefly what the brooking process is?

- 1 A That's where you're taken into the jail and your necessary
2 information that's required -- you're required to give us as far as name,
3 address, date of birth, and all that stuff is put into the computer as
4 part of the booking process.
- 5 Q So basically it sounds like general identifying information?
- 6 A That's correct.
- 7 Q And were you present for that booking---
- 8 A I was---
- 9 Q ---of Mr. Crockett?
- 10 A Yes, I was.
- 11 Q And as part of the questions that a suspect is asked in the course of
12 the booking process, do you ask whether they're employed at the time?
- 13 A They do. The booking or the correctional officers ask that question.
- 14 Q Then did you hear Mr. Crockett's response to that question?
- 15 A He advised unemployed at the time.
- 16 Q Do you see the gentleman Mr. Crockett that you previously arrested in
17 connection with this crime---
- 18 A Yes, ma'am---
- 19 Q ---in the courtroom today?
- 20 A Yes.
- 21 Q Would you please point him out to the jury?
- 22 A Sitting at defense table, gentleman with the white shirt, gray
23 jacket, William Crockett, Johnny William Crockett.
- 24 Q Thank you. Please let the record reflect that Detective Waldrop has
25 identified the Defendant. Court's indulgence just for a moment please.

1 (pause) Thank you. Please answer any questions the defense counsel has.

2 CROSS-EXAMINATION

3 BY MR. SULLIVAN:

4 Q Detective Waldrop, you indicated that you work for the Rock Hill
5 Police Department; correct?

6 A That's correct.

7 Q You have been involved in law enforcement for 37 years?

8 A That's correct.

9 Q Of course as a law enforcement officer, you have received training;
10 right?

11 A That's correct.

12 Q Initially training at the Criminal Justice Academy?

13 A Yes, sir.

14 Q That's down in Columbia?

15 A Yes, sir.

16 Q And that was training for your work as a patrol officer?

17 A Yes, sir.

18 Q As time goes by, you received more advanced training; right?

19 A That's correct.

20 Q Training from the Criminal Justice Academy?

21 A On several occasions, that's correct.

22 Q Training from your department?

23 A Yes, sir.

24 Q Training such as Advanced DUI Detection?

25 A I haven't been on patrol since 1982, but prior to that, I probably

1 did have some DUI detection.

2 Q You have received some advance training in drug crimes?

3 A That's correct.

4 Q Investigative techniques?

5 A That's correct.

6 Q As part of your investigative procedure, you're looking for certain
7 things; correct?

8 A Yes, sir.

9 Q And those things can be grouped into a few general categories. The
10 first category being witness statements?

11 A That's correct.

12 Q And witness statements is basically evidence from people who say they
13 saw the something happening in a particular case?

14 A Yes.

15 Q And that's one component of any investigation that you're looking
16 for?

17 A If they're witnesses and we can identify them, yes.

18 Q And the second thing, the second category of information you're
19 looking for is physical evidence?

20 A Yes.

21 Q And physical evidence is anything of a physical nature which tends to
22 prove a crime?

23 A That's correct.

24 Q And that could include such things as fingerprints?

25 A Yes.

1 Q DNA?

2 A Yes.

3 Q Pictures?

4 A Yes.

5 Q Weapons?

6 A Yes, sir.

7 Q Business records?

8 A Yes.

9 Q Those are all types of physical evidence?

10 A That's correct.

11 Q And the last thing you're looking for as part of your investigation
12 is confessions?

13 A That's correct.

14 Q And a confession is basically a statement from the person accused of
15 committing the crime?

16 A That's correct.

17 Q A statement which incriminates himself or herself?

18 A Or tell us -- yeah.

19 Q And a statement later on could possibly be used at trial against
20 them?

21 A That's correct.

22 Q And as a detective, you're taught to gather as many of these
23 categories as possible?

24 A When necessary, yes, sir.

25 Q More of these categories you're able to obtain or gather, the

1 stronger your case is?

2 A That's correct.

3 Q Let's talk about I know Ms. Sikora alluded to it a little bit. Let's
4 talk about how a case typically comes to the attention of the Detective
5 Division. I think you testified that a person first makes a complaint to
6 the police department?

7 A That's correct.

8 Q These complaints are usually taken by members of the Patrol Division?

9 A That's right.

10 Q Members of the Patrol Division are the first responders?

11 A Yes, sir.

12 Q And these are the guys who we see every day driving around in marked
13 patrol cars?

14 A Yes, sir.

15 Q Most of these complaints are taken at the scene of the crime?

16 A Yes, sir.

17 Q Some are also taken at the police station?

18 A Yes, sir.

19 Q And some are called in via 911?

20 A Yes, sir.

21 Q And sometimes the case may go directly to you as a detective?

22 A Normally not.

23 Q Once a case is assigned to you, that's when you begin your
24 investigation?

25 A That's correct.

1 Q That's when you began to gather as much as information as possible?

2 A Yes, sir.

3 Q That's when you began to gather as much as evidence as possible?

4 A Yes, sir.

5 Q And after you gathered the evidence in a particular case, you make a
6 decision whether or not to obtain an arrest warrant?

7 A When we feel like we have enough probable cause to get the warrant,
8 yes, sir.

9 Q And an arrest warrant is a piece of paper that allows you to arrest
10 someone?

11 A Yes, sir.

12 Q And you have to have probable cause in order to make that arrest?

13 A That's correct.

14 Q And generally after you obtain the arrest warrant, after this case is
15 completed, that's when you began to write a report?

16 A The report should already be done, typically already done.

17 Q So the incident report would have already been completed prior to
18 obtaining the arrest warrant?

19 A Yes, sir.

20 Q Okay. And as law enforcement officer, you're trained how to complete
21 these reports?

22 A Yes, sir.

23 Q And, of course, there are different type of reports. There's the
24 initial incident report?

25 A Right.

1 Q There's supplemental reports?

2 A Yes, sir.

3 Q A supplemental report is essentially another report by another
4 officer who is doing something else to assist on the case?

5 A That's correct.

6 Q And there's also in here in York County what we refer to as the
7 General Sessions Summary or Case File Summary; right?

8 A That's correct.

9 Q Okay. But you're taught how to complete all these forms; correct?

10 A That's correct.

11 Q You're taught to complete them accurately?

12 A Yes, sir.

13 Q Correctly?

14 A Yes, sir.

15 Q These reports are reviewed by other officers who may rely upon that
16 information contained in them; right?

17 A That's correct.

18 Q And they're also reviewed by the prosecuting attorneys who eventually
19 the file is turned over to?

20 A That's correct.

21 Q I know when you spoke briefly about the case law summary, but
22 basically a case law summary is a report that contains several different
23 sections?

24 A It chronologically lays out the events or the Defendant's
25 information, the charges, and then a summary of events, that's correct.

1 Q And there's a section for suspect information?

2 A That's correct.

3 Q A section for charges?

4 A That's correct.

5 Q A section for witness information?

6 A Yes.

7 Q And then there's a narrative section?

8 A Right.

9 Q And then the narrative section is where you as a detective write down
10 information that's germane to that case?

11 A That's correct.

12 Q And you complete this case file summary in a similar, complete and
13 accurate fashion as you would complete the incident report?

14 A Yes, sir.

15 Q In this particular case, Officer Maury is the one who prepared the
16 initial incident report; right?

17 A If I remember correctly, it's Maury, that's correct.

18 Q But you prepared the supplemental report for this case?

19 A I'm not sure if another supplemental report was done on it or not. I
20 don't think there was.

21 Q But you did prepare the General Sessions Case File Summary?

22 A That's correct.

23 Q And in this particular case you were investigating a complaint about
24 some stolen goods?

25 A That's correct.

1 Q More specifically you're investigating some scrap metal that has been
2 sold at Carolina Salvage on February 27th?

3 A That's correct.

4 Q You were referred this case to investigate by Officer Maury or your
5 supervisor?

6 A Supervisor, that's correct.

7 Q As part of your investigation, you went out to Carolina Salvage?

8 A I did.

9 Q You went out there on March the 4th?

10 A I don't have the summary in front of me, but I would say yeah.

11 Q And do you recall what time you arrived at Carolina Salvage?

12 A No, I don't.

13 Q You do not. Do you recall what time you departed?

14 A No, I don't.

15 Q Do you recall how long you were on scene at Carolina Salvage?

16 A The length of time, no. It wouldn't have been very long, ten or 15
17 minutes, if that long.

18 Q But during this time, that's when you interviewed Bill Templeton?

19 A Templeton is at CTR.

20 Q You went to CTR on the same day that you went to Palmetto?

21 A That's correct.

22 Q That's also during the timeframe in which you interviewed
23 Mr. Fleming?

24 A That's correct.

25 Q Same time frame in which you searched for evidence?

1 A The evidence that was given to me from them, yes, that's when I
2 collected it, that's right.

3 Q And Mr. Fleming is an employee of CRT?

4 A No. He's an employee of Palmetto.

5 Q Excuse me, Palmetto. You had a conversation with Mr. Fleming;
6 correct?

7 A I did.

8 Q About the metal that had been sold to him five days earlier?

9 A That's correct.

10 Q And Mr. Fleming told you all about this metal?

11 A In reference to what?

12 Q He told you what happened that day?

13 A That's correct. Yes.

14 Q He told you when it happened?

15 A Yes.

16 Q Told you who was involved?

17 A That's correct.

18 Q And you gave him the opportunity to tell you everything that he
19 wanted to tell you?

20 A That we needed to know at that time, yeah.

21 Q That's one of your jobs as police officer, you talked to witnesses?

22 A Yes.

23 Q You listened to their side of the story?

24 A I listen to what he had to say. You know, he told me who brought it
25 in, what he brought in, pointed it out to me and we got the paperwork and

1 the metal and took it back to the police station.

2 Q You asked questions when you're talking; right?

3 A Some. At that point, I would have asked some questions, but he
4 pretty well knew who brought it in and was giving me the information.

5 Q And Mr. Fleming's version is that my client Johnny Crockett came to
6 Carolina Salvage?

7 A That's correct.

8 Q On February 27th?

9 A That's right.

10 Q And he sold some scrap metal?

11 A That's right.

12 Q A total of 109 pounds of scrap metal?

13 A That sounds right. I don't have the ticket in front of me, but that
14 sounds right.

15 Q And the metal, that metal is recorded on a ticket; right?

16 A That's correct.

17 Q And Mr. Crockett received that ticket?

18 A To my knowledge. I wasn't present. I would say he got a copy of it.
19 He would have had to get a copy to get paid, that's correct.

20 Q So he got paid and then he left; right?

21 A That's normal procedure.

22 Q And Mr. Fleming knew that that metal has been stolen?

23 A He had suspicions, yeah.

24 Q He had suspicions that that metal belong to CTR?

25 A Yes, sir.

1 Q But he took it anyway?

2 A Yes.

3 Q And you took this, all the evidence, all the metal here that's before
4 us, you took that into evidence?

5 A That's correct.

6 Q On March the 4th?

7 A I think that's correct, yes.

8 Q And this metal that you took into evidence was supposedly the same
9 metal that my client had sold to Mr. Fleming on the 27th?

10 A That's correct.

11 Q And since that time, he testified it's been stored in the warehouse
12 in Rock Hill?

13 A That's right.

14 Q You had an opportunity to look at it?

15 A Yes.

16 Q You've had the opportunity to examine it?

17 A Yeah, I looked at.

18 Q And you counted it?

19 A We counted it when we picked it up down there, that's correct.

20 Q You counted it at what location?

21 A At Palmetto.

22 Q And you completed an Evidence Inventory Sheet?

23 A That's correct.

24 Q And you also took pictures of the metal?

25 A That's correct.

1 Q So you're familiar with it, is that fair to say?

2 A Yes.

3 Q Do you know what each piece is called?

4 A No.

5 Q Do you know what it's used for?

6 A No.

7 Q Are you familiar at all with the cryogenic technology?

8 A Not at all.

9 Q Do you have any idea what terms such as HVC, TCB and PCB mean?

10 A No.

11 Q Not familiar with those terms. Are you aware those are standardized
12 codes used by everyone in the cryogenic industry?

13 A No.

14 SOLICITOR SIKORA: Objection. There's been no evidence of that, Your
15 Honor. The witness has already testified that he's not familiar with the
16 codes or cryogenic technology at all.

17 THE COURT: Sustained.

18 CROSS EXAMINATION RESUMED

19 BY MR. SULLIVAN:

20 Q Mr. Fleming was an important witness for you in this case?

21 A Yes.

22 Q He was working out in the yard that day?

23 A That's correct.

24 Q He was responsible for receiving the metal from Mr. Crockett?

25 A To my knowledge. That's who I got it from. That's who told me he

1 filled out the ticket. He's the one that brought it in and he's the one
2 that gave it to me.

3 Q He was responsible for weighing it?

4 A I can't answer that.

5 Q He was responsible for separating it?

6 A I can't answer that either.

7 Q He was responsible for identifying it?

8 A He's the one that gave it to me. What happened prior to me getting
9 there, I can't answer those questions.

10 Q You testified that you gave Mr. Fleming the opportunity to tell you
11 anything that he wanted to tell you about the case?

12 A Fleming at Palmetto?

13 Q Yes, sir?

14 A That's correct.

15 Q At no point during your conversations did he tell you that he had a
16 criminal history?

17 A No, it didn't come up.

18 Q You prepared the Evidence Inventory Sheet?

19 A I'll have to see it to see if that's my signature.

20 MR. SULLIVAN: May I approach the witness, Your Honor?

21 THE COURT: Uh-huh (affirmative response).

22 A That's my handwriting yes, sir.

23 Q The Evidence Inventory Sheet is a sheet that's filled out reflecting
24 all the evidence or all the items that are taken into evidence as part of
25 a particular case?

1 A That's correct.

2 Q And in this particular case, the only items that you took into
3 evidence was the scratch metal; right?

4 A The scrap metal, the ticket and a copy of the driver's license.

5 Q Again, I'm sorry, I'm going to let you refer this.

6 MR. SULLIVAN: May I approach the witness, Your Honor?

7 THE COURT: (Indicated an affirmative gesture.)

8 Q According the Evidence Inventory Sheet, you prepared a total of five
9 items?

10 A That's correct.

11 Q Item number one was 16 pieces of number two copper?

12 A That's correct.

13 Q Item two was 72 pieces of yellow brass?

14 A That's correct.

15 Q Item three was four pieces of stainless steel?

16 A That's correct.

17 Q Item four were three pieces of short steel?

18 A That's correct.

19 Q Item five were 14 pieces of yellow brass?

20 A That's correct.

21 Q So according to your report you took into evidence a total of 109
22 pieces of metal?

23 A That looks to be right, yes.

24 Q And you counted this metal out at Palmetto Salvage?

25 A There. And when I did this, we counted it at the police station.

1 Q But you can't differentiate between the 72 pieces of yellow brass in
2 item number two versus the 14 pieces of yellow brass in item five?

3 A Knowing the difference between brass and copper, yes, I know the
4 difference and stainless steel. But they were listed as to the items as I
5 got them in the five gallon buckets and they were counted to correspond
6 with what he gave me at the scene.

7 Q But he didn't tell you how many -- how many items he took from
8 Mr. Crockett that day, did he?

9 A I don't think so, no.

10 Q He told you how many pounds?

11 A That's right.

12 Q And that poundage is reflected on the salvage ticket; right?

13 A That's correct.

14 Q And you weighed this metal out yourself; right?

15 A Weighed it?

16 Q Yes, sir.

17 A No, sir.

18 Q You didn't weigh it to see if it corresponded -- the items
19 corresponded with what he gave you with what's on this ticket?

20 A No.

21 Q You just took his word for it?

22 A That's correct. In all probability, this was probably just taken
23 straight from his ticket.

24 Q So you didn't conduct any type of independent investigation, you just
25 copied the ticket?

1 A That's right.

2 Q So you were taking Fleming's word for it?

3 A That's correct.

4 Q You copied the ticket that Fleming had prepared?

5 A That's right.

6 Q When you made the determination to just rely upon Fleming's word to
7 see whether the evidence matched what he told you, you didn't take into
8 consideration that he had a criminal history?

9 A Didn't have any reason to.

10 Q You also spoke with Mr. Templeton?

11 A That's correct.

12 Q That works at CTR?

13 A Yes.

14 Q He's supervisor at CTR?

15 A Yes.

16 Q You had a conversation with him as well?

17 A Yes.

18 Q You had conversation with him about the metal that had been taken
19 from their tanks?

20 A Yes.

21 Q You asked him some questions and he gave you some answers?

22 A That's correct.

23 Q You were trying to determine at that point if the metal actually
24 belonged to CTR?

25 A I mean he was showing me where it was taken from the tanks. I took

1 pictures of it. I had no reason to not believe that he was showing me,
2 you know, what was missing from the tanks. It was evident it was missing.
3 It had been ripped off, cut off and some of it had even been unscrewed.

4 Q But at no point did Mr. Templeton ever provide you with any type of
5 documentation?

6 A No.

7 Q He never provided you with any serial numbers of these items?

8 A I don't know that the copper and the stainless would have serial
9 numbers on them.

10 Q He didn't provide you with any manufacturing numbers?

11 A No.

12 Q He didn't provide you with any business records from CTR showing that
13 they purchased these items?

14 A No.

15 Q Didn't provide you with any receipts?

16 A No.

17 Q So other than Mr. Templeton's word, you don't have anything else in
18 your case file showing that this property belonged to CTR?

19 A Nothing other than his report and his word that, you know, it was
20 stolen from there, and it was evident that the items had been cut from the
21 tanks or ripped from the tanks and even unscrewed from the tanks.

22 Q So this evidence here, this metal, this has been stored in the Rock
23 Hill warehouse since February of last year?

24 A That's correct.

25 Q You've had access to it that entire time?

1 A Yes.

2 Q As a case agent, you can order forensic tests?

3 A If necessary, yes.

4 Q As a case agent, you have the ability to call upon the Forensic
5 Services Unit when you're investigating a case?

6 A If needed, yes.

7 Q The FSU, abbreviation, is available to you 24 hours a day?

8 A Yes.

9 Q Seven days a week?

10 A That's correct.

11 Q 365 a year?

12 A Yes.

13 Q And the Forensic Service Unit is a unit of officers with specialized
14 -- specialized training in forensics?

15 A That's correct.

16 Q They work over here out of the sheriff's department?

17 A Yes.

18 Q And they have specialized training in collecting evidence?

19 A That's correct.

20 Q They have specialized training in preserving that evidence?

21 A Yes.

22 Q And testing it?

23 A Yes.

24 Q And some of the examples of evidence that forensic service unit
25 processes at crime screens are such things as fingerprints?

1 A Yes.

2 Q Touched DNA?

3 A Yes.

4 Q And touch DNA, so the jury knows, is DNA that's left behind from your
5 perspiration when you touch something?

6 A I'm not a DNA expert, but I am familiar they can get evidence from
7 touch DNA, that's correct.

8 Q In the basic sense, everybody has fingerprints?

9 A Yes.

10 Q When we touch stuff, oils are left behind?

11 A That's correct.

12 Q And that imprint can be recovered?

13 A From certain surfaces, yes.

14 Q Some surfaces are easier to recover prints from than others?

15 A That's correct.

16 Q And metal is a surface that fingerprints can be recovered from?

17 A Like I said, I'm not an expert in it. But in my 37 years of
18 training, metal that is extremely hard to get fingerprints off of because
19 it is a porous object that the metal or — the amino acids in your
20 fingerprints and your body would absorb into.

21 Q If I went over here and touched this door, which is metal, you're
22 telling me that it would be very difficult for law enforcement to—

23 A If I went over there and took it right now, yeah, I could get it.
24 But if I waited some time and tried to take it at a later time, it would
25 diminish the possibility of getting the fingerprints off of it.

1 Q If DNA is recovered from a particular service, that DNA can be used
2 to identify who has touched that service?

3 A That's correct.

4 Q But you did not contact the Forensic Services Unit in this case?

5 A No, sir.

6 Q They were not called to Carolina Salvage?

7 A No, sir.

8 Q And you did not send metal that to Forensic Service Unit for
9 processing to see if there were any fingerprints left on it?

10 A No, sir.

11 Q Not one piece out of this 109 pieces was sent to Forensic Service
12 Unit?

13 A That's correct.

14 Q So Mr. Crockett's fingerprints were not found at the scene or on the
15 metal?

16 A No, sir.

17 Q In fact, there is no forensic evidence implicating Mr. Crockett in
18 this case?

19 A Other than the fact that he brought it in. We had his ID and we had
20 him identified as the person that brought it in.

21 Q There's no forensic evidence implicating Mr. Crockett in this case?

22 A No, sir.

23 Q As part of your investigation, did you check to see if there was a
24 video at Carolina Salvage?

25 A No, I did not.

1 Q So there is no -- to your knowledge, there's no video of this
2 transaction?

3 A That's correct.

4 Q There's no video showing Mr. Crockett at Carolina Salvage on the
5 27th of February?

6 A To my knowledge, no.

7 Q There's no video showing him unloading scrap metal that or talking
8 with Mr. Fleming?

9 A Not to my knowledge.

10 Q So CTR first reported the theft of these items to Rock Hill Police
11 Department on February the 24th?

12 A I think that's correct. I'd have to see the report, but I think
13 that's correct.

14 Q That's when Officer Maury went to the scene that day?

15 A Yes.

16 Q Then you became involved in the case later on on March the 4th?

17 A Well I would have been assigned the report sooner than that, but
18 March the 4th, if I'm not mistaken, would have been when all of this was
19 done.

20 Q So March the 4th is when you went out to CTR?

21 A That's correct.

22 Q And that's also when you took--

23 A Yes--

24 Q --the evidence into custody?

25 A Yes.

1 Q But prior to March the 4th, you don't know where that metal that was?

2 A No.

3 Q You don't know who had it?

4 A That's correct.

5 Q Or what they were doing with it?

6 A That's correct.

7 Q So for what, seven or eight days, the metal was unaccounted for?

8 A That's correct. I don't have any idea where it was at.

9 MR. SULLIVAN: No further questions for this witness, Your Honor.

10 SOLICITOR SIKORA: Just briefly, Your Honor.

11 (WHEREUPON, State's Exhibit No. 14 was marked for
12 identification only.)

13 REDIRECT EXAMINATION

14 BY SOLICITOR SIKORA:

15 Q Detective, I'm handing you what's been marked for identification
16 purposes as State's Exhibit Number 14. Do you recognize what I've handed
17 you?

18 A That's correct.

19 Q Could you tell me what it is?

20 A It is a photo copy of a South Carolina Department of Motor Vehicles
21 Identification Card.

22 Q Of who?

23 A William Crockett, 15---

24 MR. SULLIVAN: Your Honor, I would object. This is beyond the scope
25 of cross examination.

1 SOLICITOR SIKORA: Your Honor, during cross examination he asked the
2 detective repeatedly what evidence he gained—

3 THE COURT: After that cross examination, I can't imagine what
4 couldn't be relevant. Go ahead. Overruled.

5 REDIRECT EXAMINATION RESUMED

6 BY SOLICITOR SIKORA:

7 Q Can you tell me the name on that ID?

8 A William Crockett, [REDACTED], Rock Hill, South
9 Carolina, DL number [REDACTED], which corresponds with the ticket we
10 collected.

11 Q Okay. And is that the copy of the identification you alluded to
12 during your testimony during cross that you obtained from Carolina?

13 A That's correct.

14 Q Does it look just as it did when you received it last year?

15 A This is the one that was given to me, that's correct.

16 Q Thank you.

17 SOLICITOR SIKORA: At this time, Your Honor, State would ask to move
18 exhibit number 14 into evidence?

19 MR. SULLIVAN: Without objection, Your Honor.

20 THE COURT: Without objection.

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

23 REDIRECT EXAMINATION RESUMED

24 BY SOLICITOR SIKORA:

25 Q I know you testified, Detective, that you're not a fingerprint

1 expert?

2 A That's correct.

3 Q Do you know if it's easier to obtain fingerprints off a smooth metal
4 surface or a rough metal surface?

5 A Smooth.

6 Q You testified that you been in law enforcement over 30 years; is that
7 correct?

8 A Thirty-seven.

9 Q And in all your years that you've been working with Rock Hill Police
10 Department, approximately how many cases would you say you were able to
11 successfully get touch DNA?

12 A I can't answer that. I really don't know. Touch DNA just became
13 prevalent recently. We were able to get DNA for several years. But
14 they've developed the process greatly in the last few years where we can
15 get touch DNA from several subjects. I mean just about anything you would
16 touch now. But at this particular evidence, we had no way who had handled
17 it, where it came from. And even the people at Carolina Salvage, there's
18 no telling how many people would have handled it, taking it and putting it
19 on the scales and all. And DNA processing is extremely expensive.

20 Q So given the fact that this metal may have been touched by you're not
21 sure how many people; is that correct?

22 A That's correct.

23 Q Would that make it easier or more difficult to obtain touch DNA?

24 A Extremely difficult.

25 Q Thank you nothing further.

1 THE COURT: Anything in recross?

2 MR. SULLIVAN: Just briefly, Your Honor.

3 RECROSS EXAMINATION

4 BY MR. SULLIVAN:

5 Q You testified that although you're not an expert in DNA it's easier
6 to obtain a fingerprint from a smooth surface as opposed to rough surface;
7 is that correct?

8 A That's correct.

9 Q Something such as this?

10 A Portions of that you possibly could. Portions of it you couldn't.

11 Q Something such as this would be a smooth surface?

12 A If I were fingerprinting it, I wouldn't even try to fingerprint it
13 because of the dust, oils, all of that off of it, you would never -- your
14 fingerprint powder would gum up on it and it would probably make a mess
15 out of it. You know the forensic people can try a lot of stuff, but I
16 wouldn't.

17 Q Something such as this?

18 A You know that's like I said before, it's got both smooth and rough
19 surfaces on it. But like I testified, we didn't try any of it because we
20 had him identified.

21 Q Because it's too expensive?

22 A Well that's on the DNA. I didn't say that about fingerprints.

23 Q No further questions.

24 SOLICITOR SIKORA: Nothing further from this witness, Your Honor.

25 May Detective Waldrop be excused so he can attend the trial next door?

1 MR. SULLIVAN: No objection. He can be excused.

2 SOLICITOR SIKORA: At this point the State rest, Your Honor.

3 THE COURT: Ladies and gentlemen of the jury, if you will step back
4 to your room and relax a minute or two please.

5 (Whereupon, the jury was excused for a break at 10:25 a.m.)

6 THE COURT: Anything for the record?

7 MR. SULLIVAN: Your Honor, at this time the Defense would move for a
8 motion for a directed verdict. Due to the evidence in light most
9 favorable to the State, we would submit there has not been sufficient
10 evidence to establish all the elements of this crime sufficiently for the
11 jury.

12 THE COURT: Anything from the State?

13 SOLICITOR SIKORA: Your Honor, I think there's been more than
14 sufficient evidence presented from which the jury can infer that the
15 Defendant has committed a crime with guilty knowledge required.

16 THE COURT: All right, deny that motion at this time. Counsel what's
17 your desire as far as the Court and Fifth Amendment rights? Have you
18 reached a decision about whether your client's going to testify?

19 MR. SULLIVAN: Your Honor, my client indicated he does not wish to
20 testify at this time.

21 THE COURT: Mr. Crockett, whether you testify or not, has to be a
22 personal decision made by you. Under the Fifth Amendment of the United
23 State's Constitution every criminal defendant has a right to remain
24 silent. The exercise of that right to remain silent can not mitigate
25 against a defendant in any way. You certainly have a right to testify,

1 but you have a constitutional right not to testify. The fact that you
2 don't testify, I will instruct the jury that is your constitutional right
3 and cannot mitigate against you. However, if you were to decide to
4 testify, you need to understand that you would be treated like any other
5 witness and you could be impeached and cross examined like any other
6 witness within the rules of evidence and procedure, of course. The
7 election to testify has, as I said, got to be a personal decision made by
8 you. It has to be freely, voluntarily and intelligently entered into.
9 Now if have you discussed this with your counsel?

10 MR. CROCKETT: Yes, sir.

11 THE COURT: Do you understand what counsel has explained to you?

12 MR. CROCKETT: Yes, sir.

13 THE COURT: Do you understand what I just basically went over with
14 you?

15 MR. CROCKETT: Yes, sir.

16 THE COURT: As I understand from counsel, you do not wish to testify.

17 MR. CROCKETT: That's correct.

18 THE COURT: That's your decision, yours alone?

19 MR. CROCKETT: Yes, sir.

20 THE COURT: Of course with his advice. All right. Let's take about
21 a ten minute recess and we'll come back. I'm sure some of the jurors need
22 a minute or two, probably a restroom break.

23 (Whereupon, a break was taken at 10:29 a.m.)

24 (Back on the record and the jury was brought back in at 10:36 a.m.)

25 THE COURT: All right, anything from the Defense?

1 MR. SULLIVAN: Nothing from the Defense, Your Honor.

2 THE COURT: All right, you may proceed with your arguments.

3 SOLICITOR SIKORA: Thank you, Your Honor, may it please the Court.

4 Good morning. We picked you to sit on this jury not because you have some
5 secret, magical powers, but you came to us with a wealth of experience
6 that you have from your every day lives. Common sense that I talked to
7 you about in my opening statement to you that helps you in your every day
8 life to help you make decisions and that will help you make your decision
9 in here today. What's your common sense telling you now? Things don't
10 happened in a vacuum. You've got to look at the big picture and do the
11 pieces of the puzzle fit together?

12 At beginning of this trial, I told you Mr. Crockett is charged with
13 possession of stolen goods. There are a few parts to that crime. In
14 South Carolina it is illegal to possess goods that are stolen. With the
15 knowledge that Mr. Crockett would have had that the goods were stolen or
16 reason to believe that the goods had been stolen. So let's take the first
17 part of that and break it down. Were these goods, in fact, even stolen?
18 You heard testimony from Mr. Templeton from CTR that when he left work on
19 February 23rd of last year, all these metal, pipes, valves and fittings
20 were attached to the tanks just as they should be. But when he gets into
21 work the next day on February the 24th of 2010, all this stuff is gone.
22 He testified that it seems to have been cut with a rough saw because it
23 left some jagged edges on what was left remaining at CTR, and that
24 Mr. Templeton didn't give anyone permission to remove these items from the
25 tanks at CTR, was not aware of anyone else at CTR that could have given

1 permission to anyone to remove these items, and couldn't come up with any
2 reason why anyone at CTR would give permission for someone to remove these
3 items. In fact, I believe he testified that once these items were
4 stripped off the tanks at CTR, it cost them over \$5,000 just to replace
5 what was taken. When Mr. Templeton got to work on February 24th, he
6 realized all these things had been removed from the tanks, he immediately
7 called the police that same day, made a report to the police that these
8 items had been stolen. Does Mr. Templeton have any reason to lie about
9 that? When he was testifying up on the stand, did he seem to be unsure of
10 what he was telling you what happened last year?

11 Fast forward down to three days later to Carolina Salvage right next
12 door to CTR. Mr. Templeton goes to take a look at these items, which are
13 in evidence, which you are going to be able to see after the conclusion of
14 the case. I asked Mr. Templeton how sure he was that these items that we
15 have here in the courtroom today are the ones that went missing from CTR
16 back on February 24th just three days before. Did he seem sure to you
17 that those were the same items that were removed from his tank when he was
18 testifying?

19 How do most people identify the property that they have? You're
20 describing what you own or goods that you're familiar with to someone, do
21 you describe it by the serial number or do you describe it by what it
22 looks like? When you have this stuff back in jury room with you, you're
23 going to be able to look at some of these items, which I would recommend
24 you do with gloves. You're going to see that some of these just don't
25 have serial numbers on them to give.

1 Mr. Templeton testified he worked in this business at CTR for about
2 ten years. How familiar do you think he is with these items that CTR
3 uses? I know when he was up there testifying, I heard more from
4 Mr. Templeton about what kind of items CTR uses and how he recognizes them
5 than I ever expected to find out in this trial. When you have this
6 evidence back with you to take a look at, you will see it matches back to
7 what Mr. Templeton is telling us. What was left on the tanks at CTR on
8 February 24th had jagged edges like it had been cut. These goods right
9 here when you take a look at them, you can decide for yourself do they
10 have jagged edges which are consistent with being cut off of the tank?

11 So to get to the issue after we've examined what evidence we have as
12 to whether or not these good were in fact stolen, did Mr. Crockett
13 actually possessed these good? Mr. Fleming came in and testified about
14 his work on February 27th at Palmetto Salvage. And he told you when he
15 testified that he had seen Mr. Crockett many times before that he was a
16 regular customer at Palmetto, so he recognized them when he first got
17 there. And he took an additional step of asking for Mr. Crockett's
18 identification. You will see back in the jury room on State's Exhibit
19 Number One, the salvage ticket you earlier saw up on the big scene.
20 You'll have this back there with you to look at. And you will see that it
21 does have Mr. Crockett's name and identifying information such as his
22 address and his driver's license number on the top. Do you think
23 Mr. Fleming just made it up out of thin air? Or do you believe that he
24 was telling you on the stand?

25 We can take it one step further. Not only did he know Mr. Crockett

1 to see him and asked for a copy of his ID and record the number that was
2 on the ID, and he also testified that he compared the ID to the person
3 that was standing in front of him. Did they appear to be the same person,
4 I asked him, and he said yes.

5 You will also have back there with you State's Exhibit Number 14. A
6 copy of the identification that was provided that day back on
7 February 27th when Mr. Crockett brought in this metal.

8 So that brings us to the last part of the charge of possession of
9 stolen goods. Did Mr. Crockett know these good were stolen? Or did
10 Mr. Crockett have reason to know that these goods were stolen that were
11 brought into Palmetto back on February 27th? Well how do you prove what
12 someone knows in their mind? You look at the circumstances around what
13 was going on. Mr. Templeton testified Mr. Crockett used to work at CTR
14 back in 2007. He testified about what Mr. Crockett did at CTR. He
15 assisted the crane operators move these big tanks around with this metal
16 stuff attached to it. That tell us me that Mr. Crockett would be familiar
17 since he used to work at that company with CTR materials. Mr. Templeton
18 also testified that Mr. Crockett was fired from CTR. How much love do you
19 think a person has for a company that fired them?

20 Mr. Templeton testified that some of these items, which I'm going to
21 leave in there, in the evidence at this point had those tags that you've
22 seen pictures of that specifically identified that stuff as property from
23 CTR. And you can see when you take a look at the evidence for yourself
24 that those tags are still there. Would Mr. Crockett have known upon
25 seeing this stuff that it was from CTR? Well Mr. Fleming who doesn't work

1 for CTR, who testified here in the courtroom that he had only seen
2 pictures once before of CTR's materials, knew right away on
3 February 27th when Mr. Crockett came in with this stuff. Hey, this looks
4 pretty familiar. I haven't even seen this stuff in person. It looks
5 familiar for me just one time looking at the photograph from this stuff,
6 but, hey, I think this is CTR's stuff. So what did he do with it? He
7 acted on his suspicions. He kept this stuff separate. Didn't throw it in
8 the bins that we heard about in great detail that existed at Palmetto
9 Salvage Yard. And he called the police. Not three days later, not four
10 days later, right away that day.

11 What other evidence do we have of whether Mr. Crockett knew these
12 were stolen or had reason to believe that they were stolen? Within three
13 days of this items going missing, he shows up with them right down the
14 street from CTR with the items that were taken in that theft, three days.
15 I would say a person that has property that they believe is stolen, and
16 which is rather unique like the stuff we have before us here today in this
17 courtroom, wants to get rid of it. You don't want to hang onto stuff that
18 you know is stolen. Especially unique items like this because the police
19 are going to be investigating. Are you going to want to be found with
20 this stuff in your possession? No. You're going want to get rid of it so
21 there's not any evidence that you ever possessed it.

22 Yes, when Mr. Crockett brought it into Carolina Salvage, he did give
23 a copy of his ID, he did provide his driver's license and that was
24 furnished on the ticket. But do you think when Mr. Crockett came into
25 Palmetto/Carolina on February 27th that he ever thought that Mr. Fleming,

1 our salvage yard worker, would think to himself, hey, this stuff looks
2 suspicious, I'm going to keep it separate and I'm going to call the police
3 and let them know about it? Do you think Mr. Crockett ever anticipated
4 that's going to happened? You heard Mr. Fleming say he had been in there
5 a bunch of times before. He had seen Mr. Crockett.

6 You heard Mr. Fleming say the usual practice is when people bring in
7 metal and he says he writes about 200 tickets a day, so it's a lot of
8 people coming in and out of there. As they throw it in these big bins or
9 trashcans and when those fill up, they drag them inside. So all this
10 stuff people are bringing in this scrap is all mixed together in these big
11 bins. Mr. Crockett having been to Palmetto Salvage on many occasions,
12 don't you think he would have to seen that's how they handle these things?
13 Don't you think he came in on February the 27th and assumed, hey, all this
14 stuff is just going to get through in a big bin with everything else. How
15 are they ever going to be able to say what I brought in versus one of
16 those 200 other people that come in on any given day? Because he knows
17 the standard business practice of Palmetto Recycling is to write out this
18 ticket we saw here on State's Exhibit Number One. And he knows after that
19 metal is thrown in the bin with all the other metals that people bring in
20 the only description that is going to be left for anyone to see is what's
21 written on this ticket. And, yes, it is generic: copper, brass, steel,
22 brass. So if that stuff is already mixed in with everything else. How
23 are they ever going to find it? But Mr. Fleming was smart. He knew
24 something was suspicious and he kept this stuff separate so the police
25 could look at it rather than throwing it in with everything else.

1 You will see when you have this back here -- it's hard to tell from
2 just looking at it, but this stuff is pretty heavy. I believe Mr. Fleming
3 testified it's over a hundred pounds worth of stuff. Not that easy to
4 move and carry around. He testified that -- Mr. Templeton just testified
5 and you can not go to Lowe's and buy this type of stuff. It's not that
6 common. I believe Mr. Templeton says there's only five places that he's
7 aware of in this country that even do this type of work.

8 We heard from Detective Waldrop last here today. He told you that
9 during the booking process that Mr. Crockett told him he was unemployed.
10 That says to me he probably doesn't have a real steady stream of income
11 coming in when this incident happened.

12 What does your common sense tell you? Look at the big picture. Does
13 Mr. Fleming have a reason to lie? Did he seem to be able telling you the
14 truth when he was talking about what happened back on February of last
15 year? The fact he was convicted in 1994 of assault and battery with
16 intent to kill, does that have any bearing on whether he's telling the
17 truth today? Is that a crime that involved some type of lying or
18 dishonesty. Am I condoning it? In this job, certainly not. Is that
19 really what you're going to hang your hat on when you're deciding whether
20 or not he was telling you the truth? What motive does he have to lie?
21 Why would Mr. Fleming go to all this trouble just to frame one of his best
22 customers? What would be in it for him?

23 Don't get bogged down in all the extra stuff that we have heard.
24 What somebody printed off the internet, volumes, what kind of valves there
25 are, whether Mr. Templeton has ever seen them before. That's not really

1 relevant in this case, is it? Don't get lost in the smoking mirrors and
2 all the additional evidence that you heard that does not have to do with
3 this case.

4 In a few minutes, the defense attorney is going to get up and talk to
5 you and I not going to have a chance to respond, but don't lose sight of
6 the big picture in using your common sense in the same way you would make
7 a decision in your every day life. Do you believe what the witnesses are
8 telling you?

9 We also touched a little bit during opening statements on the proof
10 beyond a reasonable doubt. The judge is going talk to you a little more
11 about that when he instructs you on the law. That's one of the things
12 he's going to talk to you about after closing arguments. Proof beyond a
13 reasonable doubt does not require proof beyond any and all doubt. There
14 are few things in this life that we know with a hundred percent certainty.
15 And yes, the definition that defense counsel gave you of proof beyond a
16 reasonable doubt in his opening statement, that is a valid definition.
17 The kind of doubt that would cause a reasonable person to hesitate to act.
18 Don't be confused by that word hesitate.

19 You've been back in that jury room. There's chairs in there, isn't
20 there? It might be some refreshments for you, a couple bath rooms. What
21 do you think that stuff is in there? Because we don't expect you go back
22 and make an instant decision. You're going to deliberate. That's what
23 juries do. You sit down and you talk about what you've seen, the evidence
24 and discuss it. We're not expecting an instant decision, so don't confuse
25 that word hesitate and that definition of beyond a reasonable doubt and

1 think that means you to come to a decision right away. That's why there's
2 chairs back there. You sit down and you go through the evidence and you
3 reach a decision in this case. Just because you sit down and talk about
4 it and don't come to a decision immediately, that doesn't mean your
5 decision has to be not guilty.

6 Somebody comes to you, and offers you this great job. I'm going to
7 pay you \$500,000 a year. Isn't that great? Sounds like good money. But
8 you're going to have to work the night shift. You're married and you've
9 got kids, and you know that's going interfere with your family life a
10 little bit. Aren't you going to hesitate, think a little bit about
11 whether or not you're going take that job? Maybe go home and talk to your
12 spouse about it. Are you going to take it? Yeah. Where else are you
13 going to be make that kind of money.

14 I mentioned in opening statements another way that we define in South
15 Carolina proof beyond a reasonable doubt. It's proof that leaves you
16 firmly convinced of the Defendant's guilt. Firmly convinced that
17 Mr. Crockett possessed stolen goods. That the goods were, in fact,
18 stolen. And that Mr. Crockett knew or had reason to believe that they
19 were stolen.

20 At the end of my opening statement, I told you I would stand back
21 before you at the end of this case and ask you, as I am asking you now, to
22 fulfill your oath as jurors that you took at the beginning of this case
23 and reach the verdict that speaks the truth, guilty.

24 MR. SULLIVAN: May it please the Court?

25 THE COURT: Yes.

1 MR. SULLIVAN: Ladies and gentlemen, the Criminal Justice System is
2 not about the big picture. As a juror in a criminal case, you're vested
3 with incredible responsibility. It's going to require you to examine
4 things more closely than you typically would on the average day. It's
5 going to require you to make a tough call, to make the tough decision.
6 It's going to require you to look at details you might not otherwise think
7 of. Solicitor just wants you to look at the big picture because that's
8 the easiest way to handle this. Well, ladies and gentlemen, the truth is
9 that's hiding the details. The details are what you need in order to make
10 a fully informed decision about someone's guilt or innocence in a case.

11 February the 27th, Mr. Crockett went to Carolina Salvage on Porter
12 Road and he sold some metal. He gave them his name, his driver's license
13 number and his address. He goes to the window, he gets paid and he
14 leaves. Sixteen days later, on March the 15th, he's arrested. He was
15 charged with possession of stolen goods. Of course the State in this case
16 is alleging that the metal that Mr. Crockett brought in on the 27th was
17 the metal that was taken from CTR, from those tanks that you saw the
18 pictures of, and that Johnny knew or should know that that metal had been
19 stolen. Ladies and gentlemen, the evidence does not support the State's
20 claim.

21 For the past couple of days, you've seen some pictures. You've heard
22 some testimony from a few of the State's witnesses. And the State's
23 asking you to go back in the Jury Deliberation Room and find him guilty
24 based on that testimony and based on these pictures. But you really take
25 the time to look at the details, to think about everything that was

1 testified to you. If you think about all the evidence, not just the
2 State's version, the evidence does not support the claim. The truth is we
3 don't know what Johnny Crockett sold on the 24th. I don't think any of us
4 know would we ever know that. But one thing we do know is that his
5 fingerprints were not found on single piece of metal that is standing
6 before you. There's no DNA connecting him to this metal. There's no
7 forensic evidence at all implicating him in this case. The other thing is
8 we know there's no video. There's no recording in this case. There's
9 nothing showing Mr. Crockett at Carolina Salvage. There's no video
10 showing Mr. Crockett talking with Mr. Fleming or getting metal out of his
11 trunk. There's no video of that. And Mr. Fleming testified there's
12 conveniently videos in other places at Carolina Salvage, but there's not a
13 place where he happened to be with Mr. Crockett.

14 We also know that Detective Waldrop did nothing to investigate CTR's
15 claim that the metal was theirs. He didn't weigh it, he didn't check the
16 serial numbers, he didn't check the manufacturer numbers, he didn't check
17 any business records. He simply relied on the word of Duane Templeton.
18 That's all he did. Now as a law enforcement officer that's been in law
19 enforcement for 37 years, you would think he might want to call upon some
20 of the resources and training that he has available to him. Most notably
21 the easiest way we can figure out who had handled this is by requesting
22 fingerprints or DNA or forensic evidence. But he didn't do that because
23 he told you I knew it was Crockett. I knew Crockett brought that in.
24 Templeton told me that and Fleming told me that. I'm not going to get DNA
25 testing. It's too expensive. He also told you that this metal was

1 unaccounted for for at least three days. He didn't know who touched it in
2 all those entire days. I think he even said probably wouldn't be smart to
3 get DNA because I know many people handled it during that three day period
4 where it was unaccounted for.

5 If we had a video, if we had some forensic evidence, if we had some
6 serial numbers or manufacturing number or business records or receipts or
7 something to hang our hat on to show that this is CTR's metal, the case
8 would be a lot different. But we don't have any of that.

9 All we have is the word of one man who's employed at CTR, Duane
10 Templeton. Mr. Templeton is claiming that the metal in these pictures is
11 CTR's metal. This is exhibit number four and exhibit number five. Of
12 course, you'll have those back there with you. All this metal right here.
13 Mr. Templeton testified that he was 100 percent positive that this metal
14 is metal that was taken off the tanks on the 23rd of February. He looked
15 at the pictures and said, that's the same metal. That's the same metal
16 that was missing when I came in to work on the 24th at 6:30 a.m. That
17 metal right there. He testified to that. He was confident. He was very
18 confident I might add. But we know that's not true. Because Mr. Fleming,
19 who works at Carolina Salvage, testified that, oh, these are the pictures
20 that CTR sent over to me prior to the 24th, telling me to be on the look
21 out for items that look like these. It's inconsistent. How can it be?
22 Templeton saying, yeah, this is the metal taken from our tanks, but
23 Fleming saying, no, we got those pictures prior to the 24th, CTR sent
24 those over. He even went to explain about how he knew those were CTR
25 pictures because he could tell the partition was taken from some office

1 area. Those are two inconsistent positions. Can't both be true.
2 Somebody's not telling the truth. Somebody's lying.

3 Mr. Templeton also testified that he knew that this metal was theirs
4 because they're the only company that uses that type of stuff. He talked
5 about how unique it was, how important it was, how it had to be suitable
6 for a certain temperature threshold and stuff like that. He said, we're
7 the only person that uses that. That's how I know that's my company's
8 metal. But then he later admitted to co-counsel that that wasn't true
9 either. That there's actually manufacturers, there's customers that also
10 use that type of metal because they're in same cryogenic business.

11 Of course, Mr. Templeton talked about some of their customers --
12 their primary customer being Air Products. I think they also talked
13 briefly about Air Gas. Of course, he's been working there ten years.
14 Knows everything about it. Yet he couldn't recall where the Air Gas --
15 where their customers were located. He didn't know they had one in
16 Gastonia, one in Charlotte, one in Spartanburg. He conveniently left out
17 that detail. Again, this is not a big picture situation. You've got to
18 think of everything. You've got to look at the details.

19 Mr. Templeton also testified that quote a lot of these tanks were
20 finished product. If you'll recall, he said, yeah, we at CTR had to call
21 our customers and tell them there was going to be a delay. He testified
22 that the total estimated cost for all of these parts had been taken off of
23 the tanks on the 23 or 24th is \$5,000. And it was new. Does that look
24 like \$5,000 worth of parts to you? Does that look new? It's not
25 consistent with what Templeton testified to. It looks like a bunch of

1 garbage to me. It's in a garbage can for a reason. It's not their stuff.
2 Ladies and gentlemen, there's no way this metal was the metal that was
3 taken off those tanks. It's old, it's corroded, it's paint covered. Is
4 that the finished product that they're sending onto their customers? It's
5 not logical. They're not going to take this metal, put it on a tank and
6 send it back to a customer.

7 That's three things that Mr. Templeton testified to that's not
8 consistent with the State's claim. But yet, he's the man that Detective
9 Waldrop is hanging his hat on. He's the man from CTR that the State's
10 hanging their hat on. They want you to believe that man and that man's
11 statement, yeah, this is CTR's stuff. And this is CTR's metal that was
12 taken off of those tanks. Mr. Fleming said it wasn't. So who do we want
13 to believe? I don't know. But I would submit to you that we can't figure
14 out who to believe. We can't figure out if we believe Fleming or if we
15 believe Templeton, then certainly the State cannot prove to you beyond a
16 reasonable doubt that that's CTR's equipment. Therefore, they can't prove
17 to you that that equipment was stolen from CTR beyond a reasonable doubt.

18 If they can't prove ownership, they can't provide serial numbers,
19 manufacturing numbers, no business records. And, of course, Templeton
20 said, we don't keep track of all that stuff. You know better than that.
21 You know a big company like that, they're going to have documentation
22 showing where they purchased certain items from different manufacturers,
23 from Pal, from Acme. They're going to have records of all that. But he
24 didn't show that stuff to Detective Waldrop to show, yeah, this is, in
25 fact, our stuff. They want to act like there's no serial numbers or

1 manufacturer numbers. You really think that \$5,000 worth of equipment,
2 values and things that are used in hospitals don't have any serial numbers
3 on them? No documentation showing, yeah, this is what we purchased from
4 the manufacturer.

5 I guess I do want to focus your attention on one more picture. This
6 is a picture of one of the tanks, finished product that Duane Templeton
7 testified to. This is what all their tanks they have this equipment.
8 That's what it looks like. It doesn't look like that. I don't see any
9 paint. I don't see any corrosion. That's not dirty. That does not equal
10 to that. I ask you to please look at those pictures when you go back
11 there because I think it tells a better story. It doesn't paint the nice,
12 big picture story that the State's wants you to believe. It's involves a
13 little more details perhaps than maybe we would normally go into, but,
14 ladies and gentlemen, the system demands that. As jurors you're vested
15 with an incredible responsibility. Mr. Crockett demands that. Don't just
16 close this case on a broad brushstroke. Look at all the evidence.

17 Ms. Sikora went over the law with you of receiving or possession of
18 stolen goods. It's essentially three elements. The facts that the goods
19 were stolen, the fact that CTR – the fact that the goods were stolen, the
20 fact that the person who is charged with this, in this case Mr. Crockett,
21 was in possession of those goods, he knew or should have known that those
22 goods were stolen.

23 Ladies and gentlemen, in a criminal case, you heard the burden of
24 proof is beyond a reasonable doubt. Now in a civil case where they have
25 to tip the scales ever so slightly, the burden here is much higher. I

1 submit to you that under the big picture it may tip the scales ever so
2 slightly in favor of one place or the other. That's not enough. If you
3 look at the details, think of everything that's been testified to, ladies
4 and gentlemen, I submit to you they're not meeting that burden. That
5 burden – remember, reasonable doubt is not just this and this, you've got
6 to have significant proof beyond a reasonable doubt. That would cause a
7 reasonable person to hesitate to act. They have not met that burden on
8 at least two of the elements of this crime. I'll submit three.

9 What do we know about Mr. Crockett? He went to Carolina Salvage on
10 February the 27th, three days later, he presented his driver's license,
11 gave them his name, his address, all his contact information. He also
12 signed the form William Crockett. He wasn't hiding anything. Is that
13 consistent with somebody who's committing – knowingly committing a
14 criminal act? Is that consistent with somebody who is selling goods that
15 he knows or should have known were stolen? No. You don't give them all
16 your information when you're committing a criminal act. I think it's also
17 even more illogical that you're certainly not going to sell goods right
18 next door to the business that's alleging they were stolen from. Why
19 would you do that? Three or four other scrap yards in Rock Hill you could
20 pick.

21 Who was the most logical person – stuff turns up stolen at CTR.
22 Who's the most logical person they want to point their finger to? They
23 want to point their finger at the guy that they fired. The guy who
24 they've got a ax to grind with. He's an easy target. Now the evidence
25 doesn't support that claim, but it's easy for them to make these

1 allegations against Mr. Crockett.

2 We heard about how all this property had been cut off and sawed off
3 with a saw, electric saw. Where is all that? I don't see any of that in
4 here.

5 Ladies and gentlemen, Detective Waldrop has been involved in law
6 enforcement for many years. He received extensive training. In pretty
7 much any type of training you can probably receive, Detective Waldrop has
8 received. The truth is, in this case, he didn't do his job. Took one
9 person's word that this is their property, which we know can't be true if
10 you believe both of the State's witnesses. And he took another person's
11 word, who happens to be a criminal, who happens to have a criminal
12 history, multiple felonies on his records, and he took his word that
13 Mr. Crockett came in and sold this property on the 27th. There's no one
14 else here from Carolina Salvage that can support that claim. So you have
15 to reply upon and determine whether or not you believe Mr. Fleming's word.
16 Do you believe Mr. Fleming's word that these pictures were taken prior to
17 the 24th or the 27th? That this is equipment that CTR had taken pictures
18 of and sent over to them before this ever happened? Or do you believe
19 Duane Templeton, who is 100 percent sure that that's the property that was
20 taken off these tanks? I don't know who to believe. But I certainly
21 don't submit that the State has not presented sufficient evidence to prove
22 beyond a reasonable doubt that that's the metal that came off those tanks
23 on the 23rd and 24th. That's illogical. That's a finished tank. Came in
24 and testified they took a finished product costing \$5,000, had to call
25 their customers. That's a finished product? That's garbage. That's not

1 consistent with what Templeton testified to.

2 Ladies and gentlemen, I again am asking you to use your common sense.

3 I would also ask you to take the time that's necessary for you to weigh
4 all the evidence this trial. Don't look at it from the big picture. It's
5 too much at stake. Examine all the evidence and I'm convinced you will
6 find Mr. Crockett not guilty. Not guilty because they have not proven to
7 you beyond a reasonable doubt that he knew those goods were stolen, or
8 should have known they were stolen. His actions were not consistent with
9 somebody who is knowingly committing a criminal act.

10 Also, I'll submit that they have not proven to you beyond a
11 reasonable doubt that this was the stuff that was taken from CTR on the
12 24th. Ladies and gentlemen and I would ask you upon hearing all the
13 evidence and upon weighing it, I would ask that you find him not guilty.
14 Thank you.

15 THE COURT: Ladies and gentlemen, I'm going to charge you this law of
16 this case. First of all, I'm going to offer you the very basis for
17 listening to this case. As I told you in my preliminary remarks you as
18 jurors are the finders of the facts. I am the judge of the law. It is
19 your exclusive duty to decide all issues of fact in this case. For that
20 purpose to determine the effect, the value, the weight and the truth of
21 the evidence. Both the State and the Defendant have a right to expect
22 that you will conscientiously consider and evaluate the evidence and apply
23 the law of the case thereto to end that both the State of South Carolina
24 and the Defendant will receive and obtain a fair and impartial trial in
25 this case.

1 As you know, the trial and what I've already stated to you the
2 Defendant is charged with the offense of possession of stolen goods. To
3 the charge or to the indictment, he's entered a plea of not guilty. This
4 puts the burden of proof on the State to prove the guilt of the Defendant
5 beyond a reasonable doubt before you the jury can find him guilty. A
6 defendant is presumed in law innocent of the charge contained in the
7 indictment. It is a cardinal, fundamental rule of law of evidence that a
8 defendant irrespective of the enormity of the charge against him will
9 always be presume innocent of the crime for which he is indicted unless
10 and until the guilt of the defendant has been proved by evidence that
11 satisfies you the jury of his guilt beyond a reasonable doubt. The
12 presumption of innocence is not just a mere legal theory and it's not just
13 a legal phrase, it's a substantial right of which every accused is
14 entitled.

15 Our Supreme Court has declared presumption of innocence is like a
16 robe of righteousness placed about the shoulders of the defendant and it
17 remains with him and assigns him to the class of what we call innocent
18 until that presumptive robe of righteousness has been striped of this
19 person by evidence satisfying you the jury of the guilt of the defendant
20 beyond a reasonable doubt. The presumption of innocence accompanies a
21 defendant from his time of appearance in Court all the way through the
22 trial of the case, continues with the defendant until you retire to the
23 jury room to deliberate your verdict. This presumption would only end if
24 you find that the State has proven the guilt of the defendant beyond a
25 reasonable doubt. The State is not required to prove the guilt of a

1 defendant beyond all doubt, or beyond every doubt, but beyond a reasonable
2 doubt. Excuse me just a minute. (Pause)

3 Let me talk with you just a minute about reasonable doubt. Proof
4 beyond a reasonable doubt is proof that leaves you firmly convinced of the
5 defendant's guilt. There are very few things in this world that we know
6 with absolute certainty. And in criminal cases, the law does not require
7 proof that overcomes every possible doubt. If based on your consideration
8 of the evidence, you are firmly convinced that the defendant is guilty of
9 the crime charged, you must find him guilty. If, on the other hand, you
10 think there is a possibility that he is not guilty, you must give him the
11 benefit of the doubt and find him not guilty. If upon any issue of fact
12 essential to conviction in a verdict of guilty you have a reasonable doubt
13 as to how that issue should be resolved, it would be your duty to resolve
14 that reasonable doubt in favor of the defendant. A defendant is not
15 required to prove his innocence, but the State is required in law to prove
16 every essential element of the offense charged against the defendant which
17 satisfies you the jury of the guilt of the defendant beyond a reasonable
18 doubt before you can convict the defendant and find him guilty. If then
19 you have a reasonable doubt as to the guilt or innocence of the defendant,
20 he's entitled to an acquittal. But on the other hand, when you look at
21 the whole case and you find that the State has proved by evidence which
22 satisfies you the jury of the guilt of the defendant beyond a reasonable
23 doubt, then in such circumstance it would equally be your duty to convict
24 the defendant and find him guilty.

25 I tell you at this time that the indictment, which is the formal

1 written instrument by which the case is introduced into the Court system,
2 is not evidence and can not be considered by you the jury as evidence in
3 the case. You will have that later for verdict purposes. And, as I said,
4 don't give any weight to the indictment. It's just a formal written
5 document for Court purposes to process it into Court and for trial.

6 Now as far as the trial, you and I have certain duties to perform.
7 It is my responsibility to preside over the trial of the case and also to
8 rule upon and pass upon the admissibility of evidence offered during the
9 progress of the trial. You are to consider only the competent evidence
10 before you and you are to disregard and disabuse from your minds any
11 testimony ordered stricken from the record in this case during the
12 progress of the trial if there be any. And you are to consider only the
13 testimony which has been presented from the witness stand together with
14 any exhibits admitted into the record of this case and any stipulations of
15 counsel made into the record if there be any. So, once again, you decide
16 this case on a proper evidence that's before you. What the attorneys say,
17 is not evidence. They may quote the evidence or refer back to the
18 evidence, but what they maintain is not evidence. And do not get tripped
19 up on the fact that they may interject things that are not in evidence or
20 not referring back to the evidence.

21 Also as to the stipulations, you heard at least one time during this
22 trial the word stipulation. That is an agreement or admission or
23 concession made into the judicial proceeding by the parties thereto or by
24 their attorneys. Stipulations are binding upon those who make them. A
25 stipulation is an agreement or understanding. The Court and jury must

1 accept stipulations as binding upon the party. If counsel for the parties
2 have stipulated to any fact or any fact that's been admitted by counsel,
3 you regard that as a fact being conclusively proved as to the party or
4 parties making the stipulation or the admission.

5 Now I have the additional duty to charge you the applicable law of
6 the case. As the presiding judge, I'm the sole judge of the law of the
7 case. It's your duty to accept and apply the law as I state it to you.
8 If you have a preconceived idea as to what the law is or what it ought to
9 be in this case and it doesn't agree with what I tell you the law is
10 you're obligated under your oath to abandoned that preconception because
11 you're sworn to accept the law precisely as the Court states it to you.
12 And every case tried in this Court, the jury become the sole and exclusive
13 judges of the facts of the case. You the jury are the judges of the facts
14 in this case. The Court is the judge of the law in this case. The
15 Constitution of this state has declared that the trial judge shall not
16 intimate, state, comment upon or make any statements to a trial jury about
17 the facts in the case. And since you are the sole judges of the facts,
18 you're to infer from anything I said during the progress of this trial and
19 ruling upon the admissibility of evidence and otherwise or anything that I
20 say to you during the course of this charge to you that I have an opinion
21 about the facts in the case. I'm not permitted to have an opinion. Is it
22 a matter solely for you the jury to determine.

23 As far as jurors, it's your duty to determine as I stated to you
24 previously the effect, the value, the weight, and the truth of the
25 evidence presented during the course of this trial. Now once again you

1 decide this case based on the evidence presented here. You have to assess
2 the credibility of the witnesses who have the evidence in the case. I
3 point out to you that credibility is simply a legalistic term which means
4 believability. It becomes your duty then to annualize and evaluate the
5 evidence and determine that evidence which convinces you of its truth. I
6 charge you in determining the question of credibility and believability of
7 witnesses. You may believe one witness against several witnesses. Or
8 several witnesses against one witness. You may believe a part of the
9 testimony of a witness and reject the remaining part of that testimony of
10 that same witness. You may believe the testimony of a witness in its
11 entirety or reject the testimony of a witness in its entirety. You may
12 consider whether any witness has exhibited any interest, any bias or any
13 prejudice in the case, and you may consider the demeanor of a witness and
14 the appearance of a witness from the witness stand, and you may consider
15 the opportunity for knowledge concerning those things about which a
16 witness testified. In doing so, in exercising your mental processes in
17 determining what you considered to be true, the law simply requires that
18 you exercise your good judgment, your common sense, your sense of logic
19 and reason, of course, and your experiences in life. You then apply these
20 attributes and abilities to the evidence and determine what you consider
21 the truthful evidence. That these true state of facts is determined by
22 you the jury. You take and apply the law as I stated to you and thus
23 arrive at a true verdict in this case. In other words, there's an old
24 saying, you don't leave your common sense on the court house steps.
25 This trial is reality. It has nothing to do with any TV show that

1 you may have watched, any movie, or any crime drama, or any play, or
2 theatrical performance you may have watched. Many things that you see on
3 television and on the movie screen are fictional. Many investigative
4 devices that you see in criminal shows as far as crime dramas do not even
5 exists. Once again, you are to decide this case based on the facts that
6 are here in Court and use your good common sense.

7 Now I'm going to talk with you about the actual crime charged. That
8 is a possession of stolen goods. I'm going to charge section 16-13-180 is
9 the Code of Laws of the State of South Carolina as amended, called
10 receiving stolen goods. It is unlawful for a person to buy, receive, or
11 possess stolen goods, chattels, or other property if the person knows or
12 has a reason to believe the goods, chattels, or property is stolen. A
13 person is guilty of this offense whether or not anyone is convicted of the
14 theft of the property. If the defendant is in possession of recently
15 stolen property, there maybe a permissive inference of guilt from that
16 possession. This permissive inference is of evidentiary nature.
17 Permissive inference only permits rather than requires the jury to infer
18 guilt. This inference is only an evidentiary fact to be taken in account
19 by the jury along with all other evidence in the case and it is to be
20 given such wait as the jury deems proper. Any inference of guilt from
21 possession is only permissive. That is you are free to accept or reject
22 the inference regardless of whether the defendant presents any evidence.
23 The inference is merely one more fact for you to consider. Hence, it
24 maybe accepted or rejected without regard to whether the defendant
25 presents any evidence on this point. The defendant does not have to

1 present any evidence whatsoever explaining how he came into the possession
2 of this recently stolen property. The burden of proof remains on the
3 State to prove the defendant guilty beyond a reasonable doubt.

4 A little further extension of that instruction, I instruct you now
5 and emphasize to you that the election of a defendant in the trial of a
6 criminal case not to testify in his own behalf is not a factor to be
7 considered by you in anyway in your deliberation and your consideration on
8 the question of the guilt or innocence of the accused. It must not be
9 considered by you in any manner whatsoever against the defendant. Or
10 mitigate against him in any respect whatsoever. The defendant has
11 Constitutional right to remain silent and the assertion of such
12 constitutional right cannot and must not be considered by you in your
13 deliberations. Once again, the burden is on the State of South Carolina
14 to prove guilt beyond a reasonable doubt. A defendant does not have to
15 prove or present anything in the trial of the case.

16 I'll speak with you about criminal intent. Criminal intent is the
17 state of mind which operates jointly with an act or admission in the
18 commission of a crime. Criminal intent is a mental state of conscious
19 wrongdoing. Criminal intent includes those consequences which represent
20 the very purposes for which an act is done or are known to be
21 substantially certain to result regardless of one's desire. Intent maybe
22 shown by acts and conduct of the defendant and other circumstances from
23 which you may naturally and reasonably infer the intent. Criminal intent
24 must be proven by the State beyond a reasonable doubt.

25 In trial of cases, ladies and gentlemen, there can be different types

1 of evidence. I in no way represent to you what may be present in this
2 case. Sometimes in cases you have direct evidence. Sometimes you have
3 circumstantial evidence and sometimes you have a combination of both.
4 There are two types of evidence, which are generally present during the
5 trial, direct and circumstantial evidence. Direct evidence is the
6 testimony of a person who asserts or claims to have actual knowledge of
7 the fact such as an eye witness. Circumstantial evidence is a proof of
8 chain of facts and circumstances indicating the existence of a fact. The
9 law makes absolutely no distinction between the weight or value to be
10 given to either direct or circumstantial evidence. Nor is a greater
11 degree of certainty required of circumstantial evidence than of direct
12 evidence. You should weigh all the evidence in the case. After weighing
13 all the evidence, if you are not convinced of the guilt of the Defendant
14 beyond a reasonable doubt, you must find the defendant not guilty.

15 Ladies and gentlemen, you are not pardons or advocates for the State
16 of South Carolina or the Defendant. You don't serve as jurors to reward
17 friends and punish enemies and obviously such a perverted system of
18 justice wouldn't be in -- would be totally intolerable in our society.
19 You have be selected by both the State and the Defendant to be fair and
20 impartial jurors. It is your duty then by your joint deliberations to
21 determine the truth in the case, giving to the Defendant the benefit of
22 reasonable doubt on each and every issue. And then to the state of facts
23 that you determine to be true, you take the law that I have given to you
24 and thus arrive at a verdict which does speak the truth of the case. The
25 word verdict is a Latin derivative word, which means a true saying. When

1 you have accomplished these responsibilities, you have satisfied your oath
2 as jurors and you will have discharged your duty the Court.

3 There is one indictment in this case. This are two possibility forms
4 of verdict. If the State has proved the guilt of this Defendant beyond a
5 reasonable doubt, your verdict will be one word: guilty. If, on the
6 other hand, the State has failed to prove the guilty of the Defendant
7 beyond a reasonable doubt, your verdict will be two words: not guilty.
8 The verdict that you render in this case must be the verdict of each and
9 every juror. You must be unanimous verdict, all 12 deliberating jurors
10 must agree on the verdict, which you authorize the foreman to write for
11 the jury.

12 Mr. Foreman, on the back of this indictment in the bottom left corner
13 is an area entitled, Verdict. It will be your duty once the jury has
14 reached a verdict to write in the appropriate verdict, date this form and
15 sign your name and let the bailiff staff know that you have reached a
16 verdict. I'm going to ask you to step back in a few minutes, the first 12
17 of you, and also the alternate to go a separate room with the bailiff
18 staff for a few minutes. I don't want you to deliberate please until I
19 have sent the items and evidence back to you along with this indictment.
20 Mr. Foreman, if you have anyone on the jury that refuses to take part or
21 participate in deliberating this case, you will notify me of that fact and
22 I will see to a proper, hopefully remedy on that.

23 If someone needs to take a break, please stop your deliberations
24 until you have all 12 back in tact. So if somebody goes to the rest room,
25 take a spoke break, just stop until you get everybody back. Anything you

1 need, knock on the door, the bailiff staff will take care of it. I think
2 I've covered everything that I need to. But I'm going to ask y'all to
3 step back and let me -- let me -- just hold up just a second. May can
4 save a little time. I covered everything I have up here. I do need to
5 check in with counsel one last time and hopefully we'll put you to work
6 here in a few minutes. It's 20 minutes to 12. Mr. Foreman, I'll leave it
7 up to you any lunch desires you may have, you need to let the bailiff
8 staff know. It's the probably going to take, Madam Clerk, what, 45
9 minutes or so to an hour?

10 CLERK OF COURT: Something like that.

11 THE COURT: If you want lunch brought in, it's going take at least 45
12 minutes, but we'll let you decide that. All right, if y'all will step
13 back. I need the alternate just to stay with the bailiffs in library for
14 a few minutes.

15 (Whereupon, the jury went out for deliberations at 11:40 a.m.)

16 THE COURT: Anything for the record?

17 MR. SULLIVAN: Your Honor, just a couple of things, Your Honor.
18 First and foremost, we would renew our motion for a directed verdict. Of
19 course renew any other previous objections we might have made. If Your
20 Honor is not using a verdict form, I guess we would request at this point
21 that there's some language in the indictment about prior offenses,
22 certainly we want to get that redacted out of there.

23 THE COURT: You're right. Can we run a copy? Can y'all run a copy
24 for back up right quick? That will be the simplest way. Y'all check off
25 exhibits. As far as those motions, they'll be denied and that will clear

1 the record up.

2 (Whereupon, court recessed at 11:45 a.m.)

3 (Whereupon, court reconvened and the jury was brought back in at 1:41
4 p.m. with the verdict.)

5 THE COURT: Madam Clerk, you may publish the verdict.

6 CLERK OF COURT: Indictment 2011-GS-46-625, the State versus Johnny
7 William Crockett, indictment for possession of stolen goods, verdict
8 guilty, signed by the foreperson, dated today's date. Ladies and
9 gentlemen of the jury, if that be your verdict, so say you all by raising
10 your right hand. Let the record show that all jurors confirm this
11 verdict.

12 THE COURT: Anything further for the jury?

13 SOLICITOR SIKORA: Nothing from the State, Your Honor.

14 MR. SULLIVAN: Nothing from the Defense.

15 THE COURT: Ladies and gentlemen, unless any of you are in a
16 particular hurry to leave this afternoon, I'm going to ask you to stay and
17 watch some mitigation and sentencing. Now if you need to go, feel free to
18 leave. Don't think they need to be called back in since this is Thursday
19 afternoon, do they?

20 CLERK OF COURT: No, sir.

21 THE COURT: I know all probation matters are scheduled for tomorrow.
22 If anybody needs to leave, I want to thank you for coming and helping us
23 and your free to go. Hope you'll be willing to serve in the future. The
24 next phase is what we call mitigation and sentencing. The State's up
25 first.

1 SOLICITOR SIKORA: May it please the Court, I know that Your Honor
2 did hear some of Mr. Crockett's record in pre-trial, but I wanted to read
3 his entire record for the Court now, which dates back to 1981. He has a
4 1981 possession of marijuana, a 1983 forgery, a 1985 possession of
5 contraband, a 1987 unlawful possession of prescription drugs; 1992, theft
6 of electric current and several counts of fraudulent check; 1994, forgery
7 under \$1,000, three counts, and unlawful weapon; three counts of forgery
8 in 1995 in Chester County, South Carolina; 1996, shoplifting; 1997,
9 forgery, four counts, and receiving stolen goods at the Magistrate's
10 level; 2000, possession of marijuana; 2001, distribution of crack cocaine
11 in proximity; 2004, driving under suspicion, DUI, seatbelts violation and
12 furnishings false information to police; the 2009 receiving stolen goods
13 valued 5,000-dollars or more; and a 2010, two counts of petit larceny from
14 July of 2010.

15 Your Honor, I would point out that Mr. Crockett's conviction for
16 receiving stolen goods in the value of \$5,000 or more from 2009 involved
17 the same exact victim, CTR Incorporated, that is involved in this current
18 case. I know that I would just bring it to the Court's attention, he does
19 have an additional charge pending with the Solicitor's Office from May of
20 2010, again, for possession of stolen goods from CTR. My victim from CTR
21 could not be here today, but he wanted me to express to the Court and make
22 you aware as I'm sure you've learned through part of this trial, although
23 Mr. Crockett may only get a couple hundred dollars when he takes these
24 items for scrap, it costs them thousands of dollars in damage in simply
25 replacing the parts, not to discount the thousands of dollars it cost them

1 on top of that in man and labor hours to rebuild these tanks after these
2 items have been stripped off of them. The victim asked me to let the
3 Court know they would like to see Mr. Crockett incarcerated for this and
4 punished to the full extent of the law, which would be ten years on this
5 charge. Given this is a property enhancement, we have provided certified
6 copies of at least two of his prior property convictions to defense
7 counsel, which I believe was put on the record pre-trial. The State
8 feels, Your Honor, given his long, extensive criminal history that he
9 deserves the full ten years, the maximum.

10 THE COURT: Thank you. Counsel?

11 MR. SULLIVAN: Thank you, Your Honor. May it please the Court, Your
12 Honor, just by way of a little bit of history, this case as Your Honor
13 knows originated back in 2010. Mr. Crockett was at that point represented
14 by Katie Tale (phonetic) from the Public Defender's Office. He was
15 charged with a grand larceny from stealing from CTR. That charge was
16 dismissed at the preliminary hearing on May the 11th of 2010. So this is
17 a direct indictment case, Your Honor. So I was not originally
18 representing Johnny at the conception of this case. However, I have been
19 representing him and have known Johnny since July of last year. I do
20 still represent him on the other charges pending with CTR and he also has
21 a drug charge that's still pending here in the court system here in York
22 County, Your Honor.

23 Ms. Sikora, of course, was the prosecutor on one of the cases from
24 CTR she alluded to. There's another solicitor that is prosecuting the
25 drugs charges against Mr. Crockett. I will tell Your Honor that Ms.

1 Sikora presented Mr. Crockett with a very reasonable plea offer, Your
2 Honor, and he -- the problem is never really the situation with CTR. It's
3 more or less the plea offer that was offered to us. On the drug charge,
4 Mr. Crockett was not inclined to take that. So essentially, Your Honor,
5 he requested a jury trial on both of these charges. But the State did
6 make a very reasonable plea offer in this case, which Johnny and I -- I
7 advised him to take that plea offer. He was going to take a plea offer,
8 but didn't really want to do any jail time on the marijuana charge. At
9 that point, he elected to go to trial. Once he elected to go to trial,
10 that's when this case was resurrected, Your Honor.

11 Johnny is 54 years of age. He's married for 36 years. His wife has
12 been in the courtroom supporting him. I think she's actually out to lunch
13 right now, but she was in the courtroom supporting him. His daughter
14 Shawn is also here, Your Honor. They've been actively involved in this
15 case. He does have a good support system out in the community. He spent
16 about 63 days in jail on this charge before it was ultimately dismissed at
17 the Preliminary Hearing and released from the Department of Corrections,
18 Your Honor.

19 Johnny has been disabled for the last three years. He's been
20 diagnosed with bipolar and does take medication for that. Prior to being
21 diagnosed and starting to seek treatment for that, he was working as a
22 welder. Your Honor heard he did work for CTR for a short period of time.
23 But prior to that, he's always worked as a certified welder. He has a
24 GED, Your Honor.

25 This is a bad situation obviously. We're dealing with a victim who

1 Well I'm not going to sit up here and preach a sermon. I preached
2 that pretty strenuously in the case before yours about the theft up there
3 at Carowinds. What's so interesting about these type of thefts, it's
4 epidemic all around the state. Where I come from, it's farming community
5 over there. The farmers are getting ready to start planting their crops
6 and ready to go and they go around to their irrigation system and someone
7 has come along and stolen all the wire. Probably get 150, \$200 for the
8 wire, but the cost to farmer is up to about 40 or \$50,000. Downtown
9 Pageland two months ago, somebody smelled gas. A fellow like you had come
10 along decided that he wanted a little copper to sell. Probably got \$2.50
11 for it. Sawed the gasline off going into a house and just left the gas
12 sitting there running. Could have blown half the town up.

13 You, sir, are sentenced to ten years in the State Department of
14 Corrections. You'll get credit for your 63 days.

15 SOLICITOR SIKORA: Thank you, Your Honor.

16 MR. SULLIVAN: Thank you, Your Honor.

17 THE COURT: Thank you very much, ladies and gentlemen of the jury.
18 You have a wonderful Saint Patrick's Day. You have plenty of time to get
19 home and cook that corn beef and cabbage.

20 (Whereupon, the jury was released at 1:51 p.m.)

21 -- -End of Transcript- - -
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CERTIFICATE OF REPORTER

I, Cheryl T. MacMillan, Registered Professional Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 16th & 17th day of March, 2011, as reported by Wanda Nelson, Circuit Court Reporter, and transcribed by me to the best of my abilities.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 30, 2011


Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNY WILLIAM CROCKETT,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT 5

CONCLUSION 9

PETITION TO BE RELIEVED AS COUNSEL 10

TABLE OF AUTHORITIES

Cases

<u>Davis v. Alaska</u> , 415 U.S. 308 (1974)	6
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (1986)	6, 7
<u>State v. Cheeseboro</u> , 346 S.C. 526, 552 S.E.2d 300 (2001)	6
<u>State v. Cooper</u> , 291 S.C. 351, 353 S.E.2d 451 (1987)	6
<u>State v. Dinkins</u> , 339 S.C. 597, 529 S.E.2d 557 (Ct. App. 2000)	6
<u>State v. Gillian</u> , 360 S.C. 433, 602 S.E.2d 62 (2004), aff'd on other grounds, <u>State v. Gillian</u> , 373 S.C. 601, 646 S.E.2d 872 (2007)	6, 7
<u>State v. Graham</u> , 314 S.C. 383, 444 S.E.2d 525 (1994)	6, 7
<u>State v. Mitchell</u> , 286 S.C. 572, 336 S.E.2d 150 (1985)	6
<u>State v. Mizzell</u> , 349 S.C. 326, 563 S.E.2d 315 (2002)	6, 7
<u>State v. Schmidt</u> , 288 S.C. 301, 342 S.E.2d 401 (1986)	6
<u>State v. Sims</u> , 348 S.C. 16, 558 S.E.2d 518 (2002)	6

Rules

Rule 608(c), SCRE	6
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Constitutional Provisions

U.S. Const. amend. VI	5, 6
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STATEMENT OF ISSUE ON APPEAL

The lower court erred in refusing to permit Appellant to cross examine the state's chief witness regarding employee thefts at the salvage yard where the witness presented the only evidence that Appellant was in possession of the stolen scrap metal.

STATEMENT OF THE CASE

Initially, the state alleged Appellant committed grand larceny by stealing items from a company called CTR. R. 177 lines 14-15. At the conclusion of the preliminary hearing, the magistrate dismissed the grand larceny charge on May 11, 2010. R. 177 lines 15-16. Subsequently, the prosecution offered Appellant a plea offer concerning unrelated pending charges against him. R. 178 lines 1-3. When Appellant refused to accept the plea offer, the state asked a grand jury to indict Appellant on the charge of possession of stolen goods concerning the original grand larceny charge. R. 178 lines 9-10. The state then called the case for trial on March 16, 2011. R. 4 lines 5-7. Johnathan Sullivan and Mark McKinnon represented Appellant during the two day trial. Amy Sikora represented the state. The jury returned a verdict of guilty. R. 175 lines 6-8. The Honorable Paul M. Burch sentenced Appellant to the maximum sentence of ten years imprisonment. R. 180 lines 13-14.

This appeal follows.

ARGUMENT

The trial court erred in refusing to permit Appellant to cross-examine the state's chief witness regarding thefts by employees of the salvage yard where the witness presented the only evidence that Appellant was in possession of the stolen scrap metal.

To prove its case against Appellant, the state presented testimony from Johnny Fleming, an employee of a salvage yard. R. 73 lines 21-22. Fleming testified that Appellant appeared at the salvage yard on February 27, 2011 to sell scrap metal. R. 74 lines 20 – R. 75 line 4. He further testified that he suspected the metal may have been stolen. R. 85 lines 13-15. Nevertheless, he purchased the items from Appellant. R. 85 lines 2-3. Fleming claimed that he placed the items he received from Appellant in a separate location from the other pieces of scrap metal at the salvage yard. R. 86 lines 3-4. However, Fleming admitted approximately 200 customers daily enter the area where the bins containing scrap metal are stored. R. 91 lines 13-14; R. 92 lines 17-22; R. 98 lines 11-13. Thereafter, he contacted the police. R. 85 lines 7-8. Fleming testified that he turned over the items he received from Appellant to the police on March 4, 2011, five days after receiving them. R. 85 lines 23-24; R. 140 lines 20-25. When Appellant questioned Fleming regarding thefts by employees at the salvage yard, the state objected. R. 110 lines 11-15. The judge sustained the objection. R. 110 line 15. Appellant did not proffer the testimony.

The Sixth Amendment to the United States Constitution guarantees an accused the right to be confronted with the witnesses against him. The Confrontation Clause “requires a witness to testify under oath and submit to cross-examination so that the jury can observe the witness’s demeanor and assess his credibility.” State v. Dinkins, 339 S.C. 597, 601, 529 S.E.2d 557, 559 (Ct. App. 2000)(citing State v. Cooper, 291 S.C. 351, 354, 353 S.E.2d 451,

453 (1987)). The Sixth Amendment “constitutionalizes” the right to present a defense in a criminal trial. State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402 (1986). Although the Sixth Amendment encompasses various trial rights – notice, compulsory process, the orderly introduction of evidence – the primary interest secured is the right to cross-examination. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (2004), *aff’d* on other grounds, State v. Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007). “The right to meaningful cross-examination of an adverse witness is included in the defendant’s Sixth Amendment right to confront his accuser.” State v. Cheeseboro, 346 S.C. 526, 544, 552 S.E.2d 300, 309 (2001)(emphasis added). This guarantee ensures a defendant has the opportunity to cross-examine a witness concerning bias. Davis v. Alaska, 415 U.S. 308, 316 (1974); State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002); State v. Graham, 314 S.C. 383, 385, 444 S.E.2d 525, 527 (1994). Additionally, Rule 608(c) of the South Carolina Rules of Evidence states that “[b]ias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.” To establish a violation of the Confrontation Clause, Appellant must show that he was prohibited from asking questions designed to show bias on the part of Fleming. See Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986). In addition, the error must not have been harmless beyond a reasonable doubt. State v. Mitchell, 286 S.C. 572, 574, 336 S.E.2d 150, 151 (1985), State v. Sims, 348 S.C. 16, 26, 558 S.E.2d 518, 523 (2002).

The trial judge improperly prohibited Appellant from questioning Fleming regarding thefts by employees of the salvage yard as the intent of the question was to elicit testimony to reveal Fleming’s biases, prejudices, and interests. Questions concerning thefts by other

employees at the salvage yard went directly to any biases, prejudices, and interests Fleming may have had. The questions would have explored Fleming's interest in protecting the salvage yard, his employer. The questions would have explored his desire to protect fellow employees or himself from accusations related to thievery. In light of Fleming's sworn testimony that he informed the employer of others' stealing, the questions posed by Appellant would have addressed any interests Fleming had in playing "the hero" or in casting blame on others when the blame may belong to him. The questions would have challenged Fleming's testimony concerning the security measures in place at the salvage yard, which was relied upon by the state to establish that the scrap metal introduced was the scrap metal allegedly sold by Appellant to Fleming.

The next inquiry is whether the error was harmless beyond a reasonable doubt. Gillian, 360 S.C. at 454, 602 S.E.2d at 73; Mizzell, 349 S.C. at 333, 563 S.E.2d at 318; Graham, 314 S.C. at 385, 444 S.E.2d at 527. Harmless error analysis is fact-specific. The United States Supreme Court delineated a list of factors for courts to consider in determining whether an error was harmless. These factors include, but are not limited to:

the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and of course, the overall strength of the prosecution's case.

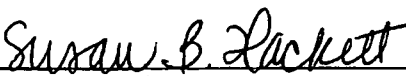
Van Arsdall, 475 U.S. at 684; see also Mizell, 349 S.C. at 333, 563 S.E.2d at 318-19. The trial judge's limitation on Appellant's cross-examination of Fleming was not harmless in light of the scant evidence against Appellant and the critical role of Fleming in the prosecution's case. The state failed to introduce any forensic evidence proving its theory of the case. R. 139 lines 21-22. The police did not test for fingerprints on the scrap metal. R.

139 lines 8-9. There were no videos of Appellant in possession of the stolen scrap metal. R. 139 lines 23-25. Appellant provided no inculpatory statements to police. R. 118 lines 19-22. The evidence inventory prepared by the police showed a count of the scrap metal pieces. R. 133 lines 11-23. On the other hand, the receipt drafted by Fleming at the salvage yard showed the weight of scrap metal. R. 81 line 21 – R. 82 line 16. Thus, the only evidence that the scrap metal possessed by the police and admitted into evidence was the scrap metal sold by Appellant was the testimony of Fleming. In fact, the only testimony that Appellant was ever in possession of any scrap metal, let alone the specific scrap metal at issue here, was the testimony of Fleming. The trial judge's erroneous limitation of Appellant's cross-examination of Fleming to explore his biases, prejudices, and interests was not harmless in light of the state's weak case against Appellant and the state's complete dependence upon Fleming for a case at all against Appellant.

CONCLUSION

The lower court erred in refusing to permit Appellant to question the state's chief witness concerning prior employee thefts. Appellant requests this Court to reverse his conviction and sentence.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 1st day of February, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Paul M. Burch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNNY WILLIAM CROCKETT,

APPELLANT

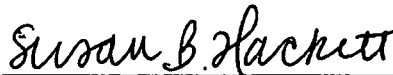
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Johnny William Crockett states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Paul M. Burch, which was held on March 17, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Johnny William Crockett.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

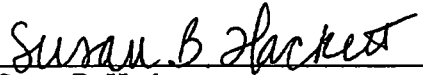
ATTORNEY FOR APPELLANT

This 1st day of February, 2012.

CERTIFICATE OF COUNSEL

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

February 1st, 2012



Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County
Paul M. Burch, Circuit Court Judge

THE STATE, \

RESPONDENT,

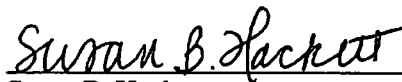
V.

JOHNNY WILLIAM CROCKETT,

APPELLANT

CERTIFICATE OF SERVICE

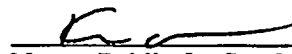
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a true copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Johnny William Crockett, #243050 at Catawba Pre-Release Center, this 1st day of February, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 1st day of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Johnny William Crockett, Appellant.

Appellate Case No. 2011-188266

Appeal From York County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2012-UP-492
Submitted August 1, 2012 – Filed August 22, 2012

APPEAL DISMISSED

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

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Senior Assistant Deputy
Attorney General Salley W. Elliott, all of Columbia; and
Solicitor Kevin S. Brackett, of York, for Respondent.

PER CURIAM: Dismissed¹ after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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September 07, 2012

The Honorable David Hamilton
PO Box 649
York SC 29745-0649

REMITTITUR

Re: The State v. Crockett, Johnny William
Lower Court Case No. 2011GS4600625
Appellate Case No. 2011-188266

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Salley W. Elliott
Susan Barber Hackett

FORM 5

STATE OF SOUTH CAROLINA)

County of YORK)

IN THE COURT OF COMMON PLEAS

JOHNNY W. CROCKETT)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED-RECEIVED
2013 FEB 22 PM 1:08
DAVID HAMILTON
S.C.P. & G.S.
YORK COUNTY, Y.S.C.

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention CATAWBA C.I. SCDC
2. Name and location of Court which imposed sentence YORK COUNTY
Sixteenth Circuit
3. Name(s) of co-defendant(s) (if any) Ø NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2011 - G54600625

- (b) NA
- (c) NA
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MARCH 17, 2011
- (b) TEN YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty. ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. APPEAL COURT
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. COURT FOUND NO ORAL ARGUMENT
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. AUGUST 21, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) PROSECUTORIAL MISCONDUCT
- (b) DUE PROCESS VIOLATIONS
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE MEMORANDUM OF LAW
- (b) SEE MEMORANDUM OF LAW
- (c) SEE MEMORANDUM OF LAW
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? JONATHAN SULLIVAN, MARK T. MCKINNON
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

18. If you answered Ayes@ to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. ~~JO~~ JONATHAN SULLIVAN MARK T. MCKINNON
1675 1E YORK Hwy.
 ii. P.O. Box 691
YORK SC 29745
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL - Sentencing
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

CONVICTION OVERTURNED

20. Are you now under sentence from any other court that you have not challenged?

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of YORK)

VERIFICATION

I, Johnny Crockett, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Johnny Crockett

SWORN to and subscribed before me this 19
day of February, 2013.

[Signature] (L.S.)
Notary Public

My Commission Expires: 9-21-2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Johnny Crockett, #243050,

2013-CP-46-0607

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 22, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the February 2011 term of the York County Grand Jury for possession of stolen goods (2011-GS-46-0625). The Applicant was represented by Jonathan Sullivan, Esquire. On March 17, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty. The Honorable Paul M. Burch sentenced the Applicant to confinement for ten (10) years for property offense, 3rd or subsequent.

Thereafter, the Applicant appealed his conviction and sentence. The South Carolina Court of Appeals dismissed after review pursuant to Anders v. California, 386 U.S. 738 (1967). (filed August 22, 2012). The remittitur was issued on September 11, 2012.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Due Process Violation"
3. "Prosecutorial Misconduct"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRC(a).

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires

that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Applicant's "Prosecutorial Misconduct" allegation concerns issues that could or should have been raised at trial or appeal. Thus, this allegation is not a proper matter for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Respondent requests this Court summarily dismiss this claim.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

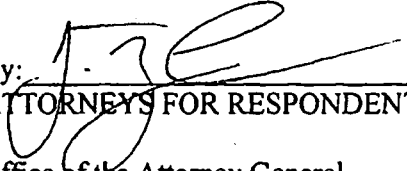
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

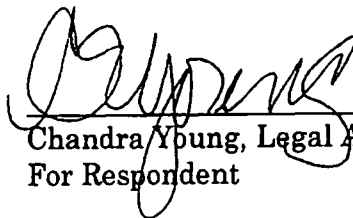
May 29, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	
	)	
	)	2013-CP-46-0607
	)	
JOHNNY CROCKETT, #243050	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Kindle Johnson, Esquire
 1844 Gingercake Cir
 Rock Hill, SC 29732

DATED this 29th day of May, 2013.


 Chandra Young, Legal Assistant
 For Respondent

State of South Carolina.,)
)
)
)
 County of York.)

In the Common Pleas
 Court of York

Case No.: 2013-CP-46-00607

Johnny William Crockett.,)
)
 Applicant.,)
)
 -vs-)
)
 State of South Carolina.,)
)
 Respondent.)

Transcript of Record
 Post Conviction Relief

April, 15, 2014
 York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III, Judge.

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

Ms. Leah B. Moody
 Law Officers of Leah B. Moody
 235 East Main Street, Suite 115
 P.O. Box 1015
 Rock Hill, South Carolina 29730
 803-327-4192
lbmatty@comporium.net
 For the Applicant

ORIGINAL

Mr. Rutledge Johnson
 Assistant Attorney General
 South Carolina Attorney General's Office
 Rembert C. Dennis Building
 P.O. Box 11549
 Columbia, South Carolina 29211-1549
 803-734-3970
 For the Respondent

Wanda Nelson, CVR-M
 Official Court Reporter
 To the Honorable John C. Hayes, III
 Sixteenth Judicial Circuit

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.:

Johnny Crockett

Ms. Moody P.5-19

Mr. Johnson P.20-25

Jonathan Sullivan

Mr. Johnson P.26-31

Ms. Moody P.31-34

Court Reporter's Certificate Page. P.36

I-N-D-E-XE-X-H-I-B-I-T-SNO.DESCRIPTIONID.EVD.

No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF JOHNNY CROCKETT
2 VERSUS STATE OF SOUTH CAROLINA TUESDAY, MAY 15, 2014 AT
3 12:09 P.M..)

4 MR. JOHNSON: Crockett.

5 (APPLICANT JOHNNY CROCKETT, BLACK MALE, ENTERS
6 COURTROOM.)

7 THE COURT: All right.

8 MR. JOHNSON: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 MR. JOHNSON: This is the case of Johnny Crockett
11 versus State of South Carolina. It's Case No. 2013-CP-46-
12 0-6-0-7. Mr. Crockett was indicted at the February 2011
13 term of the York County Grand Jury for possession of stolen
14 goods. On March 17th, 2011 he proceeded to a jury trial
15 pursuant to which he was found guilty.

16 The Honorable Paul M. Burch sentenced the Applicant to
17 confinement for ten years for a property offense third or
18 subsequent. He thereafter filed an appeal and the South
19 Carolina Court of Appeals dismissed after a review pursuant
20 to Anders v. California. The remittitur was issued on
21 September 11, 2012. He filed a timely PCR application
22 February 22nd, 2013 and the State filed it's return May the
23 29th, 2013 and he is represented here today by Ms. Leah
24 Moody.

25 THE COURT: Ms. Moody, you ready to proceed?

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-5-

1 MS. MOODY: Yes, sir, Your Honor.

2 THE COURT: What are the issues?

3 MS. MOODY: Your Honor, prosecutorial misconduct which
4 we withdraw from this application. Due process violation
5 and ineffective assistance of counsel. And this
6 ineffective assistance goes to the entire trial.

7 THE COURT: Okay. You may call your first witness.

8 MS. MOODY: Mr. Crockett, would you come up please.

9 (WHEREUPON, JOHNNY CROCKETT,
10 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

11 MADAM CLERK: Thank you, sir. Come around and have a
12 seat. Watch your set.

13 DIRECT EXAMINATION

14 JOHNNY CROCKETT BY MS. MOODY:

15 Q. Mr. Crockett, could you please state your full name
16 for the record?

17 A. Johnny W. Crockett.

18 Q. Mr. Crockett, where are you currently incarcerated?

19 A. Catawba Pre-release.

20 Q. And you're there based off of your current charges
21 that we're before the court on?

22 A. Yes.

23 Q. Okay. And can you say those charges for the Court?

24 A. Uh.

25 Q. Possession of stolen goods?

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-6-

1 A. Yes, ma'am.

2 Q. Okay. And this was a sentence that was enhanced based
3 on your prior record?

4 A. Yes.

5 Q. Okay. So you received ten years?

6 A. Yes.

7 Q. And you were represented in this case by Jonathan
8 Sullivan?

9 A. Yes.

10 Q. Were there any other attorneys on your case?

11 A. Mark McKinney.

12 Q. Mark McKinney. And in this case did you have an
13 opportunity to meet with either of those two attorneys?

14 Did you get to meet with them?

15 A. Yes. Twelve days before trial.

16 Q. And how did you describe what the incident - excuse
17 me. What did you tell your lawyers at that time about the
18 incident?

19 A. I didn't tell them anything because they changed the
20 name of the - At first I was charged with grand larceny but
21 at the day of the trial they changed it to possession so
22 the day of the trial. So I couldn't tell him nothing but I
23 didn't know anything about it - possession charges.

24 Q. Okay. And so did you all prepare for your trial?

25 A. No we didn't.

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-7-

1 Q. Okay. And you all proceeded to a trial though.

2 Correct?

3 A. Yes.

4 Q. Okay. Did you assist them in any kind of way?

5 A. No I didn't.

6 Q. Okay. What - You indicated that your attorney did
7 not represent you well in trial.

8 A. That's right.

9 Q. Can you tell the Court what you mean by your attorney
10 didn't represent you well in trial.

11 A. Okay. He didn't investigate my trial, prepare it,
12 because if he had investigated and prepared he knowed that
13 the warrant was false. I was arrested on a false warrant.
14 And he didn't - he didn't get an expert witness - you know
15 an appraisal - to investigate - for they allegedly accusing
16 me of having it.

17 Q. So he didn't - He didn't challenge the warrant that
18 you were arrested on?

19 A. That's right.

20 Q. And you realize they didn't factor that in your case?

21 A. Yeah. I found out they did the indictment - she
22 didn't indict me and two weeks later she told me about it.
23 I didn't have an attorney at that time.

24 Q. And who is she?

25 A. Solicitor Amy Sikora.

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-8-

1 Q. So you received an indictment ---

2 A. Yes.

3 Q. --- for possession of stolen goods?

4 A. Yes.

5 Q. And you didn't have a lawyer to represent you?

6 A. That's right.

7 Q. But then you received a lawyer which was Mr. Sullivan?

8 A. Yes.

9 Q. Okay. And he didn't challenge that indictment?

10 A. No, he didn't.

11 Q. And as far as the expert appraiser?

12 A. Yes.

13 Q. Okay. You indicated that he didn't challenge that
14 appraiser?

15 A. Cause he never did order a appraisal. If he had
16 investigated my case and prepared it he would a called his
17 own expert to appraise the stuff he was accusing me of
18 stealing.

19 Q. All right. And how would that have affected your
20 trial?

21 A. Okay. It would a affected - If he had did that they
22 give me ten years for a Hundred and Fifty-five Dollars -
23 for a Hundred and Fifty-five Dollars for some scrape metal.
24 Okay. They give me excessive time for it because if he had
25 had his own expert appraiser to appraise it they would know

1 the value of it. And they didn't do that.

2 Q. But now you earlier testified that you were tried and
3 convicted on the possession of stolen goods and it was an
4 enhanced charge based on your record.

5 A. Yeah.

6 Q. Okay. So you're saying that you think the judge would
7 have sentenced you to less time?

8 A. Okay. If he had studied - Had my attorney
9 investigated the case we wouldn't been a trial because
10 there wasn't no evidence really to - for to have a trial.

11 Q. Okay. And what evidence? You said there was no
12 evidence. What evidence are you speaking of?

13 A. Okay. The evidence that they allegedly accused me of
14 the scrape metal I sold on the 27th. Okay. The metal -
15 When they found out that it wasn't - I mean I got paper and
16 stuff to prove that the metal wasn't sold. Okay. The
17 police never did do any investigation on this. Yeah.

18 Q. So let me make sure I understand that you're saying.
19 You were tried for possession of stolen metal?

20 A. Yes, ma'am.

21 Q. And you're saying that the - your trial attorney
22 did not investigate your case?

23 A. Yes, ma'am.

24 Q. To discover that the metal was not stolen?

25 A. Yes.

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-10-

1 Q. And how do you know that the metal was not stolen?

2 A. Because it was mine and I got documents to prove
3 that's - that's what I do, that's the kind of stuff that I
4 do. I got statements from the place that I sell this kind
5 of stuff everyday. I been doing it over a year and I got
6 documents to prove that.

7 Q. Did you inform your attorney of that information?

8 A. But he had all this. He had done mentioned all
9 this.

10 Q. Okay. And what if anything did he say about that
11 evidence?

12 A. Okay. He didn't bring out none of this in the -
13 during the trial. He didn't bring out none of it in the
14 trial.

15 Q. And do you know why he did not?

16 A. No, I don't.

17 Q. Did you ask him?

18 A. Yes I ask him - He just told me he had it. But
19 because on the day of the trial I'm trying to ask him what
20 do they have on me. He said he didn't - the prosecutor
21 they changed the name of the trial. I thought I was coming
22 to trial for a grand larceny and burglary. When I got to
23 trial the day of the trial I got - they changed it to - it
24 was a possession of stolen goods. So now I'm surprised
25 about the charges cause I ain't never had a possession of

1 stolen goods charge. So they went over that. But he
2 didn't have no evidence on that but the evidence they was
3 doing was from a grand larceny charge that was been
4 dismissed by the magistrate. So that's what I went to
5 trial - that's what I went to trial for with the evidence
6 that was dismissed by the magistrate in 2010 and a year
7 later they came back and we went to court on this.

8 Q. So you're saying that you're attorney should have
9 investigated. Is there anything else that your attorney
10 did not do?

11 A. Okay. He said well - He didn't challenge the warrant.
12 He didn't investigate my case. He didn't prepare it. If
13 he had a the outcome of the trial we wouldn't a had a trial
14 because the evidence that we had was all falsified. The
15 warrant was falsified. If he had did investigate he would
16 a knew this.

17 Q. Okay. And you alleged earlier the due process
18 violation. Is that what you're talking about with the
19 changing the charge title?

20 A. Yes. I didn't have the due process of law. The due
21 process yes is that the detective had issued a warrant on
22 me seven days prior to it so he prejudiced me by getting a
23 warrant on me - due process by gettin a warrant on me and
24 the warrant was false.

25 Q. But so you're saying that he - the detective issued a

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-12-

1 warrant on you.

2 A. Yes.

3 Q. So there was a warrant issued. And the detective
4 served you?

5 A. Yes, ma'am.

6 Q. Okay. And that was seven days before what?

7 A. Before they alleged - There was seven days alleged
8 before I sold some scrape metal. They had a warrant on me.
9 They had a warrant issued for my arrest seven days before a
10 police investigation - the incident report yeah before the
11 police investigated so that would make the warrant not
12 valid so due process violation yeah.

13 Q. Now did you inform your attorney of this?

14 A. No, ma'am, I didn't inform my attorney because he
15 was supposed to be representing me so I figured he did an
16 investigation but after the trial I didn't know none of
17 this 'till after the trial that he didn't do until by me
18 going back and forth trying to look on the transcripts and
19 see where he made them errors. His ineffective - you know,
20 his errors.

21 Q. Now you said that your attorney was appointed to you
22 twelve days before it was tried - before your case was
23 tried?

24 A. Yes, ma'am.

25 Q. Okay. Who represented you before then when you had

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-13-

1 the other charges?

2 A. Okay. Katie Taylor.

3 Q. Okay. And what happened - what - Did you get to meet
4 with Ms. Taylor?

5 A. Yes, ma'am.

6 Q. Okay. Did you explain any of this information to
7 Ms. Taylor?

8 MR. JOHNSON: Your Honor, any ineffective assistance
9 of Ms. Taylor is not for this hearing.

10 MS. MOODY: That's not where I'm going.

11 MR. JOHNSON: And I have not had notice of any of
12 this, Your Honor.

13 THE COURT: All right. I'll let her go ahead but I'll
14 keep in mind that.

15 MS. MOODY: We're not alleging that Ms. Taylor was
16 ineffective.

17 Q. I'm asking you did you have an opportunity to give
18 her any of the information that you speak of with regard
19 to your case?

20 A. Okay. Ms. Taylor represented me from the beginning
21 of this case when I got - when the onliest one she
22 represented me. We went to preliminary hearing - I did
23 sixty-three days incarcerated. Went to a preliminary
24 hearing the judge dismissed it without no evidence or
25 nothing. But once he dismissed this, I don't have Katie

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-14-

1 Taylor no more; case is closed. And once the case is
2 closed the evidence was destroyed by the detective. Then a
3 year later that's when I don't have Ms. Taylor no more. I
4 no longer need an attorney because the case closed. A year
5 later that's when the case was brought up again by Ms. --

6 Q. Sikora?

7 A. Sikora, yeah. So that's when I --

8 Q. So are you - The evidence that was used in Ms.
9 Taylor's case ---

10 A. Yes, ma'am.

11 Q. --- is that the same evidence that you're stating
12 was used in this possession of stolen goods case?

13 A. Yes, ma'am.

14 Q. Okay. And you're saying when the evidence is
15 destroyed you're talking about that same evidence was
16 destroyed and there was no evidence at the - none of that
17 evidence was available at the time of your trial?

18 A. That's right.

19 Q. And what if anything did your attorney know about that
20 evidence being destroyed?

21 A. He knew it - He knew all about it because once I got
22 indicted Ms. Sikora told me that she was gonna appoint him
23 my attorney. She told me she was gonna appoint him my
24 attorney on the 28th of February of 2011 so I seen him one
25 time so he - If he had investigated the case he would a

1 knowed all this - all of this was the evidence. I mean
2 there wasn't no evidence.

3 Q. Okay.

4 A. So at the end of the trial that's when he tells me
5 that he wasn't my attorney during the beginning of it.

6 Q. Do you recall the date that you were released from
7 the first charge?

8 A. Yes. May the - May the 11th, 2010, I believe. 2010.

9 Q. May the 11th, 2010?

10 A. 2010, yes.

11 Q. And do you know when you were indicted for the
12 possession of stolen goods?

13 A. Yes. February 17th, 2011.

14 Q. Did at any point did you discuss this information
15 with your attorney?

16 A. Okay. On - No, ma'am, cause on February 17th, I
17 didn't have an attorney at that time.

18 Q. Okay.

19 A. And once I got indicted I was indicted then she
20 appointed me an attorney on the 28th which made - she
21 interfered with me getting an attorney. I was appointed an
22 attorney on the 28th and I think I talked to him one time
23 before we went to trial. So on the day of the trial my
24 attorney and him - my attorney and Ms. Sikora they
25 conspired. They talked about what they gonna call the

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-16-

1 charge in front of the jury and they called it possession
2 of stolen goods.

3 Q. Okay. So when you went to trial that was some twelve
4 days after being appointed Mr. Sullivan?

5 A. Yes, ma'am.

6 Q. And that was, do you recall the day that you went to
7 trial?

8 A. March the 7th. Let me see. March the 16th and 17th
9 of 2011.

10 Q. Now was there anything else in terms of information
11 that you felt your attorney should have looked at for your
12 trial?

13 A. Yes. The police report and all if he had done looked
14 at it there was no DNA, no forensic, no nothing to tie me -
15 to implicate me. He even had a detective there and he told
16 him this. But by him not investigating he just went on, he
17 didn't object to anything. He just went on and we went
18 through the trial.

19 Q. Now, you said you didn't give this - you didn't give
20 this information to your attorney?

21 A. No, ma'am.

22 Q. Can you tell the Court why you didn't give it to
23 your attorney?

24 A. Okay. Why I didn't give it to him?

25 Q. Yes.

1 A. Okay. He represented me I thought - I wrote for a
2 motion to discovery to get the evidence. They didn't have
3 anything for me to give him so he showed me the only thing
4 he had was my Rap Sheet. So I figured he had everything
5 that he needed to represent me because I kept bumping him
6 and trying to talk to him during the trial and he told me
7 he had it but I found out that everything we was going to
8 trial on was intended from the trial that was dismissed by
9 the magistrate judge in 2010 all the evidence. So the only
10 thing he had was where he done read from the solicitor
11 about that old case.

12 Q. So how did you learn that it was evidence from the
13 Magistrate's Court?

14 A. How did I learn it?

15 Q. Yes.

16 A. Because the paperwork that I had the warrant and
17 stuff, when I started looking at the warrants and I seen
18 that was back in 2010. When we went to trial she said
19 everything would be relevant what we gone through but
20 everything was intended from 2000 - from February 23rd,
21 2010 and that's how I knew about it then after this. I
22 would a stayed in jail sixty-three days for this and it had
23 been dismissed and they brought it up, you know, brought it
24 back up again and all the evidence. I mean what's so
25 called evidence. Wasn't no evidence.

JOHNNY CROCKETT: DIRECT BY MS. MOODY

-18-

1 Q. Well now did your attorney explain to you that the
2 State could directly --

3 A. No, my attorney didn't do nothing. He didn't tell me
4 none of that.

5 Q. So you never discussed your indictment ---

6 A. No, ma'am.

7 Q. --- and how they come back with a different name for
8 the charge?

9 A. No, ma'am, he didn't do nothin.

10 Q. And you heard me mention that we were withdrawing
11 the prosecutorial misconduct?

12 A. Yes.

13 Q. And you understand why we were withdrawing the
14 prosecutorial misconduct?

15 A. Not really.

16 Q. You understand this is an action against your lawyer?

17 A. Yes. Uh-huh.

18 Q. And we're talking about how he may have not performed
19 at a certain level?

20 A. Yes.

21 Q. And that you were prejudiced by his performance?

22 A. That's right.

23 Q. Now how were you prejudiced by his performance
24 specifically?

25 A. Okay. I was prejudiced by his performance by him

1 forming his own opinion of me without investigating. By
2 not investigating and preparing my case. His deficiency is
3 lacking by not calling his own expert appraiser which is
4 with what I'm being charged with because he would see that
5 everything was falsified and by prejudicing me by not
6 studying and investigating my case.

7 Q. Okay. And what relief are you asking from the Court
8 today?

9 A. The relief that they overturn my conviction - my
10 sentence cause my constitution been violation and all been
11 violated. Due process, I didn't have due protection under
12 the law and I feel that I deserve - I deserve the judge and
13 the evidence they should over turn my conviction and
14 sentence and be released.

15 Q. So you want your conviction over turned?

16 A. Yes, ma'am.

17 Q. And you want to be released?

18 A. Yes, ma'am.

19 Q. Okay. Do you realize that the judge here can grant
20 you your relief. Right?

21 A. Yes, ma'am.

22 Q. But do you realize that you will start all over on
23 this charge?

24 A. I didn't but if they do it'll be all right.

25 Q. And you're saying that because?

JOHNNY CROCKETT: CROSS BY MR. JOHNSON

-20-

1 A. I'm saying it because I feel that I am being held
2 unconstitutionally and but the evidence would a been
3 presented I feel that I should be.

4 MS. MOODY: No further questions for the witness.

5 THE COURT: All right. Counsel.

6 MR. JOHNSON: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 JOHNNY CROCKETT BY MR. JOHNSON:

9 Q. Mr. Crockett.

10 A. Yes, sir.

11 Q. One of your claims is that the evidence was falsified
12 and that we are to believe you here today; isn't that
13 correct?

14 A. Yes, sir.

15 Q. All right. You've been convicted of lying in the
16 past have you not?

17 A. I been what now?

18 Q. Convicted of lying?

19 A. Not that I know of.

20 Q. Forgery?

21 A. Forgery? Yes.

22 Q. Yes, sir, 1983. Theft of electrical current and
23 forgery in 1992. Correct?

24 A. I guess. I don't have the paper to see.

25 Q. 1994 three counts of forgery checks and unlawful

1 possession of a weapon. 1995 three counts of forgery.

2 Correct?

3 A. I guess.

4 MS. MOODY: Your Honor, we would stipulate that he has
5 a prior record.

6 THE COURT: I'll let him go over it because I think
7 its not so much his prior record but his credibility.

8 MR. JOHNSON: His credibility, yes, sir.

9 Q. 1996 shoplifting. Correct?

10 A. Yes.

11 Q. 1997 forgery four counts and receiving stolen goods.

12 Correct?

13 A. I can't say. I don't have my papers in front of me.

14 Q. Sir, do you do not know your own prior criminal
15 history?

16 A. Not really.

17 Q. Would you agree with me that this was read into the
18 record at trial after - in mitigation and so that the judge
19 could consider your prior record in his sentencing?

20 A. Yes.

21 Q. Okay. And most recently in 2009 you got - you were
22 convicted of receiving stolen goods?

23 A. Yes.

24 Q. And in 2010 two counts of petty larceny?

25 A. Yes.

JOHNNY CROCKETT: CROSS BY MR. JOHNSON

-22-

1 Q. Okay. In speaking of the evidence at trial, would
2 you agree with me that a gentleman by the name of Lafta
3 Templeton was an employee at CTR testified he knows you
4 cause you used to work there?

5 A. Yes.

6 Q. Okay. And he also testifies that one day he comes
7 into work and noticed that a lot of copper piping was
8 missing or copper pieces that are missing off these tanks.
9 Correct? That's what he testified to.

10 A. That's what he testified yeah.

11 Q. Okay. And that they were one of only five facilities
12 in the entire country that deal in I guess cryogenic liquid
13 storage. Correct?

14 A. I don't know.

15 Q. That's what was presented at trial. Correct?

16 A. Yeah. Okay.

17 Q. And that the copper piping was on the tanks the day
18 before. Correct?

19 A. Yeah , that's what he testified, yeah.

20 Q. He also testifies that you worked for this company
21 in 2007 but were subsequently fired. Correct?

22 A. But he testified to that but I wasn't fired, yeah.

23 Q. But you worked there and you no longer worked there.

24 A. That's right. That's right.

25 Q. And he is a hundred percent sure that those parts

1 that he alleged you stole, came from that company?

2 A. That's what he testified, yeah.

3 Q. And then you had Mr. Fleming from Palmetto Recycling
4 and Carolina Salvage who testifies against you. Correct?

5 A. Yes.

6 Q. Okay. And what he testifies to is that you bring in
7 this Number Two copper pipping. Correct?

8 A. Yes.

9 Q. At least sixteen pounds of it?

10 A. Yes.

11 Q. And that it looked like it had - a hacksaw had been
12 taken to it and cut off of another piece of machinery.

13 Correct?

14 A. I - Excuse me. What did you say now?

15 Q. Excuse me. That he testifies that it looked like the
16 copper piping that was turned in for money, that you turned
17 in for money, looked like it had been cut off, off of some
18 piece of machinery.

19 A. Not what I turned in but for it come off a tank yes,
20 that's what he testified against.

21 Q. But he identifies you as bringing in that copper
22 pipping. Correct?

23 A. He - He testifies to me bringing in copper. He didn't
24 say nothing about no copper pipping from the tank. He don't
25 know where that came from.

JOHNNY CROCKETT: CROSS BY MR. JOHNSON

-24-

1 Q. He doesn't know where it came from but he says that
2 you bring it in. You sign a ticket and that your driver's
3 license number is on that ticket?

4 A. That's right.

5 Q. Okay. And Officer Waldrup testifies --

6 And, Your Honor, Page 116, I'll let you read what Mr.
7 Crockett said when he was arrested.

8 But during the booking process that you admitted that
9 you had no job at that time. Correct?

10 A. Yes.

11 Q. So even though they don't produce the metal at the
12 trial, there's still evidence and testimony that you were
13 the one who committed this crime. Correct?

14 A. No, sir.

15 Q. You don't consider testimony evidence?

16 A. They - No not that - I mean they testified - there's
17 testimony that I did this.

18 Q. Right.

19 A. But the evidence --

20 Q. They didn't have the physical evidence but their
21 testimony was what convicted you in this crime. Correct?
22 That's what the jury heard and that's what the jury decided
23 that you were the one who committed this crime.

24 A. I don't know what the jury had to convict me but
25 they did.

1 Q. You also say counsel was ineffective for failing to
2 have an expert - an appraiser testify on your behalf.

3 Correct?

4 A. Yes.

5 Q. Do you have an expert here today to testify?

6 A. No.

7 MR. JOHNSON: The Court's indulgence, Your Honor.

8 (PAUSE.)

9 Q. You also testified that counsel did not investigate
10 because the State produced no evidence of fingerprints and
11 or DNA. Correct?

12 A. Yes.

13 Q. Are you aware that during the trial your counsel Mr.
14 Sullivan cross examined the Rock Hill police officer and he
15 admitted there were no fingerprints on the metal that they
16 tested?

17 A. Yes.

18 Q. So he did in fact bring that out in front of the jury
19 that there was no DNA evidence in this case?

20 A. Yes.

21 Q. Okay.

22 MR. JOHNSON: The Court's indulgence, Your Honor.

23 (PAUSE.)

24 MR. JOHNSON: No further questions at this time, Your
25 Honor.

JONATHAN SULLIVAN: DIRECT BY MR. JOHNSON

-26-

1 THE COURT: Redirect?

2 MS. MOODY: No, sir, Your Honor.

3 THE COURT: You can step down and have a seat with
4 your attorney.

5 (WITNESS LEAVING WITNESS STAND.)

6 THE COURT: Call your next witness.

7 MS. MOODY: No other witnesses, Your Honor.

8 THE COURT: All right. The State.

9 MR. JOHNSON: The State calls Jonathan Sullivan to
10 the stand.

11 (WHEREUPON, JONATHAN
12 SULLIVAN, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
13 FOLLOWS:)

14 DIRECT EXAMINATION

15 JONATHAN SULLIVAN BY MR. JOHNSON:

16 Q. Mr. Sullivan, can you please explain how you became
17 involved in this case?

18 A. Yes, sir. I was originally appointed to represent
19 Mr. Crockett in the fall of 2010 on some completely
20 unrelated charges. He had a receiving stolen goods charge,
21 a manufacturing marijuana charge, and a larceny charge that
22 I represented him on. We were able to get the larceny
23 charge dismissed at a preliminary hearing so then I
24 continued to represent him on the receiving stolen goods
25 charge and the manufacturing marijuana charge.

1 So of course those cases continued to evolve. The
2 Solicitor made a plea offer. Two different solicitor's.
3 one was prosecuting, Amy Sikora was prosecuting the
4 property crimes and Teasa Weaver was prosecuting the
5 marijuana charge. Ms. Sikora presented a plea offer on the
6 property crime, I believe for time served. However on the
7 marijuana charge the plea offer was for a two year prison
8 sentence.

9 Mr. Crockett and I discussed those. He indicated to
10 me that he wanted to go to trial. On February 16th, 2011 I
11 was informed by Solicitor Amy Sikora that she was going to
12 directly indict the case from 2009 or '10 that Katie
13 Taylor represented him on that got dismissed at a
14 preliminary hearing.

15 There was a grand larceny charge as Mr. Crockett
16 stated. He got indicted for a receiving stole goods
17 charge. I was notified of that on February the 16th. I
18 think he was actually indicted on the 17th. And then my
19 notes indicate that on February the 23rd, 2011 Mr. Crockett
20 and I met in the Public Defender's office along with
21 another attorney in my officer Mr. Phil Smith where we went
22 over the indictment, the penalty for receiving stolen goods
23 under the Property Crime Statute and then the elements of
24 receiving stolen goods.

25 Q. And is there a monetary value to the possession of

1 stolen goods?

2 A. No because he was indicted under the property
3 enhancement statute. The value of the goods was not an
4 element of the crime.

5 Q. So would you have thought about hiring an expert
6 appraiser in this case?

7 A. No.

8 Q. Did Mr. Crockett ever give you a list of witnesses to
9 investigate?

10 A. Not that I recall.

11 Q. Speaking of an investigation, what if any
12 investigation did you do in this case?

13 A. Sure. Mr. McKinnon and I - Mr. McKinnon was
14 co-counsel on the case. He and I went to CTR. Actually
15 spoke with, I believe it was the manager there Mr.
16 Templeton. You could tell at that point we really were not
17 welcome. We were there briefly. We were able to kind of
18 look around see the tanks get a lay of the landscape.

19 Then Mr. McKinnon and I also went over to Carolina
20 Salvage which of course is just right around the corner.
21 Did a little bit of a investigation there to see kind of
22 the lay out of the scene. And then of course we met with
23 Mr. Crockett both at the jail and in my office on a couple
24 of occasions preparing the case for trial.

25 Oh, actually one other thing. We also went to the

1 Rock Hill Police Department kind of evidence, if not the
2 formal evidence storage, evidence unit, it was a storage
3 unit in Rock Hill over by the stadium where they actually
4 had all this metal stored. We went over there with
5 Detective Waldrup and we were able to look through the
6 metal prior to trial.

7 Q. So the evidence wasn't destroyed as he claims?

8 A. No.

9 Q. Okay. But it also wasn't introduced into evidence?

10 A. Correct. The evidence was not introduced. Only the
11 pictures.

12 Q. And admittedly there were no fingerprints or DNA
13 evidence on this metal?

14 A. Correct. And that was something that, as you
15 mentioned, we cross examined Detective Waldrup about that.

16 Q. And he admitted there was no ---

17 A. Yes.

18 Q. --- evidence there. So I think you have already
19 testified that Mr. Crockett was adamant about having a
20 trial.

21 A. Yes. And I will say one thing. I think it was more
22 of a situation the way this case evolved it was - I think
23 he was more - less inclined to take any kind of plea offer
24 because of the offer with the marijuana charge, not so much
25 on this case, because as I said it was initially a time

JONATHAN SULLIVAN: DIRECT BY MR. JOHNSON

-30-

1 served plea offer. But then when he requested a trial
2 that's when everything got resurrected so.

3 Q. And did you prepare for a trial?

4 A. Yes.

5 Q. And what if any strategy would you have come up with?

6 A. Well the best defense that we had as a common defense
7 in receiving stolen goods cases was the fact that Mr.
8 Crockett's actions that day were not representative of
9 somebody who knew what they had in their possession was
10 stolen. So that was the main - the defense strategy was to
11 prove that he did not know that the items were stolen.

12 The facts of the case were such where Mr. Crockett
13 went there in a car, he gave them his driver's license, he
14 signed the name William Crockett - he didn't try to hide
15 anything - and so we tried to use that to our advantage to
16 show that he - this is not the actions of somebody who knew
17 that something was stolen or should have known.

18 Q. Mr. Crockett claims that the first time you ever met
19 with him was twelve days before the trial and that you
20 didn't discuss the case at all. Is that a true statement?

21 A. No. My notes indicate various meetings both at the
22 jail and in my office. But I mean I'm looking at a note
23 right now, on February the 23rd where we were of course
24 preparing for trial, discussing the indictment, et cetera.

25 Q. And he also states that the first charge was a grand

1 larceny and then charged with possession of stolen goods.
2 Is the State allowed to bring a different charge even if
3 say the grand larceny is dropped at a preliminary or
4 dismissed in a preliminary?

5 A. Yes.

6 MR. JOHNSON: I think that's all I have at this time,
7 Your Honor.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 JONATHAN SULLIVAN BY MS. MOODY:

11 Q. Mr. Sullivan, you indicated that you met with Mr.
12 Crockett on several occasions.

13 A. Yes, ma'am.

14 Q. Do you have the dates?

15 A. Of course our relationship began back in July of
16 2010 at which time Mr. Crockett was in jail and he and I
17 were discussing the manufacturing marijuana charge and the
18 other receiving stolen goods charge and the larceny charge
19 that I represented him on so we started meeting back in
20 July of 2010.

21 And he then of course bonded out and we were
22 proceeding with those charges but then as I indicated I
23 found out on February the 16th after I told Solicitor
24 Sikora that he wanted a trial, that she was going to indict
25 - directly indict the old charge that Katie Taylor

JONATHAN SULLIVAN: CROSS BY MS. MOODY

-32-

1 represented him on. I found that out on February the 16th.
2 So again I have a note right here that says we met on the
3 23rd.

4 Q. Okay. So on the 23rd was he in jail or out of jail?

5 A. He would have been out of jail at that point, is what
6 my notes indicate, but for some reason my notes seem to
7 indicate that we went - Mark and I went - Mark - Excuse me
8 - Attorney McKinnon and I went back to see Mr. Crockett a
9 couple of times in March where he was in the jail. So I'm
10 not sure when he was in the community first as to when he
11 was in the jail. Several times between February and trial
12 date.

13 Q. Okay. Now when you went back to your notes that
14 you're referring to where you met with him and Mr.
15 McKinnon, did you all discuss the defense strategy?

16 A. Yes. I mean that was - of course the main defense
17 strategy was that. And then the other strategy because
18 there was a two-day period that last from the time that the
19 items were reported stolen until Mr. Crockett was alleged
20 to have turned them into the scrape yard, of course we were
21 arguing and Mr. McKinnon cross examined the employees from
22 CTR about the fact are you sure this is your property. So
23 that was kind of our secondary was them not being able to
24 identify the property as theirs. That this is just other
25 scrape metal not their scrape metal.

1 Q. And again, you discussed that with Mr. Crockett?

2 A. Yes.

3 Q. At any point did you explain to Mr. Crockett how they
4 would be able to come back and indict him for receiving
5 stolen goods versus - Or are you saying that this was a -
6 with the receiving stolen goods and the larceny charge they
7 were separate?

8 A. Once I found out in February of 2011 that Solicitor
9 Sikora was going to re-indict the case that was older, my
10 notes indicate on the 23rd we explained to Mr. Crockett,
11 Mr. Smith and I, the indictment, the fact that it was an
12 old charge, et cetera.

13 Q. So that goes to the evidence that they would have
14 been using where he --

15 A. Yes.

16 Q. Okay. And then during the time that you were
17 discussing with Mr. Crockett how you investigated at CTR,
18 Carolina Storage, Rock Hill's Storage at the stadium, did
19 you all attempt to get Mr. Crockett to consider taking a
20 plea or anything?

21 A. Yeah I discussed that with him on a couple of
22 different occasions particularly in light of the
23 fact that, you know, the plea offer was for time served.
24 But the problem is where the negotiations did not go the
25 way that Mr. Crockett wanted, cause they still wanted a two

JONATHAN SULLIVAN: CROSS BY MS. MOODY

-34-

1 year sentence on the marijuana charge, so that's why he
2 indicated to me that he wanted to go to trial on both those
3 cases.

4 Q. And so did you proceed on the marijuana charge too to
5 trial?

6 A. He came back after he was convicted at trial and
7 plead to concurrent time.

8 Q. Okay. Did you have an opportunity to explain to Mr.
9 Crockett about his enhancement of this charge?

10 A. That I do not recall.

11 Q. So throughout the time that you represented Mr.
12 Crockett and you guys were going back and forth with the
13 Solicitor's office on the different deal two years versus,
14 you know, time served or whatever, did Mr. Crockett appear
15 to understand all of your conversations?

16 A. Yes, ma'am.

17 Q. And after the conviction on - from the trial, did
18 Mr. Crockett indicate that he wanted an appeal if anything?

19 A. Yes. And we filed a Notice of Intent to Appeal for
20 him.

21 Q. And during that time did he understand - At the end of
22 the trial did he understand what occurred and the evidence
23 that was presented against him?

24 A. I believe so. But of course I can't be certain. But
25 I believe so yes, ma'am.

1 MS. MOODY: I beg the Court's indulgence.

2 (PAUSE AT 12:42 P.M..)

3 MS. MOODY: No further questions for this witness,
4 Your Honor.

5 MR. JOHNSON: No redirect, Your Honor.

6 We ask that this witness be released.

7 THE COURT: Any problem with him returning to
8 Charleston?

9 MS. MOODY: No, sir, Your Honor.

10 THE COURT: Thank you. Good to see you.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: All right. .

13 MR. JOHNSON: The Court's indulgence, Your Honor.

14 (PAUSE.)

15 MR. JOHNSON: That would be the State's case, Your
16 Honor.

17 THE COURT: All right. Let Mr. Crockett return to...

18 MS. MOODY: Thank you, Your Honor.

19 THE COURT: Mr. Crockett, you can return to the
20 holding cell.

21 Who's next? Who's next?

22 (APPLICANT, JOHNNY CROCKETT, EXITS COURTROOM.)

23 (BENCH CONFERENCE OFF THE RECORD AT 12:45 P.M..)

24 THE COURT: All right, we're gonna break until 1:30.

25 (COURT IN LUNCH RECESS AT 12:46 P.M..)

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 15th day of April, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson

Wanda Nelson, CVR-M
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE:

July 16 / 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

Johnny William Crockett, #243050)

C.A. No.: 2013-CP-0607

Applicant,)

v.)

ORDER

State of South Carolina,)

Respondent.)

2014 FEB 18 PM 4:18
 YORK COUNTY, SC

This is a post-conviction relief application filed February 22, 2013. The case was heard by the undersigned on April 15, 2014, at the Moss Justice Center in York, South Carolina. Applicant was represented by Leah B. Moody, Esquire, the State by J. Rutledge Johnson, Esquire.

The Applicant is presently incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The applicant was indicted by the February 2011 term of the York County Grand Jury for Possession of Stolen Goods (2011-GS-46-0625). The Applicant was represented by Jonathan Sullivan, Esquire. On March 17, 2011, the Applicant proceeded to a jury trial pursuant to which he was found guilty. The Honorable Paul M. Burch sentenced the Applicant to confinement for ten (10) years for property offense, 3rd or subsequent.

A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the appeal pursuant to *Anders v. California*, 386 U.S. 738 (1967). The remittitur was issued on September 11, 2012.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

Je #171

1. "Ineffective Assistance of Counsel"
2. "Violation Due Process"
3. "Prosecutorial Misconduct" ¹

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

¹ This ground was withdrawn by Applicant at his PCR hearing

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The Applicant testified first at the PCR hearing. Applicant's trial counsel, Jonoathan Sullivan, Esquire, also testified at the hearing.

As to the first ground raised in his PCR application, that being his claim of "Ineffective Assistance of Counsel," the Applicant alleges that his trial counsel was ineffective in that he failed to obtain an expert witness to testify on the Applicant's behalf and additionally that he failed to investigate and prepare the Applicant's case. The Court will first address the Applicant's claim in regards to trial counsel's failure to obtain an expert witness.

In *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998), the South Carolina Supreme Court held that:

This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. *Pauling v. State*, 331 S.C. 606, 503 S.E.2d 468 (1998) (applicant established prejudice where nurse's notes presented at PCR hearing corroborated lack of penetration in sexual assault case); *Glover v. State*, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992) (where applicant did not offer witnesses at PCR hearing but merely alleged they would have provided him with alibi defense and testified victims had recanted their trial testimony, he failed to establish prejudice); see also *Jackson v. State*, 329 S.C. 345, 495 S.E.2d 768 (1998) (applicant failed to establish prejudice from counsel's failure to investigate criminal backgrounds of victims and witnesses where he failed to substantiate at PCR hearing that victims and witnesses had criminal records). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." *Glover v. State*, supra, 318 S.C. at 498-99, 458 S.E.2d at 540.

At the PCR hearing the Applicant did not produce the testimony of an expert witness to establish prejudice from any expert witness's failure to testify at trial. The Applicant alleges his trial counsel was ineffective by failing to obtain an expert on the basis that an expert would have

QHA3

testified that the Applicant's DNA or fingerprints were not found on the stolen goods that were recovered and/or that the value of the stolen goods was actually less than the State alleged. The Court cannot rely on hearsay or mere speculation as to what an expert witness's testimony could or would have been at the time of trial. Additionally, there was no question that the goods in this case were stolen. Rather, there was a jury question as to whether the goods actually belonged to the victim(s) in this case. Any DNA or fingerprint evidence offered at trial would have been of no value to the State or defense in trying this case. Additionally, the Applicant failed to present any expert testimony concerning this issue at the PCR hearing. Therefore, the Court finds that the Applicant failed to meet his burden of establishing prejudice and finds that trial counsel was not ineffective in his failure to obtain an expert witness in this case.

Applicant also testified that trial counsel was ineffective by failing to investigate and prepare the Applicant's case. Specifically, Applicant testified that trial counsel failed to object to a "false" warrant. After reviewing the record and testimony presented at the PCR hearing the undersigned finds that there is nothing to support the claim of a "false" warrant.

Applicant also testified that the police did not fully investigate his case. The undersigned finds that this is not an issue for Post-Conviction Relief and will not address this issue at this time.

The Applicant also testified that trial counsel was ineffective by failing to investigate and object to his indictment. The Applicant was directly indicted and even though the case appears to have been dismissed by the Magistrate at some prior point in time, the State has a right to directly indict him, which they did. The undersigned finds no fault on the part of trial counsel in failing to attack the indictment.

Je 24 H A

Applicant also testified that trial counsel was ineffective for failing to object to the property value he was charged with under the crime of Receiving Stolen Goods. The undersigned finds that the property value in this case was of no importance as Applicant was subject to the enhanced penalty under the Property Crimes Enhancement Act, regardless of the value of the property that was stolen.

Applicant's trial counsel, Jonathan Sullivan, Esquire, also testified in this matter. Trial counsel testified that he met with the Applicant on several occasions prior to trial in order to discuss the case strategy and options with the Applicant. Trial counsel testified that he discussed a plea deal of time served and two years with the Applicant. He also testified that it was Applicant's decision to go to trial and that it appeared to him that the Applicant understood everything. The undersigned finds trial counsel's testimony credible and it appears to the undersigned that trial counsel did a thorough investigation into the Applicant's case. Therefore, the undersigned finds that the Applicant has failed to meet his burden of proof in alleging that trial counsel was ineffective by failing to investigate and prepare for the Applicant's case.

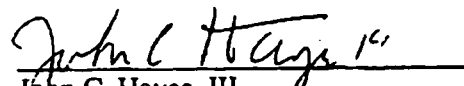
As to the second ground raised in his PCR application, that being "Due Process Violation," the Applicant failed to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." (Section 17-27-50, SC Code of Laws, 1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Court finds that this allegation

JCHAS

should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

Wherefore, Applicant's application for Post-Conviction Relief is denied and dismissed with prejudice. This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. See Rule 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.


John C. Hayes, III
Presiding Judge #6

April 17th, 2014
York, South Carolina

WITNESSES

RHPDWaldrop

DOCKET NO. 2011-GS-46-00625

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

February 17, Term 2011

ab

ARREST WARRANT NUMBER

Direct Indictment re:
K-641014

THE STATE

vs.

Witness:
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

JOHNNY WILLIAM CROCKETT

TRUE BILL

For person of Grand Jury
Date: 2/17/11

VERDICT

Guilty

Indictment for

POSSESSION OF STOLEN GOODS

For person of Petit Jury

SC Code: 16-13-180; 16-1-57
CDR Code: 2367

250
03/14/2011

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

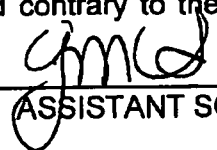
INDICTMENT

At a Court of General Sessions, convened on February 17, 2011, the Grand Jurors of York County present upon their oath:

POSSESSION OF STOLEN GOODS

The Defendant, Johnny William Crockett, did in York County, South Carolina, on or about February 23 through February 27, 2010, buy, receive and/or possess stolen goods valued at more than Two Thousand Dollars described as follows: various fittings, valves, pipes and other metal items belonging to the CTR Inc. with a value of approximately Five Thousand Five Hundred Dollars (\$5,500.00), and the said defendant knew or had reason to believe such goods had been stolen. Furthermore, the defendant has at least two prior convictions for which the term of imprisonment is contingent upon the value of the property involved. All in violation of Section 16-13-180 and 16-1-57, 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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

York

VS.

Johnny Crockett

AKA:

Race: B

Sex: M

Age: 55

DOB: [REDACTED]

SS: [REDACTED]

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Enhancement / Property offense, 3rd or sub. conviction, enhancement to Felony E

in violation of § 16-01-0057

of the S.C. Code of Laws, bearing CDR Code #

2367

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Sikora, Amy M

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 63 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ 130

Clerk of Court/ Deputy Clerk

David Hamilton

Court Reporter:

Wanda Nelson

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

2040

3-17-11

SENTENCE SHEET

ORIGINAL