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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

ROBERT T. ARTIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002189

APPENDIX

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1 STATE OF SOUTH CAROLINA

2 County of York

Court of General Sessions

3 -----x Transcript of Record

4

5 State of South Carolina,

6 vs

Case No.

7 -against-

2010-GS-43-01098

8 Robert Timothy Artis,

9 Defendant.

10 -----x

11 April 16, 2012

12 Rock Hill, S.C.

13

14 B E F O R E:

15 HONORABLE MICHAEL BAXLEY

16

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

18 MARINA HAMILTON, Esquire

19 Attorney for the Plaintiff

20

21 DAN HALL, Esquire

22 Attorney for the Defendant

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24 Aileen Butler

25 Official Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>

NO EXHIBITS INTRODUCED

1 THE COURT: Thank you, ladies and gentlemen.

2 Please be seated.

3 Good morning. I am Judge Baxley and we are here
4 for some preliminary issues, and madam solicitor, please
5 call your case.

6 MS. HAMILTON: Thank you, Your Honor, may it
7 please the Court. This is the case of State versus
8 Robert Artis, on indictment 2011-GS-46-02460. He is
9 charged with receiving stolen goods two thousand or
10 less, property enhancement third or subsequent offense.
11 This charge has been true billed on August 18th, 2011.
12 He has -- the defendant has plead not guilty to that.

13 On second indictment, State versus Robert Timothy
14 Artis, 2012-GS-46-01098, this is an indictment for petit
15 larceny and it has been true billed March 22nd, 2012.
16 Your Honor, the defendant has waived formal arraignment
17 on this indictment and we will be proceeding, and he has
18 plead not guilty to that.

19 THE COURT: All right. Thank you. And is the
20 defense ready to go forward?

21 MR. HALL: The defense is ready Your Honor.

22 THE COURT: And counselor you have motions I am
23 told.

24 MR. HALL: I do. Let me pass them up.

25 Your Honor I am passing up to the Court a case

1 that I will be referring to a little bit later. State v
2 Kindle, a potential witness list and motion in limine.

3 Your Honor, first motion that the defense would
4 have is a motion to dismiss these charges based on the
5 lack of subject matter of jurisdiction.

6 My client, Mr. Artis, has been charged with petit
7 larceny and possession of stolen goods. I previously
8 handed up to the Court a stapled set of some statutes,
9 16.13.30, petit larceny which he is charged with, states
10 that that charge, simple larceny, is triable in
11 magistrate or municipal court, notwithstanding some
12 other provisions that refer to transfer court,
13 magistrate court exclusively, and he is also charged
14 with receiving stolen goods in amount less than two
15 thousand dollars, an element of that, as far as penalty
16 provisions under that statute, that it was a misdemeanor
17 triable in magistrate court or municipal court, the
18 values less than two thousand dollars. He is charged
19 with both of those, obviously those would be exclusive
20 jurisdiction of magistrate's court. The question would
21 be the 16.1.57 in which he was also indicted under,
22 states that a person convicted of an offense for which a
23 term of imprisonment is contingent upon the value of the
24 property involved must upon conviction for a third or
25 subsequent offense be punished as prescribed for a Class

1 C felony. The defense argument is, is that, that is a
2 penalty provision that does not confer jurisdiction on
3 other statutes. Certainly under -- under the petit
4 larceny and the petit goods by under -- I'm sorry,
5 possession of stolen property, the legislature clearly
6 as far as jurisdiction if someone had a prior record of
7 several petit larcenies or whatever the property
8 offenses were and then were charged with an offense lets
9 say grand larceny for two to five that carries a five
10 year penalty, or a possession of stolen property where
11 the value is more than two thousand but less than five,
12 would carry five, the court would have jurisdiction to
13 then obviously hear the case and then to sentence beyond
14 the five years up to a ten-year penalty. And so there
15 obviously wouldn't be a question of jurisdiction in
16 those issues -- in those cases.

17 The defense's argument is that section 16-1-57
18 again is a penalty provision, a general penalty
19 provision and does not confer jurisdiction to bring a
20 case that is by statute exclusively in the jurisdiction
21 of a municipal or magistrate court and so based on that
22 the defense would to move to have both of these
23 indictments dismissed for lack of jurisdiction.

24 THE COURT: Let's hear from the State on that.

25 MS. HAMILTON: Your Honor, the State takes the

1 position that the magistrate court can not sentence more
2 than thirty days. This charge is up here for judicial
3 economy. We are not going to try the case down there.
4 He can't sentence down there. We would have to bring
5 the trial up here. Judicial economy. We try it up
6 here. You sentence accordingly if he is convicted for
7 this crime. We believe there is concurrent jurisdiction
8 with the general sessions court and it does not state it
9 must be triable in the magistrate court. It says
10 triable in magistrate court or in municipal court and
11 Your Honor, we believe that for judicial economy these
12 two charges should be tried up here since it carries up
13 to ten-year penalty.

14 THE COURT: All right. Thank you.

15 And defense, let me ask what would you propose
16 would be the procedure when someone is charged with a
17 third offense, petit larceny for example, that the case
18 could wind its way through the justice system.

19 MR. HALL: Your Honor, certainly the legislature
20 has the power to word their statutes that would include
21 that. The statute for petit larceny is simply as far as
22 the language of the statute, could include or if that is
23 their intent, should include language where in addition
24 to the penalty provisions that are already under those
25 statutes there would simply be a provision that would

1 say, one with a record of three or more, two or more,
2 prior property offenses or petit larcenies is subject to
3 penalty provisions under 16-1-57.

4 THE COURT: But isn't the statute 22-3-540 which
5 talks about the jurisdiction in the magistrate court
6 really anticipating this event because they give the
7 magistrate exclusive jurisdiction when punishment
8 doesn't exceed a certain amount but in this case when
9 the State puts in the prior convictions then the
10 punishment exceeds the amount as listed in that statute
11 and thus the statutory scheme is consistent and
12 appropriate that the case be tried here in the circuit
13 court.

14 MR. HALL: Your Honor, when you look at 22-3-540
15 about the exclusive jurisdiction of the magistrate court
16 and I believe what the court is referring to, it says
17 that except in cases in which an offense within the
18 jurisdiction of a magistrate is included in the charge
19 of an offense beyond his jurisdiction or when it is
20 permissible to join a charge of an offense within his
21 jurisdiction with one or more of which the magistrate
22 has no jurisdiction. Clearly that would be the typical
23 case of a burglary charge and a petit larceny. And so,
24 that would be, I think the language of exception in
25 22-3-540 makes provision for that, where obviously you

1 couldn't argue if he was charged with burglary which is
2 clearly outside the jurisdiction of the magistrate's
3 court to then say Your Honor you can't go forward with,
4 the Court doesn't have jurisdiction over petit larceny.
5 That's what this statute cures. Again, in this
6 particular case there is nothing that these two charges
7 that are attached to that takes it out of the exclusive
8 jurisdiction of the magistrate court.

9 THE COURT: All right. Thank you. Now, from the
10 State, tell me what priors does the defendant have that
11 would be, in your position, would be relevant to this
12 proceeding.

13 MS. HAMILTON: Well, let me -- and these, we have
14 certified convictions for each one and they have been
15 provided to the defense. We have one a forgery under
16 \$5,000. Convicted in Chester County on October 25th,
17 2006.

18 Another one from January 14th, 1994, receiving
19 stolen goods in -- what county is this -- Chester
20 County.

21 Lancaster County he had from 1991, a shoplifting.
22 Receiving of -- actually another receiving stolen goods
23 from Lancaster County, 1991. A petit larceny, 2003.
24 Forgery, 2007. 1993, receiving stolen goods. I believe
25 that is it.

1 I mean, there may be more that I have not
2 addressed, but that's two or more.

3 THE COURT: Of receiving stolen goods and petit
4 larcenies. How many petit larcenies does the defendant
5 have? I heard you tell me one.

6 MS. HAMILTON: One from 2003, but it is just three
7 or more property offenses and he has, I believe, five or
8 more property offenses.

9 THE COURT: And tell me does the statute have a
10 time limitation in which those prior offenses must be
11 obtained.

12 MS. HAMILTON: It does not, Your Honor.

13 THE COURT: All right. And again so our records
14 will be clear for review, how would you propose that
15 those priors be made a part of this proceeding in order
16 to invoke the jurisdiction of the Court.

17 MS. HAMILTON: That is a good question, Your
18 Honor. I was going to ask that the defense stipulate to
19 this prior to trial so we did not have to bring it in
20 front of the jury, but now that this is not being
21 stipulated --

22 MR. HALL: We, Your Honor ---

23 MS. HAMILTON: Maybe through an officer since he
24 did charge this.

25 MR. HALL: Certainly, Your Honor, my stipulation

1 would be depending on how the Court rules. Whether I
2 stipulate or not would depend on how the Court rules on
3 my motion.

4 I would also argue that again it is a penalty
5 provision and it is not an element of the offense so it
6 would be improper to put up any officer, any person to
7 talk about his prior record, because the jury is not --
8 is not an issue of an element of the offense being
9 established like in a burglary first degree where the
10 statute says that you can be convicted of burglary first
11 if you got two prior burglaries and I believe the case
12 law is that if, if absent, any agreement or stipulation
13 on both the state and defense, then the state would then
14 have to put it up, but as far as this charge this is
15 strictly a penalty provision, and but again, depending
16 on how the court rules, then we would like to -- we will
17 certainly agree that he has prior convictions.

18 THE COURT: Well, the Court is prepared to rule
19 and my ruling is that the penalty provision 16-1-57 is
20 actually incorporated within the language and the
21 meaning of section 22-3-540 which discusses the
22 jurisdiction of the magistrate's court and because this
23 third offense or greater has a penalty that is greater
24 then what is permitted within the jurisdiction of the
25 magistrate's court then that would automatically bring

1 jurisdiction of this offense, these two offenses, within
2 the ambit of this Court.

3 So, I'm going to deny your motion for a dismissal
4 based on jurisdiction for the reasons just stated and we
5 will work with counsel to place in the record without
6 the jury being aware that the defendant has previous
7 convictions.

8 All right. Anything further now with regard to
9 preliminary issues before we stand down for the jury.

10 MR. HALL: Yes, Your Honor. The next issue is my
11 client has also been indicted for petit larceny and
12 possession of stolen goods. I have handed up to the
13 Court and provided a copy to the defense {sic}, a case
14 State v Tendall where it is a well settled issue -- a
15 well settled law of this state that one can not be
16 guilty of receiving something from himself and the case
17 law is very clear that under receiving stolen goods that
18 in the court of State v Tendall that someone else must
19 have stolen the item or comitted a larceny before a
20 defendant can be charged or convicted of receiving
21 stolen goods. So based on that, we would ask that --
22 move the State elect on which indictment they intend to
23 go forward because based on that if one, if the Court
24 allows it in then at the directed verdict stage the
25 Court is going, as a matter of law, the Court is going

1 to have to direct a verdict on one of the charges.

2 That being the case, if we got to that point, the
3 unfair prejudice that that would occur from my client
4 being subjected to two charges that he can't possibly be
5 guilty of both of them, that information going in front
6 of the jury under 403 very clearly would be, even if it
7 is obvious, Rule 403 says all the relevant evidence may
8 be excluded if it's probative value is substantially
9 outweighed by the danger of unfair prejudice, confusion
10 of the issues or misleading the jury. I believe the
11 State's position is to go forward with two charges that
12 he can't possibly be guilty of, certainly would be
13 unfairly prejudicial to him in front of the jury. It is
14 confusing to the jury under 403 and that it also be
15 misleading the jury and we would ask that the Court
16 require the State to elect one of the charges to go
17 forward on but not both.

18 THE COURT: What says the State?

19 MS. HAMILTON: Your Honor, under State v Lyles and
20 State v Lee, they both deal with receiving stolen goods,
21 a charge on the defendant for receiving stolen goods and
22 the larceny charge. But when several offenses are
23 charged, grow out of the same transaction, then the
24 prosecuting officer is not required to elect and the
25 Court instructs the jury to pass upon the several counts

1 separately and write their verdict accordingly.

2 It is essentially saying that we can proceed on
3 both charges and at the close of the case can move for a
4 directed verdict if we have not presented evidence for
5 one of the charges. But you can instruct the jury as to
6 that he can not be guilty of both. We agreed with that.
7 But you can instruct the jury to choose in the
8 alternative when the time comes either for. Not both.

9 THE COURT: And what is the evidence that the
10 State intends to introduce with regards to the petit
11 larceny as well as the receiving stolen goods.

12 MS. HAMILTON: Your Honor, we are also moving
13 forward like this for judicial economy. He has not
14 given -- he hasn't said any statement as to where he got
15 these items from. He has pleading not guilty to the
16 larceny. Essentially that he did not do the larceny.
17 Therefore it is presumed that he received these goods
18 from someone else and if he gets on the stand and says
19 as a defense to the larceny that he did not steal these
20 goods then we could cover the receiving stolen goods in
21 the same trial and that is how we would proceed.

22 THE COURT: And what do you say to the Rule 403
23 argument that it is prejudicial to the defendant.

24 MS. HAMILTON: Your Honor, these are charges. We
25 are not presenting evidence that is going to be

1 prejudicial to him. He would go up on the stand. He
2 would give his defense if that's what he needs to do and
3 that would be it. The inference that he received these
4 goods from someone else would be produced when he says
5 he did not steal them himself.

6 And there is direct evidence and circumstantial
7 evidence in this case, also, to prove that if he did not
8 steal these and he gets on the stand and says he did not
9 steal them, then we can move forward on the receiving
10 stolen goods and you can direct a verdict for - -

11 THE COURT: Well now, lets think about this. The
12 State goes first. You can't call the defendant.

13 MS. HAMILTON: But he can move for a directed
14 verdict again, if we did not produce evidence for the
15 receiving stolen goods.

16 But based on these cases we can move forward on
17 both of them, on both these charges and at the end you
18 can instruct the jury you can not find him guilty of
19 both. You can either choose one or the other and if
20 there is not evidence presented in the trial he can move
21 for a directed verdict. But we feel we can move forward
22 on both these charges for judicial economy, Your Honor.

23 THE COURT: All right. But the evidence is going
24 to be, I believe you told me in chambers, that the
25 defendant is accused of taking a piece of scrap. A

1 large piece, heavy piece of scrap aluminum from a body
2 shop. Is that correct?

3 MS. HAMILTON: Yes, Your Honor.

4 THE COURT: And that came to light when he
5 presented that at a scrap metal place and sold it to
6 them to be scrapped.

7 MS. HAMILTON: Yes, Your Honor. He was caught on
8 video and he produced an ID.

9 THE COURT: And so, what evidence will you have
10 with regard to, other than circumstantial evidence, that
11 the defendant either was given this stolen goods or
12 stole it himself. What would be the evidence?

13 MS. HAMILTON: Well, our position going forward is
14 that he did actually steal these items, but we are
15 protecting if he does get up and try to do an alternate
16 defense in saying that no, I did not in fact steal
17 these, then receiving stolen goods would be the charge
18 because then he would have received them from someone
19 else. He wouldn't have stolen them. And we are holding
20 the position that he did steal these goods, Your Honor.

21 THE COURT: Right, but the reason I am asking this
22 the directed verdict motion comes at the close of the
23 State's case before the defendant is called as a witness
24 or the defendant puts up a case, and so we are going to
25 get there and if you are not going to have any evidence

1 of it I am not certain what the benefit is to you, to
2 start off with a charge that you know is going to be
3 dismissed without any evidence of it at the end of your
4 case.

5 MS. HAMILTON: Well, we also have that he lived
6 next door with another woman at that residence. He
7 lived right next door to the body shop where this item
8 was stolen. He could have possibly received it from her
9 or he could have stolen it himself. They both had the
10 opportunity to do so and that would be something that we
11 could present circumstantially.

12 THE COURT: Is she charged?

13 MS. HAMILTON: She is not, Your Honor.

14 THE COURT: Okay, let me do this. We've flushed
15 this out for the record. Let's stand down and I'm going
16 to review the case law that was handed up and will be
17 prepared to rule before we begin.

18 MR. HALL: Your Honor, if I just might briefly
19 state, as far as the benefit for the State, it appears
20 that obviously the State could benefit tremendously if
21 they could get two charges in front of the jury and the
22 jury have the option of two, and then weighing whether
23 to do one or two. So really gives them two shots at the
24 apple. And so I would argue that that might be
25 something that the Sate would be trying to go forward

1 with. And that -- that -- that in and of itself would
2 be because he can't be guilty of both of them, would be
3 unfairly prejudicial to my client.

4 THE COURT: Very good. All right. I will take
5 that matter under advisement.

6 Anything further before we bring the jury in at two
7 o'clock?

8 Mr. HALL: Your Honor, I handed up some other
9 motions in limine.

10 I don't know whether -- they are certainly not
11 matters of law. I don't know whether you want to take
12 those up right now. Just the standard motions about
13 compliance with Brady. There was a motion, we
14 anticipate that the victim in the case has made
15 statements and may feel the need to make statements to
16 in front of the jury, that he has run this business.
17 He's never experienced any thefts until my client moved
18 in beside his business and then as soon as he was
19 arrested those thefts stopped. That would clearly be
20 inadmissible testimony from him and we have in addition
21 to the other standard motions we would just like to have
22 a motion in limine that he be excluded from making any
23 type of statements to that effect.

24 THE COURT: Do you want to be heard on that?

25 MS. HAMILTON: Your Honor, we have told him. We

1 have spoken with the victim and told him not to make any
2 reference to that.

3 THE COURT: Very good. Any other issues.

4 MR. HALL: I think the others maybe we can put on
5 the record before the jury comes in, unless you want to
6 deal with those now. And I also handed up some requests
7 for voir dire.

8 THE COURT: All right. We will take those up at
9 two when we come back. And when we come back of course,
10 the first thing we will do is we will qualify the jury,
11 and before the jury comes in I will give you the
12 decision on the issue of the two charges going forward.

13 MR. HALL: All right, thank you.

14 THE COURT: All right, very good. Look forward to
15 working with you. We will be in recess now until two
16 o'clock.

17 (Luncheon recess).

18 THE COURT: Have you all looked at the voir
19 dire? Is there an objection?

20 MR. HALL: The defense has no objection to the
21 questions that the State submitted.

22 MS. HAMILTON: The State has no objection to the
23 defendant's voir dire.

24 THE COURT: Let's go back on the record and let me
25 go ahead and make the ruling on the defense motion

1 requiring the State to either elect or for the Court to
2 enter a dismissal.

3 I had a chance to review the case law further on
4 the lunch hour and I am persuaded by the precedents
5 handed up by counsel the State versus Lee which is cited
6 at 145.SE.285. The case has some age on it, but I
7 believe it still stands for the 1926 case, but the
8 principle has stood the test through the years which is
9 simply that when a person is charged with a receiving
10 stolen goods as well as larceny, the State is not
11 required to elect any advance as to how they wish to
12 proceed. They may proceed on both charges, and the
13 question will be put to the jury if both cases get to
14 the jury as to whether or not there has been a proof of
15 guilt on the counts separately. So the Court does not
16 require the election. I am going to respectfully deny
17 your motion.

18 Is there anything further that you wish at this
19 point.

20 MR. HALL: Your Honor, I may be heard just briefly
21 on that issue. When I read State versus Lee, it states
22 that if several offenses charged, and obviously this is
23 the case where you have two separate individuals, and do
24 not grow out of the same transaction and the proper
25 practice is to require the prosecuting officer to elect

1 upon which counts he will proceed. The argument, and
2 certainly in State versus Lee, what we have in State
3 versus Lee, we don't have any factual basis for the
4 opinion. The opinion does not include a recitation of
5 the facts, so we do not have any basis, factual basis,
6 to see how they reached that. Obviously the fact in
7 this case, he is charged with a petit larceny which is a
8 separate and perceived offense, and a receiving stolen
9 goods which is separate and perceived offense.

10 The defense would argue that that by law would have
11 to be two separate -- that that would have to be two
12 separate transactions because at some point, the
13 defendant can not receive from himself so if the State
14 is going to go forward, obviously there has to be an end
15 to the petit larceny, before the receiving could happen,
16 and it appears that, we would argue that there is a
17 basis to argue that these two, these two offenses
18 factually in this case, do not grow out of the same
19 transaction and would be basis of requirement election.

20 THE COURT: Right, and again, do you wish to be
21 heard in response to what has been said?

22 MS. HAMILTON: No, Your Honor.

23 THE COURT: Okay. Well counsel, there are many
24 junctures at which this problem pointed out by the
25 defense maybe fixed. First of all, there may not be a

1 problem because again I haven't heard the evidence and I
2 don't know what the evidence will be, and it maybe they
3 will prove both of these. It is unlikely, but if a
4 failure of proof on one or the other or both may resolve
5 it at the directed verdict stage. If there is
6 circumstantial evidence of both, or proof of both, then
7 we will let the jury resolve it. I don't have any
8 objection to telling this jury in the beginning that the
9 defendant may not be found guilty of both charges but of
10 course I want to hear from the State on that as to how
11 we wants to put that in, whether or not they agree or
12 disagree with that principal, and in a way that would
13 lessen the prejudice I think, of which you complain.
14 But I can't require -- what you are really asking me to
15 do is to force the state into a particular tactic or
16 strategy, which is not for the court to do.

17 At this point they may proceed on both. It might
18 be at their own peril or it may be to their own benefit
19 but it is not for the court to tell them how to try
20 their case. And so again, I will be glad to hear from
21 you if you wish for me to tell the jury something, but
22 again, I would want to hear from the State on it and
23 would want us to work out the language before we mention
24 it at all.

25 Do you have a preference or position on that?

1 It would go something like this. These charges
2 arise out of the same core set of facts or circumstances
3 and under South Carolina law, the defendant may not be
4 convicted of both of these charges, but it is up to the
5 State to determine which, what evidence they wish to put
6 up and ultimately for the jury to determine whether or
7 not the State has proven beyond a reasonable doubt, the
8 defendant is guilty of either charge. It would be
9 something like that. I don't demand that language but
10 somewhere in that vicinity. But I will be glad to hear
11 from both the State if they don't like that or the
12 defense if you have a better idea, go ahead.

13 MR. HALL: Your Honor, I am happy with that
14 language. At what point -- we assume you are going to
15 give that as part of your preliminary instructions when
16 you are levying out the charges that are being brought
17 by the State.

18 THE COURT: It will be up front somewhere.

19 MR. HALL: That's fine.

20 THE COURT: And what says the State? I don't
21 insist upon that language. If you have a better or
22 different idea I will be glad to receive it.

23 MS. HAMILTON: Your Honor, that sounds fine to us.

24 THE COURT: Okay, all right. Thank you.

25 MR. HALL: And Your Honor, I guess while we are

1 waiting on the jury, I'd just like to put another matter
2 on the record just so we are clear for the record, as
3 far as my representation of my client, Mr. Artis.

4 Mr. Artis was, when he was initially charged, he
5 had a preliminary hearing in which he represented
6 himself without counsel. At the preliminary hearing --
7 at the end of the preliminary hearing the magistrate who
8 heard the case found no probable cause and the charge
9 was dismissed. It was not until -- and the public
10 defender's office and I certainly did not represent him
11 at that time. I began to represent him just for
12 purposes of the record once the State informed him that
13 he would be directly indicted for possession of stolen
14 goods. At that point he then applied for and was
15 appointed a public defender. So for the purposes of the
16 record I began to represent him at the point they
17 decided to directly indict him.

18 THE COURT: All right. And let me say I don't
19 know whether or not the defendant will testify with
20 regard to this case at all. But on those issues, as
21 well as the States witnesses, how we came to be here
22 whether it is by direct indictment or whether there was
23 a dismissal at the preliminary hearing stage, is not
24 really admissible to the jury.

25 The issue for the jury is whether or not the State

1 can meet the burden of proof in the case, and so I would
2 not anticipate having any evidence about this case
3 having been previously dismissed on any ground,
4 technical or substantive.

5 Is there any question about that by the defense?

6 MR. HALL: No, Your Honor.

7 THE COURT: Okay. Did I understand you to say
8 that your client has some concerns about that process?

9 MR. HALL: I will state that Mr. Artis has
10 expressed to me multiple times that in his mind he
11 believes that he had his day in court. That a proper
12 authority had listened to the evidence and dismissed the
13 case.

14 I have instructed him and told him that certainly
15 that is what happened in the preliminary hearing, but
16 the State of South Carolina has the right to directly
17 indict him on this charge and also they end up directly
18 indicting him on the petit larceny, which he was not
19 originally charged for. And I explained to him that is
20 the law. Certainly in his mind, and I can't fault him
21 as a layman, he still struggles with that issue in his
22 application. But I have been very clear and plain with
23 him that the State has that right to go forward on a
24 direct indictment even after the case has been dismissed
25 at the preliminary hearing.

1 THE COURT: All right. Very good.

2 Mr. Artis let's talk about that for a moment.

3 First of all and I should introduce myself. My name is
4 Judge Baxley and I will be your presiding officer here.
5 In South Carolina the circuit judges move around the
6 state and we do that to prevent the appearance of
7 alliances that may develop or even appear to develop
8 between local lawyers and local judges and people come
9 from out of town and have a bad result and they say they
10 got "home cooked" is what they call it. And so that's
11 why you have a judge from Hartsville today hearing your
12 case.

13 Now, I know that you watch a lot of television
14 shows. We all do. With various legal principles being
15 discussed and the people have the idea that if a charge
16 is dismissed in any state in your favor or even taken
17 that to the furthest extent the police officer decides
18 not to arrest you the first time around, then it's been
19 dismissed in your favor. That's not how double jeopardy
20 works.

21 It is very clear in our constitution and in our
22 state laws that jeopardy attaches when a jury is sworn.
23 So in a few moments when we bring a jury in here and we
24 swear that jury, jeopardy is going to attach. If you
25 get a not guilty under those circumstances those cases

1 are over because the State can not bring them back. But
2 if something happens before a jury is sworn at the
3 preliminary hearing or in some other fashion, before the
4 jury is sworn the State if they drop the charges or they
5 get it dismissed can reinstitute the charges in one or
6 two or three different ways they can do that. And so I
7 will just tell you as an officer of the court, as the
8 court here, as the judge here, what the State has done
9 is not incorrect. In other words, it is correct. They
10 are allowed to after a dismissal at the preliminary
11 hearing to directly indict someone. In fact it is very
12 common. I see it all the time.

13 One other thing I want to make sure you understand
14 is, I don't work for the State. I don't work for the
15 prosecution. I'm not part of the, I guess what I would
16 call the prosecutorial apparatus. My job here is not to
17 be part of the defense team. Not to be part of the
18 prosecution team. It is just to see here that the trial
19 is fair and the rules are followed. And that's what we
20 are going to do here, sir. But I do want you to
21 understand that there is no double jeopardy problem in
22 what the State is proposing to do.

23 Do you have any questions about what I just
24 discussed with you?

25 THE DEFENDANT: No, I have no questions, but one

1 thing about this other charge I got, it seemed like they
2 giving me a charge for something I ain't do.

3 THE COURT: Well, remember this, you have a lawyer
4 that has been appointed for you who is very capable and
5 the State has a lot of resources at it's beck and call.
6 There's lots of policemen out there. There's
7 investigators, there's detectives, there is a lot of
8 officers and folks out on the street and to tip the
9 balance to make it fair, when they bring a charge
10 against you they have to prove it beyond a reasonable
11 doubt. Not just suspicion and not just, you know we
12 think that is what Mr. Artis did. They must be beyond a
13 reasonable doubt. If it is not beyond that standard you
14 don't get convicted, sir. And so, to balance it, you
15 have that tremendous benefit in your favor. It all
16 works out in the wash, so to speak. And, again, what is
17 happening here in this prosecution is well within the
18 rules of the state.

19 Okay. Any further questions?

20 THE DEFENDANT: No.

21 THE COURT: All right. I will let you be seated
22 then and we'll wait for our jury to come up.

23 MR. HALL: As far as the motions in limine, can we
24 just put those on the record as well.

25 THE COURT: Go ahead.

1 MR. HALL: Number one, was the motion for the
2 State to comply with the rule of Brady. I believe that
3 they have.

4 Number two, is a motion to determine the prior
5 record of the defendant the State intends to introduce
6 should he testify. We can deal with that at the close
7 of the State's case.

8 List of witnesses. They have provided that. We do
9 have a motion to sequester the witnesses for the State
10 and the defense.

11 THE COURT: Well, let's take that up after we
12 qualify the jury.

13 MR. HALL: Okay, that is fine. Obviously that is
14 your practice. Other than those, there is nothing in
15 there that we haven't agreed with and if you feel more
16 comfortable after the jury is qualified.

17 THE COURT: Okay. Let's do that. That way the
18 jury won't -- are they just standing outside the court?

19 BAILIFF: Yes sir.

20 THE COURT: Out the front door?

21 BAILIFF: Yes sir.

22 THE COURT: Let's bring in the jury then please.

23 (Jury entering).

24 THE COURT: Thank you. All right. Ladies and
25 gentlemen, welcome to the courtroom. I trust you had a

1 nice lunch and now ready to come back for a jury draw.
2 And what we are going to do now is earlier this morning
3 I asked you a series of questions about your general
4 qualifications to serve. Now we are going to be case
5 specific and ask you questions that have to do
6 specifically with the case at bar, right here.

7 Now, I know just from human psychology and having
8 done this for a few years that a lot of times when you
9 are sitting in a group as you are, you hear a question
10 and you think well, gosh, that probably doesn't apply to
11 me. I don't want to stand up and call attention to
12 myself. I don't want to embarrass myself. I'm just
13 going to be quiet. I will just ask you to do the
14 opposite of that. If you have some inkling that you
15 need to respond to the question, please stand up and
16 give us the benefit of that information. I will tell
17 you that there are no wrong answers in jury
18 qualification. The purpose of this process is to insure
19 that whatever jury we choose is fair and impartial and
20 that's the reason that we go through the questioning
21 process.

22 Now, we are going to begin here with by allowing
23 the State, because under South Carolina law the
24 solicitor's office prioritizes the cases, calls them
25 when they are for trial, not the court. So I will let

1 the solicitor call their case, and you may proceed.

2 MS. HAMILTON: This is the State versus Robert
3 Artis. He is charged with receiving stolen goods under
4 Indictment 2011-GS-46-02460. He is additionally charged
5 with petit larceny, Indictment 2012-GS-46-01098.

6 THE COURT: All right. Thank you. And then for
7 the defense do you represent Mr. Artis, counsel.

8 MR. HALL: I do, Your Honor.

9 THE COURT: And how does he plead to these two
10 charges.

11 MR. HALL: Mr. Artis has entered a plea of not
12 guilty on both those charges.

13 THE COURT: Very good. Thank you, you may be
14 seated. So ladies and gentlemen you heard the charge.
15 You heard the entry of the plea of not guilty. Those
16 are the issues and now we are going to proceed to pick a
17 jury and go forward in the trial. The way we are going
18 to do this is we're going to start by letting the
19 parties and the lawyers introduce themselves to you. We
20 will start with the prosecution. The state goes first,
21 and thus, counsel if you would all please introduce
22 yourselves to the jury panel.

23 MS. HAMILTON: I am Marina Hamilton. I work for
24 the 16th Circuit Judicial Circuit and I am an assistant
25 solicitor.

1 MR. SHELTON: My name is Matthew Shelton, I'm
2 assistant solicitor also with the 16th Judicial Circuit.

3 THE COURT: All right and defense counsel.

4 MR. HALL: My name is Dan Hall. I am a lawyer
5 here in York. This is my client, Robert Artis.

6 THE COURT: All right, thank you. Please be
7 seated. And let me ask while we are introducing because
8 the defendant was introduced, do you have a complaining
9 witness or an alleged victim in this case who is present
10 today?

11 MS. HAMILTON: We do, Your Honor.

12 THE COURT: Please introduce that individual if
13 you would.

14 MS. HAMILTON: This is Mr. James Fanning.

15 THE COURT: Thank you sir, please be seated. All
16 right ladies and gentlemen, let me ask you about the
17 lawyers. Let' start with the lawyers. Just talking
18 about the attorneys you were introduced to, Miss
19 Hamilton and Mr. Shelton who will be prosecuting and Mr.
20 Hall who will be defending.

21 So what I am asking now is whether there is any
22 member of this jury panel related by blood or marriage
23 to any of the attorneys or have some close business,
24 professional or social connection to any of the
25 attorneys or either now or in the past, been represented

1 by these lawyers in any other proceeding of some kind.
2 If any of that applies to you then please stand.

3 All right now, the prosecution's office in this
4 judicial circuit is known as the solicitor's office. I
5 want to ask now whether there is any member of this jury
6 panel that has previously been represented by the
7 solicitor's office. That is, you've been a victim of a
8 crime or had some other professional relationship with
9 the solicitor's office. If that applies to you please
10 stand.

11 All right. Now, you also were introduced to the
12 two parties in this case, and the defendant is Mr.
13 Robert Timothy Artis and Mr. Artis I will get you to
14 stand one more time so we can all see you sir. Thank
15 you. And I want to ask you ladies and gentlemen -- you
16 may be seated. Thank you sir.

17 Is there any member of the jury panel who is
18 related by blood or marriage to Mr. Artis or who has
19 some business, professional or social connection to him,
20 whatever that might be, or who thinks you even know Mr.
21 Artis by whatever means that may be.

22 If any of that applies to you then please stand.

23 All right, and no one has stood and let's ask the
24 same question about Mr. Fanning who stood earlier and is
25 in the back of the courtroom, and I want to ask you

1 ladies and gentlemen if there is any member of the jury
2 panel related to Mr. Fanning by blood or marriage or
3 have some business, professional, or social connection
4 to him or think he may even know him and then Mr.
5 Fanning, I believe you operate Palmetto Recycling
6 Services of Rock Hill; is that correct?

7 MR. FANNING: No, sir.

8 THE COURT: You do not. Excuse me then. I say
9 that incorrectly, but anyway I ask if there is any one
10 who has any connection then with Mr. Fanning. If so,
11 please stand.

12 All right, let the record reflect that no one has
13 stood.

14 MR. SHELTON: May it please the Court. He is with
15 Rock Hill Paint and Body, just for the Court's
16 edification.

17 THE COURT: Excuse me, sorry. I said that wrong.
18 I meant to say Rock Hill Paint and Body. And I ask you
19 ladies and gentlemen if there is any member of this jury
20 panel that has some business connection as either a
21 customer or a vendor or perhaps some other business
22 connection to Rock Hill Paint and Body Shop. If that
23 applies to you please stand.

24 All right. Very good. Let the record reflect
25 that no one has stood in response to the Court's

1 questions.

2 Now, ladies and gentlemen, we are going to talk
3 about the witnesses who may appear today. And we will
4 start by first asking the State to please publish the
5 name's of potential witnesses who may appear in the
6 prosecution of this case and ladies and gentlemen if you
7 are here and you hear your name, please stand so our
8 jury panel can see you.

9 MS. HAMILTON: As I said before, Mr. James
10 Fanning. Mr. Terry Taylor from Palmetto Recycling.
11 Officer Dennis from Rock Hill Police Department, and
12 Officer Sarah Blair from Rock Hill Police Department.

13 THE COURT: All right, ladies and gentlemen I ask
14 you a few moments ago when I was introducing the parties
15 here whether you even knew them, my question is not so
16 close for witnesses. What I am really looking for is
17 whether you have some close connection to them,
18 relationship by blood or marriage, that is a family
19 relationship, or you have some close business,
20 professions, social relationship to these witnesses. If
21 any of that applies to you with regard to the potential
22 witnesses for the State please stand.

23 All right, let's let the record reflect no one has
24 stood.

25 Now, let's talk a moment before I ask the defendant

1 whether there may be any witnesses that will appear
2 before for the defendant. I will talk with you further
3 about this in a moment. But the defendant has two
4 charges here that are levelled against him by the state.
5 But I want you to understand that the defendant has no
6 burden of proof in this courtroom, it is a bedrock
7 foundational principal of our justice system that the
8 State bears the burden of proof and must prove the
9 charges beyond a reasonable doubt. That is, as opposed
10 to defendant having to disapprove the charges, the State
11 has the burden of proof. As a result of that the
12 defendant is not required to testify. The defendant is
13 not required to put up a case and not required to
14 respond to the charges because the defendant again has
15 no burden of proof. The state does. But I ask you
16 while I am qualifying this jury, Mr. Hall, are there
17 other individuals for whom we should query this jury who
18 may be potential witnesses in the prosecution of this
19 case or the defense of it?

20 MR. HALL: Linda Massey or Ed Massey.

21 THE COURT: All right. And I ask you now ladies
22 and gentlemen does anybody in this courtroom believe
23 they are related by blood or marriage by Linda or to Ed
24 Massey or have some close business, professional or
25 social connection to them. If that applies to you then

1 please stand.

2 All right. Now let's talk a little bit further
3 about the charges. I have in my hand two indictments.
4 As you can see these are pieces of paper and that's
5 exactly what they are. They are the documents by which
6 the State commences a prosecution against an individual.
7 But let me say to you, you heard the defendant in this
8 courtroom plead not guilty. Which means that the
9 defendant denies these charges. But again the burden of
10 proof is not on the defendant. The burden of proof at
11 all times is on the State. It never shifts to the
12 defendant. And so what is in these indictments is not
13 to be accepted as evidence, or accepted as the truth of
14 the matter because it is not necessarily evidence. The
15 evidence is what the witnesses say, and so please
16 understand that any evidence in the case will be based
17 upon sworn testimony, not based on something that is
18 said on a piece of paper. So for that reason though I
19 want -- with that understanding I want to publish the
20 allegations that are on the indictments and the reason I
21 am going to do this is so that I can ask you whether you
22 have some knowledge of this incident. But again
23 understand at this juncture these are allegations only
24 which are posed by the State. And as to the indictment
25 for receiving stolen goods the indictment alleges that

1 the defendant, Robert Timothy Artis, did in York County
2 on or about March 29th, 2011, by receive or possessed
3 stolen goods and that the defendant knew or should have
4 known had reason to believe that such goods had been
5 stolen and this is against the laws of South Carolina.
6 With regard to petit larceny, this indictment alleges
7 that and I should have said earlier on the same day
8 which is March 29th 2011, so I should say that both of
9 these indictments arise out of the same core set of
10 facts, the same incident, which was March 29th, 2011
11 allegedly. And says that the defendant, Robert Timothy
12 Artis, did in York County on or about March 29th, 2011,
13 unlawfully take and carry away the goods of the victim,
14 James Fanning, specifically a piece of aluminum with
15 intent to deprive the owner permanently of such property
16 against the laws of the State of South Carolina.

17 So again there are two charges that arise out of
18 this alleged incident. One is for petit larceny, which
19 will actually be the theft of the item. The other is
20 for receiving stolen goods, which is of course to
21 receive it when it may have been stolen by some other
22 individual. These are the allegations contained within
23 the indictments.

24 Now, I want to ask ladies and gentlemen, if there
25 is anybody in this jury panel who has any knowledge of

1 this incident that happened March 29th, 2011, allegedly,
2 or these charges from whatever source that may be. If
3 you have some knowledge about this case, please stand.

4 All right, then let's let the record reflect that
5 no one has stood in response to the Court's questions.
6 Now let me ask you just a little generally about your
7 background if I may. I want to ask first of all ladies
8 and gentlemen, if there is any member of this jury panel
9 who has been previously employed in law enforcement, or
10 currently employed in law enforcement, or currently
11 volunteers in law enforcement in some capacity. So if
12 you previously been a police officer, or in law
13 enforcement or currently in law enforcement as either a
14 paid individual or a volunteer, please stand.

15 All right, let's let the record reflect no one has
16 stood in response to the Court's question.

17 Can you hear me in the back, ladies and gentlemen?
18 Okay, very good. Miss Graham, is there a question
19 ma'am?

20 THE CLERK: Yes, Your Honor, he has a question.

21 THE COURT: Yes sir, did you have a question.

22 JUROR: Yes sir, my last three months in the
23 military I worked with the drug enforcement and with
24 SLED out of Columbia, South Carolina. I don't know if
25 that has any bearing on this or not.

1 THE COURT: Well, lets do this. Tell me your
2 juror number and your name, please sir.

3 JUROR: 134 and my name is Jack Kerns.

4 THE COURT: All right. Mr. Kerns, and let me ask
5 you, would the fact that you had that previous
6 involvement in some capacity with law enforcement, would
7 that prevent you from being fair and impartial as a
8 juror here in this case.

9 JUROR: Not to my knowledge, no, sir.

10 THE COURT: All right. Then based on your answer I
11 find that you are qualified and thank you for divulging
12 that information.

13 JUROR: Yes, sir.

14 THE COURT: All right. Anyone else now who is
15 standing and say they have been involved in either a
16 voluntary basis or paid basis, in law enforcement, in
17 any capacity, if so please stand.

18 JUROR: I volunteer part time in a security
19 department.

20 THE COURT: Okay. Ma'am, please tell me your name
21 and your juror number.

22 JUROR: Kathleen Kramer, 138.

23 THE COURT: All right. Miss Kramer, tell me what
24 security department is that please.

25 JUROR: Security department at the Villagrama

1 Evangelistic Association. It is associated with the
2 headquarters at the library.

3 THE COURT: Okay. And would the fact that you
4 have some duties in the security area would that he
5 prevent you in your opinion from being fair and
6 impartial in this case as a juror.

7 JUROR: No.

8 THE COURT: All right. Then I find that you
9 qualify by your response, ma'am. Thank you for
10 response.

11 And ma'am, please tell me your name and your juror
12 number.

13 JUROR: Yes, Your Honor. Diana Thomas, juror
14 number 222. I own a child development center and I do
15 have to do SLED checks.

16 THE COURT: Okay. And would the fact that you have
17 that connection through SLED by the check process in
18 order to operate your business would that prevent you
19 somehow from being fair and impartial in a case with
20 these allegations?

21 JUROR: No, sir.

22 THE COURT: Then I find that you are qualified by
23 that response. Thank you ma'am.

24 All right. Now, let me ask a little bit about
25 family members. Now I asked if you yourself had

1 previously been in law enforcement. Let me ask you now
2 if anyone has an immediate family member who is
3 currently employed in law enforcement and this is how
4 I'm going to define immediate family member for purposes
5 of this question and some other questions I will ask
6 you.

7 Your immediate family, is your spouse and your
8 children, regardless of where they live, and anyone else
9 living in your household. So immediate family, spouse
10 and children regardless of their residence, and then
11 anyone else who lives in your residence with you who is
12 a family member. I ask you now if there is anyone who
13 has immediate family members as I just defined it who is
14 currently employed in law enforcement in some capacity
15 if so please stand.

16 All right lets set the record reflect -- all right.
17 Ma'am.

18 JUROR: Your Honor, I am sorry.

19 THE COURT: No, don't apologize.

20 JUROR: I have a nephew that is now employed with
21 the FBI.

22 THE COURT: Okay. Now, where is that?

23 JUROR: He lives in Union, South Carolina.

24 THE COURT: And ma'am your Miss Tompson, right?

25 JUROR: Thomas.

1 THE COURT: Miss Thomas, excuse me. And Miss
2 Thomas, would that fact that you have a family member
3 who is in law enforcement would that prevent you from
4 being fair and impartial in that case?

5 JUROR: No, sir.

6 THE COURT: All right. Than I find that you
7 qualify. Thank you for your response.

8 All right. Also I want to ask whether there is
9 any member of the jury panel who is a member of an
10 organization, that has as it's purpose the advocacy for
11 police officers, or police organizations. Let me just
12 hasten to say there is absolutely nothing wrong with
13 being a member of such an organization, but I would like
14 to know if you are. And these are organizations such as
15 the Fraternal Order of Police or the South Carolina Law
16 Enforcement Officer's Association or any other police,
17 benevolent association of that nature. If that applies
18 to you, if your are a member of any of those
19 organizations please stand.

20 Let's set the record reflect no one has stood and I
21 want to ask now there is always two sides to everything
22 we do in this court. I want to ask the question from
23 the other side, is any member who's an organization,
24 excuse me, any juror who's a member of an organization
25 has as its purpose the advocacy for victim's rights.

1 That is the victim of crimes such as Mother's Against
2 Drunk Driving. There is also an organization called
3 CADE, which is Citizens Against Violent Crime. CASA,
4 Citizens Against Spousal Abuse. There are other victim
5 witness assistance programs, and I ask you ladies and
6 gentlemen if there is any member of this jury panel who
7 is a member of such organization if so please stand.

8 Let's set the record reflect no one has stood.

9 I want to ask now whether there is any member of
10 this jury panel who has an immediate family member or
11 you, yourself, who is currently employed or currently
12 volunteers for any prosecuting agency such as the
13 solicitor's office here in this judicial circuit or any
14 defense type agency such as the public defender's office
15 or anything of that nature. If that applies to you
16 please stand.

17 Let the record reflect no one has stood.

18 I want to ask you now whether there is any member
19 of this jury panel who has been a customer of the Rock
20 Hill Paint and Body Shop that I referred to earlier. If
21 that applies to you please stand. Rock Hill Paint and
22 body shop.

23 Let the record reflect no one has stood. And I
24 have the same question for the -- I referred to it
25 earlier, for Palmetto Recycling Services of Rock Hill.

1 Have you been a customer of that entity please stand.

2 All right ma'am, tell me your name and jury number
3 please.

4 JUROR: Wanda Williamson, 242.

5 THE COURT: Okay, and are you a customer there
6 often?

7 JUROR: No, it has been several years ago, I have
8 since moved to Fort Mill, but when I lived in Rock Hill
9 I purchased some recycled materials from them.

10 THE COURT: And would the fact that you had some
11 involvement with that company and that company may be in
12 some way or fashion connected to the facts in this case
13 would that prevent you from being fair and impartial as
14 a juror in this case?

15 JUROR: I don't think so.

16 THE COURT: All right. Very good. Then I find --
17 well, let me just be a little more certain than that.
18 Okay. Let me ask you another way. Would you be able to
19 make a decision as juror based on the evidence in this
20 case ---

21 JUROR: Yes, I would.

22 THE COURT: --- And nothing but the evidence and
23 put outside your mind any of the other connections that
24 you may have.

25 JUROR: Yes, I would.

1 THE COURT: All right. Then based on that ma'am,
2 I find that you are qualified by your response. Thank
3 you.

4 All right ladies and gentleman, I want to ask you
5 now and as I say I am going to ask both sides of this
6 question so please don't be offended either way. I want
7 to ask if any of you have been ever been the victim of a
8 theft. That is if you had something stolen from you.
9 If that applies to you, please stand.

10 All right, now what we are going to do just
11 briefly, we are going to follow up and let everyone give
12 us their name and their juror number then I have one or
13 two questions in follow up for you. And let's let the
14 ladies go first and ma'am on the front row, the blonde
15 lady, would you please give us your name and juror
16 number.

17 JUROR: Jeanette Wilson, 243.

18 THE COURT: Okay, and Miss Wilson, tell me what it
19 is that was stolen.

20 JUROR: My wallet.

21 THE COURT: Okay. And how long ago was this.

22 JUROR: It was 2004.

23 THE COURT: Okay and did some prosecution of some
24 sort result?

25 JUROR: No, they never caught the person.

1 THE COURT: Is there anything in that experience
2 that would prevent you from being fair and impartial in
3 this case with these allegations?

4 JUROR: No.

5 THE COURT: Are you certain of that?

6 JUROR: Yes.

7 THE COURT: All right. And let me ask it again, in
8 a different way. Would you be able to render your
9 decision based on the evidence in the case and solely on
10 the evidence in this case and put out of your mind any
11 experience or connections you may have. Can you do
12 that?

13 JUROR: Yes.

14 THE COURT: All right. Very good. I find that you
15 are qualified. You may be seated.

16 And yes, ma'am.

17 JUROR: Diana Thomas, juror number 222. Back in
18 2006 my purse was stolen and check book.

19 THE COURT: Okay. And was there a prosecution that
20 resulted.

21 JUROR: They didn't catch him, but it caused many
22 hardships later on.

23 THE COURT: Okay. And Miss Thomas, let me ask you
24 ma'am, would that experience prevent you from being fair
25 and impartial in this with these allegations?

1 JUROR: No, sir.

2 THE COURT: Then I find you are qualified by your
3 response. And still with our ladies, ma'am, would you
4 give us your name and juror number again please.

5 JUROR: Sure, Wanda Williamson, 242. I had my
6 wallet stolen back about three years ago and there was
7 no prosecution.

8 THE COURT: And would that prevent you from being
9 fair and impartial somehow in this case?

10 JUROR: No, sir.

11 THE COURT: Then I find that you are qualified
12 ma'am. You may be seated.

13 And yes ma'am, please give me your name and juror
14 number.

15 JUROR: Jessica Myers, 252. I had a TV and other
16 electronics stolen from my home a few years ago.

17 THE COURT: Okay, was there a prosecution, ma'am?

18 JUROR: No, they didn't catch him.

19 THE COURT: And would this experience prevent you
20 from being fair and impartial in this case?

21 JUROR: No, sir.

22 THE COURT: Then I find that you are qualified.
23 Thank you, ma'am. And directly behind you ma'am.

24 JUROR: Dee Ann Neal, juror number 160. I had my
25 license tag stolen off my car.

1 THE COURT: Okay. How long ago was that please?

2 JUROR: About two years ago.

3 THE COURT: Was there a prosecution that resulted?

4 JUROR: I am not sure.

5 THE COURT: And would that prevent you from being
6 fair and impartial somehow in this case in your opinion?

7 JUROR: No.

8 THE COURT: Then I find that you are qualified
9 ma'am by your response. Thank you. And then ma'am, if
10 you would give us your name and your juror number
11 please.

12 JUROR: Kristyn Edley, juror number 69. My wallet
13 was stolen out of my purse in September.

14 THE COURT: How long ago was that.

15 JUROR: Eight months ago.

16 THE COURT: And was there a prosecution?

17 JUROR: Not so far.

18 THE COURT: And would that prevent you from being
19 fair or impartial here somehow?

20 JUROR: No.

21 THE COURT: Then I find that you are qualified
22 ma'am. Thank you for response. And one more lady.
23 Ma'am, please give us your name and juror number.

24 JUROR: Tiffany Ramsey, 176. My car was broken
25 into and car radio was stolen out of the car. Nothing

1 ever happened.

2 THE COURT: Would that prevent you from being fair
3 and impartial somehow in this case?

4 JUROR: No.

5 THE COURT: Then I find that you are qualified,
6 ma'am.

7 Now sir, on the front row please, to the right,
8 tell me your name and juror number.

9 JUROR: Michael Tabak, 217. My house was robbed
10 roughly about five years ago.

11 THE COURT: Was there a prosecution that resulted?

12 JUROR: Yes.

13 THE COURT: And would that experience prevent you
14 somehow from being fair and impartial in this case?

15 JUROR: No, sir.

16 THE COURT: Then I find that you are qualified by
17 your response. Thank you sir. And please tell me your
18 name and juror number.

19 JUROR: My name is Parks M. Garmon Jr., my number
20 is 88.

21 THE COURT: And what was stolen from you, sir?

22 JUROR: A nine millimeter pistol about a month and
23 a half ago. I was teaching a young lady how to shoot so
24 she could get her weapons card, conceal weapon, and her
25 brother stole the car and my pistol was in the car and

1 they retrieved the car but they never retrieved my
2 pistol and I was not allowed to take a warrant out for
3 this guy.

4 THE COURT: All right. Let me ask you this. Would
5 that experience, that recent experience, prevent you
6 from being fair and impartial somehow in this case with
7 these allegations in your opinion?

8 JUROR: No, it just -- it strikes me a little bit
9 on the judicial department a little bit. No offense.

10 THE COURT: That's all right. You won't hurt my
11 feelings.

12 JUROR: I felt like I was done wrong. I should
13 have been given a chance to at least put him in jail for
14 a couple of hours.

15 THE COURT: I find that you are qualified based on
16 your responses to my questions. And thank you sir.

17 JUROR: Yes, sir.

18 THE COURT: And last but not least in the back just
19 tell me your name and juror number.

20 JUROR: Stephen Rhode, 181. In 1998 I had a moving
21 truck broken in to and much of my personnel possessions
22 was stolen. No prosecution.

23 THE COURT: And would that prevent you from being
24 fair and impartial somehow in in this case in your
25 opinion?

1 JUROR: No, it would not.

2 THE COURT: All right. Thank you. I find that you
3 are qualified.

4 Ladies and gentlemen, I want to ask the other side
5 of the question which is, is there any member of this
6 jury panel who has ever been accused of taking something
7 from some other person or entity. If that applies to
8 you, you have been accused of theft please stand.

9 Let the record reflect no one has stood in response
10 to the Court's question.

11 Now from the state, is or are there further
12 questions for the jury qualification at this point?

13 MS. HAMILTON: No, Your Honor.

14 THE COURT: And from the defense?

15 MR. HALL: No, Your Honor.

16 THE COURT: All right, how many strikes are
17 claimed by the stand.

18 The State claims five.

19 MS. HAMILTON: Yes, Your Honor.

20 THE COURT: And very good. How many strikes are
21 claimed by the defense.

22 MR. HALL: Your Honor, also five.

23 THE COURT: The defense claims five so the strikes
24 will be five and five.

25 Now, just one moment ladies and gentlemen.

1 All right. Now ladies and gentlemen, let me
2 explain to you the process we are going to use now, just
3 so we will all be on the same wavelength. And what
4 we're going to do, your names have been randomly
5 selected, using a computer program that court
6 administration provides and when your name is called
7 what I would ask you to do is just to stand where you
8 are, and then both sides will have an opportunity to
9 either seat you or excuse you,

10 Now, let me just say a couple things about that.
11 First of all, what I am going to let you do because in
12 some courts the judge asks you to come up here and stand
13 in front of everybody and that is a long trip up and a
14 long trip back if you end up going back to your seat.
15 Rather than do that, I'm just going to let you stand
16 where you are. You don't have to leave your seat and
17 the lawyers again will have an opportunity to seat you
18 or excuse you.

19 Now, if you are excused, don't be offended. That
20 may suit you fine. That may be your preference. But I
21 want you to understand that if the lawyers don't seat
22 you, that is, if they excuse you, it may be based on
23 some response given here in the courtroom. Something
24 that was said on a jury response form. It may be based
25 on some strategy or tactic that only counsel knows

1 about. But I will tell you what it is not, it is not
2 because of your race and it is not because of your sex.
3 It is against the law to strike on those basis and each
4 side has the opportunity to challenge the other side
5 strikes on that basis. So I will tell you that it is
6 not for that reason. So if you are not chosen, that is
7 if you are excused, I will let you be seated where you
8 are. I can't let you walk out the door right now. We
9 may have to revisit the strikes or revisit the jury draw
10 for some reason. But if you are chosen, if you would
11 just bring your personal belongings, not because we are
12 getting ready to sequester you somewhere but you are
13 just changing seats. We're going to let you come up
14 here and be seated in the jury box.

15 Okay. Madam clerk, are you ready to proceed?

16 THE CLERK: Yes.

17 THE COURT: Is the State ready to strike?

18 MS. HAMILTON: Yes, Your Honor.

19 THE COURT: The defense ready to strike?

20 MR. HALL: The defense is ready.

21 THE COURT: Do you want to turn your backs to the
22 court and face the jury panel and whatever your
23 preference is fine.

24 Madame clerk please proceed.

25 THE CLERK: Number 143, Karin Macheski. What say it

1 for the State?

2 MS. HAMILTON: Please seat the juror.

3 THE CLERK: Defense.

4 MR. HALL: Swear the juror.

5 THE CLERK: You may have a seat in the jury box.

6 Number 106, Matthew Higdon. What say the State?

7 MS. HAMILTON: Please seat the juror.

8 THE CLERK: Defense?

9 MR. HALL: Swear the juror.

10 THE CLERK: You may have a seat in the jury box.

11 Number 173, Amy Pontecorvo. What say the State?

12 MS. HAMILTON: Please excuse the juror.

13 THE CLERK: You are excused in this case.

14 Number 252, Jessica Myers. What say the State?

15 MS. HAMILTON: Please seat the juror.

16 THE CLERK: Defense?

17 MR. HALL: Please excuse the juror.

18 THE CLERK: You are excused in this case.

19 Number 134, Jack Kerns. What say the State?

20 MS. HAMILTON: Please seat the juror.

21 THE CLERK: Defense?

22 MR. HALL: Please excuse the juror.

23 THE CLERK: You are excused from this case.

24 Number 163, Angela Nicholas. What say the State?

25 MS. HAMILTON: Please seat the jury.

1 THE CLERK: Defense?

2 MR. HALL: Present the juror.

3 THE CLERK: You may have a seat in the jury box.

4 Number 206, Amy Smoak. What say the State?

5 MS. HAMILTON: Please seat the juror.

6 THE CLERK: Defense?

7 MR. HALL: Present the juror.

8 THE CLERK: You may you have a seat in the jury
9 box.

10 Number 184, Dixie Robinson. What say the State?

11 MS. HAMILTON: Please seat the juror.

12 THE CLERK: Defense.

13 Mr. HALL: Swear the juror.

14 THE CLERK: You may have a seat in the jury box.

15 Number 144, Therese Macphee. What say the State?

16 MS. HAMILTON: Please excuse the juror.

17 THE CLERK: You are excused from this case.

18 Number 176, Tiffany Ramsey. What say the State?

19 MS. HAMILTON: Please seat the juror.

20 THE CLERK: Defense?

21 MR. HALL: Please excuse the juror.

22 THE CLERK: You are excused from this case.

23 Number 20, Roberta Bonner. What say the State?

24 MS. HAMILTON: Please seat the juror.

25 THE CLERK: Defense.

1 MR. HALL: Present the juror. I'm sorry, swear
2 the juror.

3 THE CLERK: You may have a seat in the jury box.
4 Number 11, Cameron Bailey. What say the State?

5 MS. HAMILTON: Please seat the juror.

6 THE CLERK: Defense?

7 Mr. HALL. Swear the juror.

8 THE CLERK: You may have a seat in the jury box.
9 Number 166, Jeremy Olson. What say the State?

10 Ms. HAMILTON: Please seat the juror.

11 THE CLERK: Defense?

12 MR. HALL: Swear the juror.

13 THE CLERK: You may have a seat in the jury box.
14 Number 185, Akeem Roseboro. What say the State?

15 MS. HAMILTON: Please present the juror.

16 THE CLERK: Defense.

17 MR. HALL: Swear the juror.

18 THE CLERK: You may have a seat in the jury box.
19 Number 138, Kathleen Kramer. What say the State?

20 MS. HAMILTON: Please present the juror.

21 THE CLERK: The defense?

22 MR. HALL: Swear the juror please.

23 THE CLERK: You may have a seat in the jury box.
24 Number 217, Michael Tabak. What say the State?

25 MS. HAMILTON: Please excuse the juror.

1 THE CLERK: You are excused from this case.

2 Number 8, Gregory Ayers. What say the State?

3 MS. HAMILTON: Please present the juror.

4 THE CLERK: The defense?

5 MR. HALL: Please excuse, this juror.

6 THE CLERK: You are excused from this case.

7 THE COURT: The defense has one strike remaining.

8 THE CLERK: Number 29, Alison Bumgardner. What say
9 the State?

10 MS. HAMILTON: Please present the juror.

11 THE CLERK: Defense.

12 MR. HALL: Swear the juror.

13 THE CLERK: You may have a seat in the jury box.

14 Number 181, Stephen Rhode. What say the State?

15 MS. HAMILTON: Please present the juror.

16 THE CLERK: Defense?

17 MR. HALL: Please excuse the juror.

18 THE CLERK: You are excused from this case.

19 THE COURT: The defense has only challenge for
20 cause remaining.

21 THE CLERK: Number 109, Gail Hinson. What say the
22 State?

23 MS. HAMILTON: Please present the juror.

24 THE CLERK: Defense.

25 MR. HALL: Please swear the juror.

1 THE CLERK: You may have a seat in the jury box.

2 THE COURT: All right. We will choose one
3 alternate and the strikes will be one for the state and
4 two for the defense as to the alternates.

5 THE CLERK: Number 122, Dana Jackson. What say the
6 State?

7 MS. HAMILTON: Please present the juror.

8 THE CLERK: Defense.

9 MR. HALL: Please swear the juror.

10 THE CLERK: You may have a seat in the jury box.

11 THE COURT: All right. Ladies and gentlemen,
12 welcome to the jury box and let me ask just for my own
13 knowledge how many of you have served before as a juror
14 in a case, whether it be criminal or civil. Please
15 raise your hand.

16 Well, we have some experience on the jury panel.
17 Let me just say for those of you who find yourselves
18 sitting there for the first time don't be uncomfortable
19 about where you find yourself.

20 Jurors need two tools in order to serve and serve
21 well and you got them both. The first is your ability
22 to listen and the second is your collective common
23 sense. With those two things you will find yourself in
24 good standing.

25 Now, let me ask the parties, counsel is there any

1 objection to the procedure used by this court in
2 selecting this jury or the strikes employed by the other
3 side. What says the State?

4 MS. HAMILTON: No, Your Honor.

5 THE COURT: What say the defense?

6 MR. HALL: None from the defense.

7 THE COURT: Very good. Then that means you will
8 be in our jury in the first trial.

9 Just one moment please, madame clerk.

10 (Off the record discussion).

11 Ladies and gentlemen in the back, our jurors who
12 are not chosen I know you are disappointed but let me
13 say this, the good news is that you are free for the
14 rest of day. What I would ask you to do is after seven
15 o'clock tonight please call the number for the jury line
16 to give you the information as to how to respond to it.
17 If I new what that was now I would tell you but we never
18 know until the end of the day what the instructions are
19 for the jury. So after seven tonight please dial the
20 jury number for instructions to the entire panel and
21 follow whatever those are. But you're done for the day
22 and we all will remain where you are as you depart.
23 Have a good day ladies and gentleman.

24 All right. Counsel let's step up and let's talk
25 about scheduling here please. So we can give our jury

1 just a little bit more specific information.

2 All right. Ladies and gentlemen lets do this. We
3 are first of all just so we have good use of our
4 government resources let me say that the Court is
5 multi-tasking in many areas at the same time. I have
6 another matter that I need to take up for a few moments
7 which has nothing to do with this case and so what we
8 are going to do we will give you a break. It maybe as
9 much as 30 minutes, so that will give you an opportunity
10 to know one another.

11 Please don't discuss the case. You don't even know
12 enough to discuss the case, but just discuss your
13 backgrounds and yourself and enjoy your break and then
14 we will come back for opening statements at that time.

15 Any questions from the jury panel?

16 (No response)

17 Please follow our bailiff and he will take you
18 where you need to be. And we will remain where we are
19 out of respect for you.

20 All right, Mr. Artis, your case has been called
21 for trial. I'm going to at this point release you to
22 your lawyers, custody and companionship, while we take
23 the next few moments for a break and we'll see you back
24 here. I'm suspecting in about thirty minutes or so. So
25 just please be on call so when we finish this proceeding

1 we will go directly into the trial.

2 All right. Very good. Counsel will you kindly let
3 the solicitor's office know when we can take that plea
4 now, or, I will stand right here and wait on them if
5 they're ready.

6 MR. SHELTON: Yes sir, I will inform the necessary
7 parties.

8 (Break in the proceedings.)

9 THE COURT: Ladies and gentlemen in this
10 proceeding we will be on break now for about, roughly
11 thirty minutes while we take a plea in another matter.

12 (Whereupon there was a break in proceedings)

13 THE COURT: All right, counsel, it appears that the
14 hour is four o'clock. Do you want to have openings and
15 then end for the day. What says the state on that?

16 MS. HAMILTON: Your Honor, we think that is the
17 best solution for today.

18 THE COURT: How about the defense, does that suit
19 you?

20 MR. HALL: That is fine.

21 THE COURT: Fine. Yes, ma'am.

22 MS. HAMILTON: We have some issues to address prior
23 to opening.

24 THE COURT: Lets go ahead and take those up now
25 then. I think it would be a good time.

1 MS. HAMILTON: We want to appoint a case agent,
2 Officer Dennis in this case, since we will begin direct,
3 I know he requested sequestration of all witnesses. We
4 would like Officer Dennis to be in here.

5 THE COURT: Well, he requested sequestration but
6 we really didn't talk about it. Let's start off with
7 square one. Why do you want to sequester the witnesses,
8 counsel?

9 MR. HALL: Your Honor, in this case I withdraw my
10 motion to request sequestration.

11 THE COURT: Well, that makes that easy then. I
12 assume that the officer can be seated with you there in
13 the courtroom or at the table if you wish since there is
14 no request for sequestration now.

15 Anything further we need to take up before we bring
16 in the jury?

17 MS. HAMILTON: That's the only issue we had
18 remaining, Your Honor.

19 THE COURT: Okay, thank you. Just one moment
20 please.

21 All right. Counsel, let me read to you because I
22 had just given extemporaneously what I intended to say
23 about the two charges pending and this is what I have
24 written now.

25 The defendant is charged with two separate crimes

1 arising from the same alleged incident. In other words,
2 out of the same core set of facts and circumstances the
3 State has brought two charges against the defendant.
4 Under South Carolina Law and the allegations of this
5 particular case, the defendant may not be convicted of
6 both charges. Further, the defendant may not be
7 convicted of either charge unless the elements of that
8 particular charge are proved by the State, beyond a
9 reasonable doubt.

10 Now, lets ask one at a time, what says the defense
11 to that in addition to the opening statement from the
12 court?

13 MR. HALL: No objections, Your Honor.

14 THE COURT: And what say the state?

15 MS. HAMILTON: No objections, Your Honor.

16 THE COURT: Okay, very good.

17 MR. HALL: Your Honor, if you would just read that
18 one more time.

19 THE COURT: Okay. The defendant is charged with
20 two separate crimes arising from the same alleged
21 incident. In other words, out of the same core set of
22 facts and circumstances the State has brought two
23 charges against the defendant. Under South Carolina Law
24 and the allegations of this particular case, and I
25 should say these particular cases, the defendant may not

1 be convicted of both charges. Further, the defendant
2 may not be convicted of either charge unless the
3 elements of that particular charge are proved by the
4 state beyond a reasonable doubt.

5 MR. HALL: Thank you.

6 THE COURT: All right. Very good. Then it
7 appears that we are ready for the jury so please bring
8 in the jury.

9 (Jury entering)

10 All right. Ladies and gentlemen, did you think we
11 had forgotten about you back there? We have not, but
12 let me just say that sometimes we have some fairly
13 important business here in the courtroom and we are not
14 in a factory line where we have to produce X number of
15 product in X number of time and sometimes we have to
16 stop and take a little time. So thank you for your
17 understanding and your patience with that process.

18 We will begin this trial with you accepting the
19 oath as jurors in this specific case, please follow our
20 clerk's instructions.

21 THE CLERK: Please stand and raise your right
22 hand. You should welly a truly and /TWAOPBS the State
23 of South Carolina and the defendant at the bar, whom you
24 should have a charge a true verdict according to the
25 evidence and the law, so help you God.

1 Please acknowledge and say you will.

2 JURORS: I will.

3 THE CLERK: You may be seated.

4 THE COURT: Thank you and let me ask you ladies
5 and gentlemen, is there any juror that did not take the
6 oath that was just admitted. And let the record reflect
7 no one has raised their hands. And so, thus all of our
8 jurors are appropriately sworn out.

9 Now I realize for many of you that being in a
10 courtroom particularly on a Monday where you would
11 normally be somewhere else, you are a little bit out of
12 place. So let's take a moment and catch our breath and
13 I will just introduce a few individuals to you who work
14 with the court, and who will be around you during the
15 course of this trial.

16 Now, I'll tell you I'm going to let the lawyers if
17 they wish to do so in there opening statements
18 reintroduce themselves as well as their client's in the
19 case. But I just want to introduce to you some of the
20 court personnel you will be working with. Seated in
21 front of me who works with our clerk of court is Miss
22 Cindy Meek. We have two officers here in court with us,
23 two security officers, which are Mr. Officer Curtis Neal
24 and Officer Wilson Barnett and I believe that Officer
25 Charles Dunlap, actually Chief Bailiff Charles Dunlap,

1 was with you a little while ago when you came into the
2 courtroom. But we have two of our bailiffs here with
3 us, Ms. Zelda Grant is in the back and then Mr. Richard
4 Westridge is there in the front.

5 Of course the bailiffs are here for your needs. If
6 you get lost in this fancy building or don't know where
7 the phone or restrooms are whatever you need, please ask
8 them that and they will know exactly where and how to
9 answer you.

10 Our court reporter is Miss Aileen Butler. This is
11 a court of record. Meaning that what is said in here is
12 taken down. In the event there is some dispute about
13 what was said or an appeal of a proceeding. Of course
14 you will see her here when you sit close to her work
15 station throughout the course of this proceeding taking
16 down the proceedings. And then seated beside me is
17 Mason King. Mason is an attorney and serves as my law
18 clerk. And as I introduced myself earlier today I am
19 Mike Baxley. I'm Judge Baxley. I will be your
20 presiding officer throughout the trial.

21 Now, what I would like to say to you here in the
22 beginning is really intended to serve as an introduction
23 to the trial of this case, but it is not to supplant or
24 take the place of a much more detailed charge on the law
25 that I will give you at the end of the case. In fact,

1 most likely the last person you will hear from before
2 you will retire to deliberate is the Court giving you a
3 detailed charge on the law. This is a just a few things
4 I think you need to know going into the case.

5 All right. Now this is a criminal case, as we
6 already discussed, which is commenced by the State which
7 we generally refer to as the prosecution and the case is
8 based on two indictments which I earlier held up for
9 you. And I want to say to you again, I don't mean to be
10 repetitive, but it's important. The indictments in
11 these cases are simply pieces of paper. They are simply
12 charging documents that the solicitor uses to bring
13 charges, criminal charges against an individual. They
14 are not to be accepted as evidence. They are not
15 automatically to be accepted as truth because hopefully
16 whatever the truth is it will come from witnesses who
17 are under oath and under examination not from some piece
18 of paper.

19 Now, as I mentioned to you earlier please remember
20 that the defendant plead not guilty. You heard it here
21 in the open courtroom to the indictments and thus denies
22 the allegations, but it is not up to the defendant to
23 prove anything including proving his denials because the
24 burden of proof is always on the State in a criminal
25 charge to prove the elements of each indictment and we

1 have two indictments here beyond a reasonable doubt.

2 The purpose of this trial is to determine whether
3 or not the State has met its burden and I will tell you
4 that it is a high burden and the defendant is entitled
5 -- the defendant is presumed innocent and is entitled to
6 a verdict of not guilty, unless and until the State
7 proves the charges or the particular charge alleged,
8 beyond a reasonable doubt.

9 Now, I also will tell you that one of the
10 traditions in our courtroom is that the party with the
11 burden of proof sits closer to the jury. Now if you
12 look into the courtroom arena you will see that the
13 State is sitting at the table closer to you and if you
14 notice throughout the trial the defense and the State
15 are not going to change seats. The burden of proof is
16 going to remain with the State throughout this trial.
17 Now, as you are aware, the defendant, you heard the case
18 called, is charged with two -- has allegations of two
19 criminal charges against him. And one of these is for
20 petit larceny, that is the taking and carrying away of
21 goods and the other is for receiving stolen goods which
22 is, to have in your possession stolen goods, or to have
23 received those stolen goods that you know or should have
24 known, were stolen.

25 I will tell you that again, the defendant is

1 charged with two separate crimes which arise from the
2 same alleged incident. In other words, out of the same
3 core set of facts and circumstances the State has
4 brought two charges against the defendant. I also
5 charge you and tell you under South Carolina Law and the
6 allegations of these particular cases that the defendant
7 may not be convicted, can not be convicted of both of
8 these charges. And further the defendant may not be
9 convicted of either charge, unless and until the
10 elements of that particular charge are proved to you by
11 the State beyond a reasonable doubt. Okay.

12 Now, let's talk a little bit about your role as
13 jurors and let me start off though telling a little bit
14 about my role as the presiding officer. I am a judge of
15 the law and basically what that means is if I will
16 preside during this trial. If there is some dispute
17 over a legal point or evidentiary point then I will
18 resolve that. But your role is much more important than
19 mine because you are the judges of the facts. And what
20 that really means is collectively working together while
21 I will give you the law, you will listen to the
22 testimony. You will determine what the facts are.
23 Apply it to the law that I give you and from that
24 deliberation you will reach your verdict.

25 Now, I will tell you that just like you, I haven't

1 heard the testimony in this case. But sometimes in
2 proceedings of this nature, or really just in life
3 generally, you will hear people take the stand and
4 describe an event or testify to something that sometimes
5 seems inconsistent and sometimes is absolutely mutually
6 exclusive and can not be reconciled. Well, if that
7 happens, as a judge of the facts, your role is to
8 determine which of the witnesses is more credible and
9 believable so that you can determine what the facts are.
10 Now, if you think about this, it sounds a little
11 complicated but it's really not because it is something
12 we do everyday. All day long. Whether we are talking
13 to a child or talking to an adult, we gage that
14 individual for credibility and believability. You
15 should use those same factors you use in every day life
16 to gage credibility and believability here in the
17 courtroom. But some other things you may want to also
18 look to is what is the demeanor of the witness while
19 they are testifying. Is it hesitant. Is it straight
20 forward. What is the witness's ability to know what
21 they are in here testifying about. And is the witness
22 testimony consistent with itself, or is it weakened or
23 strengthened by other evidence in the case. And
24 further, in light of the global elements in the cases
25 you find how reasonable what that witness is saying.

1 Then finally, might there be a reason that a witness
2 would want to help or hurt one side or the other of the
3 case and might that witness have a bias or prejudice.

4 I tell you these things in advance so that you can
5 make these considerations while the testimony is ongoing
6 and that's why you sit where you do and the witnesses
7 are going to sit right there where they are so that you
8 can closely observe their demeanor and hear and observe
9 their testimony.

10 Now, let's talk a little bit about how we are going
11 to proceed. First of all, the good news for you today
12 is we are just going to have opening statements from
13 counsel and then we are going to stop for the day and
14 pick up with actual testimony tomorrow. And so, after
15 we complete that, then we'll stand down for the day.
16 Come back tomorrow morning. But, the process of the
17 trial will be as follows. After opening statements and
18 after I finish these remarks in just a moment here, both
19 sides will come in front of you and talk with you in
20 what we call an opening statement. That is not some big
21 persuasive argument like you might imagine from
22 television. It is just an opportunity for the lawyers
23 to tell you what they believe either the evidence will
24 or will not show and after the opening statements then
25 the State, which has the burden of proof, goes first and

1 they call their witnesses one after another. And every
2 time they call a witness, that witness is put under
3 direct examination by State's counsel, who called the
4 witness, and cross examination by the defense counsel,
5 of course on the other side of the case. And then,
6 after the State rests, calls all their witnesses one
7 after another, we've gone through that process, then we
8 stop there and we give the defendant an opportunity to
9 call witnesses if they wish too. But please remember
10 again, I say it like a broken record. The defendant is
11 not required to call a witness. Not required to
12 testify. Not required to put up a case. The defendant
13 has no burden of proof. If they wish to call a witness
14 they may and those witnesses will be subject to direct
15 examination by defense counsel and cross examination by
16 the State's counsel. I mention that because direct and
17 cross the rules are a little different for direct and
18 cross and you may see that during the course of this
19 trial.

20 After all the testimony is in, the lawyer's will
21 come before you in closing statement, which is an
22 opportunity for them to argue persuasively to you about
23 what the evidence has or has not shown. I give you the
24 charge on the law. You retire to deliberate. And in a
25 nutshell, that is how this process is going to go. Now,

1 of course this wouldn't apply for today because we are
2 not going to be here very long, but tomorrow I usually
3 go about an hour and a half before I take a break. But
4 I don't want you to feel like you are pinned over there
5 in the jury box. I don't want you watching the clock
6 because we never know exactly when we'll stop. It
7 depends where we are in the testimony. But if you need
8 to take a break, before we reach a break point or before
9 I call for a break, please raise your hand and I will
10 understand what that means and we will stop and take a
11 break immediately. And do I that for two reasons.
12 Number one, you are giving your time or just about
13 giving it, for a very high public purpose. An important
14 civic function. I want you to be comfortable about what
15 you are doing. But secondly, I don't want you to
16 worried about something else. I want you to be able to
17 listen to the testimony and focus on the witnesses so
18 that you can be the judges of the facts. So again, let
19 us know if you need to take a break. No problem.

20 Second thing I want to tell you is when we do take
21 a break, please, don't go back and discuss the case
22 among yourselves. Don't discuss the case among
23 yourselves until it is given to you for deliberation in
24 the end. And the reason for that is this, not to
25 eclipse your ability to talk about it, but you think

1 about it in this terms. If we took a half a witness or
2 one witness and the jury went back and made some
3 preliminary decision that drove the rest of the case
4 without hearing the other witnesses and the rest of the
5 case, it would be unfair. So please don't discuss the
6 case among yourselves at any break or at any time until
7 it is given to you for deliberation.

8 Now, we operate this courtroom on a system of rules
9 that we call the rules of criminal procedure, as well as
10 the rules of evidence. And one side or the other
11 believes that the other is either breaking those rules
12 or just about to break them they call that to my
13 attention by an objection. Well, just like you are
14 sitting over there where you are and I'm sitting over
15 here where I am, I don't know when the objections are
16 coming or what they will be when they do come. But I
17 want you to understand that when there is an objection
18 brought to the Courts's attention, I rule on it. Based
19 on my training as a judge, my understanding of South
20 Carolina substantive and procedural law, and as well as,
21 experiences in the courtroom for many years before
22 coming a judge. But never do I rule on some objection
23 in front of me to somehow send you a message about how I
24 feel about an issue or feel about the facts. I will
25 tell you now, I don't have a position on the facts. And

1 the reason I don't, is because you're the judge of
2 facts. Not me. I would be invading your providence if
3 I took a position on the facts. So please understand
4 and take no inference from any ruling I make, other than
5 the fact that I rule on the issue that was presented to
6 the Court during the course of this trial.

7 The last thing I would say to you is this. In a
8 moment the lawyers will come before you in opening
9 statement and in the end they will come before you in a
10 closing statement. Well, if you will notice when the
11 lawyers get up to speak to you they are not put under
12 oath and they are not under direct and cross
13 examination. So what the lawyers tell you is not
14 evidence. I am not saying they will be dishonest with
15 you. I'm just simply saying please appreciate the
16 distinction between evidence from the witness stand,
17 which is what you should consider, and arguments of
18 counsel. Because again, the evidence in the case is
19 what the witnesses say and what the testimony, the
20 documents show you as that are placed into evidence
21 during the course of the trial.

22 Now, with that understanding, the Court recognizes
23 the State's counsel for opening statements.

24 MS. HAMILTON: Thank you, Your Honor. May it
25 please the Court.

1 THE COURT: Yes. Please proceed.

2 MS. HAMILTON: Good afternoon ladies and
3 gentlemen. We are here today because the defendant,
4 Robert Artis, is charged with petit larceny, and
5 receiving stolen goods. I am not going to make this
6 case out to be some complicated dramatic case because it
7 is not. It is a simple case. It boils down to one
8 concept. I learned it when I was little. You do not
9 take what is not yours. The victim in this case, Mr.
10 Fanning, hard working man. Owned a shop here in Rock
11 Hill called Rock Hill Paint and Body. Still owns it,
12 forty years. Makes an honest living. The defendant in
13 this case, lives next door to this shop that Mr. Fanning
14 owned. Now his apartment and this home overlooks Rock
15 Hill Paint and Body.

16 Now Mr. Fanning had a large piece of aluminum
17 metal. Very unique piece of metal. It had green on one
18 side of it. Estimating about forty-six pounds. This
19 was on top of a black barrel, right next to his
20 business.

21 Now, between the days of Friday, March 25th, and
22 Monday, March 28th, his metal went missing. Mr. Fanning
23 noticed that when he went outside because he would see
24 this almost everyday. But not that weekend. He came
25 back on Monday and it was gone. He immediately reported

1 to officers. You will hear them testify on the stand,
2 Officer Dennis. Reported it to officers. Then the next
3 day on Tuesday, March 29th, the defendant is seen on
4 video at a scrap yard, right down the road, from the
5 place where this item was stolen. Caught on video,
6 scrapping this metal for a fraction of what it was
7 worth.

8 You will hear from the victim in this case, Mr.
9 Fanning, that this piece of metal was estimated to be
10 about five hundred dollars, give or take. The defendant
11 sold it to the scrap yard for twenty-six dollars and
12 some change.

13 His identity is also confirmed, not only from that
14 video that you will see, brought in through the owner of
15 Palmetto Recycling, Terry Taylor, but also by a purchase
16 order that corresponds to that video that is created
17 based on every transaction that happens at that scrap
18 yard. They took the defendant's license. Made a copy
19 of it and listed all the items that he brought in. That
20 license identifies Robert Artis, and states he brought
21 in clean aluminum and got twenty-six dollars and some
22 change for it.

23 Now ladies and gentlemen, I am going to explain the
24 law to you in this case but at the end of this trial the
25 judge will instruct you on the law. As I said before

1 the defendant is charged with petit larceny. Petit
2 larceny requires five elements. The first one is the
3 taking. The second one is personal property of another.
4 The third is to carry away that property. Fourth,
5 without the owner's consent. And five, with the intent
6 to steal. Now with the intent to steal means, that that
7 person who took that property was converting it to his
8 own use and permanently intending to deprive the owner
9 of that property.

10 Second, the defendant is charged with receiving
11 stolen goods. Two elements to receiving stolen goods.
12 To buy, possess, or receive, stolen goods or property,
13 that the person has knowledge that is stolen or has
14 reason to believe that that item has been stolen.

15 Now, it is my burden of the State to prove to you
16 these elements of these crimes, beyond a reasonable
17 doubt. Now you probably heard that term. It's
18 complicated, but let me just break it down for you. It
19 is, not one hundred percent certainty. It is not beyond
20 any and all doubt. It is proof that leaves you firmly
21 convinced that the defendant is guilty.

22 During this trial you will hear two types of
23 evidence. You will hear direct evidence and you will
24 hear circumstantial. Direct evidence is when a witness
25 gets on the stand and says I saw this happen. I was an

1 eye-witness. I have actual knowledge of what happened.
2 And the second type is circumstantial evidence. Now
3 circumstantial evidence is based on inferences. Facts
4 that put together, to come to an inference of a main
5 fact.

6 Now I have a little story for you all about this to
7 help understand circumstantial evidence. There is a
8 mother and her son at home in a kitchen alone. No one
9 else in the home and the little boy is at the table in
10 the kitchen with some crayons and a coloring book. The
11 mother leaves the room. She goes and does some laundry
12 for five minutes and comes back into the room and her
13 white cabinets are covered in black crayon. The son is
14 standing right in front at these cabinets with a black
15 crayon by his feet. He says I didn't do it. But the
16 facts and circumstances have her infer that he is the
17 one who did that. He has a black crayon by his feet.
18 He was the only one in that room and he had the
19 opportunity to do that. All of those inferences lead
20 you to fact that he did it.

21 Now ladies and gentlemen of the jury, I ask that
22 you listen to all of this evidence today and tomorrow.
23 And I will come back before you at the end of this trial
24 and ask that you speak a verdict -- or ask you to come
25 to a verdict that speaks the truth in this case and find

1 the defendant guilty of either petit larceny or
2 receiving stolen goods.

3 Thank you.

4 THE COURT: And defense, opening statement.

5 MR. HALL: May it please the Court.

6 THE COURT: Yes, sir.

7 MR. HALL: Are you confused? Are you confused?
8 Are you confused? I will come back to that in just a
9 minute.

10 Did you all watch the basketball tournament in
11 March, the March Madness. I'm not a good basketball
12 player but I like to watch it. And I am always amazed,
13 it seemed like this year the young men that can rise
14 above the rim. And you know when you can rise above the
15 rim, you can dunk the ball. You can just let it float
16 off your fingertips down into the basket. In fact, I
17 dream about being able to rise above the rim, but I have
18 not ever been able to do it. I have a 16-year old
19 grandson who loves to play basketball. He is convinced
20 that if he can rise above the rim and dunk then he will
21 make it to the NBA. Now we have tried to convince him
22 that there is whole lot more to basketball then that.
23 But he can touch the rim now and he can get his
24 fingertips right above the rim and the ball can drop
25 down in the basket and I believe he is going to be able

1 to get his whole hand above the rim when he quits
2 growing. Now I tried and I got to the point at one time
3 I could touch the backboard. And at one time I could
4 touch the net. But that's about all I can do. And I
5 never could rise or get beyond the edge of that rim.
6 And ladies and gentlemen of the jury, that is what this
7 case is about. It's about the State bringing some
8 evidence, underneath the basket. Gets off the floor a
9 little bit, but never being able to get above and beyond
10 the rim, beyond a reasonable doubt. There will be some
11 evidence. There'll be attempts. There'll be efforts
12 and you will hear about some things that are done, but
13 remember it is not going to be enough evidence in this
14 case to rise above the rim to be able to drop the ball
15 in off your fingertips or to be able to push the ball
16 through. There is a lot of that in the NCAA Tournament.
17 Those guys are really great. And so doesn't that leave
18 you confused because the State has chosen to bring you
19 two cases, two charges, where the judge has already
20 instructed you. And you haven't even heard any
21 evidence. The judge has already instructed you that you
22 cannot find Robert Artis guilty of both of those as a
23 matter of South Carolina Law. That the judge has
24 instructed you already that as a matter of South
25 Carolina Law the State cannot prove both of those

1 charges beyond a reasonable doubt. Ain't that
2 confusing. That's confusing.

3 My client, Robert Artis, lived a year ago back in
4 March 2011 beside the Rock Hill Body Shop in Rock Hill.
5 That is the body shop if you go out Saluda Street and
6 just almost the end Saluda Street and 901, I think it is
7 Heckle Boulevard, at the end there is I think there is a
8 CVS on the corner and Saluda street is a four lane. It
9 is about almost the second to the last business. Maybe
10 the last business on the left, there is Rock Hill Body
11 Shop. And we expect that you will hear from Mr.
12 Fanning, who owned that body shop. Now that body shop
13 is sort of in a unique place. It is located right on
14 the four-lane Saluda Street . It has got a sidewalk
15 right beside the four lane and then there is a gravel
16 area right in front of the business. And there is some
17 cars there and there is a storage -- a storage type
18 building there. There is no fence around it. There is
19 no fence around Rock Hill Body Shop, and in fact we will
20 expect that you will hear testimony that there are
21 fourteen mobile homes located in a trailer park right
22 behind Rock Hill Body Shop. There is one way in and out
23 to those fourteen mobile homes. It is a gravel road, or
24 driveway, right beside the Rock Hill Body Shop that
25 doesn't have a fence by it. So there are fourteen

1 mobile homes behind it. A gravel road beside it. The
2 sidewalk and four lane highway in front of it.

3 Robert Artis lives in a house, an apartment
4 building, beside the Rock Hill Body Shop. Just like the
5 fourteen mobile homes. And that's where he lives. He
6 got accused of taking a two foot by two foot piece of
7 metal. You are going to hear testimony that was serving
8 as a lid on a plastic fifty-five gallon drum that was
9 located in the front of the Rock Hill Body Shop, between
10 the body shop and the street with no fence around it.
11 Because he was seen -- and he did take a piece of
12 aluminum to the Palmetto Recycling, along with some
13 other material and got paid for it. A piece of scrap
14 metal.

15 Aren't you confused. Aren't you confused. There
16 isn't any question that one of these charges, the State
17 can't prove beyond a reasonable doubt. They bring this
18 case here for you, for you to figure it out. Not the
19 State, but for you to figure it out. We ask that you
20 listen to the evidence attentively and give it your full
21 attention. Tomorrow we expect to be able to hear from
22 witnesses in the case. At the conclusion of the case we
23 will have an opportunity to come back and talk to you
24 about the facts of the case that have been presented or
25 the testimony that has been presented here in the

1 courtroom.

2 I want you to remember that basketball illustration
3 and the confusion. We expect that you will return a
4 verdict in this case that Robert Artis is not guilty.
5 Thank you.

6 THE COURT: All right ladies and gentlemen, that
7 concludes today's proceedings. What I would ask you to
8 do is to be back in the jury room tomorrow morning at
9 9:30 and we will begin. So please be prompt so we can
10 all begin at 9:30.

11 When you go home tonight your loved ones are going
12 to say what happened in court today and I would ask you
13 to tell them this. Please tell them you cannot discuss
14 the facts or the allegations of the case until it is
15 over with. The reason for that is I don't want someone
16 outside of these proceedings saying something that may
17 somehow influence you in your thinking and in your
18 decision. Because that will be inappropriate and thus
19 tell your loved ones the judge has instructed you that
20 until it is all over with, then can you fully discuss it
21 or you can continue to tell them the judge said not to
22 discuss it. I will leave it up to you. But in the
23 meantime, please don't discuss it until we reached a
24 conclusion in this case.

25 All right. Any question now about scheduling?

1 We'll see you tomorrow morning at 9:30. Please don't
2 call the jury information line for any information.
3 We'll just see you back here at 9:30 and we'll all
4 remain where we are as you depart the courtroom for the
5 day.

6 Have a nice day ladies and gentlemen.

7 All right. Anything for our record before we
8 close the record for the date from the State?

9 MS. HAMILTON: No, Your Honor.

10 THE COURT: And the defense?

11 MR. HALL: Your Honor, I don't know what your
12 custom is as far as bond and the defendant, my client,
13 has always been here when he is called to be here. He
14 is a resident of Rock Hill. He is 52 years old. Has
15 some health issues. I ask the Court to consider
16 allowing him to remain out and not be incarcerated over
17 night.

18 THE COURT: How long has he been out on bond?

19 Mr. HALL: For a year.

20 MR. SHELTON: Your Honor, may it please the Court.
21 I would concur he has been here every time he has been
22 asked to be on docket. Just for the record.

23 THE COURT: All right. Mr. Artis let's do this.
24 I will release you this evening, sir, but I will remind
25 you please to be back tomorrow morning at 9:30 or

1 earlier if your lawyer asks you to come, to meet with
2 your lawyer. If you do not appear for any reason, of
3 course we will issue a bench warrant but even more
4 importantly than that, the case would go forward without
5 you which would not be in your best interest.

6 Do you have any questions about that sir.

7 MR. ARTIS: No, sir.

8 THE COURT: All right. Then we'll see you at 9:30
9 tomorrow morning and this Court is in recess until that
10 time.

11 (Court in recess for the day.)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 16th day of April, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 27, 2012

1 STATE OF SOUTH CAROLINA

2 County of York

Court of General Sessions

3 -----x

Transcript of Record

4 State of South Carolina,

5 vs.

Case No.

6 Robert Timothy Artis.

2011-GS-46-02460

7 Defendant.

8 -----x

9 April 17, 2012

10 York, South Carolina

11 B E F O R E:

12 HONORABLE J. Michael Baxley, Judge; and a jury.

13

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

15 Marina Bender Hamilton, Assistant Solicitor

16 Attorney for the State

17

18 Daniel Hall, Public Defender

19 Attorney for the Defendant

20

21

22 Aileen Butler

23 Official Court Reporter

24

25

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	JAMES FANNING				
4	Ms. Hamilton	95		122	
5	Mr. Hall		108		
6					
7	TERRY TAYLOR				
8	Ms. Hamilton	128		144	
9	Mr. Hall		142		
10					
11	JAMES DENNIS				
12	Ms. Hamilton	146		158	
13	Mr. Hall		153		
14					
15	Closing Arguments				
16	Ms. Hamilton	196			
17	Mr. Hall	199			
18					
19	Charge of the Court	204			
20	Verdict of the Jury	224			
21	Sentence of the Court	231			
22	Certificate of Reporter	236			
23					
24					
25					

E X H I B I T S

NO.	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
Plf's 1-8	Photographs	92	97
Plf's 9	Video	92	129
Plf's 10	Purchase Order	92	139
Court's 1	Defendant's prior record		188

1 (Plaintiff's Exhibit one through eight, pictures,
2 marked for identification as of this date.)

3 THE COURT: All right. Are we ready to go?

4 MR. HALL: Your Honor, if I may state on the
5 record my client is not here yet. He has had some
6 transportation issues.

7 THE COURT: That is unfortunate.

8 MR. HALL: I was expecting him to be here. We are
9 ready to proceed.

10 THE COURT: Well, where is he?

11 MR. HALL: Your Honor, I don't know.

12 THE COURT: Well, when is the last time you spoke
13 with him?

14 MR. HALL: Yesterday evening when we instructed --
15 the Court instructed him to be here at 9:30 and I
16 instructed him to be here at 9:00.

17 THE COURT: Well, I will definitely issue a bench
18 warrant for his arrest and if he comes in late and we
19 are in process I will inquire of him in front of this
20 jury where has he been and why is he not here.

21 MR. HALL: Your Honor, would you just give me five
22 more minutes.

23 THE COURT: No, sir.

24 MR. HALL: Okay. Thank you.

25 THE COURT: I told him we were going to get started

1 at 9:30 and we're ready to proceed. I'm not going to
2 delay the jury any further.

3 Is there anything for the record before we begin
4 this proceeding today?

5 MS. HAMILTON: No, Your Honor, not from the State?

6 THE COURT: All right. Very good. Please bring
7 in the jury.

8 MS. HAMILTON: My paralegal is issuing a bench
9 warrant in the event he doesn't show up at the
10 appropriate time.

11 THE COURT: Very good. Thank you.

12 (Whereupon, Mr. Artis walks in the courtroom)

13 Where have you been, sir?

14 MR. ARTIS: Got stuck in traffic, all of them
15 lights coming up.

16 THE COURT: Yes, I'm familiar with how traffic
17 lights work, but I am asking why didn't you start in
18 time to be here on time, sir.

19 MR. ARTIS: We did, a little bit. We had to stop
20 to get gas and traffic.

21 THE COURT: Yes, sir. Well, I may sanction you
22 for being late and we delayed these proceedings for you
23 today. Come on in to be seated. We will not take that
24 up in the presence of the jury. They will have no
25 knowledge you were late. Fortunate for you. But we

1 will take that up at the end of the trial.

2 MR. ARTIS: Okay. Thank you.

3 THE COURT: Yes, sir. When I say I start at 9:30,
4 everybody is here at 9:30. We are not all going to sit
5 around and wait on you sir.

6 Please bring in the jury, thank you.

7 (Jury entering)

8 All right. Good morning ladies and gentlemen.
9 Welcome back to the courthouse and to the courtroom. I
10 trust you had a nice evening and good morning.

11 Let me ask since when we were last together, is
12 there any juror who's had a discussion about the facts
13 of this case with a third person or had been contacted
14 by anyone about this case? If that applies to you
15 please raise your hand. Let's set the record reflect no
16 one has raised their hands.

17 Thank you for complying with the Court's request.
18 And of course I didn't expect anyone to be contacted
19 about it, but I certainly wanted to know if they did.
20 You will recall at the end of the day yesterday we were
21 in the State's case. Actually, we were, we had just
22 finished opening the statements and were beginning the
23 State's case. So now state please call your first
24 witness.

25 MS. HAMILTON: Mr. James Fanning.

1 THE COURT: Please come forward sir and take the
2 oath of a witness.

3 If you'll just come up to the clerk's stand and
4 place your hand.

5 JAMES FANNING, called as a witness, having been
6 duly sworn by the clerk, was examined and testified as
7 follows:

8 MS. HAMILTON: May it please the Court?

9 THE COURT: Yes, ma'am, please proceed.

10 DIRECT EXAMINATION

11 BY MS. HAMILTON:

12 Q Good afternoon, Mr. Fanning, and thank you for being
13 here. Would you please state your full name?

14 A James A. Fanning.

15 Q And Mr. Fanning what do you do for a living?

16 A I run a body shop and a machine shop.

17 Q And in that shop, what do you do? What kind of things
18 do you do in a normal day?

19 A I repair automobiles and I make industrial machine
20 parts.

21 Q Okay. And where is this body shop located?

22 A It's 1307 Saluda Street in Rock Hill.

23 Q Okay. And what county is that in?

24 A York.

25 Q Okay and how long have you -- do you work there, do you

1 own it?

2 A I own it and work there. Yes, ma'am.

3 Q How long have you owned it?

4 A Forty years.

5 Q Forty years. Okay.

6 Mr. Fanning, I'm going to show you a few pictures. Could
7 you please look through those pictures?

8 I handed you what has been marked for State's
9 identification, exhibit one through eight. Could you please
10 describe for me, after you look through all of those photos,
11 I'll give you a second to do that. Describe to me what they
12 are.

13 A It is a picture of my business and property on 1305 and
14 1307 Saluda Street.

15 Q Okay, and how do you recognize that?

16 A I own the property.

17 Q And do these photos clearly and accurately depict the
18 roads, the location and the buildings ---

19 A Yes, ma'am.

20 Q --- As they appear on the date of March 25th, through
21 April 4th, of 2011?

22 A Yes, ma'am.

23 Q Are there any material alterations or deletions from
24 those photos?

25 A No, ma'am.

1 Q That you can tell?

2 A No.

3 MS. HAMILTON: Your Honor, the State offers
4 Exhibit's 1 through 8 for admission in evidence?

5 THE COURT: Is there an objection?

6 MR. HALL: No objection, Your Honor.

7 THE COURT: All right. Then one through eight
8 for the State in evidence without objection.

9 MS. HAMILTON: Thank you, Your Honor.

10 (Plaintiff's Exhibit 1-8, Photographs received in
11 evidence as of this date.)

12 THE COURT: Let me just say to the jury, ladies and
13 gentlemen, what's in evidence will go back with you to
14 the jury room when you retire to deliberate which is
15 why we keep up what is in evidence and what is not in
16 evidence.

17 MS. Hamilton: Your Honor, may I publish for the
18 jury?

19 THE COURT: Yes, you may show those to the jury if
20 you wish.

21 (Whereupon, photographs handed to the jury
22 panel.)

23 THE COURT: Ladies and gentlemen, pass those among
24 yourself if you wish to do so.

25 Q Okay, Mr. Fanning, I have placed a pointer, a laser

1 pointer up there for you. Would you please pick that up. I'm
2 going to ask you a few questions about this picture.

3 Now could you please identify what buildings are in this
4 picture? And the location that this depicts?

5 MR. HALL: Your Honor, if I may, it might be
6 helpful for me, the record, and the jury, if she could
7 identify which number of evidence that is.

8 MS. HAMILTON: I am sorry, Your Honor. This is
9 exhibit one. State's Exhibit One?

10 THE COURT: Exhibit one on the view finder.

11 A That is my shop building. That is a shed, storage
12 building, storage building, storage building. (Indicating) This
13 is the mobile home I own and rent and that's a house I own and
14 rent and some more mobile homes back in the back that you can't
15 see.

16 Q Okay. And what is that house that you just pointed to?

17 A That is 1305 Saluda Street, two apartments.

18 Q Okay. Mr. Fanning I'm going to put up State's Exhibit
19 Number 2, for identification. Could you please tell me what
20 this is a photo of?

21 A That is the front of my shop and front of a storage
22 building.

23 Q Okay, and that sign, was that there?

24 A Yes, ma'am. That is my location, Rock Hill Paint and
25 Body.

1 Q And that was there March 29th ---

2 A Yes, ma'am.

3 Q --- 2011. Now, Mr. Fanning, I am going to show you
4 what has been put in State's Exhibit Number 3. Could you please
5 explain this view?

6 A All right. That's one of my storage buildings just
7 pointed out, and that is the bottom apartment of 1305 Saluda and
8 that is the top of 1305 Saluda.

9 Q Okay. Now Mr. Fanning, I would like to draw your
10 attention to the day that we are here for. When did you notice
11 that something was missing from your property?

12 A It would have been on a Monday.

13 Q Okay. And what was that?

14 A I am not good on dates.

15 Q What was the item that was missing, I'm sorry?

16 A It was a piece of aluminum plate.

17 Q And what made you notice that it was missing?

18 A I walk by it every day and it was missing that Monday
19 when I came in.

20 Q Okay. And where did you keep that?

21 A I kept it on top of a barrel to keep rain water from
22 getting in it.

23 Q Could you please describe that piece of aluminum?

24 A It was a piece of aluminum, roughly twenty-four by
25 twenty-four square. It was one inch thick, had some holes

1 drilled in it and was painted turquoise on one side.

2 Q Okay, and where did you get this?

3 A That was a piece of material I got from Samuel
4 Strapping to make a part out for them but they later decided
5 they didn't need it.

6 Q And you owned this or not?

7 A Yes, ma'am, they gave it to me.

8 Q Would you please describe what you were planning on
9 doing with this?

10 A Originally I was going to make a part for a piece of
11 equipment. I don't know what they were going to do with it. I
12 had a mechanical drawing to go by and I was going to cut it out
13 and drill 23 holes in it I believe.

14 Q Okay.

15 Now, is this a - - now can you describe what people do
16 with pieces of aluminum like this. Is it normally trash or do
17 you do something else with it?

18 A No ma'am, it is not scrap. Aluminum is very valuable
19 piece of metal and you don't throw it away.

20 Q Did you give anybody permission to take this?

21 A No ma'am, I did not.

22 Q How much would something like this normally be worth?

23 A The metal itself probably it could be anywhere from
24 three to five hundred bucks. I don't know without checking the
25 prices. And if it was considered a part, it could be worth a

1 thousand or more dollars.

2 Q Now, I think you said earlier you kept this aluminum

3 ---

4 A Yes ma'am.

5 Q --- on a barrel?

6 A I set it on top of barrel to keep rain water from
7 getting in it.

8 Q Now Mr. Fanning, I am going to show you and the jury,
9 State's Exhibit Number 4. Would you please describe what this
10 is?

11 A That is the barrel the metal sat on. It is right
12 outside my front door.

13 Q Okay and where is your front door located? Could you
14 point with the laser pointer?

15 A It is right past that drum right there.

16 Q Okay so that's your building?

17 A Yes, ma'am.

18 Q Mr. Fanning, I am going to show you and the jury
19 State's Exhibit Number 5.

20 Now can you describe this view?

21 A That is the view from [REDACTED], which is
22 right next door.

23 Q Okay, and who stays at [REDACTED]?

24 A Mr. Artis was staying at [REDACTED].

25 Q Okay and what's this white?

1 A That is the storage building.

2 Q That's a storage building right there?

3 A Yes, ma'am. And there is the corner of one right
4 there. You can barely see it.

5 Q Okay. Now Mr. Fanning, I am going to show and the jury
6 State's Exhibit Number 6.

7 Could you please describe to me what this is a view of?

8 A That would be the view from standing in front of up on
9 Saluda Street looking back on the property of 1305 and the
10 corner of 1307.

11 Q And what is behind that machine shop trailer?

12 A The barrel was behind that building there. That is the
13 storage building, it is another one right behind it and that
14 barrel was right in, right in that area there, on the opposite
15 side there.

16 Q Okay.

17 A You couldn't see it from the street.

18 Q You couldn't see it from the street?

19 A No, ma'am.

20 Q So, I am going to go back to when you noticed this was
21 gone. Could you please describe to me what happened once you
22 noticed it was gone? What did you do and the schedule of
23 events?

24 A I probably -- it would have been on a Monday morning,
25 because I go back and forth to my storage shed every day and I

1 probably called Rock Hill City Police and told them that
2 something had been stolen.

3 Q Something had been stolen. And what had been stolen?

4 A That piece of metal.

5 Q Okay, what did you tell the police?

6 A I would, if I called them and I think I did I would
7 have told them I would took them around and showed them the
8 barrel and showed what got gone and the piece of metal.
9 Described the metal for them.

10 Q What did you proceed to do next?

11 A It's a long time.

12 Q I know. I know it's a long time. It was almost a year
13 ago.

14 A I think later that day I went to Smith's Metal and it
15 was pretty late in the afternoon. I knew I could recognize it
16 if I saw it again and I figured somebody took it to the scrap
17 pile and sold it.

18 When I went to Smith's the gate was already closed and they
19 were closed that day. So I think the next day I went to Mr.
20 Terry's at Palmetto and found the metal over there.

21 Q And Palmetto, what is that?

22 A Palmetto Salvage Yard.

23 Q It's a salvage yard?

24 A Yes ma'am. I found a picture of the metal, not the
25 metal itself.

1 Q Okay. So can you please describe to me what happened
2 once you went to Palmetto Recycling and Material?

3 A I went in and Terry was in his office. He was looking
4 at some videos. You know the place has got cameras everywhere.
5 And he was sitting at the desk going through those and I told
6 him what happened and I asked if I could go back and look and
7 see if I could look see this piece of metal come in this
8 building because it was very recognizable. And he did and after
9 a few minutes we went back through the films and found it. I
10 recognized the guy driving up with it and I recognized the metal
11 and I recognized the car. And I think Terry called the law
12 officer out.

13 Q Now, we can't say anything Terry said, but how did you
14 -- what were you looking at? You said a film. Were there
15 pictures?

16 A Video.

17 Q It was a video?

18 A Yes, ma'am.

19 Q And what did that video show?

20 A It shows people when they drive up to Terry's place of
21 business. It shows them different stages of where they walk
22 across the lot and where they weigh in the metal and it gives
23 them an idea of what is being bought and sold. It is a
24 surveillance type of thing.

25 Q Surveillance video. Okay. And you said you recognized

1 your metal in that video?

2 A Yes, ma'am.

3 Q And how did you recognize that metal?

4 A Because it is painted turquoise on one side. It's very
5 distinguished piece of metal.

6 Q And you say you recognized the individual in that
7 video?

8 A Yes, ma'am.

9 Q How did you recognize him?

10 A I recognized the car he drove up in and I recognized
11 him when he got out of the car and went around to the trunk and
12 retrieved the metal. And he went to the scales and put the
13 metal on the scales.

14 Q Now, how do you know this individual?

15 A Beg pardon.

16 Q How did you know this individual?

17 A I saw him every day for six months.

18 Q And why did you see him everyday?

19 A Because he lives fifty feet from my shop.

20 Q Okay.

21 A I rented to him.

22 Q And what's the address where he lives?

23 A 1305.

24 Q Do you see that person in the courtroom today?

25 A Yes, ma'am.

1 Q Could you please point him out for the court?

2 A Mr. Artis sitting right there.

3 Q Okay, what is he wearing?

4 A Checkered shirt.

5 MS. HAMILTON: Would you please let the record reflect
6 that the witness has identified the defendant.

7 Q I'm going to bring up Exhibit Number 1, one more time.
8 Just really quickly I want you to point out, what house you said
9 the defendant lived at?

10 A Right there, in that top apartment.

11 Q And that is your business?

12 A Yes, ma'am. That right there.

13 Q Now Mr. Fanning, I am going to show you what's been put
14 into evidence as State's Exhibit Number 7. What is this a
15 picture of?

16 A That is the front view of 1305 Saluda Street.

17 Q Of the house we just saw an aerial of?

18 A Yes, ma'am.

19 Q Okay and this is the house --

20 A That Mr. Artis lived in.

21 Q And where did he live in this house? Could you point
22 that out?

23 A That upper apartment. It's an entrance door around the
24 back that he would have used for the entrance.

25 Q Okay. Mr. Artis I am going to show you what's been put

1 into evidence as State's Exhibit 8. Is this the view you just
2 spoke of?

3 A Yes, ma'am. That would be the entrance door for 1305.
4 top apartment. And there is where the barrel was right there.

5 Q Okay and what, what is this entrance used for?

6 A It's the entrance for [REDACTED].

7 Q Okay. Was the defendant living at this location on
8 March 29th, 2011?

9 A Yes, ma'am.

10 Q And before that?

11 A Yes, ma'am.

12 Q Mr. Artis, I'm going to ask you one last question?

13 THE COURT: Counsel, you have Mr. Fanning on the stand?

14 Q Oh, I am so sorry. I apologize. Mr. Fanning. I going
15 to ask you one last question?

16 A Okay.

17 Q Did you give anyone permission to take --

18 A No ma'am.

19 Q Metal from you?

20 A No, ma'am.

21 Q You did not.

22 Ms. Hamilton: Beg the court's indulgence.. And Mr.
23 Fanning can you please answer any questions the defense may
24 have?

25 MR. FANNING: Yes, ma'am.

1 THE COURT: Cross examination?

2 Mr. HALL: Thank you. If you could just pull up
3 State's exhibit one please.

4 MS. HAMILTON: Yes.

5 CROSS EXAMINATION

6 BY MR. HALL:

7 Q Mr. Fanning, anytime I ask you a question and you don't
8 understand it just be sure and stop me and I will be glad to
9 answer that.

10 Let's take a look there at State's Exhibit 1. Can you see
11 it good from there? Can I use that pointer?

12 Mr. Fanning, so obviously this is your business right here,
13 is that correct? That is your building right there?

14 A That is my main, yes, and the other storage.

15 Q Sir?

16 A The buildings around it are mostly storage buildings.

17 Q And this is all Saluda Street, right?

18 A That's correct.

19 Q And across from your building is a, is it a Dollar
20 General, is this a Dollar General right here on this corner?

21 A Yes sir.

22 Q And on this corner would be a CVS?

23 A No. It's a convenience store over there I think.

24 Q I am sorry?

25 A It's a convenience store on the other corner.

1 Q There is a convenience store on this corner. And there
2 is a sidewalk right there in front of your business, is that
3 right?

4 A That's correct.

5 Q And this sidewalk goes out to Heckle Boulevard which
6 would be just beyond this business?

7 A That's correct.

8 Q Is that right. And so across from Heckle Boulevard
9 there businesses, right?

10 A Yes.

11 Q And then this is a side street. Is this an entrance to
12 these businesses or is this a street?

13 A That's the entrance to the Dollar General store.

14 Q And then you testified that this is a building. This
15 is an apartment that you own, right?

16 A That's correct.

17 Q Now, isn't it true that Ed Massey owns half of that
18 building?

19 A Yes, my partner.

20 Q And in fact, Mr. Massey is the one who rented the
21 apartment to Mr. Artis and his girlfriend, right?

22 A That's correct.

23 Q And so, in fact he was not your tenant, he would have
24 been Ed Massey's tenant?

25 A You could say that.

1 Q Ed Massey collected the rent from them. Do you know
2 that?

3 A Yes.

4 Q You never collected rent from Mr. Artis?

5 A Nope.

6 Q And then, just beyond that, this is a street. Blackman
7 Street right?

8 A That's correct.

9 Q And on Blackman Street you can see this is a residence
10 or some type of house right here, is that right?

11 A That's correct.

12 Q Again, we are looking at State's Exhibit 1 and there
13 are residences, houses, all up and down Blackman Street, right?

14 A Yes, sir.

15 Q And there are people that walk up and down Blackman
16 Street?

17 A I am assuming so.

18 Q Have you ever seen people walking up and down Blackman
19 Street?

20 A I am assuming so.

21 Q My question is not to assume. Have you ever seen
22 people walking up and down Blackman Street?

23 A I can't recall, but I assume being there for forty
24 years I've seen somebody walk up and down Blackman Street
25 before.

1 Q And then people use the sidewalk out here to walk up
2 and down the street, right?

3 A Yes, sir.

4 Q And isn't it true that, that this is a gravel driveway
5 that goes right by your business, right?

6 A That's correct.

7 Q And it goes back to a trailer park back behind your
8 business, right? And you and Mr. Blackman own 14 trailers back
9 there, is that right?

10 A Mr. Massey.

11 Q I am sorry, Mr. Massey. You all own 14 trailers, is
12 that right?

13 A Yes, sir.

14 Q Seven of them are Mr. Massey's and seven of them are
15 your's, right?

16 A Yes, sir.

17 Q And the only way in and out to that trailer park is on
18 this driveway, right?

19 A That's correct.

20 Q And how far would you say it is from the side? I
21 believe on this building you have an entrance or a shop door, a
22 garage type door, on this side of your shop, right?

23 A Yes, sir.

24 Q How far is it from that shop door out to the middle of
25 this little driveway?

1 A Probably thirty feet, twenty feet.

2 Q And looking here in the courtroom, would that be from
3 me to you?

4 A Yes, sir.

5 Q And then looking up here at the State's Exhibit 1, how
6 far would you say it is from the front door of your shop to the
7 sidewalk?

8 A I would say about fifty feet or so.

9 Q A little bit further then the ---

10 A Yes.

11 Q --- going out the side of that?

12 Q And you don't have a fence around your building do you?

13 A No, sir.

14 Q And there is nothing. And I believe if we look at
15 State's Exhibit 1 where this pointer is, I'm pointing at, that's
16 what you call your storage building, right?

17 A Yes, sir.

18 Q And so between that storage building, what's this
19 little attachment right here?

20 A That's another storage building.

21 Q And we looked at those other photos, the barrel where
22 your aluminum was sitting was located right between those two
23 buildings, right?

24 A Which two buildings?

25 Q Your storage buildings.

1 A That's correct.

2 Q And it is in this area right here, this alley right
3 back in there?

4 A That's correct.

5 Q And we can look at those pictures in a minute. And so,
6 in that area, there was nothing to keep anybody from going back
7 in there, was it?

8 A No, sir.

9 Q And in fact somebody could have been walking on the
10 sidewalk and walked back there, isn't that correct?

11 A Could have.

12 Q And in fact someone could stop a vehicle if they walk
13 around they could walk around get back in it.

14 In other words, it's open to the public, right?

15 A Yes, sir.

16 MR. HALL: Please turn the lights, Madame Clerk.

17 Q Now let me -- let's talk a little bit about when you
18 discovered this metal missing. You indicated that you left your
19 business on Friday. You closed up on Friday afternoon?

20 A Yes, sir.

21 Q What time do you normally close up?

22 A About four.

23 Q About four o'clock on Friday afternoon. So your
24 testimony to the jury is that on that Friday, sometime that
25 Friday, you saw that piece of metal?

1 A More than likely, yes.

2 Q Now, you didn't see it at four o'clock when you closed
3 up.

4 A No, sir.

5 Q And you don't have -- you can't recall any particular
6 time, that you saw it on the 25th?

7 A No.

8 Q But more than likely your testimony is that if you gone
9 in and out of that storage building you would have seen it?

10 A Yes, sir.

11 Q And so, you didn't go --

12 A I would have noticed it missing. That's what I did. I
13 noticed it missing.

14 Q And you did not notice it missing some time on the
15 25th?

16 A No, I don't think so. It had been on a Monday
17 probably.

18 Q And you did not go back to your business on Saturday
19 the 25th?

20 A Not to my recollection, no.

21 Q And you didn't go back to your business on Sunday the
22 26th?

23 A No.

24 Q Well, I am sorry, maybe we got those dates a little bit
25 wrong?

1 A Could be.

2 Q The 29th was the day you said you went and looked at
3 the video, is that right?

4 A I am not sure on the dates.

5 Q That would have been a Tuesday?

6 A Been a Tuesday, probably, yeah. Cause I noticed it
7 missing Monday.

8 Q Without a doubt you noticed it on Monday morning?

9 A More than likely, yeah.

10 Q Well, why do you say more than likely?

11 A It has been six or eight months ago.

12 Q You are not sure?

13 A Not sure, no.

14 Q Had it been on a Monday the 28th, you didn't go back on
15 Sunday the 27th to your business?

16 A No.

17 Q And your testimony is actually, let me get the dates
18 right. The 26th would have been Saturday. You didn't go on
19 that day either?

20 A I'm normally not there on Saturdays or Sundays.

21 Q So back to the Friday, that was the 25th, is that you
22 more than likely would have seen it that day but you can't
23 recall.

24 A That's correct. I didn't notice it missing on that
25 Friday.

1 Q But you did notice it missing on Monday?

2 A I think so. It would have been a Monday.

3 Q So, and you called the police?

4 A I think probably would have.

5 Q And when did they come out to talk to you?

6 A It would probably been pretty quick. It'd have been in
7 the morning. I see the police there all the time because of the
8 trailer park back there. There's always something going on.

9 Q You are talking about the State's Exhibit ne, you are
10 talking about your trailer park?

11 A Yes, sir.

12 Q And the police go back there a lot, is that right?

13 A All the time.

14 Q All the time. How long have you owned that trailer
15 park?

16 A For forty years.

17 Q Forty years. So there is a lot of activity from the
18 police going back there?

19 A Yup.

20 Q Now, the police responded because you called them, is
21 that right?

22 A I think so, yes.

23 Q And when they came out they didn't make any arrests or
24 have any information to arrest anybody on the 28th, right?

25 A No.

1 Q And so you began to look around to the recycling or
2 metal dealers, is that right?

3 A Yes, sir.

4 Q And you first went to Smith's?

5 A Uh-huh.

6 Q And then you went to out to Palmetto Recycling?

7 A Yeah.

8 Q And you asked to look at their videos, right?

9 A Yes, sir.

10 Q And, you looked at the videos for the 29th, right?

11 A Yes, sir.

12 Q And you didn't look at any videos for somebody who may
13 have come in on the 28th, did you?

14 A Yes, I went back several days.

15 Q Several days?

16 A Yes.

17 Q And you gave that information to the police right?

18 A Yes, sir. They were called at Palmetto.

19 Q They came out to Palmetto?

20 A Yes, sir.

21 Q And you never saw a photo lineup of Robert Artis, did
22 you?

23 A No, sir.

24 Q You were never shown anything from the police, were
25 you?

1 A No, sir.

2 Q And your knowledge, the police didn't go back and talk
3 to any of the 14 people that live in the mobile homes behind
4 your shop?

5 A Not to my knowledge, no.

6 Q And your knowledge, the police didn't canvas the
7 neighborhood on Blackman Street?

8 A No sir, no.

9 Q They didn't do any of that?

10 A I don't think so.

11 Q Mr. Fanning, let's talk about this piece of aluminum.
12 You indicated that you had gotten it from Samuel's Strapping, is
13 that right?

14 A That's correct, a machine shop customer.

15 Q And they had brought it to you, to make something out
16 of it?

17 A That's correct.

18 Q And Samuel's Strapping is an aluminum company, right?

19 A No sir. They're a banding company. They make bands for
20 packaging.

21 Q And it is located out on Red River Road?

22 A It was. They've shut the plant down since.

23 Q It was a big business, wasn't it?

24 A Yes, sir.

25 Q And it is a national company?

1 A Yes, sir.

2 Q And who brought you that metal?

3 A I probably picked it up. Usually I am back there two
4 or three times a week picking up parts and delivering parts. I
5 would have probably picked that up from Samuel Strapping.

6 Q Do you remember telling the police that the plant
7 manager Mr. Shaver gave you that piece of metal?

8 A He gave me the offer to make the part and he could have
9 given me the metal because I dealt with him all the time.

10 Q But it's a two by two piece of metal, right?

11 A Twenty-four by twenty-four. One inch thick.

12 Q And then Mr. Shaver eventually said you can just have
13 it?

14 A Yes, sir. When they shut the plant down Mr. Shaver was
15 the plant manager and I asked what to do with all the materials
16 that I had that belonged to them and he said just keep them. So
17 that became my part then.

18 Q You don't know what Samuel Scrapping did with their
19 scrap metal?

20 A I have no idea.

21 Q And you indicated that you know they are in the
22 strapping business?

23 A Yes, sir.

24 Q And so in that business they take metal and they
25 produce -- what do they produce?

1 A They get giant rolls of sheet steal and they cut it
2 into little thin pieces like a belt, and you make packaging
3 bands for heavy packages. All of it mostly of steel. All that
4 is steel.

5 Q But they have a lot -- it would be a safe assumption to
6 say they have a lot of scrap?

7 A I would assume so, yeah.

8 Q And this piece of metal that you've indicated that it
9 had a value of three or four hundred dollars, three to five
10 hundred dollars?

11 A I would guess. I don't --

12 Q You didn't lock it up, did you?

13 A No, sir.

14 Q You didn't put it inside your shop?

15 A No, I was using it.

16 Q I'm sorry?

17 A I was using it for, to cover that barrel with. The
18 barrel was outside the shop.

19 Q You used it for a lid on the barrel that we saw?

20 A Yes, sir.

21 Q To keep rain out of the barrel?

22 A Yes, sir.

23 Q And when you went out to Palmetto Recycling you saw
24 what you say is the piece of metal on video, right?

25 A Yes, sir.

1 Q And they didn't show you the metal, did they?

2 A No, sir. They told me where it was.

3 Q Did you go look at it?

4 A No, sir, because it was packed in a bin. It was about
5 thirty foot bin. I talked to the guy who put it in there and it
6 was way in front of the bin and the bin was full and I wasn't
7 going to ask them to take all that metal out to get to that
8 piece of metal.

9 Q They could have gotten the metal out, couldn't they?

10 A I guess they could have. Somebody eventually did, but
11 I wasn't going to ask them to move thirty tons of scrap to get
12 the one piece of scrap.

13 Q When you say somebody did, you mean because they got
14 rid of it?

15 A I am assuming they took that container and sent that
16 container somewhere to whoever they sold it to. I don't know
17 how they run their business. That's just an assumption.

18 Q As far as you know the police never looked at that
19 piece of metal?

20 A No, sir.

21 MR. HALL: Thank you, Your Honor. That is all
22 the questions I have.

23 THE COURT: We have a witness presented. We have
24 direct and then cross, and if some new issue is brought
25 up on cross we go back to the witness on the redirect.

1 So is there redirect for the witness?

2 MS. HAMILTON: Just briefly, Your Honor.

3 THE COURT: All right. Go ahead.

4 REDIRECT EXAMINATION

5 BY MS. HAMILTON:

6 Q Mr. Fanning, the defense was talking about the sidewalk
7 out front?

8 A Yes, ma'am.

9 Q Now, I'm going to ask you a question. Was that --
10 could you see that barrel from the sidewalk?

11 A No, ma'am.

12 Q So the public couldn't see it from the sidewalk?

13 A No, ma'am.

14 Q Could you see that piece of metal from the driveway?

15 A No, ma'am.

16 Q He talked about the gravel driveway?

17 A No, ma'am.

18 Q And what was blocking that view?

19 A An oil drum.

20 Q Now, the defense talked about Mr. Massey. How were you
21 and Mr. Massey -- how do you deal with him? Are you all
22 partners?

23 A We're partners. Life long friends. Grew up together.

24 Q Now Mr. Fanning, I'm going to ask you, did you give
25 anyone permission to take this aluminum?

1 A No, ma'am.

2 Q Okay. Did you get that aluminum back?

3 A No, ma'am.

4 Q In the video you talked about seeing, that he was
5 talking about and about the lineup, you said you saw the
6 defendant in that video?

7 A Yes, ma'am.

8 Q How did you know it was that defendant?

9 A I recognized him.

10 Q Okay. And how did you recognize him?

11 MR. HALL: Objection. These have all been asked
12 and answered?

13 THE COURT: I will sustain it, counsel.

14 MS. HAMILTON: I will move on, Your Honor. No
15 further questions?

16 THE COURT: Sir, you are free to step down.
17 Please watch your step as you exit and you may return
18 to your seat.

19 MS. HAMILTON: Your Honor, at this point the State
20 would ask to relieve Mr. Fanning from the subpoena if
21 he wishes to return back to work?

22 THE COURT: Certainly. Is there an objection?

23 MR. HALL: No objection, Your Honor.

24 THE COURT: Mr. Fanning you are not required to
25 leave but you are free to go if you wish. Have a good

1 day.

2 MR. FANNING: All right. Thank you, sir.

3 THE COURT: Please call your next witness.

4 MS. HAMILTON: The State calls MR. Terry Taylor.

5 THE COURT: And please come forward to the clerks
6 desk, to take the oath of the witness.

7 TERRY TAYLOR, called as a witness, having been duly
8 follows:

9 DIRECT EXAMINATION

10 BY MS. HAMILTON:

11 Q Good afternoon. Thank you for being here. Would you
12 please state your full name for the court?

13 A My name is Terry Taylor.

14 Q And Mr. Taylor, what do you do for a living?

15 A I am general manager at Palmetto Recycling.

16 Q What is Palmetto Recycling?

17 A It is -- Palmetto Recycling consists of a full service
18 car lot, a upheaval yard, and a metal and recycling business
19 where we actually buy metals, separate the metals and sell,
20 resell the metals.

21 Q All right, and where is your business located?

22 A 234 Porter Road in Rock Hill.

23 Q And what county is that?

24 A York.

25 Q Okay, now how long have you worked there?

1 A I've been there about two and a half years.

2 Q Okay, and what position do you hold?

3 A General manager.

4 Q Okay, and as a general manager can you please describe
5 to me what a general day is like for you?

6 A Actually we have the three business there and I try to
7 spend time at each one of the businesses there. I actually put
8 the people to work, monitor the video cameras, and quote prices
9 and to resell.

10 Q And could you please describe what type of items are
11 normally brought to your business?

12 A On the recycling side, anything from cars to aluminum
13 cans to tin tans, to wire. Any type of metal that can be
14 recycled.

15 Q Now, Mr. Taylor, I would like to bring your attention
16 to the morning of March 29th, 2011?

17 A Yes, ma'am.

18 Q Were you working at Palmetto Recycling that day?

19 A Yes, ma'am.

20 Q You were. Okay.

21 Now did you see the defendant come into Palmetto
22 Recycling that morning?

23 A No, ma'am, I did not.

24 Q But do you have video surveillance?

25 A We have twenty-four hour video surveillance from over

1 33 acres of land.

2 Q And could you please describe to me the type of
3 recording system that is used at the company?

4 A The one at the Recycling area is actually Samsung,
5 self-contained unit. It does not have a computer or anything
6 with it. Everything is in the monitor.

7 Q Okay and was this video surveillance system in good
8 working order on the morning of March 29, 2011?

9 A Yes, ma'am.

10 Q Now, was this video from the morning of March 29th,
11 2011 subsequently retrieved from the system?

12 A Yes, ma'am.

13 Q And who did that?

14 A Actually we have a guy that actually comes out and does
15 that for us that works up front in the office. Actually we'll
16 take it and put it on a flash drive, and then we turn the flash
17 drive into the city or county or whoever is there to pick it up.

18 Q So on April 4th, 2011, was that video retrieved?

19 A Yes, it was.

20 Q And who did that?

21 A Neil Mystery.

22 THE COURT: Was that last name again, sir?

23 THE WITNESS: Mystery.

24 THE COURT: Thank you.

25 Q Did you view this video?

1 A Yes, I did.

2 Q Now, you said this guy, Master, (sic) Mr. Master
3 retrieved this video?

4 A Yes.

5 Q Did you ever come into possession of this video?

6 A No. I actually looked at that video there.

7 Q Mr. Taylor, I am going to hand to you what's been
8 marked as State's Identification Exhibit Number 9.

9 Do you recognize that video?

10 A I recognize it because I had viewed it. It has my
11 initials on it where I've signed it.

12 Q So you had a chance to view this prior to today?

13 A Yes.

14 Q And in this video once you viewed this, is this a fair
15 and accurate depiction of the events that were recorded on that
16 video system that you just described on March 29th, 2011?

17 A Yes, it is.

18 Q And how do you know that?

19 A I watched the one in the office with Mr. Fanning. I
20 also looked through the one in the office with Officer Dennis
21 and I actually was there when they retrieved the flash drive and
22 then I came back over and watched it. I've actually saw the
23 thing probably ten times.

24 Q And has it been altered or edited in any way since it
25 has been removed from that camera?

1 A It has not.

2 MS. HAMILTON: Your Honor, the people offer
3 State's Exhibit Number 9 for admission into
4 evidence?

5 THE COURT: Is there objection?

6 MR. HALL: Your Honor, may I ask a question
7 through this witness concerning the video?

8 THE COURT: Is it about the foundation of the
9 evidence?

10 MR. HALL: Yes, it deals with the foundation.

11 THE COURT: I will permit you to do that, go ahead.

12 MR. HALL: Mr. Taylor, you looked at the video
13 right?

14 MR. TAYLOR: I looked at the video.

15 MR. HALL: You watched that video?

16 MR. TAYLOR: Yes.

17 MR. HALL: You were not present out on what the
18 video depicts?

19 MR. TAYLOR: Was I present on the yard?

20 MR. HALL: That is correct.

21 MR. TAYLOR: No, no sir, I was not.

22 MR. HALL: So, you don't have any personal
23 knowledge about whether it fairly and accurately
24 represents what was taken place on your yard because you
25 were not on the yard, is that right?

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1 MR. TAYLOR: Well, I was actually on the yard. I
2 was not sitting there monitoring the video. I was on
3 the yard.

4 MR. HALL: I understand that. That is not my
5 question. My question is, you were monitoring it, you
6 looked at a copy or what a depiction of what someone
7 else would say happened on the yard. Is that correct?

8 MR. TAYLOR: I am not sure how to answer that.

9 MR. HALL: You're not in the video, are you?

10 MR. TAYLOR: No, I am not.

11 MR. HALL: And do you have employees that are on
12 that video?

13 MR. TAYLOR: Yes, I do.

14 MR. HALL: And they are not here today, are they?

15 MR. TAYLOR: No, they are not.

16 MR. HALL: Thank you, Your Honor. That's all I
17 have.

18 I would object to it being admitted. Basically
19 there is no foundation to which this witness can talk
20 about that it fairly and accurately represents the
21 events that took place that day.

22 THE COURT: The objection is to foundational.
23 What do you say in response to that?

24 MS. HAMILTON: Your Honor, could I please ask a
25 few more questions?

1 THE COURT: You may follow up, go ahead.

2 CONT'D EXAMINATION

3 BY MS. HAMILTON:

4 Q Have you viewed other videos from transactions that
5 occurred at this business, at your business?

6 A Everyday.

7 Q And how do you identify the days that these incidents
8 occur that are on this video?

9 A They actually have the date on the video.

10 Q And, where is that date located on the video?

11 A On the bottom of the screen.

12 Q Does it have a time?

13 A Yes, it does.

14 Q Okay, and in this video was there a date and time?

15 A Yes.

16 Q Okay. So are you familiar with all of the systems and
17 the camera angles that take place in recording one of these?

18 A I actually installed the system.

19 Q You installed the system?

20 A Yes, I did.

21 Q And are you familiar with the area that is in this
22 video that you have viewed multiple, on multiple occasions,

23 A Yes, I am.

24 MS. HAMILTON: All right. The state would ask --

25 THE COURT: I am prepared to rule.

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1 MS. HAMILTON: Okay.

2 THE COURT: All right. Very good. Objection is
3 overruled. There is sufficient foundation to admit the
4 video into evidence based on the witness's testimony.
5 It is up to the jury to determine what weight and
6 credibility they give it. That maybe what your
7 questions are aimed at, Mr. Hall, but the objection to
8 admissibility is overruled.

9 State's 9 in evidence over objection.

10 (State's Exhibit 9, Video, received in evidence
11 as of this date.)

12 MS. HAMILTON: Thank you, Your Honor. The State
13 would ask to publish for the jury?

14 THE COURT: You may publish.

15 (Playing video)

16 MS. HAMILTON: Now, Mr. Taylor there is a laser
17 pointer that has been left up there. It should be to
18 your right.

19 Your Honor, we may need to install the driver for
20 this particular software.

21 THE COURT: All right. How long will that take?

22 MS. HAMILTON: It should be just a moment.

23 THE COURT: Would you rather just take a break at
24 this time?

25 MS. HAMILTON: Your Honor, if we could take a

1 brief recess.

2 THE COURT: Let's do that ladies and gentlemen.
3 It's almost time for our morning break. We will be
4 down for about 10 or 15 minutes. Please don't discuss
5 the case, but just enjoy the break among yourselves
6 and we'll remain where we are while you return to jury
7 room. Let me ask you a question of our bailiff. This
8 is a non-smoking facility I believe, is it not?

9 All right. So if someone wishes to go outside to
10 take a smoking break, I assume you all make that
11 possible. All right, then I will ask that you do so
12 if somebody wants to go outside and take a break. And
13 we will remain where we are. We will see you in about
14 15 minutes.

15 (Jury leaves the courtroom).

16 THE COURT: All right, we will be in recess for
17 about 15 minutes.

18 (Short recess taken)

19 THE COURT: Is the jury back?

20 THE CLERK Yes.

21 THE COURT: Are they ready? Would you please bring
22 them in.

23 THE BAILIFF: Yes, Your Honor.

24 (Witness retakes the stand).

25 THE COURT: All right, welcome back ladies and

1 THE COURT: All right, welcome back ladies and
2 gentlemen. You will recall when we took our morning
3 break we were in direct examination of Mr. Taylor, the
4 State's witness.

5 You may proceed.

6 MS. HAMILTON: May it please the court.

7 THE COURT: Yes, ma'am, Miss Hamilton.

8 CONT'D EXAMINATION

9 BY MS. HAMILTON:

10 Q Okay. Mr. Taylor, we just left off, with exhibit
11 number nine. Now we will publish number nine for the jury, at
12 this time.

13 (Playing video)

14 Now Mr. Taylor, could you please describe to me what this is
15 a view of?

16 A It is a view of the small scale area.

17 Q Could you identify with the laser pointer that you
18 have, the scale. Where is that located?

19 A The scale is right here. It is a little four by four.
20 A scale on the floor.

21 Q Okay and what, where it says "15", what is that?

22 A That is the amount of weight that is actually on the
23 scales.

24 Q Okay. And the individual in this video, that the
25 defense had mentioned earlier, where is he? Who is he?

1 Q The individual that works there, in this video, who is
2 your employee?

3 A This is Alfonso McCroy.

4 Q Okay. And where is he today?

5 A He is actually no longer works with us. He actually IS
6 in a suit that we have against him for stealing from the
7 company, really.

8 A Okay, thank you. Now Mr. Taylor, is that a customer
9 that just walked up?

10 A Yes, it is.

11 Q And do you recognize him?

12 A Recognize -- no, I don't really recognize him. I don't
13 really know his name.

14 Q Okay. Now Mr. Fanning -- I'm sorry Mr. Taylor.

15 A Yes.

16 Q Now this item that was placed on the scale, is that the
17 weight of it right there?

18 A Yes, it is.

19 Q And what is that weight?

20 A Forty-eight pounds.

21 Q Forty-eight pounds. Now Mr. Taylor, the items being
22 placed on right now --

23 A Yes.

24 Q --- what would you categorize those items to be?

25 A Well, the first one's being aluminum cans. The second

1 would have been the two by two aluminum sheet. I can't really
2 tell if that is shredder steel or electric motor from this
3 angle. I'm going to say it's shredder steel.

4 Q And that's thirty two, that we just saw?

5 A Yes.

6 Q Where is he throwing?

7 A He is actually throwing it into a small bin that the
8 shredder steel will actually sit in until they go and dump it in
9 an another area.

10 Q Okay. Does that normally probably get pretty full
11 during the day?

12 A Yeah, it's probably dumped about three times a day.

13 Q What we saw in the beginning of the video, does that go
14 in there to?

15 A Do what?

16 Q Does that also go where he was throwing?

17 A No. No, the aluminum cans actually go in an aluminum
18 can trailer which actually run through the machine and the cans
19 are crushed. The aluminum would go in the old sheet aluminum
20 which is in a long thirty yard container.

21 Q Okay. Now, Mr. Taylor, does Palmetto Recycling keep
22 any records of items scrapped and by whom?

23 A When you come in they are actually going to take your
24 driver's license and they are going to run a picture of your
25 driver's license. When you go up front and get paid out, right

1 now we actually do the permit numbers too. I am not sure if we
2 did the permit numbers back then, but now we do the permit
3 numbers which went into effect with York County.

4 Q Okay.

5 A Then what we do is we write the permit number on the
6 ticket that we give them. When they go up front to get paid out
7 they will actually take another picture of them getting paid out
8 at the pay out window and they will also scan their driver's
9 license again so it will all be on the record for us.

10 If you've ever been in there any time in the past it's going
11 to be on record.

12 Q Okay. And what do you call that record?

13 Q We call it police record, is exactly what we call it?

14 Q And who creates these purchase orders for each
15 transaction?

16 A They've got the small scale that will actually create
17 the purchase order. The guy at the payout window would actually
18 pay them out, they'll get a small ticket and they'll go up front
19 and they'll match it up with tickets and their driver's license
20 and then they'll pay them out.

21 Q Okay. And who -- let me ask you one more question.
22 Who has access to these purchase orders?

23 A There is actually three people there at the office each
24 day that have access to it. That'll be myself, the comp
25 controller, and the person running the payout window.

1 Q Now Mr. Taylor, I'm going to hand you what has been
2 marked as identification purposes State's exhibit number ten.
3 Could you take a moment to look at that? Do do you recognize
4 that?

5 A Yes, I do.

6 Q Okay. Now what is that?

7 A This is a report that we run out if somebody wants to
8 see somebody came in, what time, what type of material they
9 brought in, the picture of the driver's license on here so can
10 you ID who brought them in.

11 Q How do you recognize that purchase order?

12 A We do them everyday. This is, you know, its got
13 Palmetto Recycling on top of it. It's one of our purchase
14 orders.

15 Q And is this purchase order kept in the regular course
16 of business?

17 A Yes, it is.

18 Q Regularly conducted business?

19 A Yes.

20 Q And when was this particular purchase order created?

21 A 3/29/2011 at 10:59 a.m.

22 Q And looking at this purchase order has it been altered
23 or edited since - - I believe did you retrieve this purchase
24 order?

25 A Yes, I did.

1 Q And has it been altered or edited in any way since you
2 retrieved it today? When did you retrieve it? What date, do
3 you remember?

4 A It was a couple of days after. I think it was on the
5 sixth. It was a couple days after. I know we went back through
6 a couple days of video to find the video to go with this to
7 figure out who it was and what time it came in.

8 Q All right. But has it been edited since you printed
9 it? Any deletions from this?

10 A No, ma'am.

11 MS. HAMILTON: Your Honor, the people offer
12 State's Exhibit Number 10 for admission into
13 evidence.

14 THE COURT: Is there an objection?

15 MR. HALL: No objection, Your Honor.

16 THE COURT: All right. Let me ask if I may. How
17 do you know -- are you going to ask how he knows that
18 purchase order is connected to that particular video?

19 MS. HAMILTON: Yes, Your Honor, I am.

20 THE COURT: All right then proceed then. I won't
21 ask my question, you go ahead and ask.

22 MS. HAMILTON: Your Honor, I ask, the State asks
23 permission to publish this for the jury?

24 THE COURT: All right you may. You may put it on
25 the board.

1 THE COURT: And that is State's 10 in Evidence
2 without objection.

3 (State's Exhibit Ten, purchase order, received in
4 evidence as of this date.)

5 MS. HAMILTON: Thank you, Your Honor.

6 Q Now Mr. Taylor, I am showing what has been marked as
7 State's exhibit number ten. Now, it's kind of hard to see but
8 could you please point out, where the date would be, the invoice
9 date?

10 A Right in here.

11 Q And what does that say, based on what you have there?

12 A Invoice date is 3/29/2011, 10:59, a.m.

13 Q Okay, and the name on this?

14 A The name is Robert Timothy Artis.

15 Q And does that date correspond to the video?

16 A Yes, it does.

17 Q It does correspond. And how can you know that?

18 A The date that is on here, where it's got the invoice
19 date, it's actually when they weigh you in on the small scale
20 and when you hand the small delivery ticket that is going to be
21 the time stamped on it.

22 Q Okay and these items below that, could you please
23 describe to me what we are seeing below?

24 A What you are seeing below is actually we are in the
25 process - - well, we already have now. They have to have

1 pictures on them now. These large areas right here, they will
2 have pictures of everything that you put on the scales and these
3 areas here.

4 Q And what does that one say? The first one underneath
5 the driver?

6 A The first one says, aluminum cans. He had four pounds,
7 at fifty five cents a pound was equal to an amount of two \$2.20.

8 Q And is that what we saw on the video prior, the
9 aluminum cans?

10 A Yes, it is.

11 Q Okay. Now the next item?

12 A It's going to be the clean aluminum.

13 Q And what is the weight on that?

14 A Forty-nine pounds, fifty five cents a pound at \$26.95
15 total.

16 Q Okay. And the next item. Would you please look at
17 that?

18 A It's small scale, shredder steel. It's thirty-two
19 pounds at eight cents a pound at \$2.56.

20 Q Okay. Now, can you please describe for us how you come
21 to this amount that it is scrap versus value?

22 A It goes by the resale of the items that we have. If we
23 are buying it in at like fifty five cents, we are actually
24 selling out at sixty cents.

25 Q Okay. So is that retail value?

1 A It's scrap value. Recycling value.

2 Q Is that lower then retail?

3 A Yes.

4 Q Now, could you please explain to us what happens when
5 someone sells you an item?

6 A If someone sells us, I mean a lot of different types of
7 items, but it is all separated by -- what we do is separate it
8 and we sell it by volume. They'll bring in two or three pounds,
9 we'll actually build up the poundage until it's two or three
10 tons and we'll have to sell that product in volume. It is
11 separated. It goes into different bins at the place.

12 A Okay. And once that item is sold to you, does the
13 person that sold it to you get that item back?

14 No, he does not.

15 Q Okay. And the aluminum, Mr. Fanning, was it retrieved?

16 A The aluminum was not retrieved. It was actually a
17 couple of days before, when Mr. Fanning come up there.

18 A Couple days before when Mr. Artis came in and actually
19 been put in the back of a bin and it had been just aluminum from
20 them for the next two days stacked on top of it.

21 Q Okay, so that piece of aluminum is gone now?

22 A Yeah, it is gone.

23 Q Okay. And, what are we seeing at the top of this
24 purchase order?

25 A Drivers license, ID of who came in and sold these

1 products.

2 MS. HAMILTON: Okay, thank you. I beg the Court's
3 indulgence.

4 Q Now Mr. Taylor, the amount at the bottom of this
5 purchase order, what is that total?

6 A The total of all three items, \$31.71.

7 Q Okay, and who receives that \$31.71?

8 A The guy who brought it in to sell us. The guy on the
9 ID or drivers license.

10 Q Okay. And one last question. Is it normal course of
11 business to use this identification on the purchase order to
12 identify the person who actually sold that scrap to you?

13 A Yes.

14 Q Yes, okay. Thank you.

15 MS. HAMILTON: No further questions.

16 THE COURT: Cross. Go ahead.

17 MS. HAMILTON: Please answer any questions the
18 defense may have.

19 THE COURT: Cross examination.

20 MR. HALL: May it please the Court.

21 THE COURT: Yes, sir, Mr. Hall.

22 CROSS EXAMINATION

23 BY MR. HALL:

24 Q I missed your answer, Mr. Taylor. Alfonso, your
25 employee, why is he no longer working with you?

1 A He is actually -- we caught him falsifying some
2 documents.

3 Q You caught him falsifying documents --

4 A Uh-huh.

5 Q And he was the employee that when we looked at the
6 video, State's exhibit nine was sitting in the chair?

7 A That's correct.

8 Q And he was generating documents for the business?

9 A He and Doug McKinney, the two employees on that day, I
10 think Dough McKinney actually did this document here.

11 Q Mr. -- is it, Alfonso. What is his last name?

12 A McCroy.

13 Q McCroy. He is not there because --

14 A For falsifying documents.

15 Q For falsifying documents. Right. And you testified
16 that your business, you are in business of buying scrap metal.
17 Is that right?

18 A Correct.

19 Q And you don't buy manufactured parts, do you?

20 A If they are scrap metal, do we buy manufactured parts
21 there? The small scales. If they are scrap to the company that
22 bring them in, yes.

23 Q And in fact you never, you never saw the piece of
24 aluminum in the video, you never saw it?

25 A No, sir. Did not.

1 Q And you have no idea where it came from, personally,
2 you don't?

3 A No, I could not tell you where it came from before it
4 came in to the scales.

5 MR. HALL: That's all I have for Mr. Taylor.

6 Thank you.

7 THE COURT: All right. Is there redirect?

8 MS. HAMILTON: Yes, Your Honor, just briefly?

9 REDIRECT EXAMINATION

10 BY MS. HAMILTON:

11 Q MR. Taylor, is there anything in that video, that
12 would make you believe that the purchase order did not match up
13 to what was brought in? Anything was falsified.

14 A Not a thing. This is normal. Been doing since I been
15 there. Like I said the system that we actually have at Palmetto
16 Recycling is now used all over the state of South Carolina. We
17 are about the third person to put them in and everybody in South
18 Carolina is about to use the same type of equipment that we have
19 now.

20 Q So, it does not look like Alfonso had manufactured any
21 kind of ---

22

23 A No, no.

24 Q --- That matched up?

25 A No, actually when we looked over at the office, like I

1 say, there is actually twenty-eight cameras in that location.
2 This is one camera view. I can actually watch the guy that does
3 the documents. I can watch the scales. What's on the scales.
4 I can watch what he writes across the screen, which I did all of
5 that before we got into this. I could actually watch there and
6 see him drive up in his car and get out of his car. Take it out
7 of his car through another camera shot. Put it on the scale.
8 Give the guys his ID, get back in his car and go around the
9 front and actually have a picture of him going around the front
10 and getting paid out for the material.

11 MS HAMILTON: Thank you.

12 THE COURT: All right, sir, you may step down. Is
13 there is any objection for him being released from
14 subpoena?

15 MR. HALL: None from the defense.

16 THE COURT: Then you are free to leave if you wish
17 at this time.

18 THE WITNESS: Thank you.

19 THE COURT: Please call your next witness.

20 MS. HAMILTON: The State calls Officer Dennis?

21 THE COURT: Please come forward and take the oath.

22 JAMES FRANKLIN DENNIS, Jr., called as a witness, having
23 been duly sworn by the Clerk, was examined and testified
24 as follows:

25 DIRECT EXAMINATION

1 MS. HAMILTON:

2 Q Good afternoon.

3 A Good afternoon.

4 Q Could you please state your full name for the court?

5 A James Franklin Dennis Junior.

6 Q And what is your occupation?

7 A I am a police officer for the city of Rock Hill.

8 Q And what type of work do you do?

9 A Initially, actually, crime prevention. Taking reports
10 on incidents that took place and following up on incidents as
11 well.

12 Q And what is your position?

13 A I'm a patrol officer to working with the road division.

14 Q Do you have a certain area that you cover?

15 A I do have a certain area of the city that I cover.

16 Yes, ma'am.

17 Q And what is that?

18 A Well, actually, it's currently it is called the area
19 three of the city which is everything from Black Street south.

20 Q And is that -- what county is that in?

21 A That's in York County.

22 Q Were you employed -- how long have you been employed by
23 Rock Hill PD?

24 A I actually joined the Rock Hill Police Department in
25 March, early March, of 2011.

1 Q What did you do prior?

2 A Prior to that I worked for the city of West Columbia
3 Police Department as a detective.

4 Q So, in March 2011 when you started, were you training?

5 A Yes, ma'am. I went through about three or four weeks
6 of base and indoctrination with this department, seeing I had
7 prior experience.

8 Q So on April 4th, 2011, you were training?

9 A Yes, ma'am.

10 Q You said it was four weeks. Who were you with?

11 A I was with another officer.

12 Q Okay and what was his name?

13 A It was officer Thomas.

14 Q Okay and what was Officer Thomas's job at that time?

15 A Pretty much just to make sure everything I was doing
16 was also adhering to the department policy.

17 Q Okay. I would like to draw your attention to the date
18 of April 4th, 2011. You were employed in your present capacity
19 at that date?

20 A Yes, ma'am.

21 Q What were you doing that day?

22 A That day we were working day shift, which is from 6:30
23 in the morning to 2:30 in the afternoon. We were just
24 responding to calls for service as they were coming in.

25 Q Did a specific call come in to respond to Saluda

1 Street?

2 A Yes, ma'am.

3 Q Okay. And what happened on that call?

4 Q We were responding. It was actually what we call a
5 follow-up. There was a report initially taken prior to our
6 arrival some days prior. We had some information that the
7 victim in the case had information on, about who had taken some
8 items from him.

9 Q Do you remember the address to the location you
10 responded too?

11 A I don't. No ma'am.

12 Q Okay. Do you know the name of the business that you
13 responded too?

14 A No, ma'am. I don't recall off the top of my head, if I
15 could refresh my memory.

16 Q Would looking at the incident report that you produced
17 that day, would that help refresh your recollection?

18 A Yes, ma'am.

19 Q Okay. I don't want you to read off this, but you can
20 just read, try to refresh your recollection and then let me know
21 if it does so.

22 A Yes, ma'am.

23 Q Could you please tell us where you responded?

24 A It was 1305 Saluda.

25 Q Okay. And what did you do once you were at that

1 location?

2 A We met with the victim in the case, Mr. Fanning. He
3 advised us that he had some information on who had stolen an
4 item, some metal from him.

5 Q And what happened once you spoke to him? What happened
6 next?

7 A He advised myself that he had contacted several local
8 businesses. When you work a certain area of town and certain
9 things happen for instance when a theft takes place, depending
10 on what it is you kind of have an idea on where to go to try and
11 find it. In this case, he had gone to the recycling area to try
12 to see if he could find it and that day he actually did.

13 Q Now, what did you proceed to do next once you finished
14 talking to him?

15 A After getting some additional information such as the
16 previous case number from Mr. Fanning, we left from there and
17 went to Palmetto Recycling.

18 Q And how far away, just estimation, was the drive?

19 A One or two minutes. Not too very far at all.

20 Q What happened once you arrived at Palmetto Recycling?

21 A Once I got there, I was met by the general manager and
22 he already had all the information ready for us and he gave us
23 some details on what took place.

24 Q And did he show you anything? Did he give you
25 anything?

1 A He gave us a printout which showed the ID of the person
2 who made the transaction and the actual printout of the invoice
3 the transaction itself. He also allowed us to view on his
4 personal, on the in-shop computer, the actual transaction that
5 took place.

6 Q Okay. And do you remember the individual's name who
7 had helped you with all that?

8 A Yes. Mr. Terry.

9 Q And what was his last name, do you know?

10 A I don't know off the top of my head.

11 Q Mr. Terry is how you identify him?

12 A Yes, we deal with him on almost a daily basis.

13 Q Okay. So once you got that purchase order, with the
14 identification on it, what did you do with that purchase order?

15 A Once we got that, we looked at it. The actual ID was
16 kind of fuzzy so what we did, we took the information off the ID
17 and put it into our police system and pulled up information on
18 the suspect.

19 Q And the suspect. What was the name of that suspect
20 that you came up with?

21 A Robert Artis.

22 Q And you said earlier you had spoken to the victim?

23 A Yes.

24 Q Was the victim there that day?

25 A He was there at his shop, yes, ma'am.

1 Q Was he -- did he come to Palmetto Recycling with you?

2 A No, ma'am, he didn't.

3 Q So what did you do next once you got your suspect
4 identification and the evidence that you obtained from Palmetto
5 Recycling? What did you do next?

6 A From there, we went back to the law center and we
7 obtained warrants for Mr. Artis.

8 Q Okay. And then what did you proceed to do once you
9 obtained those warrants?

10 A We got -- we spoke with our warrant officer, Officer
11 Blair. She was familiar with the area as well, and from there
12 we devised a plan to actually go and pick up Mr. Artis at his
13 residence.

14 Q And do you remember the location of that residence?

15 A 1305. It is actually right next door to the shop.

16 Q Okay. Now, I'm going to put up what's in evidence as
17 State's exhibit one, and ask you a few questions about this.

18 There should be a pointer, a laser pointer next to you.
19 Could you please identify the location that you responded to, at
20 the original time, when you went and met with the victim. Could
21 you point out the building.

22 A The original time?

23 Q The first time you responded.

24 A Actually back here at this back door, is where we met
25 Mr. Fanning.

1 Q Okay. And then where did you respond when you went out
2 to execute the warrant?

3 A Right here on the back side of the house, there is a
4 front entrance. Officer Blair actually pulled her vehicle in
5 here and blocked the driveway. Myself and Officer Thomas came
6 to this side and I remained right here on the back side because
7 there is another door on this side that you can't see just to
8 make sure nobody ran out the back.

9 Q Now when you were at Palmetto Recycling and you saw
10 that purchase order that Mr. Taylor showed you --

11 A Yes, ma'am.

12 Q You said were you able to identify a suspect how?

13 A Well, by the -- when we took, compared the photo on the
14 ID with the image that was on the video they were similar. We
15 also took the information that was on the ID, put it in our
16 system and we tied all three together.

17 Q And an image came up in your system?

18 A Yes, ma'am.

19 Q Okay. Now, when you responded to this house with
20 Officer Blair, did you see the defendant at that house?

21 A I initially, once we first got there there was no one
22 outside so I didn't see him initially, but once Officer Blair
23 and Officer Thomas got to the door they made contact with Mr.
24 Artis.

25 Q And when did you get a chance to view him?

1 A Once he was being carried out from the front door.

2 Q From the front door of that white house?

3 A Right on this side.

4 Q So were you able to get a good look at him?

5 A Yes, ma'am.

6 Q Do you see that suspect in the courtroom today?

7 A Yes, ma'am.

8 Q Would you please point him out?

9 A It is the gentleman seated there with the plaid shirt.

10 MS. HAMILTON: Okay. Could the record reflect the
11 witness has identified the defendant.

12 I beg the Court's indulgence.

13 Would you please answer any questions the defense
14 may have?

15 OFFICER DENNIS: Yes, ma'am.

16 THE COURT: Cross examination.

17 MR. HALL: May it please the court.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. HALL:

21 Q Could I borrow your video, your recorder there,
22 Officer?

23 A Yes, sir.

24 Q Officer Dennis, you testified that you responded on the
25 fourth, is that right?

1 A I don't recall exactly the date.

2 Q I mean did you look, did you have an incident report?

3 A I did. I didn't look at the date.

4 MR. HALL: May I approach the witness, Your
5 Honor?

6 THE COURT: You may.

7 Q What is that, that I am showing you?

8 A This is the incident, the supplemental incident report.

9 Q Would that help you figure out when you went?

10 A Yes.

11 Q What day did you respond?

12 A The fourth.

13 Q And so you didn't respond on the 28th, of March?

14 A No sir, I did not.

15 Q And you didn't respond on the 29th of March?

16 A No sir, I did not.

17 Q And obviously, any of the days between the 29th and the
18 fourth, is that right?

19 A That is correct but if I could qualify that answer.
20 The reason being that's a supplemental report. I didn't take the
21 initial report. It was a followup from an original report that
22 was taken by a different officer.

23 Q All right. So a different officer had gone and met
24 with Mr. Fanning earlier?

25 A Yes, sir.

1 Q All right. Okay. And you went, you testified you went
2 to his business, right?

3 A Yes, sir.

4 Q And then from there you went down to Palmetto
5 Recycling, but he did not go with you?

6 A No, sir.

7 Q Let me talk about this location, can you see that?

8 A Yes.

9 MR. HALL: Madame Clerk can you get the lights,
10 please?

11 Q And this is, I believe this is the State's exhibit one.
12 Is this an aerial photo of Rock Hill Body Shop?

13 A Yes, sir it is.

14 Q And again you testified obviously this is Saluda
15 Street, right?

16 A Yes.

17 Q And you went out here. You went out here the first
18 time to meet with Mr. Fanning, right?

19 A Yes, sir.

20 Q And then when you came back to arrest my client. You
21 pulled in this driveway between the house and the business,
22 right?

23 A Yes, sir.

24 Q And you had another set of officers that came in this
25 back driveway, right?

1 A Yes, sir.

2 Q And is that because this driveway goes all the way
3 around this house?

4 A Yes, sir. Essentially it loops all the way around to
5 Blackman.

6 Q And so if you were on Saluda Street you could drive a
7 vehicle or walk on the driveway all the way around to Blackman
8 Street, right.

9 A Yes, sir.

10 Q And there is obviously, there is no fences or gates to
11 prohibit anybody from using this? It is a shortcut you can take
12 to walk back to Blackman Street, right.

13 A That's correct.

14 Q And back behind the business, did you know that there
15 were 14 mobile homes and mobile home park back behind the
16 business?

17 A I honestly did not until today.

18 Q So obviously you didn't go back and talk to any of the
19 people back in any of those mobile homes did you?

20 A No, sir.

21 Q And you didn't talk to anybody located or living on
22 Blackman Street, did you?

23 A No, sir.

24 Q And you didn't make an attempt to retrieve this
25 aluminum from Palmetto Recycling, did you?

1 A Yes, sir. We did.

2 Q You did. And you were told that -- then why didn't you
3 retrieve it?

4 A I'm sorry.

5 Q Let me ask you this. The aluminum is evidence in the
6 case, right?

7 A Yes, sir, it is.

8 Q And evidence is important, isn't it?

9 A Yes sir, it is.

10 Q And evidence is important to determine whether someone
11 committed a crime, right.

12 A That's correct.

13 Q And evidence is important to show that someone may not
14 have committed a crime, right.

15 A That is also correct, yes.

16 Q And in this case you did not retrieve the aluminum,
17 did you?

18 A No, sir but if I can qualify that.

19 Q That will be fine.

20 A Myself and Officer Thomas who was training me at the
21 time made several calls and stops by Palmetto Recycling to try
22 and get or have, one of the employees retrieve the item.
23 Towards the end of the day, towards the end of our shift, we --
24 our last stop there we asked them about it and the response that
25 we got was that it was on -- if you actually go to the recycling

1 place it's a huge area. Just about takes up the whole block.

2 He advised us that it's somewhere on that yard. Where it
3 at was buried under mounds and mounds of other materials. It
4 was essentially, it would take -- it's like looking for a needle
5 in a haystack essentially.

6 MR. HALL: Thank you, I have no further questions,
7 Your Honor.

8 THE COURT: All right. Is there redirect?

9 MS. HAMILTON: Just briefly, Your Honor.

10 THE COURT: Okay, you may proceed.

11 REDIRECT EXAMINATION

12 BY MS. HAMILTON:

13 Q Officer Dennis, did you have the opportunity to view
14 the report that was taken prior to you following up on April
15 4th, 2011?

16 A Yes, ma'am.

17 Q And was everything consistent with what you discovered
18 the day of April 4th, 2011?

19 A Yes, ma'am.

20 Q And one last question, did you retrieve evidence from
21 the scene?

22 A From the Palmetto Recycling.

23 Q From Palmetto Recycling?

24 A Yes, ma'am.

25 Q And what evidence was that?

1 A That was the copy of the driver's license, as well as
2 the invoice, the statement from the purchase.

3 Q And why did you not talk to anyone in the trailer park
4 and in Blackman Road?

5 A Well, the call came out about the victim having
6 knowledge of the person who took the item. Once we've
7 identified and located a suspect there is no need to continue
8 any further.

9 MS. HAMILTON: No further questions.

10 THE COURT: All right sir, you may step down. Any
11 objection to release of this witness?

12 MS. HAMILTON: No, Your Honor?

13 MR. HALL: None from the defense, Your Honor.

14 THE COURT: You are not required to leave but you
15 are free to leave if you wish.

16 MS. HAMILTON: Your Honor, may we approach briefly?

17 THE COURT: You may.

18 (Whereupon, there was an off the record
19 discussion.)

20 All right, ladies and gentlemen, the State has
21 requested that we take a break at this time because the
22 next witness we are waiting on has -- will be called and
23 you never know exactly when the first witness will
24 finish and the next witness will be called. They are in
25 route to the courthouse but not present, so we need

1 about 15 minutes. That's their request and we will
2 grant that request, so we'll take about a 15-minute
3 break.

4 Now, let me tell you a little bit so your family
5 and other loved ones will be aware and you will be aware
6 of your schedule. It's likely that this case will
7 finish today. Meaning that the testimony will end and
8 we will give it to you for deliberations and you'll
9 reach a verdict. I can't set that for you in stone. I
10 simply say that is what we would intend to happen today
11 for those of you who are thinking about your schedule
12 and the demands upon you. Of course, obviously this is
13 not necessarily the end of the jury service for you, but
14 the end of this case we believe will occur today. So
15 please don't discuss the case and again we will give you
16 an opportunity to step outside if you wish to enjoy the
17 beautiful day and we will recess for approximately 15
18 minutes and we will reconvene when the State's final
19 witness arrives.

20 All right. We will remain where we are while you
21 depart the courtroom.

22 (Jury exits courtroom)

23 THE COURT: I am told that the State has
24 determined not to call an additional witness so let me
25 hear that from the state so our record will be complete.

1 MS. HAMILTON: Your Honor, the State would like to
2 rest. We are not going to call any additional
3 witnesses.

4 THE COURT: Very good. We will leave the jury out
5 of the room at this point then because I assume there
6 are motions now here at the end of State's case from the
7 defense and if there are motions I will take them at
8 this time. Mr. Hall.

9 Mr. HALL: Your Honor, the defense would move for
10 directed verdict on both charges against my client Mr.
11 Artis.

12 If we could start with the receiving of possession
13 of stolen goods. I have several prongs to base my
14 motion on. One, the evidentiary prong. There was no
15 evidence from the victim in this case that linked the
16 video that is in evidence, States exhibit nine, to being
17 the video that he saw. The State choose for whatever
18 reason not to show Mr. Fanning the video here in court.
19 Mr. Fanning recalled the testimony. Did testify that he
20 went down to Palmetto Recycling on the 29th and looked
21 at a video, there was no link between what he did on the
22 29th to State's exhibit nine introduced into evidence
23 today. And so, it would be an evidentiary problem with
24 allowing it to go to the jury. The fact again there is
25 no link in my client possessing and Mr. Fanning being

1 able to say again what has been introduced into evidence
2 today shows Mr. Artis with this particular piece of
3 metal that he says. Again his testimony is he looked a
4 video there, but there is nothing here about stating it
5 is State's exhibit nine.

6 THE COURT: Let's do this. Let's take all of your
7 collective issues, as to both charges and then we'll get
8 a response to all of them.

9 MR. HALL: Okay. Then, Your Honor, as far as on
10 the law of receiving stolen goods, certainly, I intend
11 if we get to the point to charges to the jury, certainly
12 the Court will -- it is my understanding of the law the
13 Court is required to charge the jury that, that the
14 State must show that the goods channel property in
15 question were previously stolen by another which is one,
16 it is not statutory element, but it is an element added
17 under State v McNeal to receiving stolen goods.

18 It is clear from the law that that would be a
19 consideration for the jury. The State has chosen to go
20 forward with not only receiving stolen goods but the
21 petit larceny charge, they are taking, the evidence is
22 presented by the state in a light most favorable on that
23 part on that issue of receiving stolen goods.

24 So they're really wanting to have it both ways.
25 They are wanting to come to court and say, he is --

1 present evidence that he stole it. If that is true,
2 then he can not possibly be held liable, or a jury
3 certainly couldn't rule on the issue of whether he
4 possessed stolen goods when the State's theory is that
5 he is the one who stole it and certainly they tried to
6 produce some evidence that he is, and so therefore, we
7 move for a directed verdict on that issue.

8 THE COURT: And give us your full site on the case
9 you rely upon.

10 MR. HALL: Let me do this, Your Honor, I will hand
11 up a copy of State versus McNeal. It is a Court of
12 Appeals case that is also cited in Judge Anderson's
13 charge on receiving stolen goods and it is 314 S.C.473,
14 445 S.E. 2nd, 461.

15 I provided a copy of Judge Anderson's charge in the
16 State v McNeal to the State and a copy of Judge
17 Anderson's charge and state v McNeal to the Court.

18 THE COURT: Thank you. All right. Anything
19 further?

20 MR. HALL: Your Honor, and also -- Your Honor,
21 that would be my basis for my motion on receiving stolen
22 goods.

23 THE COURT: And is there a further motion in
24 regards to petit larceny?

25 MR. HALL: With regard to the petit larceny, Your

1 Honor, it certainly appears that the State's case rests
2 on circumstantial evidence. I remind the Court and I'll
3 pass up to the Court recent Supreme Court case of State
4 v Odom. I provide a copy with the defense, that in
5 order for a case to be submitted to the jury, the Court
6 reminds us as in State v Odom there must be substantial
7 circumstantial evidence before it can go to the jury.
8 In fact, State versus Odom was a burglary case here in
9 York County and had some circumstantial -- it was a
10 circumstantial evidence case. Mr. Odom was convicted
11 and the court states that in that case and among all of
12 the evidence in that case that it did not rise to the
13 level of -- or beyond the substantial circumstantial
14 evidence. Stated that the Circuit Court Judge should
15 grant a directed verdict motion on the evidence, merely
16 raises a suspicion that the accused is guilty. And
17 certainly there is evidence that has been presented,
18 that may raise a suspicion.

19 Mr. Artis, the evidence is that he lived beside the
20 building and that he is in close proximity to where the
21 metal was. However, there are other things in the case,
22 trailer park where the testimony is that these officers,
23 that the police spent a lot of time down in trailer park
24 right by the building. This place where this metal was
25 located was in an open area, accessible to the public.

1 There were certainly people who lived beside it, behind
2 it, that would have had access to it. That there is no
3 evidence that he took and possessed it. That he took it
4 on the 29th.

5 In fact the indictment submitted to the Court that
6 the jury would be considering, indicates and states that
7 the larceny took place on March the 29th. There has
8 been no testimony, evidence, here in court that the
9 larceny took place on the 29th. In fact it couldn't
10 have taken place if you take the light most favorable to
11 the State. Mr. Fanning says that when he, some time on
12 the 25th, he assumes that the metal was there because he
13 did not notice it missing, and then on the morning of
14 the 28th is when he then notices that it is missing and
15 he calls the police. And so, there is a three-day time
16 period where the metal could have been taken by someone,
17 and so -- and there again the indictment that the
18 solicitor brings to you states the 29th. On or about
19 the 29th. Obviously it took place some time, at the
20 very latest, possibly on the early morning of the 28th,
21 but certainly not during the day on the 28th, as Mr.
22 Artis (sic) as he did call police when he noticed it
23 missing. So we believe that there is not sufficient
24 evidence, taking evidence, that has been presented by
25 the State on the issue of the petit larceny that rises

1 to the level of being substantial circumstantial
2 evidence.

3 THE COURT: All right, sir, is there anything
4 further with regard to these charges?

5 MS. HALL: No, Your Honor.

6 THE COURT: All right let me hear from you in
7 response to the first argument made by Mr. Hall, which
8 is the fact that there is no link by Mr. Fanning to have
9 viewed the film in court and to have identified the
10 suspect as State's exhibit nine. Do you have a response
11 to that?

12 MS. HAMILTON: Yes, Your Honor, we do. Viewing
13 the evidence that was presented by Mr. Fanning in a
14 light most favorable to the State, he says he went in
15 and viewed a video. He said he saw on that video a shot
16 of the metal being put on the scale. That is the shot.
17 That is the video that we showed. He stated that he saw
18 that metal and recognized that metal.

19 THE COURT: Okay.

20 MS. HAMILTON: And he is the one who identified the
21 defendant and pointed law enforcement to the defendant
22 as being the suspect. And to the evidence, the video,
23 the purchase order showing the driver's license. That's
24 how it connects to this video.

25 THE COURT: All right. Very good. And what do

1 you say about receiving stolen goods?

2 MS. HAMILTON: Your Honor, in regards to the
3 receiving stolen goods, what happened is what we
4 anticipated. The defense is saying someone else took
5 this item. Not the defendant. But he is in possession
6 of this item as we saw evidenced by the video. We saw
7 evidence by the purchase order brought in by Mr. Taylor.
8 They planted the seed this has been taken by someone
9 else. Someone in the trailer park. Someone in Blackman
10 Road. You know, planting that seed, this is what we
11 anticipated. They were going to say that he received
12 this by someone and there is no way he could have taken
13 this item.

14 THE COURT: Let me stop you there. We don't have
15 any evidence from the defendant. We haven't gotten the
16 defendant's case. The focus is on what is the proof the
17 State has put up. So the question to you is, what is
18 the proof you have of receiving stolen goods?

19 MS. HAMILTON: It's just a question of fact of how
20 he received those goods and that's a question of fact
21 for the jury to get.

22 Do they believe he actually took this item himself,
23 which we have presented evidence of, or did he not take
24 this item. Did he receive this stolen goods? We showed
25 that he is in possession of these stolen goods.

1 THE COURT: All right. Well you asked me some
2 questions, but I am asking you, again, what is the proof
3 you have that there -- that the defendant received
4 stolen goods? That he is guilty of 16-13-180?

5 MS. HAMILTON: The victim did testify that this
6 item was taken. And he has testified that it was stolen
7 from his location and the defendant is found in
8 possession of it at Palmetto Recycling on video with his
9 ID?

10 THE COURT: Okay.

11 Do you want to reply to that? Let's just narrow
12 down. Let's just focus on this issue.

13 Mr. Hall do you want to respond to what you just
14 heard, circumstantial evidence of receiving stolen
15 goods. This item was stolen. Your defendant is
16 depicted on camera with the item.

17 MR. HALL: Your Honor, at least on the issue of
18 the application on the law, if he is the guy who stole
19 it and that's the theory they are proceeding on, then as
20 a matter of law he cannot be found guilty of possession
21 of stolen goods and it would be an error to send it to
22 the jury when they are claiming that he is the one who
23 stole the goods.

24 THE COURT: All right. Just a moment let me
25 review the McNeal case. McNeal seems to be more about

1 the procedural issues that happen when someone plead
2 guilty to a charge that was not a lesser included
3 offense of what appears to be the theft of a motor
4 vehicle. Can you tell me specifically.

5 MR. HALL: Well, if you look at the last page,
6 Your Honor, and I think this is what, why Judge Anderson
7 includes it in his charge. In fact Judge, I don't refer
8 to Judge Erwin book very often, but he does have in his
9 supplement where he included in his charge possession of
10 stolen goods.

11 The last page I quote, " The possession of a stolen
12 vehicle statute requires the defendant receives,
13 possesses, conceals, sells, or disposes of a stolen
14 vehicle knowing it to be stolen, and grand larceny
15 possession of stolen vehicle are separate and distinct
16 offenses, because the possession of stolen vehicle
17 statute requires the defendant to receive the goods from
18 someone who actually stole them. He can not receive
19 from himself." And so, I believe that's the language
20 that the court has applied. I would also add that there
21 has been no evidence that that my client had any
22 knowledge of what he had in his possession on March the
23 29th was in fact stolen. Absolutely no, no evidence of
24 knowledge.

25 THE COURT: All right. From the State, just

1 practically speaking, as a practicing attorney, your
2 witness on receiving stolen goods didn't show. The
3 cases that the defendant stole them, the item. Why
4 persist, technically, in - - excuse me. I will finish
5 when you all are finished.

6 MR. SHELTON: Sorry, Your Honor.

7 THE COURT: That's all right. Thank you.

8 Why persist to have a second charge in here, which
9 of course is somewhat confusing to the jury,
10 questionable, and thus an appellate issue when it is
11 really not the thrust of your case. Am I missing
12 something?

13 MS. HAMILTON: No, Your Honor. He had possession
14 of these goods. Now, it can be perceived that he did
15 not steal them, which is what they are putting forward.
16 That he did not steal these items. That someone around
17 in a mobile park stole these items. They planted the
18 seed that's what going on. When you know, based on all
19 the circumstantial evidence, he lives next door. He had
20 the opportunity to take it, but someone else could have
21 taken it also, is what they're planting the seed of. So
22 what we are doing is we are saying okay, so if he did
23 not actually steal these items then he received
24 possession of stolen goods. Is in possession of stolen
25 goods.

1 Mr. HALL: Your Honor --

2 THE COURT: Let me just continue a moment.

3 Really what you are telling me is you are basing
4 your prosecution on what you believe the defense is
5 going to say. But the prosecution has to stand on its
6 own before it can be worried about what response is
7 coming back, if any. So I am concerned that you wish to
8 keep a charge in here that is questionable, based on
9 what the defense is going to say and not focusing on the
10 proof, or lack thereof, that the State has on the
11 charge.

12 I mean at best this is conjecture that the
13 defendant received stolen goods. There is no third
14 person in this body of proof whatsoever. So it is
15 clearly not a receiving stolen goods. The question is
16 well then, did he possess a stolen good.

17 There is no evidence that the defendant knew it was
18 stolen or should have known it was stolen, or how he got
19 it which you say he purloined it. That's basically the
20 thrust of your case. But then you say, well if he
21 didn't steal it maybe someone gave it to him under
22 suspicious circumstances where he knew it was stolen
23 from. But all I know he could have purchased it from
24 somebody who told him he purchased it from Mr. Fanning.
25 There is so much supposition. I just simply don't

1 believe receiving stolen goods survives the direct
2 verdict stage.

3 I know you have something you wish to say and so
4 does Mr. Hall. I will hear from you, each of you in
5 finality, and then we will go forward.

6 MS. HAMILTON: Okay, Your Honor, I would like to
7 say, we believe based on the circumstantial evidence
8 being presented today that it is a question of fact for
9 the jury to decide, if he received these or he actually
10 stole these items and I know it is ultimately your
11 decision, but that is the State's position.

12 THE COURT: Very good.

13 MR. HALL: I have nothing further, Your Honor.

14 THE COURT: All right. Well, based on the analysis
15 I just gave I don't think it's fair for the defendant to
16 put him to the burden of facing a charge of receiving
17 stolen goods and that's really not the theory of the
18 State and there is no evidence to support it other than
19 circumstantial evidence and suspicion which I do not
20 believe meets the level required, however, and thus I am
21 going to enter a judicial dismissal on the receiving
22 stolen goods charge.

23 In regard to the petit larceny charge I find there
24 is ample and specific circumstantial evidence which
25 would have proximity of the defendant to the item. The

1 fact that the item went missing, or was discovered by
2 the owner. The fact that there is a video which depicts
3 the defendant selling that item, and then, not just a
4 visual identification but of the defendant with the
5 item, but a photo ID which is a South Carolina driver's
6 license. All that clearly goes beyond. Meets the test
7 of circumstantial evidence which excludes others, and
8 inculcates the defendant and for all those reasons the
9 Court denies your motion to collectively dismiss both
10 charges and denies your motion to dismiss the petit
11 larceny charge, but grants your motion on the receiving
12 stolen goods charge.

13 Now, counsel let me ask you, will there be evidence
14 from the defendant?

15 Mr. HALL: Your Honor, we -- one of our motions in
16 limine was to determine what part of the defendant's
17 record that may be used against him. That is the only
18 evidence we would be presenting if we decide to do so
19 would be testimony from Mr. Artis if he chooses to
20 testify. That is something we need to discuss. I
21 thought we discuss that at the closing of the State's
22 case based on what they presented and then what they
23 intended to introduce as part of what he may testify.

24 THE COURT: Well, may I ask, has counsel discussed
25 among yourselves what you believe would be appropriate

1 evidence if the defendant testifies from his prior
2 record? Have you all had a discussion about that.

3 MS. HAMILTON: We have not, Your Honor. We have
4 not been told if he was going to. We have what we would
5 present. We do.

6 THE COURT: Let me ask that, just so we will flush
7 this out for the defendant's knowledge as well as our
8 record. What do you believe would be admissible if Mr.
9 Artis takes the stand?

10 MS. HAMILTON: Well, Your Honor, any kind of
11 charge regarding dishonesty within the past ten years.

12 THE COURT: Which are?

13 MS. HAMILTON: It would be forgery. More than one
14 thousand. We have a burglary, second violent, which
15 carries more than one year. And we believe those are
16 the two items that we would focus on bringing up.

17 THE COURT: Okay. In other words, previous petit
18 larcenies.

19 MS. HAMILTON: We have a prior petit larceny from
20 2003 that we could bring.

21 THE COURT: Well, I am just saying, though let me
22 finish my thought. I am assuming you are not offering
23 those because of the similarity, distinct similarity, to
24 the charges which the defendant faces.

25 MS. HAMILTON: We could get that. We're basically

1 going to focus on the forgery more than the dishonesty
2 charges. Those are going to be our main focus. The
3 burglary, second violent and the forgery?

4 THE COURT: So there you have it. Burglary second
5 and forgery.

6 And Mr. Artis let me make sure, do you understand,
7 I know your lawyer has discussed this with you. I'm
8 going to talk to you in a moment about testifying, but I
9 want you to understand that under South Carolina
10 procedure, and really any state in the nation, the State
11 just cannot put your prior record into evidence because
12 it is not admissible on whether or not you committed the
13 crime for which you are charged. But if you take the
14 stand it is admissible on the question of your
15 believability, your credibility, and thus it appears the
16 State will attempt to put into evidence your prior
17 convictions, not all of them, but forgery, as well as
18 for burglary. Taking the position that those are crimes
19 of dishonesty and so, do you understand that, sir?

20 MR. ARTIS: Yes.

21 THE COURT: Very good, I will let you be seated.
22 Now, Mr. Hall do you have a response?

23 MR. HALL: Your Honor, I agree to both of those
24 could be used by the State to possibly impeach my
25 client. I do think the forgery, they could refer to the

1 fact that it was a forgery, that specific crime. As far
2 as cross examining on the issue of the burglary, my
3 understanding of law is they would be limited to asking
4 him if he's been convicted of a felony that carried more
5 than one year. It would be unfairly prejudicial to be
6 able to say that he is convicted of a burglary.

7 THE COURT: Do you want to be heard on that, the
8 State, you cannot use the term burglary. That is the
9 defendant's position. Do you wish to be heard?

10 MS. HAMILTON: Your Honor, we would ask we be able
11 to state that is a crime of dishonesty, to specify also
12 that it is a felony.

13 THE COURT: All right. In other words not use the
14 term "burglary" but to say a crime of dishonesty or a
15 felony or do you want to call it a burglary?

16 MS. HAMILTON: Yes, that's correct. No burglary.
17 Crime of dishonesty and a felony that carries more than
18 one year.

19 THE COURT: Very good. All right, lets do this.
20 Let's bring the jury back in. Let's send them to lunch.
21 Then we'll talk to the defendant about his right to
22 testify and remain silent, but I think we're all of the
23 accord that when the jury comes back from lunch, one of
24 two things is going to happen. Either one more witness
25 and then argue and charge or we will argue and charge.

1 Am I correct in that Mr. Hall?

2 MR. HALL: Yes, and I assume that you mean you
3 will give my client and I the lunch break to decide
4 whether he will testify. He'll let the court know that
5 when the jury comes.

6 THE COURT: Well, what I'm really saying is that
7 when we get the jury in and out to lunch and we'll
8 discuss with your client his right to remain silent and
9 his right to testify, so that is clear. We all of the
10 same understanding. But I wouldn't demand an answer
11 until we come back at two o'clock.

12 That would be my intention. We would break. I
13 don't insist on two o'clock but I assume you want to
14 work on closing arguments. We break here at 12 here in
15 a few minutes and come back at two.

16 MR. HALL: That will be fine.

17 THE COURT: Is that satisfactory? Very good. How
18 long do you think your closing will be from the State?

19 MS. HAMILTON: Not very long, Your Honor. I would
20 say ten minutes.

21 THE COURT: You would open and close or do you
22 wish -- or do you open and close is that what you intend
23 to do? Open on the law and close on full?

24 MS. HAMILTON: Yes.

25 THE COURT: All right. How long do you believe

1 your closing?

2 MR. HALL: Your Honor, Fifteen to twenty minutes
3 and obviously, if we don't put my client up then I would
4 ask that we be the last to argue.

5 THE COURT: All right. We'll take that up then
6 when we return at two. But lets bring the jury in and
7 let me discuss with them where we find ourselves. All
8 right.

9 And counsel, what I'm actually going go to do is
10 when the jury comes in and be seated I will say call
11 you're next witness and let you rest so that it is all
12 happening in the presence of the jury and then we'll
13 take it from there. Okay.

14 Counsel, while we're waiting on the jury we are
15 going to give you what we believe the charge will be at
16 the close of morning hour and let you have it over lunch
17 so you can review it for a charge conference. We will
18 probably come back about, maybe ten or fifteen to two
19 and have a brief charge conference in the back and be
20 ready to start at two.

21 (Jury entering.)

22 We'll leave Miss Jackson there for the moment. All
23 right, ladies and gentlemen, welcome back to the
24 courtroom. It took a little longer then anticipated but
25 thank you for your patience and the State please call

1 your next witness.

2 MS. HAMILTON: Your Honor, the State has no
3 further witnesses. We would like to rest.

4 THE COURT: Very good. The State has determined
5 not to call the additional witness and thus the State
6 has rested and what we are going to do is we're going to
7 end our morning hour at that and come back this
8 afternoon to conclude final testimony as well as
9 argument, charge and go to the jury probably fairly
10 early in the afternoon.

11 Now, what that means is we are going to go to lunch
12 now and I will give you lunch until two o'clock. I know
13 that is a long lunch. That sounds like banker's hours,
14 but what we are going to do is, this will also give the
15 lawyers an opportunity to prepare their closings for you
16 so we go right into the closing once the testimony is
17 concluded.

18 Ladies and gentlemen, I will ask you when you
19 return and I suggest you return maybe about five till
20 two. A few minutes early. I will ask you; among
21 yourselves, to elect your own foreperson. And what I
22 would ask you to do, Miss Jackson, ma'am, our alternate,
23 I'm going to ask you to preside while the foreperson is
24 chosen. And lets do it in the following way. You will
25 have a vote in this, but it should not be you because as

1 the alternate you may actually not deliberate with the
2 jury. That just remains to be seen. But if you would
3 assist the jury as they choose their foreperson among
4 themselves. You may have known one another before you
5 arrived and now having been together for a couple of
6 days, you now have a better feel for other's
7 capabilities and personalities. And I would suggest to
8 you that the best foreperson is one who is a facilitator
9 of opinion. One who can help generate discussion
10 because ultimately your verdict must be unanimous and
11 that's as opposed to a dictator of opinion or controller
12 of opinion. So you would know among yourselves better
13 who would be your best foreperson. Whether that be
14 forewoman or foreman, that is your choice, rather than
15 the court making that choice.

16 So when you come back, about five to two, and lets
17 wait please Miss Jackson until everyone's together and
18 then make that decision. If you write the name down and
19 knock on the door, then we'll be ready to go at two
20 o'clock.

21 All right. Now any questions about scheduling?
22 Have a nice lunch. It's a pretty day outside and we'll
23 see you back five till two. We'll start at around two
24 and remain where you are while the jury departs.

25 All right. Thank you. The jury's clear. And Mr.

1 Artis I'm going to get you to stand if you will please
2 and just where you are we'll place you under oath, sir.
3 We're going to ask you a series of questions. Please
4 follow our clerk's instructions.

5 THE CLERK: Please raise your right hand. Do you
6 solemnly swear or affirm that the testimony you are
7 about to give this court in this matter will be the
8 truth, the whole truth, and nothing but the truth, so
9 help you God?

10 MR. ARTIS: I do.

11 THE CLERK: Thank you.

12 THE COURT: All right. Mr. Artis you have been in
13 courtroom this morning so you've heard the State close
14 their case and now we are ready to turn to the
15 defendant's case, if you wish to put up a defense and do
16 you understand that, sir?

17 You've got to speak up so we can all hear you.

18 MR. ARTIS: Yes, sir.

19 THE COURT: All right. Have you had an opportunity
20 to discuss with your lawyer the fact that you have the
21 right to testify in this case as well as the right to
22 remain silent? Have you talked with Mr. Hall about
23 that?

24 MR. ARTIS: Not really on the issue about that.

25 THE COURT: Well, has he explained to you that you

1 have the right to testify or the right to remain silent?

2 MR. ARTIS: Yes.

3 THE COURT: All right. And have you understood the
4 things he has explained to you about that?

5 MR. ARTIS: Yes, sir.

6 THE COURT: All right. I want you to understand
7 that in this courtroom if you decide not to testify,
8 then the jury cannot use that against you and I will
9 instruct them that you have no responsibility to
10 testify. No duty to testify. No burden of proof, and
11 they may not use that against you in any way in their
12 deliberations and in deciding your innocence in this
13 case.

14 Do you understand that?

15 MR. ARTIS: Yes, sir.

16 THE COURT: All right. By the same token you have
17 the right to testify. Which means that you would take
18 the stand and answer your lawyers questions, under oath,
19 but also be subject to cross examination by the State in
20 the presence of the jury, and furthermore if you have
21 previous criminal charges on your record, which we
22 discussed this morning that you do, some of those
23 charges may come into evidence bearing on your
24 credibility and believability.

25 Do you understand sir, that you have the right to

1 testify, under those circumstances?

2 MR. ARTIS: Yes, sir.

3 THE COURT: All right. And if you testify to this
4 jury, the jury may use what you say either against you
5 or for you as they make that factual determination that
6 they are called upon to make. Do you understand that?

7 MR. ARTIS: Yes.

8 THE COURT: Now, have you understood the rights I
9 just discussed with you, about first of all, your right
10 to remain silent?

11 MR. ARTIS: Yes.

12 THE COURT: And have you understood the rights I
13 just discussed with you on your right to testify?

14 MR. ARTIS: Yes.

15 THE COURT: And do you have any questions of me,
16 about what I just told you about your right to remain
17 silent or your right to testify?

18 MR. ARTIS: No, sir

19 THE COURT: Is what I've told you the same thing
20 your lawyer has told you about your right to remain
21 silent?

22 MR. ARTIS: Yes, sir.

23 THE COURT: And how about your right to testify?

24 MR. ARTIS: Yes, sir.

25 THE COURT: Very good. Now Mr. Hall, is there

1 anything further you would have me ask or discuss with
2 Mr. Artis about his right to remain silent or his right
3 to testify?

4 MR. HALL: No, Your Honor.

5 THE COURT: And State, is there anything you would
6 have me discuss further with Mr. Artis about his right
7 to remain silent or his right to testify?

8 MS. HAMILTON: No, Your Honor.

9 THE COURT: All right. Thank you, Miss Hamilton.

10 All right. Then I will let you be seated. And how
11 much time do you need to discuss this with Mr. Artis
12 because he's going to remain with us over the lunch
13 hour.

14 MR. HALL: I can, if he is going -- I assume what
15 you mean by remain with us, he will be taken into
16 custody ---

17 THE COURT: Right.

18 MR. HALL: --- and placed in detention. There is
19 a place I can go back and talk to him any time between
20 now and two o'clock. So we'll have an answer for you at
21 two o'clock.

22 THE COURT: All right. We're going to hold Mr.
23 Artis. Based on the fact you were late this morning it
24 gave us concern, Mr. Artis, that you were not going to
25 be here at all. We're going to let you remain with us

1 over lunch hour and take you into custody, sir, and
2 lunch will be provided for you and you will have an
3 opportunity to talk with your lawyer and we'll come back
4 a few minutes before two, and at that time receive from
5 you the decision as to whether or not you wish to
6 testify or remain silent. And we will hear from you at
7 that time.

8 Anything further before we close the record in this
9 case for the morning hour?

10 Hearing none, we are in recess now until
11 approximately two o'clock.

12 (Luncheon recess.)

13 THE COURT: All right. Ladies and gentlemen I want
14 to tell you that Jeremy L. Olsen has been chosen as
15 foreperson, as juror number 166. So we'll seat Mr.
16 Olsen in the foreperson seat when he comes in.

17 Mr. Artis. Let me get you to stand if you will
18 again sir, and did you have an opportunity to talk with
19 Mr. Hall, your attorney, about whether you intend to
20 testify during the lunch break?

21 MR. ARTIS: Yes, sir.

22 THE COURT: And have you made that decision?

23 MR. ARTIS: Yes, sir.

24 THE COURT: And before you tell me what the
25 decision is let me ask you sir, was that your decision?

1 MR. ARTIS: Yes, sir.

2 THE COURT: Nobody forced you either way to make
3 this decision?

4 MR. ARTIS: No, sir.

5 THE COURT: All right. And what is your decision,
6 sir?

7 MR. ARTIS: I am not going testify, Your Honor.

8 THE COURT: You're not. All right. Very good.
9 Well, you may be seated. And I will instruct the jury
10 during my charge that they may not hold that against
11 you in any way in the course of their deliberations.
12 All right, sir.

13 MR. HALL: Your Honor, at this time we have no
14 intent to put any evidence so the defense rest.

15 THE COURT: All right. Then what I'd ask you to do
16 is to rest when the jury comes in and we will re-enact
17 that so the jury will see it happen as it occurs. What
18 I would intend to do is bring the jury in. Tell them
19 that the receiving stolen goods charge is dismissed.
20 Turn to your call witness. You rest. And then we move
21 into closing arguments.

22 MR. HALL: Your Honor, I do have a matter before
23 the jury comes in.

24 THE COURT: Okay.

25 MR. HALL: I would like to renew my motion as far

1 as jurisdiction. Subject matters, Jurisdiction. We had
2 a discussion earlier, at the beginning of the trial,
3 where the defense certainly did not stipulate to
4 jurisdiction. There was a discussion about his prior
5 record. There has been no introduction of any certified
6 record, any certified convictions, anything in the
7 record that would compel jurisdiction to the court based
8 on the fact that he is charged with a magistrate's level
9 offense.

10 The State for whatever reason did not, did not
11 introduce those or attempt to introduce those inside or
12 outside the presence of the jury. So I renew my motion
13 as far as jurisdiction, that this Court at this point
14 lacks jurisdiction.

15 THE COURT: What says the State?

16 MS. HAMILTON: Your Honor, we addressed that
17 pretrial and you said that -- we agreed, that was not
18 going to be needed, admitting those into evidence during
19 the trial in front of the jury.

20 THE COURT: Well, we said it was not going to be
21 admitted into evidence because it would not go to the
22 jury, that doesn't mean it wouldn't be part of the
23 Court's record.

24 Tell me why was it not offered or made a Court's
25 exhibit, counsel.

1 MS. HAMILTON: Well, I had turned it over to the
2 defense. I didn't know that we needed to put it in.
3 Sorry, Your Honor, as a Court's exhibit. I thought that
4 we addressed the convictions that he had prior to trial.

5 THE COURT: Very good.

6 MS. HAMILTON: I made him aware that the defendant
7 had copies of these prior to trial, also. Certified
8 convictions.

9 THE COURT: All right. Let's do this, for
10 purposes of appellant review for whatever decisions
11 occur here, lets mark these as Court's exhibit and stop
12 now and do that as Court's Exhibit Number One.

13 Mr. HALL: Your Honor, also as far at record you
14 are allowing the State to reopen their case.

15 THE COURT: No, we'll address this in just moment.

16 I'm first of all going to mark it as Court's
17 Exhibit Number One so the document will be identified.
18 (Court's Exhibit One, Previous convictions,
19 received in evidence as of this date.)

20 All right. Court's Exhibit One now is marked and
21 these consist of the prior convictions.

22 Now let me hear from Mr. Hall about your objection
23 to the timeliness of this and the procedure of this
24 being accepted as Court's exhibit for purposes of
25 considering the jurisdiction of the Court.

1 MR. HALL: Your Honor, clearly the State had
2 rested. The defense had an opportunity to put up
3 witnesses or put up evidence. We decided not to. The
4 State and defense had rested, and certainly did not put
5 up and it is not a record of the case where they have
6 put it into evidence and then it would be certainly
7 unfairly prejudicial to my client to now allow the State
8 to reopen the case and put those in evidence.

9 THE COURT: Do you want to reply?

10 MS. HAMILTON: Your Honor, we feel this is not
11 prejudicial to the defendant. He knew of this prior to
12 going into trial that this was an issue. It was settled
13 by you that we were moving forward on jurisdiction on
14 this matter. He knew about these convictions prior.
15 This is not prejudicial to him in any way. This is a
16 sentencing matter that we will take up upon sentencing
17 and as it was established we have concurrent
18 jurisdiction with the Magistrate Court in settling these
19 matters.

20 THE COURT: Very good.

21 All right. Mr. Hall, I will respectfully overrule
22 your objection. Well, your motion for dismissal as to
23 jurisdiction. I will do this for the following reasons;
24 again, your objection now on jurisdiction is that the
25 prior convictions which would invest jurisdiction within

1 this Court, that is, it would increase the penalty to
2 get this petit - - excuse me, petit larceny charge
3 before the Circuit Court.

4 First of all, I agree with Miss Hamilton that there
5 is no surprise here. That there was a discussion of
6 these cases and this prior record of the defendant
7 before this Court even began the trial of the case.

8 Secondly, my comments may have misled counsel for
9 the State in thinking that it was not necessary to put
10 these into evidence because it would not go to the jury.

11 Thirdly, it is a sentencing issue. The Court does
12 have concurrent jurisdiction in considering the petit
13 larceny charge. And fourthly, I just think the fairest
14 thing to do is to, if you wish to phrase it, reopen the
15 State's case. The way the Court sees it is to just
16 allow it to mark it as a Court's exhibit at this point,
17 so that there would be no doubt about the jurisdiction
18 of this Court.

19 So for those reasons I am going to overrule your
20 motion. That is deny it. And you may move forward.

21 MR. HALL: Thank you, Your Honor.

22 THE COURT: All right. Very good.

23 MR. HALL: And, Your Honor, just a -- Mr. Artis
24 informs me that he did not have anything to eat. He
25 can't eat anything with salt. He has some medication

1 that was taken from him when he went back. He does --
2 he tells me he needs some pills that he is supposed to
3 take.

4 THE COURT: Okay. Are you diabetic?

5 MR. ARTIS: No. No, sir. I have a bad heart.

6 THE COURT: Okay.

7 MR. ARTIS: I need a possible donor and my liver is
8 no good and I walk around with nitroglycerin every day.

9 THE COURT: Tell me, Mr. Neal, where is the
10 medicine that Mr. Artis had?

11 MR. NEAL: It should be right here, sir.

12 THE COURT: Let's bring it out to him and let him
13 take what he needs.

14 MR. ARTIS: I didn't eat anything.

15 THE COURT: All right.

16 MR. HALL: Your Honor, he indicates that he will
17 be able to make it for another hour and I think
18 certainly that may give the Court ample time to do
19 closing and charges and I think we can may be make
20 arrangements for him to have some food.

21 THE COURT: All right. Well we have a clementine,
22 a small orange in the back. It is very easy to peel and
23 eat.

24 MR. HALL: If he could just have his pills he can
25 take one now without food and we can resolve ...

1 MR. ARTIS: I take it twice a day.

2 DEPUTY: His blood pressure medicine is what they
3 are telling me and he was checked out by a nurse and
4 when he was brought back here his blood pressure was 100
5 over 60. And the one that he takes twice a day, there
6 policy would be that he get it at nine o'clock tonight,
7 the second dose.

8 THE COURT: That's assuming he will be convicted.

9 DEPUTY NEAL: I know. And he would get it back if
10 he is found not guilty. He also has a leg brace on that
11 he will have to come back here and get taken off.

12 THE COURT: All right. Well, first of all, though
13 since he stands before me presumed innocent even at this
14 point, lets give him back his medicine that he has now.

15 MR. ARTIS: Thank you, Your Honor.

16 THE COURT: Yes, you're welcome.

17 Let the record reflect we have given Mr. Artis
18 back his various medications.

19 DEPUTY NEAL: They also told me, the nurse told me,
20 if he takes the nitroglycerin pill, it will lower his
21 blood pressure down. So he does not need to take that.

22 THE COURT: Thank you. Very good. Do you intend
23 to take any medicine at this point, Mr. Artis?

24 MR. ARTIS: The one I take which is the one the
25 doctor said I need to take it.

1 THE COURT: Which is what pill?

2 MR. ARTIS: The one I take twice a day.

3 THE COURT: Yes, sir, I understand that. What is
4 the name of it?

5 MR. HALL: Your Honor, he has it looks like -- I
6 can't pronounce it. C-a-r-v-e-d-i-l-o-l. And it does
7 say take one tablet by mouth twice a day.

8 THE COURT: And does it say what it's for?

9 MR. HALL: It does not.

10 MR. ARTIS: To keep the heart rate down. Keep the
11 heart from pumping so fast.

12 THE COURT: And Mr. Neil, I don't mean for you o
13 be a physician here, but did you say it is the lithium
14 he should not take?

15 DEPUTY NEAL: No, nitroglycerin. They say if he
16 takes the nitro, that it can bottom it out and they were
17 saying that the other medication would be the twice a
18 day deal, would normally be in the morning and in the
19 evening.

20 THE COURT: Very good. You are not taking your
21 nitro at this point?

22 MR. ARTIS: No, this is only when I have a chest
23 pain. Like I'm about to have a heart attack.

24 THE COURT: All right. Very good. Lets bring in
25 the jury.

1 (Jury entering)

2 All right. Welcome back ladies and gentlemen.
3 And first of all Mr. Olsen, I know that you have been
4 chosen as foreperson of the jury.

5 MR. OLSEN: I have.

6 THE COURT: So, I say to you congratulations for
7 the confidence that your colleagues have shown in you
8 for choosing you to be foreperson and during the course
9 of my charge I will talk to you a little bit further and
10 your colleagues about your role as foreperson.

11 But just again, in advance I thank you for
12 undertaking that important position. And also Miss
13 Jackson, thank you for your leadership to the jury in
14 choosing -- in presiding over the choosing process when
15 Mr. Olsen was chosen as foreperson.

16 All right. You will recall at the close of the
17 morning hour the State rested and now we move to the
18 defense of the case.

19 Please call your first witness.

20 MR. HALL: Your Honor, the defense rests.

21 THE COURT: All right. Ladies and gentlemen, the
22 defense rests. Meaning that the defense will not put up
23 a case or call any witnesses. And as I told you
24 throughout the trial the defense is not required to put
25 up a case and not required to call any witnesses because

1 the defense has no burden of proof. I also want to tell
2 you that, you may recall at the beginning of the trial I
3 told you that under South Carolina law and the facts and
4 circumstances of these particular cases, the defendant
5 could not be convicted of both charged crimes that arise
6 out of this core set of alleged events.

7 I tell you that the charge of receiving stolen
8 goods has now been dismissed and the sole remaining
9 charge for your deliberation is petit larceny. And that
10 is the charge we move forward at this time on. The
11 petit larceny.

12 Now, because we have concluded the testimonial
13 portion of the case, we now move into closing arguments.
14 Which is, you may recall I told you at the beginning, is
15 the time when the lawyers could come before you and
16 persuasively express their beliefs as to what the
17 evidence has or has not shown in the case. And then at
18 the end of the closings, I give you the charge on the
19 law.

20 The way we are going to proceed for closing is the
21 State has the burden of proof will go first, and then
22 the defendant's counsel will go last, and then I will
23 give you the charge on the law. That's how we are going
24 to proceed at this time.

25 So at this time the Court recognizes prosecution

1 for closing statement.

2 MS. HAMILTON: May it please the Court.

3 THE COURT: Yes, Miss Hamilton.

4 MS. HAMILTON: Good afternoon. As I said at the
5 beginning of this case, this is very simple. This is
6 not a complicated case. This is a case where if you
7 apply your common sense, your everyday knowledge, you
8 can see based upon all the evidence, this comes to a
9 full circle that the defendant is guilty of stealing
10 something that is not his. It is exactly what he did.
11 He stole something from Mr. Fanning. No regards for the
12 victim in this case. Don't be distracted by what the
13 defense is trying to put forward in this case. Don't be
14 distracted by all of these things that they say. The
15 barrel was open to the public. No it was not. You saw
16 those pictures. You want to know who it was open to.
17 It was open to the defendant. From his back porch you
18 could see directly to that barrel. That's who it was
19 open to. That's who could view this. He had the
20 opportunity to view this. The opportunity to take it
21 and that's what he did.

22 Now, lets look at all the evidence in this case.
23 The defendant is charged with petit larceny. The
24 taking, and carrying away of property. Like I just
25 said, we look at facts and circumstances and we can

1 infer based upon the fact that this defendant lived
2 right next door, in a house that overlooked Rock Hill
3 Paint and Body. The location where this item was
4 stolen. He had a complete unaltered view of that
5 aluminum. The public didn't. The street didn't. This
6 mobile home park didn't, that the defense wants to make
7 you believe they did. They did not. The defendant did.
8 And guess what, he carried that aluminum. He carried
9 that aluminum right into Palmetto Recycling and you saw
10 that. You saw that on video. You want to know why his
11 identity is confirmed. Because he put his driver's
12 license on that purchasing order and it shows clean
13 aluminum. It corresponds directly to that video that
14 you saw. That Mr. Fanning identified, that was the
15 defendant and how do I know he's the defendant. Mr.
16 Fanning said because I live next door to him. I see
17 him. I know that's him. Just confirmed by that
18 purchase order that showed it was him and that he
19 brought in that clean aluminum, weighing forty-nine
20 pounds that you saw on that video. Said forty-nine
21 pounds and he put that slab on there.

22 Let's look at personal property of another. You
23 heard Mr. Fanning on the stand. This was my property.
24 I got this from Samuel Strapping. He gave this property
25 to me. This was mine. It wasn't the defendant's. It

1 was not the defendant's to take, like he did. Exactly
2 like he did. And it wasn't with the consent of the
3 owner. That is a fourth element. Without the consent
4 of the owner. Mr. Fanning on the stand said I did not
5 give him consent to take this. I did not give anyone
6 consent to take this. No one had permission to take my
7 aluminum.

8 Last element with intent to steal. Now, at the
9 beginning of this case I said, what does intent to steal
10 mean. It means to take for your own use and permanently
11 deprive the owner of his property. That is exactly what
12 the defendant did in this case. He took Mr. Fanning's
13 property that he owned and that he could do whatever he
14 wanted too. He said it was worth \$500. Well, guess
15 what? The defendant took that property intending to
16 make some easy money off of it which he did. I think
17 \$26 and some change is what he made off of this. \$500
18 piece of metal. Easy money. Not -- no regards, for the
19 victim in this case.

20 Now, ladies and gentlemen we had to prove these
21 beyond a reasonable doubt. As I said before, proof
22 beyond a reasonable doubt is not one hundred percent
23 certainty. Not beyond any and all doubt. It is the
24 type of proof that leaves you firmly convinced of the
25 defendant's guilt. Please do not go back in that jury

1 room and confuse deliberation with hesitation to act.
2 Please do not. That is not doubt.

3 Now I want you to take this seriously and
4 deliberate. You should. But please do not confuse
5 that.

6 Ladies and gentlemen, I am convinced that when you
7 go back there and deliberate, based on all the evidence
8 presented today and using your common sense in this
9 case, that you will be firmly convinced that this
10 defendant, Robert Artis, is guilty of petit larceny,
11 stealing a piece of aluminum from the victim James
12 Fanning in this case.

13 Thank you.

14 THE COURT: Now closing statement from the
15 defendant.

16 MR. HALL: May it please the Court.

17 THE COURT: All right.

18 MR. HALL: Don't you need more? Don't you need
19 more? Don't you deserve more? Don't you deserve more
20 evidence in this case? Don't you deserve the State with
21 all of their resources to bring a case with evidence
22 that can prove beyond a reasonable doubt somebody
23 guilty? Don't you deserve more? Don't you want more?
24 Don't you want more? Wouldn't you like to have Mr.
25 Fanning, the victim in the case, be here in court and to

1 look at the video before you and for Mr. Fanning in
2 front of you, the jury, to tell you what he sees in that
3 video, State's exhibit nine. State didn't do that.
4 They didn't ask Mr. Fanning to look at that video here
5 in court in front of the jury. Wouldn't you like to
6 know that? Wouldn't you like to seen what he said or
7 what he saw? Wouldn't you liked to have seen the
8 evidence? The piece of metal. The piece of metal, the
9 evidence in the case. The State was not motivated to
10 get the metal. My client, Mr. Artis, like every other
11 criminal defendant in South Carolina someone charged
12 with a crime, liberty's at stake. Wouldn't you liked to
13 have seen the evidence?

14 The owner, Mr. Taylor, the manager stated that it
15 was in a bin. It was in the back of a bin, but it was
16 in the bin. Officer Dennis said it would be like
17 looking for a needle in a haystack because the place is
18 so big. For this unique piece of metal, he says.
19 Wouldn't you liked to have seen the evidence? Wouldn't
20 you like the police to have gotten the evidence and to
21 have brought it here to court and put it in front of you
22 to see?

23 Wouldn't you have liked to have heard from the
24 officers who responded to Mr. Fanning on March the 28th?
25 Who talked to Mr. Fanning. Wouldn't you have liked to

1 of metal on March the 29th. Maybe it's an error in the
2 indictment. Maybe it is. For whatever reason, but it's
3 not there. Because he didn't steal it on the 29th.
4 Nobody stole it on the 29th.

5 The testimony was that Mr. Fanning assumed it was
6 there on the 25th and then on the morning of the 28th,
7 after Friday afternoon, Saturday, Sunday -- three
8 nights, Friday night, Saturday night, Sunday night, it's
9 missing. Nobody saw who took it. Wouldn't you like to
10 have known? Wouldn't you like to have known?

11 Remember I talked to you about basketball and how I
12 always dreamed of being able to get my hand above the
13 rim. And that I can't do that but there is a lot of
14 people who can and my 16-year old grandson who is making
15 progress. Well, that is what this case is about. It's
16 about reasonable doubt. And it's a circumstantial
17 evidence case. There is no direct evidence. The judge
18 is going to tell you the difference between direct
19 evidence and circumstantial evidence. There is no
20 direct evidence.

21 Direct evidence, somebody will come in here and
22 give testimony they saw something happen. They observed
23 it take place and you would have to still determine
24 their believability, but this is a circumstantial
25 evidence case.

1 have known what they saw? What they -- who they spoke
2 to. What they did. Wouldn't you liked to have known
3 that?

4 Wouldn't you have liked to have known about the
5 fourteen mobile homes behind the business with the one
6 way in and out, that the police respond to for lots of
7 stuff, who live back there. Whether they had any metal
8 at their house. Scrap metal. Scrappling. Wouldn't you
9 have liked to have known that? Wouldn't you like the
10 police to have gone through and talked to neighbors
11 before they arrested and charged this man with a crime
12 and brought here to trial before you. Wouldn't you have
13 liked to know that?

14 You deserve more. You deserve the State to give
15 its best effort to bring those facts in evidence to you
16 and they do not. They don't. Here's what they bring
17 you.

18 Robert Artis lives beside Rock Hill Paint and Body.
19 They can't tell you when this item was stolen. They
20 give you a range. You're going to have an indictment or
21 you had an indictment in this case where the judge read
22 to you. The indictment says that he took and stole the
23 metal on March the 29th. March the 29th, that's what he
24 read on the indictment. On or about March the 29th.
25 There is not one piece of evidence that he took a piece

1 The only circumstances, Mr. Artis lives beside the
2 business. He's seen on March the 29th with a piece of
3 metal at a scrap yard. That's the evidence. Of a piece
4 of metal that came, that was used, as a lid on the
5 barrel that was open to the public.

6 Now, yes, people can't see it when they are riding
7 by, but it is open to the public. The people that walk
8 by, mess around twelve o'clock at night, one o'clock in
9 the morning, three o'clock in afternoon, three o'clock
10 in the morning. It was there.

11 Reasonable doubt is a doubt. This is what the
12 judge will read to you and will tell you. He will say,
13 that reasonable doubt is a doubt which makes an honest,
14 sincere, consciousness juror in search of the truth,
15 hesitate to act. Proof beyond a reasonable doubt is
16 proof which leaves you firmly convinced of the
17 defendant's guilt. If you have a doubt for which you
18 can give or assign a reason as to the guilt of the
19 defendant, then he is entitled to a verdict of not
20 guilty. That is what the judge is going to tell you.

21 My client is charged with a crime. It's a serious
22 offense. He sits here on a case that is ripe with
23 inaction by the police. Lack of motivation to fully
24 investigate. He sits here with evidence that you don't
25 have that could have been presented to you in this

1 courtroom. You deserve more. You deserve more. You
2 deserve more.

3 Ladies and gentlemen I ask that you consider what
4 you know in this case. There is a lot of jumping
5 around. Of reaching for the rim. There is some
6 evidence, but it is not beyond a reasonable doubt.
7 There is no payment. There is no evidence that reaches
8 the rim, much less above the rim and beyond the rim.
9 Thank you.

10 THE COURT: All right. Thank you, counsel.

11 Now, let me give you the charge on the law. Ladies
12 and, gentlemen you, recall I told you at the beginning
13 the last person you would hear from before you retire to
14 deliberate would be the Court giving you the charge on
15 the law and we reached that point. Before I begin the
16 actual points of the law, I want to say to you again as
17 I mentioned to you yesterday morning, that I am grateful
18 that you've given of your time and come in and served as
19 jurors this week, at least so far this week. I hope
20 it's been a positive experience for you.

21 You may also recall I mentioned to you yesterday
22 that I knew and we all know, that you have a busy life
23 before you ever came down here to the Courthouse to
24 engage as a juror. But throughout this trial when I
25 have looked at you, the jury, and I try not to stare at

1 you but I do focus on you from time to time to make sure
2 you are comfortable and to gage your level of focus.
3 Every time I looked at you, you are and have been just
4 as you are doing now, sitting and looking at me with
5 close focus and what I call rapt attention. And I'm
6 grateful ladies and gentlemen, that you set aside your
7 busy lives and engaged in this case to the level that
8 you have because it gives me comfort that in a few
9 moments when you retire to deliberate you will be able
10 to do that because you have listened to the evidence in
11 the case and you participated fully in the case. This
12 is the -- both parties one day in court. And thank you
13 again for your level of focus and commitment to see that
14 justice is done in this trial.

15 Now, as you know, the State charges the defendant
16 Robert Timothy Artis, seated at the table farthest from
17 you, with a count of petit larceny. Please remember the
18 defendant plead not guilty to that charge, you heard it
19 here in open court and by that plea denies the
20 allegations that are charged against him.

21 Now, the indictment which was explained to you at
22 the beginning of the trial and I will just say again ,
23 is merely a set of accusations against the defendant.
24 It is not evidence. It is not to be accepted as truth
25 simply because it says something on a piece of paper.

1 The evidence that you are to consider in your
2 deliberations is the testimony of various witnesses who
3 have appeared right there in the witness chair, as well
4 as such exhibits that have been introduced into the
5 record of this case during the trial of the case and
6 you'll have the exhibits with you back in the jury room.
7 Let me say one thing if I may, Mr. Foreman and ladies
8 and gentlemen of the jury, about one of the exhibits
9 which is the video that was shown. If you wish to see
10 the video, rather than simply giving you a computer
11 which you may not be familiar, because obviously it
12 would not be your computer. What we're going to do is
13 ask if you wish to review that video then we will make
14 an IT specialist available to you who will come in with
15 the computer and play it for you in whatever mode or
16 whatever way that you wish for that to be played. But
17 you'll have the evidence with you in the jury room when
18 you retire to deliberate and I say to you again the
19 defendant comes in this courtroom clothed with a
20 presumption of innocence. And that presumption of
21 innocence is a bedrock foundation of our criminal
22 justice system and it continues with the defendant
23 throughout this case, and entitles the defendant to a
24 verdict of not guilty unless and until, that presumption
25 of innocence is dispelled by evidence that satisfies you

1 the jury beyond a reasonable doubt, that the State has
2 proved each and every element of the alleged crime,
3 beyond a reasonable doubt.

4 Now, as I told you at the beginning of the trial,
5 under the constitution of our state, you are the soul
6 fact finders of the case. Which means you are the
7 judges of the credibility and believability of the
8 witnesses who come before you. Now in passing upon
9 their credibility I already discussed with you what
10 factors you may take into consideration. There is no
11 need to be duplicative and go over those again. I
12 simply will say to you, you should use those factors you
13 use in everyday life and good common sense, engaging
14 credibility and believability, and I will tell you that
15 in deciding what are the facts in this case you may
16 believe as much or as little of any witness's testimony
17 you think proper. You can believe one witness against a
18 whole group of witnesses or you can do just the
19 opposite. You may believe part of what a witness says
20 and completely disbelieve the rest.

21 Further, I would tell you the fact that certain
22 testimony is not controverted doesn't mean you have to
23 accept it as true and undisputed because you must first
24 still gage the credibility of the witness through which
25 it comes to determine the believability of truth and the

1 facts offered through that testimony. And keep in mind
2 ladies and gentlemen, throughout this process you have
3 one objective, and that is to seek the truth, regardless
4 of from which witness or from what source that truth may
5 come.

6 Now, there are two types of evidence in cases such
7 as these. There is direct evidence and there is
8 circumstantial evidence.

9 Direct evidence is testimony of a person who
10 asserts or claims to have actual knowledge of a fact,
11 such as an eye-witness. That is direct evidence.

12 Circumstantial evidence on the other hand, is proof
13 of a set or chain of facts that indicate the existence
14 of yet another fact. That is indirect evidence.

15 I tell you that the law makes no distinction
16 between the weight or value to be given to either direct
17 or circumstantial evidence. Nor is a greater degree of
18 certainty required of one over the other. You should
19 consider all the evidence in the case, both direct and
20 circumstantial and after weighing all the evidence, if
21 you are not convinced of the guilt of the defendant
22 beyond a reasonable doubt, you must find the defendant
23 not guilty.

24 Now lets talk little bit about weighing the
25 evidence and as I said to you earlier you have listened

1 closely during the course of the case to the testimony.
2 You'll have the exhibits with you back in the courtroom,
3 or back in your jury room and I will tell I have been
4 back in your jury room not while you have been back
5 there, but there is not a set of scales to go back and
6 weigh the evidence. Well that's obvious. But that is
7 because it is entirely a mental process. But I would
8 say to you that evidence that weighs with you, is
9 evidence that convinces you of its truth. Again
10 regardless from which source that truth, that evidence,
11 may come. Now the same constitution that makes you the
12 judge of the facts makes me the judge of law. And let
13 me say to you that you should accept this law as I give
14 it to you in this charge. Apply it to the facts as you
15 find them in the case and if you do that you will reach
16 a verdict which is just and which is true. And I will
17 tell you that it is not for you or for I for that matter
18 to put in instead of the charge of the law that I give
19 you, to put in what you or I think might be a better
20 idea or what would seem to be more -- make more sense
21 under the circumstances. You should accept the law as I
22 give it to you because it is something I have gone over
23 with both counsel, and I am giving you the law
24 correctly. Please accept it as I give it to you and
25 apply it to the facts as you find it and again doing

1 that you are going to reach a verdict which is just and
2 which is true.

3 Now, in a criminal prosecution of this kind, I will
4 tell you that the State, the prosecution, seated at the
5 table closest to you has the burden of proof. The
6 defendant has no burden of proof. The defendant is
7 presumed innocent.

8 The defendant entered a plea of not guilty, over
9 and above being presumed innocent and in this state,
10 according to our constitution the prosecution must prove
11 its case to the standard of proof we call beyond a
12 reasonable doubt. That is the standard. Beyond a
13 reasonable doubt. Before finding of guilt may occur.
14 If the State fails to meet this high burden and it is a
15 high burden, the defendant is entitled to an acquittal.
16 So you say, well, okay, then what is reasonable doubt.
17 Well, I'll start by telling you what it is not. It is
18 not an imaginary or fanciful doubt or a weak doubt. It
19 is a substantial doubt. It is doubt that the words
20 imply. A doubt for which you can give or assign a
21 reason based on the testimony and the evidence in the
22 case.

23 A reasonable doubt is not any sort of a doubt. You
24 and I know from everyday life experience that we may
25 have some kind of a doubt about trivial matters such as

1 what tie to wear or what pair of shoes to wear
2 somewhere. That's not a reasonable doubt.

3 A reasonable doubt is a doubt that makes an honest
4 and consciousness juror in search of the truth hesitate
5 to act. Proof beyond a reasonable doubt is proof that
6 leaves your firmly convinced of the defendant's guilt.
7 If you have a doubt for which you can give or assign a
8 reason as to the guilt of the defendant based on the
9 evidence in this case, or the lack of evidence, then he
10 is entitled to a verdict of not guilty.

11 I tell you, reasonable doubt may arise from the
12 evidence in the case or the lack or absence of evidence
13 in the case. You the jury must make the determination
14 of whether or not reasonable doubt exists, as to the
15 guilt of the defendant in this particular case. I will
16 tell you though the very fact that you the jury go back
17 into the jury room and engage in a full and free
18 discussion of the issue of guilt or non-guilt in the
19 case, with conversational ebb and flow on those
20 particular issues does not automatically mean that
21 reasonable doubt exists in this case or in any other
22 case for that matter.

23 Now, I further charge you that criminal intent is a
24 necessary element of each crime that must be proved by
25 the state beyond a reasonable doubt. Criminal intent is

1 always a matter that must be determined by the jury from
2 the circumstances that surround the situation. There is
3 no way to prove intent in some mathematical certainty.
4 There is no way that medical science will let us dissect
5 an individual's brain and look in and determine what a
6 particular person has in mind at a particular time. So
7 the law states that criminal intent may be inferred from
8 the circumstances that are shown to have existed both
9 before and after the fact. This is how you, the jury,
10 make a determination of whether or not the element
11 requiring intent is present. Criminal intent.

12 Now, criminal intent is a state of mind that
13 operates jointly with an act or omission in the
14 commission of crime. Criminal intent is a mental state
15 of conscious wrongdoing so it is up to you the jury,
16 ladies and gentlemen, to determine whether or not the
17 State has proved criminal intent based on the
18 circumstances shown that exists in this case. I tell
19 you the State must prove criminal intent beyond a
20 reasonable doubt just as the State must prove every
21 element of this crime, alleged crime, charged crime,
22 beyond a reasonable doubt as I previously explained to
23 you.

24 Now, I further instruct you and emphasize that the
25 fact that the defendant did not testify, is not a factor

1 that should be considered by you in any way in your
2 deliberation and in your consideration of the question
3 of the guilt or innocence of the defendant in this case.
4 It must not be considered by you in any manner
5 whatsoever. That's because the defendant has the
6 constitutional right to remain silent and the assertion
7 of this right must not be considered by you in your
8 deliberations or held against him in either way. I
9 repeat under your oath, you are to draw no conclusion
10 whatsoever from the fact that the defendant in this case
11 did not testify either positive or negative. In fact,
12 the defendant did not testify should not even be
13 discussed in the jury room. That's because the burden
14 of proof as I stated to you multiple times, is always on
15 the State, it never shifts to the defendant. The
16 defendant is not required to prove his innocence and the
17 burden of proof remains on the state to prove guilt
18 beyond a reasonable doubt.

19 Now, with regard to the charge of petit larceny.
20 The defendant is, as you know, is charged with petit
21 larceny. In order to prove this, the State must prove
22 beyond a reasonable doubt that the defendant took and
23 carried away the property of another, against the will
24 or without the consent of the other person. The
25 slightest removal of the property or the complete

1 possession of that property even for an instant by the
2 defendant is enough to show a taking and carrying away
3 of that property.

4 The State must also prove beyond a reasonable doubt
5 that the defendant intended to permanently deprive the
6 owner of that property.

7 And finally, for this particular charge the State
8 must prove that the value of the thing taken was less
9 than \$2,000.

10 Now, I further charge you that under South Carolina
11 law, the mere presence of the scene -- at the scene of a
12 crime or alleged crime, is not sufficient to prove
13 somebody guilty of that particular crime. The burden is
14 upon the State to prove every element of the crime
15 charged. If you find, after reviewing all the evidence,
16 that the State has proved that the defendant was only
17 present at the scene of a potential crime and that
18 they've not proved beyond a reasonable doubt any other
19 participation in the crime by the defendant, then you
20 must find the defendant not guilty.

21 The law is that proof of mere presence at the scene
22 of a crime is not sufficient to find someone guilty of
23 that crime.

24 Now, Mr. Foreman, ladies and gentlemen of the jury,
25 as you begin to retire, or you will begin in a moment to

1 retire and start your deliberations, I want to express
2 to you the hope that each of you are mindful of the
3 importance of your responsibility and I know that you
4 are aware of that. You may recall we discussed
5 yesterday the fact that you have an exemption for jury
6 service for a three year period after you serve and
7 there is a reason for that. You are not called upon to
8 serve often as jurors and that is because it's a
9 difficult task. It requires you and I to reach the
10 height of freeing our minds of all outside and improper
11 influences because you and I are acting for the
12 community in seeing to it that every trial here is fair,
13 and every verdict is just. And you probably observed
14 throughout this trial that the presiding officer, which
15 is me, is referred to as Your Honor. I know you know
16 that is not some title given to me individually. It's a
17 title that is assigned to the position that I am
18 privileged to hold and that is because this Court is
19 entrusted with the honor of this community, this county,
20 this state, and indeed this nation, to see to it that
21 every trial here is fair, and every verdict is just.
22 And in a few moments you're going to take the
23 preservation of the honor of this community, county,
24 state and nation with you in the jury room to decide
25 this case.

1 Now, when I say that to you please understand, I am
2 not telling you how to decide this case. First of all
3 that will not be proper. That's not my point. My point
4 is simply this, as a presiding officer of this court, it
5 is vitally importance to me that whatever verdict you
6 reach, will be the result of you going back into the
7 jury room, confiding your consideration to the evidence
8 put forth in this courtroom, weighing it fairly and
9 weighing it impartially. Applying that evidence to the
10 law that I have given you here in this proceeding and
11 reaching a verdict which is fair and just. I have every
12 confidence that that's what you will do and if you
13 follow that procedure, you will reach a verdict which is
14 just and fair.

15 And I will tell you that everyone, both sides of
16 this case, are entitled to justice, both the State and
17 the defendant. All are entitled to justice, nothing
18 more and nothing less.

19 I tell you ladies and gentlemen, we owe no support
20 to any party or no sympathy to any party and I am
21 convinced that whatever verdict you reach, will
22 represent truth and justice to all the parties involved.

23 Now, Mr. Foreman and ladies and gentlemen of the
24 jury, let me say to you, please remember your verdict
25 must be unanimous and in order to assist you in reaching

1 a verdict we've prepared and the lawyers have reviewed a
2 verdict form. And the verdict form simply has one
3 question because there is one charge pending here for
4 you to determine and it reads as follows; as to the
5 charge of petit larceny, we the jury unanimously find
6 the defendant, Robert Timothy Artis, beyond a reasonable
7 doubt, and then there's two choices. And let me say to
8 you, I have two choices to give you. I can't give them
9 both to you at the same place on the page. One has to
10 come in front of the other. But there's no priority.
11 There's no preference. Just simply the first choice is
12 not guilty and the second choices is guilty. Whatever
13 is your unanimous verdict among the jury, please mark
14 that. Sign the verdict form, Mr. Foreman, and your
15 signing under these words, I certify that this is a
16 unanimous decision of the jury. So when you sign and
17 certify this verdict form you are telling us that this
18 is the unanimous decision of the jury.

19 Now you are in the jury room, some may be over by
20 the wall, some seated at the table, someone doing
21 something else. If anyone wishes to be heard on the
22 point please be sure to give them the opportunity. Not
23 only is this a full and free discussion, but your
24 verdict will be a consensus verdict and indeed a
25 unanimous verdict whenever you reach the end of your

1 deliberations.

2 Now what I'm going to ask you to do, ladies and
3 gentlemen of the jury, is to go back to the jury room
4 but don't start your deliberations. I have to talk to
5 the lawyers one more time and then I will send the
6 exhibits in with you and when we do that, we're going to
7 ask Miss Jackson to come back out and join us as our
8 alternate juror and then we will let the remaining
9 twelve begin the deliberations. Miss Jackson I know a
10 lot of times when we reach this point, the alternate
11 juror says well my goodness I've wasted my time here
12 because I am not even going to deliberate in this case
13 but I want you to know this. First of all, thank you
14 for assisting this jury and leading them as they chose
15 their foreperson. But secondly, your position here and
16 your participation has been important because if we did
17 not have an alternate juror, and if even now when in the
18 closing moments of this trial, before it went to the
19 jury, if one of our jurors had an emergency, or got sick
20 and had to leave, I would have to declare a mistrial.
21 This case would be tried again if we had no alternate
22 juror to be seated in place of the original. So I thank
23 you for being here to prevent that in an event that it
24 happened. I want to express that gratitude to you in
25 the presence of your colleagues. I suspect these twelve

1 are going to hold their health here for the next minute
2 or two so it's much likely you won't need to deliberate.
3 But then I'm going to let you go back and say goodbye.
4 Please don't begin to discuss the case but when we send
5 in the exhibits then you may begin. Miss Jackson I need
6 you to come back in here and I will speak with you
7 again, ma'am.

8 All right, with that understanding let's all remain
9 where we are here while our juror returns to the jury
10 room.

11 (WHEREUPON, the jury exits the courtroom at 2:54)

12 And now let me ask the parties if you would review
13 the evidence and make sure it's in order and then I'll
14 have a question for you in just a moment.

15 All right. Now, please if you will listen for the
16 jury to advise us whether or not they need to have a
17 computer, and do you have a video person who will go in
18 response, counsel?

19 MR. SHELTON: I believe so Your Honor. I tried to
20 make arrangements for that anticipating it and then
21 again I follow up with them, but I'll make sure.

22 THE COURT: Please do, because I want it to be
23 timely and I don't want to have them wait 15 minutes
24 where we round up somebody to do that. So, if you'll go
25 ahead and -- well, lets wait.

1 Is there an objection to the charge given by the
2 court or exception to it from the State?

3 MS. HAMILTON: No, Your Honor?

4 THE COURT: And from the defense?

5 MR. HALL: No, Your Honor.

6 THE COURT: All right. The exhibits you reviewed
7 them, are they in order in your belief and opinion,
8 State?

9 MS. HAMILTON: Yes, Your Honor.

10 THE COURT: And defense?

11 MR. HALL: Yes. SIR.

12 COURT: All right. Then please bring, go ahead and
13 take the exhibits in to the jury and ask them to begin
14 deliberations and lets remain in session and bring Miss
15 Jackson back. All right.

16 (WHEREUPON, the jury begins to deliberate at 2:57.)

17 (Miss Jackson enters the courtroom.)

18 THE COURT: All right, Miss Jackson, welcome back.

19 I want to thank you again for your service and tell
20 you I have some good news for you. My first news is if
21 you wish to stay you are welcome to remain with us. You
22 are not required to leave. So if you want to stay to
23 see what the verdict is and we don't know how long this
24 will be, but you're certainly welcome. But also if you
25 wish to leave, then you are free to go. And I wanted to

1 tell you that there will not be any further jury service
2 or jury call summons this week. So you're done for the
3 week if you wish to go.

4 Do you know whether you want to stay or do you want
5 to go?

6 MISS JACKSON: I'll maybe just sit and see how it
7 turns out.

8 THE COURT: Well, aren't you nice to do that.
9 Well, I'm going to get you to step up ma'am I can't get
10 over there to you but I'm going to get you to step up
11 and shake your hand as my expression of gratitude for
12 your service. I enjoyed working with you this week,
13 Miss Jackson, and you just make yourself comfortable and
14 if you get tired at some point and wish to leave, then
15 feel free to do so. Thank you.

16 All right. Anything further for our record now
17 before we stand down, awaiting the call from the jury.
18 From the State?

19 MS. HAMILTON: Nothing, Your Honor.

20 THE COURT: From the defense?

21 MR. HALL: No, Your Honor.

22 THE COURT: Okay. Very good. Then ladies and
23 gentlemen, we look forward to the verdict of the jury.
24 Best wishes to you in the meantime. This Court will be
25 in recess, awaiting the jury's return.

1 MR. SHELTON: Your Honor, may it please the Court.
2 One other matter will be Mr. Artis. Does he need to be
3 taken into custody?

4 THE COURT: I took Mr. Artis into custody because
5 he was late this morning over lunch. I will leave him
6 out it out. If he wants to get a snack I will leave him
7 into Mr. Hall's custody at this time and we'll see what
8 happens. He will of course not go into custody if he is
9 exonerated from this charge and is there somewhere in
10 the courthouse that Mr. Hall -- excuse me. Mr. Hall
11 that Mr. Artis can get something to eat?

12 MR. HALL: I will find out. We may have something
13 downstairs.

14 He does have a problem with a brace that they put
15 on.

16 DEPUTY: By their policy they put a brace on him.
17 I can get it taken off right quick and then bring him
18 back out.

19 THE COURT: Yes, let's take it off.

20 (Court stands in recess.)

21 THE COURT: All right. We have received a note
22 from the jury. The jury would like to see the video,
23 so, that's no shock in that.

24 MR. SHELTON: Let me go and see if I can find an
25 IT guy.

1 THE COURT: All right, please do. And lets just
2 give him these instructions that he is not to interact
3 with the jury. He is just simply to play that video for
4 them. When he's finished and they're finished looking
5 at it he's to bring his computer and leave.

6 MR. SHELTON: Yes, sir.

7 THE COURT: Fair enough. Let's get that to our
8 court reporter and mark that as a Court's exhibit as
9 well. And be in recess.

10 (Court's Exhibit two, jury note, received in
11 evidence as of this date.)

12 THE COURT: All right. Please bring in the jury.
13 And let me ask one thing when the jury departs, they go
14 out that back door, so what I am going to do, I will
15 shake the jurors hands. I will come down as leave use
16 thought I would let you all know that.

17 (WHEREUPON, the jury came into open court at
18 approximately 3:32.)

19 THE COURT: All right. Welcome back ladies and
20 gentlemen, and Mr. Foreman I am advised that the jury has
21 reached a verdict. Is that correct?

22 MR. FOREMAN: Yes, Your Honor.

23 THE COURT: All right. So would you please give
24 your verdict form to our bailiff.

25 Let the record reflect that the verdict form is

1 appropriately filled out and signed and dated by the
2 foreperson, Mr. Olson.

3 The defendant will please rise and Madame Clerk,
4 would you publish the verdict.

5 THE CLERK: The State of South Carolina versus
6 Robert Timothy Artis with indictment number
7 2012-GS-46-01098, as to the charge of petit larceny, we
8 the jury unanimously find the defendant, Robert Timothy
9 Artis, beyond a reasonable doubt guilty. Signed by the
10 foreperson this day.

11 If this so be your verdict, so say you all by
12 raising your right hand.

13 Let the record reflect all affirmed.

14 THE COURT: Thank you. You may put your hands
15 down. Now the defendant may please be seated.

16 Now, while we are in the presence of the jury, are
17 there or is there a motion or issue for which a jury
18 response would be necessary. First from the State?

19 MS. HAMILTON: No, Your Honor?

20 THE COURT: And now from the defense?

21 MR. HALL: No, Your Honor.

22 THE COURT: All right. Very good. Ladies and
23 gentlemen that means that your role in this case has
24 ended. What we are going to do now is we are going to
25 have a sentencing proceeding, but I don't require the

1 jurors to stay for that. I give you the opportunity to
2 do that and you are welcome to stay but what I ask you
3 to do is rather than be seated in the jury box, we are
4 going to let you leave the jury box and then go back and
5 be seated in the courtroom, if you wish, or go ahead and
6 depart the courthouse if you wish.

7 I have some good news for you, which is that we
8 will not have any further jury draws this week and thus,
9 you are done for the week.

10 I want to thank you for a verdict which is just and
11 fair under the facts and circumstances which were put
12 forth to you. I will tell you that in a few days, maybe
13 a week or so, that county of York is going to send you a
14 small check. It's not enough to retire on, but it's the
15 county's expression of gratitude for your service. But
16 if you will allow me, I'm going to step out the back and
17 come greet you at the door to shake your hand as my
18 personal expression of gratitude for a job well done.
19 Now again, you may have something you have in the jury
20 room you may want to get. You may just want to leave
21 out the back door, but if you want to join us for the
22 sentencing procedure, I think it's probably a lot easier
23 than walking all around this courtroom. We'll just wait
24 for you here at the door and come back in or you can
25 just turn the corner and go be seated back there. But

1 give me just a moment to catch up with you there at the
2 front.

3 All right. Some of my jurors have elected to
4 remain. And are we ready for our sentencing proceeding?
5 State ready?

6 Let me hear from the State first as to what the
7 sentence ranges are, and for what reason they are that
8 range, and then we'll hear from defense, as to what they
9 wish to say. Go ahead.

10 MS. HAMILTON: I know you are aware of the facts
11 because of the trial. He is charged, petit larceny
12 third and subsequent property offense. It is up to ten
13 years, Your Honor, based upon that third and subsequent.
14 I don't know if you want me to go into the record and
15 it's quite -- it may take a while.

16 THE COURT: Well, yes. I want you to give --
17 well, first of all this record will reflect it as well
18 as our jurors who were here, will have an opportunity to
19 see what the prior record is of the defendant.

20 Let me just speak. I'm going to speak with you,
21 Mr. Hall if I may, you don't mind stepping aside.

22 Ladies and gentlemen, I will tell you that,
23 typically petit larceny, which is stealing an item that
24 is less than \$2,000 under current law, is a Magistrate
25 Court offense and carries up to thirty days. But if you

1 have a record of three or more property offenses then
2 the jurisdiction of this court, which is a Circuit
3 Court, is invoked and it carries up to ten years in
4 prison.

5 Now you're going to hear the prosecutor give me the
6 prior record of the defendant, and the first thing you
7 think is well why didn't I know what the prior record
8 was and there is a reason for that. The jury is the
9 judge of the facts. And it is for you to decide whether
10 the State proved that the charges against the defendant
11 were proved and occurred beyond a reasonable doubt. If
12 you were told that the defendant has a prior record for
13 this or for that then that may have spilled over and
14 effected your decision, and thus enured to the detriment
15 of the defendant. And so the prior record of the
16 defendant does not come into evidence unless the
17 defendant takes the stand and if the defendant takes the
18 stand then that may come in not on the issue of did the
19 defendant commit the crime for which he is charged, but
20 are they credible and believable. And so if you have a
21 crime in your past of dishonesty it may come in on your
22 credibility. And this may or may not be why the
23 defendant took the stand. This is not for the court to
24 say. I don't know that because this decision is made by
25 the defendant and defense council. But I wanted to

1 explain to you why the jury was not advised that the
2 defendant had a prior record.

3 So please tell us if you will, what is the prior
4 record.

5 MS. HAMILTON: Okay. 1979 housebreaking. 1980
6 grand larceny. 1982 reckless driving. 1987 simple
7 possession of marijuana. 1989 two counts of receiving
8 stolen goods. 1990 driving under suspension. 1992
9 receiving stolen goods more than 200, fraudulent check,
10 and possession of cocaine second. 1993 receiving stolen
11 goods, two hundred to one thousand dollars, criminal
12 domestic violence, assault and battery, resisting
13 arrest. 1995 in Lancaster County open container,
14 resisting arrest, providing false information to police;
15 law enforcement, possession of stolen goods, DUI.
16 Additionally in 1995 attempted armed robbery, petit
17 larceny, possession of drug paraphernalia. 1998 assault
18 and battery, high and aggravated of nature, driving
19 under suspension second, failure to stop for a blue
20 light, attempted robbery. 2000, simple assault and
21 battery. 2002, loitering and engaging in drug activity,
22 possession of drug paraphernalia. 2003, criminal
23 domestic violence first, petit larceny, possession of
24 drug paraphernalia. 2004, burglary, second violent.

25 In 2007, forging more than one thousand, less than

1 five thousand dollars.

2 THE COURT: And those are all not arrests, but
3 convictions?

4 MS. HAMILTON: Yes, Your Honor.

5 THE COURT: And tell me, from those have you
6 determined what is the longest, previous prison sentence
7 the defendant has had? What was the burglary sentence?

8 MS. HAMILTON: 18 months was his burglary sentence.

9 THE COURT: All right. Thank you.

10 Now, does the State have a recommendation or any
11 comment, argument you wish to make with regards to
12 sentencing?

13 MS. HAMILTON: Well, I'm going to let -- after I
14 say I believe that there needs to be some kind of
15 significant jail time in this case based upon the fact
16 that he has a significant record in this case. We
17 didn't offer him anything in this case due to his prior
18 record and the amount of, you know, property offenses
19 that he does have on his record and I know Mr. Shelton's
20 going to want to speak on the behalf of the victim
21 because he had to go back to work today.

22 MR. SHELTON: Your Honor, may it please the Court.
23 Your Honor, Mr. Fanning did have to return to work after
24 he testified today. He asked me to relay to Your Honor,
25 that this chunk of metal may not have seemed

1 significant, but it was the fact he's a hard working man
2 and had this item stolen from him that caused him to
3 really want to see this all the way through to trial.
4 He also wanted to relay to me and I told him this would
5 not be admissible in trial, but this was one of many
6 things that were stolen from his shop, over a period of
7 six months or greater that coincided with Mr. Artis
8 renting of the house next door. One of the major
9 reasons I told him we couldn't discuss that in the trial
10 is because of the potential unfair prejudices it would
11 put on the defendant, but also because he couldn't
12 substantiate that it was Mr. Artis that did that but
13 certainly coincidentally, it appears that was the case.
14 After Mr. Artis moved out the thefts stopped. So, I
15 told him that I would relay that to Your Honor, if a
16 conviction was rendered by the jury. It has been in
17 this case. I'd offer that for whatever insight that may
18 give you to this defendant and any other incidents that
19 may be surrounding this particular case.

20 THE COURT: Very good. Thank you. And now from
21 the defense, Mr. Hall, do you have something you wish to
22 say?

23 MR. HALL: Your Honor, Mr. Artis is 52 years old.
24 He does receive full disability. He has a multitude of
25 health issues. He's got heart problems, knee and

1 shoulder and he receives disability for that. I will
2 state as far as his record, certainly there is nothing
3 we can say about the past. He does appear though that
4 in the last -- he has his forgery four years ago, well
5 five years ago. That in the five years since then he
6 his NCIC does not show any other convictions.

7 He is 52 years old. Has slowed down. Health
8 issues. He lives in Rock Hill. He's always lived in
9 the Rock Hill, Ft. Lawn area. He was here with his
10 wife. His wife would have been here but she had to go
11 back to work. And Your Honor, that's all that we will
12 say on Mr. Artis' behalf.

13 We do respect the decision of the jury.

14 THE COURT: All right. Thank you.

15 Mr. Artis, I'll give you an opportunity to speak,
16 sir. You chose not to testify in your trial which is
17 certainly your right. If you have something you wish to
18 say with regard to your sentencing, I'll be glad to hear
19 from you.

20 MR. ARTIS: No, sir.

21 THE COURT: Very good. Just one moment. Please
22 you may be seated.

23 What type of time credit is Mr. Artis entitled to
24 or put another way, how long was he in jail before he
25 was bonded out?

1 MR. HALL: Your Honor, it looked to me like he was
2 only in jail overnight, before he bonded out. I'm
3 sorry. I can tell you exactly how long he was in.

4 Your Honor, it looks like he was arrested on the
5 4th and then he bonded out on the 8th of April, so he
6 spent four nights in jail.

7 THE COURT: I will give him the benefit of the
8 doubt and credit him for five days for some portions of
9 those days that he served.

10 Mr. Artis, you have been convicted by a jury of
11 your peers, sir, after a full trial in which you were
12 able to put up evidence if you wished and contest the
13 State's evidence. The evidence against you was clear.
14 It really was overwhelming although it was
15 circumstantial. The Court finds based on your lengthy
16 and chronic record for petit theft, burglary, and other
17 criminal charges that it is appropriate under the
18 circumstances to sentence you to seven years in the
19 department of corrections and that is the sentence I
20 oppose.

21 I'm going to give you five days credit against that
22 for the time you served when you were first arrested.
23 Sir, when you are released from prison I hope you will
24 discontinue a life of criminal activity and turn a new
25 leaf and come out and go straight. I challenge you to

1 that end and that is the decision of the court.

2 Now is there anything further with regard to the
3 State.

4 MS. HAMILTON: No.

5 THE COURT: And Mr. Artis?

6 And now from the defense?

7 MR. HALL: Your Honor, just for the purpose of the
8 record, we renew all our previous motions and ask that
9 that be part of the record.

10 THE COURT: Very good. I will deny your motions
11 that have previously been made and Mr. Artis I hope you
12 understand this is sad because it was an item that was
13 scrapped for \$26, but by that, all of this court
14 proceeding has revolved around you sir. You have
15 disrupted not only the lives of the victims, but
16 everyone involved in this process and you've done it on
17 a continual basis and that's why the Court sentences you
18 to seven years. I wish you well sir.

19 Good luck to you and I'm going to remand you now
20 for the detention center to transport you to the
21 department of corrections. That concludes this matter.
22 Anything further? Sir?

23 MR. ARTIS: Yes, sir, but just one thing I don't
24 understand, Like I was charged with receiving. All
25 right. They indicted me on a different charge.

1 THE COURT: Yes, sir.

2 MR. ARTIS: Okay. You dismissed the receiving.

3 THE COURT: I did.

4 MR. ARTIS: Okay. Shouldn't that all have went
5 together in the same charge?

6 THE COURT: No, sir. The receiving stolen goods
7 is different from stealing the goods. There was no
8 evidence that someone else stole it and gave it to you.
9 The State didn't produce any evidence of that so in your
10 favor in giving you a fair trial the Court dismissed
11 that charge and you went to the jury only on whether you
12 stole it and the jury found that you did and that's why
13 I sentenced you to seven years.

14 MR. ARTIS: Okay. But still, it seem like when the
15 other charge, it seemed like it should have been
16 combined with the same offense.

17 THE COURT: No sir. What started all this is when
18 you stole that Mr. Artis and rather than spend any
19 further time describing it to you, I'm going to let you
20 go with the department of corrections and give you a
21 chance to talk to your lawyer about it later.

22 Good luck to you sir.

23 All right. Again to our jurors, thank you for your
24 service in this case. Let me say this to you. Whether
25 you think the sentence was fair or harsh, or somewhere

1 in between, please understand the jury takes no
2 responsibility for the sentence that is imposed. You
3 are the judge of the the facts. You made the decision
4 on the facts. The Court who sadly does this day in and
5 day out has a better perspective then to ask the jury to
6 turn around and impose sentence as well. So I don't
7 want you to leave with some feeling that somehow you are
8 responsible for whatever happened here. You simply made
9 a valid and correct decision on the facts.

10 I thank you for that, and with that we'll conclude
11 this proceeding. This Court is adjourned.

12 (End of Transcript of Record)
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court 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
all the proceedings in the captioned case, in the Circuit Court
for York County, South Carolina, on the 17th day of Aril, 2012.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

July 2, 2012

Aileen Butler

York County General Session
RANDOM STRIKE SHEET

237

JUDGE NAME: Baxley, J. Michael

Sorted by: Random Nbr

TRIAL TYPE: Criminal

NEL ID: 4-16 CRT2

DESCRIPTION: 4-16 CRT2

Trial

NAME	REF NUMBER	JURY NUMBER	CHARGE	CHARGE	CHARGE	CHARGE	CHARGE	REMARKS
1 Macheski, Karin M	143	102464	() ()	() ()	() ()	() ()	() ()	1
2 Higdon, Matthew E	106	75546	() ()	() ()	() ()	() ()	() ()	2
3 Pontecorvo, Amy M	173	133816	() ()	() ()	() ()	() ()	() ()	
4 Myers, Jessica E	252	121441	() ()	() ()	() ()	() ()	() ()	
5 Kerns, Jack D JR	134	90883	() ()	() ()	() ()	() ()	() ()	
6 Nicholas, Angela L	163	123636	() ()	() ()	() ()	() ()	() ()	3
7 Smoak, Amy M	206	156539	() ()	() ()	() ()	() ()	() ()	4
8 Robinson, Dixie H	184	142489	() ()	() ()	() ()	() ()	() ()	5
9 Macphee, Therese F	144	102772	() ()	() ()	() ()	() ()	() ()	
10 Ramsey, Tiffany C	176	137526	() ()	() ()	() ()	() ()	() ()	
Bonner, Roberta L	20	16099	() ()	() ()	() ()	() ()	() ()	6
12 Bailey, Cameron W	11	6484	() ()	() ()	() ()	() ()	() ()	7
13 Olson, Jeremy L	166	125894	() ()	() ()	() ()	() ()	() ()	8
14 Roseboro, Akeem J	185	144592	() ()	() ()	() ()	() ()	() ()	9
5 Kramer, Kathleen A	138	93829	() ()	() ()	() ()	() ()	() ()	10
16 Tabak, Michael J	217	163427	() ()	() ()	() ()	() ()	() ()	
7 Ayers, Gregory S	8	6047	() ()	() ()	() ()	() ()	() ()	
8 Bumgardner, Alison M	29	23035	() ()	() ()	() ()	() ()	() ()	11
19 Rhode, Stephen M	181	140038	() ()	() ()	() ()	() ()	() ()	
0 Hinson, Gail S	109	76437	() ()	() ()	() ()	() ()	() ()	12
21 Jackson, Dana E	122	83638	() ()	() ()	() ()	() ()	() ()	13
2 Sanders, Marcus R	253	147042	() ()	() ()	() ()	() ()	() ()	
23 Holbert, Conrad A JR	112	77468	() ()	() ()	() ()	() ()	() ()	
Robinson, Betty J	183	142336	() ()	() ()	() ()	() ()	() ()	

238

York County General Session RANDOM STRIKE SHEET

JUDGE NAME: Baxley, J. Michael

Sorted by: Random Nb

IAL TYPE: Criminal

NEL ID: 4-16 CRT2

DESCRIPTION: 4-16 CRT2

Trial

NAME	REF NUMBER	JUROR NR	PLAINTIFF Chg St	DEFENDANT Chg St	Count	Remarks
25 Neal, Dee Ann	160	122026	() ()	() ()	()	
26 Garmon, Parks M JR	88	59510	() ()	() ()	()	
27 Myers, Christopher	159	121379	() ()	() ()	()	
28 Tate, Diana C	218	163893	() ()	() ()	()	
29 Rutherford, Mary M	186	146095	() ()	() ()	()	
30 Mitchell, Misty D	3	913	() ()	() ()	()	
31 Williamson, Wanda D	242	181525	() ()	() ()	()	
32 Edley, Kristyn S	69	49536	() ()	() ()	()	
33 Wilson, Jeanette J	243	177273	() ()	() ()	()	
34 Raymes, Eleanor V	179	138339	() ()	() ()	()	
Thomas, Diana S	222	165415	() ()	() ()	()	

Total Number of Jurors:

35

** END OF REPORT **

2014-CP-46-00278

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

2014 FEB -4 AM 10:10

COUNTY OF York

IN THE COURT OF COMMON PLEAS

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SCRobert T. Artis, S.C.D.C. # 189722

Full name and prison number (if any) of Applicant

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 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 Turbeville Corr. Inst. P.O. Box 252, Turbeville, S.C. 29142
2. Name and location of Court which imposed sentence York County Circuit Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-05-43-01098
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 17, 2012, Seven (7) years
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (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 "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina Supreme Court _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 8, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 246(d)(2), S.C.A.C.R. _____
- ii. _____
- iii. _____
9. If you answered "no" 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) Ineffective assistance of counsel (Trial)
- (b) Ineffective assistance of counsel (PCR)
- (c) Due Process of law
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) U.S.C.A. Const. Amend. VI
- (b) U.S.C.A. Const. Amend VI
- (c) U.S.C.A. Const. Amend XIV
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? See Pg. 8
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. See, Pg. 8
- ii. See, Pg. 105 - 10 thru 13
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. See, pg 8
- ii. See, Pg. 105 - 10 thru 13
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. See Pg. 8-9
- ii. See Pg. 105 - 10 thru 13
- iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

19. State clearly the relief you seek in filing this application:

Remand, New Trial, Release From Judgment

20. Are you now under sentence from any other court that you have not challenged?

None

STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, RTA, 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.

Robert Artis

SWORN to and subscribed before me this 28th
day of January, 2014

Emily Hulse (L.S.)
Notary Public

My Commission Expires: 4-27-2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RTA, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Robert Artis

Applicant

SWORN or affirmed to and subscribed before me this

27th day of January, 2014

Emil [Signature]
Notary Public

My Commission Expires: 4-27-2016

J014CP4600278

State of South Carolina
County of York

In the Court of Common Pleas

Robert T. Artis,
Applicant, SCDC #189722

v.

Amendment Application
to Post-Conviction Relief

State of South Carolina
Respondent,

FILED-RECEIVED
JAN 30 PM 1:46
DAVID HAMILTON
C.C.P. & S.
YORK COUNTY, S.C.

The Applicant was denied the right to effective assistance of Counsel guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Article I § 3 and 14th of the State of South Carolina, these rights were violated, by the action of the Constitution prior to and during trial and sentencing.

- (1) Trial Counsel's Performance during trial and sentencing was both unreasonable and prejudicial, see Strickland v. Washington 466 U.S. 688 (1984), Counsel's Acts or Omissions, included, but are not limited to the following
- (2) Counsel failed to seek a contemporaneous objection to any error of law by the use of S.C. Code § 16-1-57 to enhance Applicant's Sentence for "Petit Larceny" Under S.C. Code § 16-13-30(A) where the "Term imprisonment" is not contingent upon the value of the Goods Stolen.

(1)

Amendment Application

- (3) Counsel failed to adequately investigate the facts and circumstances surrounding the ownership of the alleged metal stolen from the victim, Pg 100. line (2) through (7) Counsel failure to investigate such claims deprived the jury of critical information, relevant to an accurate assessment of applicant's guilt or innocence.
- (4) Whether Counsel, properly investigated ownership "He would have found that, Samuel Strapping Not Only Moved From the Park Hill Location Prior to the alleged Incident, But never had a Contract with City Paint and Body shop. Owned. By the victim, and that Samuel Strapping Policy and Regulations, Does not allow for allow for the leaving of any unused Materials with Prospected Clients.
- (5) Counsel Failed to Object to the state's use of an alleged Prior, Forgery offense date, October 25 2006, Had Counsel properly investigated He would have found that applicant Not Only doesn't have a 2006, Forgery But has never been arrested for Forgery in 2006.

Amendment Application

- (6) The Applicant Asserts that Rule 609(B) is incorporated into S.C. Code § 16-1-57, therefore limiting the use of Prior Convictions Over ten (10) year old. Counsel should have objected to the state's use of any conviction's Prior to 2002. Under SC § 16-1-57.
- (7) Also Applicant was denied the Right to the Fifth and Fourteenth Amendment, Pursuant to Brady v. Maryland, 373 U.S. 83, 87 (1963), and the Rules 5 of the South Carolina Rules of Procedure.
- (8) On, March, 30, 2011, Officer Bailey Spoke with the Victim, James Fenning. Officer Bailey Filed an Incident Report of the statement Made to him by the Victim. Within that report, the Victim gave an account of how and who found the stolen items that was Completely Contrary to his trial testimony, (see attached Report of Officer, Dennis) Transcript Pg. 154, lines, 19-22,

Amendment Application

In the Original Report the Victim stated that
 an. alfonzo Mc Gray at Palmetto Recycling deter-
 mined the item was at his place of business and
 that. He alphonzo. checked the Computer system for
 the transaction account. This information an incident
 Report of Officer Bailey was not provided to applicant
 at his Counsel Prior to trial, as a Result denying the
 applicant or his Counsel. Trial Counsel went to Cross
 Examine the witness as directed by the defendant.

which the state witness was forced to be lying
 under Oath; see; Pg. 105. line 10-13, View Video tape at
 this time.

CLEAN ALUM	49	0.5500	26.95
SMALL SCALE SHREDDER STEEL	32	0.0800	2.56
Total Amount Paid			\$31.71
I have the lawful right to sell and dispose of the property listed below, and I am of legal age.			



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Robert T. Artis, #189722,

2014-CP-46-0278

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on February 4, 2014, the Respondent would show this Court:

I.

The Applicant is 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 March 22, 2012 term of the York County Grand Jury for Petit Larceny/Property Enhancement (2012-GS-46-1098). Dan Hall, Esquire, represented him. On April 17, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty of Petit Larceny, 3rd or subsequent offense. The Honorable J. Michael Baxley sentenced the Applicant to confinement for seven (7) years.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Artis. 2013-UP-491 (filed December 23, 2013). The Remittitur was issued on January 8, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel (Trial)"
2. "Ineffective Assistance of Counsel (PCR)"
3. "Due Process of Law"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the trial transcripts. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine

confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

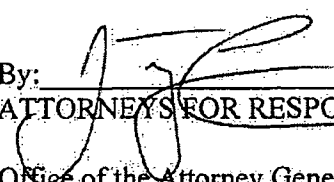
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 

ATTORNEY FOR RESPONDENT

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May 22, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2014-CP-46-0278

ROBERT T. ARTIS, #189722)

Applicant,)

vs.)

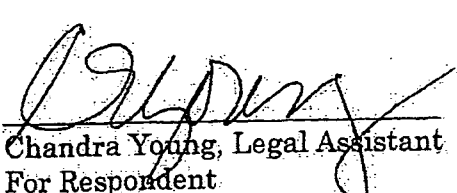
AFFIDAVIT OF SERVICE BY MAIL

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:

Leah B. Moody, Esquire
 235 East Main Street, Suite 115
 Rock Hill, SC 29730

DATED this 22ND day of May, 2014.

 Chandra Young, Legal Assistant
 For Respondent

1 State of South Carolina Court of Common Pleas
2 County of York Sixteenth Judicial Circuit
3

4 Robert T. Artis,) Transcript of Record
5 Applicant,) 2014-CP-46-278
6 vs.)
7 The State of South Carolina,)
8 Respondent.)

9
10 August 5, 2014
York, South Carolina

11
12 B E F O R E:

13 The Honorable J. Ernest Kinard, Judge

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

15 Leah B. Moody, Esquire
Attorney for the Applicant

16 J. Rutledge Johnson, Esquire
17 Attorney for the State of South Carolina

18

19

20 STACY S. JOHNSON
CIRCUIT COURT REPORTER

21

22

23

24

25

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E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>

NO EXHIBITS WERE INTRODUCED

P R O C E E D I N G S

MR. JOHNSON: May it please the Court, Your Honor?

THE COURT: Okay.

MR. JOHNSON: This is the case of Robert Artis versus the State of South Carolina. It's Case Number 2014-CP-46-0278. Mr. Artis was indicted in the March 2012 term of the York County Grand Jury for petit larceny, property enhancement and also for receiving stolen goods, third or subsequent, less than \$2,000. He was represented by Dan Hall. On April 17, 2012, he proceeded to a jury trial pursuant to which he was found guilty of petit larceny, third or subsequent offense. The receiving stolen goods was dismissed as a result of directed verdict. The Honorable J. Michael Baxley sentenced him to seven years. A Notice of Appeal was filed on his behalf. An appeal was perfected. The Court of Appeals affirmed his conviction and sentence. The remitter was thereafter issued on January 8, 2014. Mr. Artis filed this PCR application February 4, 2014, and the State filed its return May 22, 2014, and he is represented here today by Ms. Leah Moody.

MS. MOODY: Thank you, Your Honor. May it please the Court? Mr. Artis would like to go forward on his PCR. He has alleged ineffective assistance of counsel. One specific ground is his counsel failed to review his

Robert T. Artis - Direct by Ms. Moody

1 prior objections -- or renew his prior objections as
2 well as review his prior record. He also alleges due
3 process of the law. I think on his application it has
4 ineffective assistance of counsel PCR. We would like
5 to have that stricken. I think that was put on that
6 in error.

7 **THE COURT:** All right.

8 **MS. MOODY:** At this time, I'd like to call Mr. Artis
9 to the stand.

10 **THE COURT:** Okay, Mr. Artis.

11 ROBERT T. ARTIS,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. MOODY:

15 Q. Mr. Artis, could you, please, state your full name
16 for the record?

17 A. Robert T. Artis.

18 Q. And where are you currently living?

19 A. [REDACTED].

20 Q. And that's --

21 A. You mean where I'm incarcerated?

22 Q. Yes, sir.

23 A. Manning Correctional Institute.

24 Q. Okay. And you are in Manning Correctional Institute
25 for what charges?

1 A. Petit larceny.

2 Q. And those charges -- who represented you in that
3 case?

4 A. Mr. Hall.

5 Q. Mr. Dan Hall?

6 A. Dan Hall.

7 Q. And you went forward on this case in a trial?

8 A. That's right.

9 Q. And you filed your PCR application for ineffective
10 assistance of counsel, correct?

11 A. That's correct.

12 Q. Could you, please, state to the Court your grounds
13 for PCR.

14 A. Okay. One of the issues is about a -- a 2006
15 forgery and the other issue's concerning the video and
16 the other issue's concerning the witness.

17 Q. Okay. Well, if we can put it as you have it listed
18 with your application, you indicated that your trial
19 counsel's performance during trial was unreasonable and
20 prejudicial?

21 A. That's correct.

22 Q. Okay. And how was it unreasonable and prejudicial?

23 A. Excuse me?

24 Q. How was it unreasonable and prejudicial?

25 A. Because he could have done a better job than what

Robert T. Artis - Direct by Ms. Moody

1 he did.

2 Q. And what do you mean by that? Tell the Court what
3 you mean by that.

4 A. He didn't do a thorough investigation.

5 Q. And what kind of investigation did you expect for
6 him to perform?

7 A. On the record -- on the record there's charges I
8 don't have that was indicated.

9 Q. And what are those charges?

10 A. A 2006 forgery.

11 Q. And is that the only charge?

12 A. Right. It's not on the record period.

13 Q. Okay. When you say it's not on the record, you're
14 meaning on your prior record?

15 A. Right. It's not on the prior record.

16 Q. Okay. You don't have a prior forgery?

17 A. For 2006.

18 Q. For 2006. Okay. And you're indicating to the Court
19 that your attorney didn't look into that?

20 A. Right, because if he had of, it would have showed
21 that I wouldn't have had two -- I have nothing but
22 two priors under a ten-year period. It's like this
23 amendment bill states that you ain't supposed to go
24 back more than ten years.

25 Q. And when you say they're not supposed to go back

1 more than ten years, you're suggesting that the State
2 is limited to bringing up your priors within a ten-year
3 period of time --

4 A. Right.

5 Q. -- or the Court should not allow anything beyond
6 ten years?

7 A. They should not allow -- basically it states
8 anything over ten years they should not have brought up.

9 Q. Okay. Now at what point was this brought up, your
10 prior record?

11 A. During trial.

12 Q. How was it brought up?

13 A. Because the judge asked them what was the -- what
14 was the State going to proceed on.

15 Q. Okay.

16 A. And so she called out the charges -- charges from
17 '91, I think '93 and '94, and a 2003, 2007 and 2006.

18 Q. And when you're referring to this, you're referring
19 to pre-trial motions that the Court was entertaining at
20 that time?

21 A. Right.

22 Q. And when the State mentioned your prior record, she
23 alluded to different charges that they intended to use
24 to impeach you?

25 A. Right.

Robert T. Artis - Direct by Ms. Moody

1 Q. And those charges you're referring to are on Page 3
2 in the transcript? Did I say Page 3? Page 9. Have you
3 reached Page 9? Well, just for the sake of time, if I
4 may, Your Honor, the day of your trial Ms. Hamilton was
5 the prosecutor, correct?

6 A. Correct.

7 Q. Okay. And she indicated that there were charges
8 that you had on your record, one, being a January 14,
9 1994, receiving stolen goods in Chester County?

10 A. Right.

11 Q. Okay. And then there was something from Lancaster
12 County then from 1991, a shoplifting?

13 A. Right.

14 Q. And -- or another receiving stolen goods in 1991, a
15 petit larceny in 2003?

16 A. Correct.

17 Q. And the forgery that you're speaking of is a forgery
18 from 2007?

19 A. Right.

20 Q. Okay. And then she also mentioned a receiving
21 stolen goods, correct?

22 A. Correct.

23 Q. Okay. So your attorney didn't investigate to
24 determine whether or not you actually had those charges?

25 A. Correct.

1 Q. And based on that, you felt that that was
2 unreasonable?

3 A. Correct.

4 Q. Now one of the other issues that you alluded
5 to in your application is counsel failed to seek
6 contemporaneous objections to an error of law by the
7 use of South Carolina Code Section 16-1-57.

8 A. Correct.

9 Q. Can you explain to the Court what you mean by that?

10 A. That's the amendment bill --

11 Q. Okay.

12 A. -- that the State can't go back more than ten years
13 on the records.

14 Q. Okay. And so that addresses that issue?

15 A. Right.

16 Q. Okay. Is there anything else with regard to that
17 issue that you felt your attorney did not do?

18 A. The video.

19 Q. Okay. Well, I'm coming to that.

20 A. Okay.

21 Q. Another allegation that you have is your counsel
22 failed to adequately investigate the facts and
23 circumstances surrounding the ownership of the alleged
24 metal stolen in this case.

25 A. Correct.

Robert T. Artis - Direct by Ms. Moody

1 Q. What investigation was he supposed to do?

2 A. To determine to see did the witness own that piece
3 of metal.

4 Q. Okay. And how was he supposed to do that?

5 A. Because in the -- in the script he stated that he
6 got it from -- from the business owner.

7 Q. Okay. And that business owner being who?

8 A. Mr. Shaver.

9 Q. Okay.

10 A. The State never -- my attorney never got anything
11 from the company in writing saying that he owned that
12 property and the State never did.

13 Q. Okay. So -- and let's be clear on this. You got
14 charged with -- your conviction is for petit larceny,
15 but you also were charged with receiving stolen goods?

16 A. Right. That's the one that was dismissed.

17 Q. Okay. So at -- but during the trial you all had to
18 go through the State proving petit larceny or -- and/or
19 receiving stolen goods?

20 A. Correct.

21 Q. Okay. And you couldn't be convicted of both?

22 A. Right.

23 Q. Okay. So when you're talking about the ownership
24 issue, you're speaking of they did not verify that the
25 owner -- or Mr. Fanning in this case, he didn't own the

1 metal that you were accused of stealing?

2 A. Right.

3 Q. And you wanted your attorney to find out more
4 information?

5 A. Right, right.

6 Q. What else did you want your attorney to find out?

7 A. To see did he actually own that property, but in
8 the script he's saying he probably picked it up.

9 Q. Well, you saying the script. Do you mean the
10 transcript?

11 A. Yes, ma'am.

12 Q. Okay. So in the transcript they keep saying --

13 A. He probably picked it up. He don't know.

14 Q. The victim?

15 A. Right.

16 Q. Okay. What, if anything, did you discuss with your
17 attorney regarding the ownership of this metal?

18 A. Basically that was all.

19 Q. When you say basically that's all, did you ask him
20 to go find out the ownership?

21 A. Right, right, right, right. I asked him to do an
22 investigation. I asked him could he get a court order
23 to seek the information from this company.

24 Q. From the company?

25 A. Yes, ma'am.

1 Q. And what happened along those lines?

2 A. Nothing. I haven't heard anything.

3 Q. Okay. And was this before the trial?

4 A. Yes, ma'am.

5 Q. Okay. Now you indicated that there was a video.

6 Can you tell the Court what the problem was with the

7 video?

8 A. Okay. It's on -- in this video, when it was
9 shown -- when it was shown, the witness stated -- he
10 stated -- he stated that by looking at the video he saw
11 the car when it first pulled up, he seen me get out the
12 car, he said he seen me go to the trunk of the car, he
13 said he seen me get the metal out of the trunk of the
14 car and put it on the scale, but the video does not show
15 that. It just only shows me standing there at the
16 scale.

17 Q. And when you say the witness, you're talking about
18 Mr. Fanning?

19 A. That's right.

20 Q. Okay. And Mr. Fanning testified that he saw you
21 pull up in the car?

22 A. Right.

23 Q. Okay. And so what didn't your attorney do -- I
24 mean, you just testified. What did you want your
25 attorney to do?

1 A. I asked my -- I advised my attorney that the
2 witness just had made a false statement while under
3 oath and I asked him to cross-examine him. He told
4 me to be quiet. I said this man just made a false
5 statement under oath.

6 Q. But your attorney did cross-examine the witness.

7 A. No, sir -- no, ma'am.

8 Q. From the transcript, your attorney did not
9 cross-examine the witness?

10 A. Not when -- when I told him he had -- he had found
11 him for committing the act of perjury under oath.

12 Q. So let me understand. You're saying -- or you
13 agree your attorney did cross-examine the witness?

14 A. Not the allegation I tried to get him to --

15 Q. Slow down for me. Your attorney cross-examined the
16 witness?

17 A. Right.

18 Q. Not specifically -- I'm not talking about the
19 specific things. He did cross-examine the witness?

20 A. Yeah, right, he cross-examined the witness.

21 Q. But he did not cross-examine the witness on the
22 specific issue of the video?

23 A. Right, right.

24 Q. Okay. And what did you tell your attorney you
25 wanted him to ask that -- or cross-examine that witness

1 on?

2 A. Well, I told him I feel like he should have
3 cross-examined because he just -- he just committed
4 an act. He was sworn in under oath.

5 Q. I'm trying to get you to tell the Court what did
6 you want him to say.

7 A. I wanted him to advise that to the Court; that he
8 had just committed perjury.

9 Q. So you wanted your attorney to tell the Court that
10 the witness committed perjury?

11 A. Yeah, perjury while under oath.

12 Q. Did you not want your attorney to ask that -- this
13 victim about the video?

14 A. Yes, ma'am.

15 Q. Okay. Did your attorney ask that victim about the
16 video?

17 A. No, ma'am.

18 Q. Okay. So you felt he could have done a -- he could
19 have asked about that a little bit more in depth or
20 period?

21 A. Right.

22 Q. Okay. Is there anything else that relates to that
23 video?

24 A. No, ma'am.

25 Q. You have also -- you wanted your attorney -- I

1 believe we might have already discussed this, and you
2 said Sam Strapping --

3 A. Yeah, right. We discussed that.

4 Q. And then you're -- we've already talked about your
5 priors. Is there anything else your attorney didn't do
6 that you felt he should have done with regard to Officer
7 Bailey?

8 A. I feel like he could have -- should have called
9 those for witnesses.

10 Q. And when you say those, there are more than one?

11 A. Right, in an additional report.

12 Q. Okay. So who were those witnesses?

13 A. Alfonso McCroy and Officer Bailey.

14 Q. Okay. And what would Alfonso testify to?

15 A. He'd testify that --

16 **MR. JOHNSON:** Objection to hearsay, Your Honor.

17 **THE COURT:** Yeah, you can't do it. He needs to
18 call them.

19 **MS. MOODY:** You're right.

20 BY MS. MOODY:

21 Q. Who was Alfonso?

22 A. He was an employee at the Sam -- at Palmetto
23 Recycling Center.

24 Q. What contact did you have with Alfonso?

25 A. I didn't have no contact. He's the one that say he

1 never seen the piece.

2 Q. Well, did you ever meet -- you went into the
3 location, correct?

4 A. Correct.

5 Q. Okay. Did you ever meet Alfonso?

6 A. Correct.

7 Q. Okay. And so he saw you in the place?

8 A. Right.

9 Q. Okay. And the witness that they had testify, who
10 was that that testified on behalf of that business?

11 A. Mr. Fanning.

12 Q. Mr. Fanning. And did you ever come in contact with
13 Mr. Fanning?

14 A. No, ma'am.

15 Q. Okay. When you talked to your attorney about
16 this Alfonso, did your attorney attempt to subpoena
17 Mr. Alfonso?

18 A. No, ma'am.

19 Q. Did you know where Mr. Alfonso was?

20 A. I just know where he worked.

21 Q. And what, if anything, did your attorney do with
22 regard to getting in contact with Mr. Alfonso?

23 A. He didn't do anything.

24 Q. Now there was another witness that you wanted to
25 have presented at trial. Who was that?

1 A. Officer Bailey.

2 Q. Okay. And what was -- what was your purpose of
3 having him there?

4 A. Because he was the initial officer.

5 Q. He was the initial officer in what regard?

6 A. That did the initial report.

7 Q. Okay. And he was not present?

8 A. Right.

9 Q. Was there any other witness that you wanted to be
10 present that your attorney didn't have come forward?

11 A. No, ma'am.

12 Q. Who was Ms. Massey?

13 A. She was my landlord.

14 Q. Okay. And with regard to Ms. Massey, would
15 Ms. Massey have been able to help you in your case?

16 A. Possibly.

17 Q. How so?

18 A. Because when we first moved in the apartment, she
19 had advised us that Mr. Fanning, everybody --

20 **MR. JOHNSON:** That's hearsay, Your Honor.

21 **THE COURT:** Yeah.

22 BY MS. MOODY:

23 Q. You can't say what Ms. Massey said. I'm asking you
24 what did you want Ms. Massey to present on your behalf?

25 A. She could stated things were already getting stolen

1 before we even moved in there.

2 MR. JOHNSON: Objection to strike that from the
3 record. That calls for hearsay.

4 THE COURT: Yeah, I'm not listening to that. He
5 doesn't understand what he can testify to and can't
6 testify to.

7 BY MS. MOODY:

8 Q. So in terms of preparing for your trial with your
9 attorney, what, if any, preparation did you have with
10 your attorney?

11 A. I don't understand.

12 Q. How did you all prepare for your trial?

13 A. Just calling the jury.

14 Q. Before you all went before the jury, did you meet
15 with your attorney?

16 A. Yeah, a couple of days earlier to look at the video.

17 Q. Okay. Did you all do any other preparation?

18 A. No, ma'am.

19 Q. Now you indicated that -- well, in your PCR
20 application you're saying your attorney was ineffective.
21 How have you been prejudiced by your attorney's
22 ineffective assistance?

23 A. By not calling witnesses.

24 Q. How have you been prejudiced? How has it harmed
25 you?

1 A. It caused me to get incarcerated.

2 Q. Okay. And what was your sentence?

3 A. Seven years.

4 Q. Okay. And what relief are you seeking from the
5 Court here today?

6 A. Vacate the sentence and -- vacate it and re-sentence
7 me.

8 Q. Vacate and -- you understand that this Court
9 can't re-sentence you. They can find your attorney
10 ineffective assistance of counsel, but they can't --
11 you start all over again.

12 A. (Nods head.)

13 Q. So what relief are you asking from the Court?

14 A. To start all over again.

15 Q. And so that means you would go back to a trial or
16 entertain a plea?

17 A. Right, or time served.

18 Q. Is there anything else you'd like to tell the Court?

19 A. No, ma'am.

20 **MS. MOODY:** No further questions for this witness.

21 **THE COURT:** Okay.

22 **MR. JOHNSON:** Briefly.

23 CROSS-EXAMINATION

24 BY MR. JOHNSON:

25 Q. Mr. Artis, I think counsel was trying to explain

1 that if you go back to the beginning the State can try
2 you and you can receive ten years. Do you understand
3 that?

4 A. Yes, sir.

5 Q. The prosecutor back here doesn't have to give you
6 any plea offer whatsoever. She can try you again and
7 if they find you guilty, the judge could give you ten
8 years.

9 A. I was never offered a plea bargain from the start.

10 Q. But I'm saying they don't have to vacate, they don't
11 have to give you time served, they can try you again and
12 you could get ten years. You understand that?

13 A. Yes, sir.

14 Q. Okay. One of the first allegations is that the
15 Solicitor should not have brought up your prior record
16 at the beginning of this trial; is that correct?

17 A. Correct.

18 Q. Okay. Do you realize that why she did that was to
19 prove that the circuit court had jurisdiction over the
20 case?

21 A. Okay.

22 Q. Okay. And so that she was showing that you had
23 many prior offenses so that the circuit court could
24 actually hear the case, correct?

25 A. Correct.

1 Q. Okay. You also state that Mr. Hall did not
2 investigate the ownership of the piece of metal?

3 A. Correct.

4 Q. Okay. And that he should have gotten a report as
5 to the ownership of the metal?

6 A. Correct.

7 Q. Have you brought anything here to show the ownership
8 of that piece of metal?

9 A. The only thing I have is my scrap yard receipt.

10 Q. You have the scrap yard receipt where you turned it
11 in --

12 A. Right.

13 Q. -- and got \$25?

14 A. Right.

15 Q. Okay. But at trial Mr. Fanning states that he
16 owned the piece of metal and you took it and turned it
17 in, correct?

18 A. Correct. That's what he stated.

19 Q. Okay. But besides that receipt, you have no other
20 proof that you actually owned the piece of metal that
21 you turned in, correct?

22 A. Correct.

23 Q. Okay. You also state that Mr. Hall should have
24 called witnesses on your behalf at trial, correct?

25 A. Correct.

1 Q. Have you brought any of those witnesses here to
2 testify on your behalf today?

3 A. No, I have not.

4 MR. JOHNSON: Okay. That's all the questions I
5 have, Your Honor.

6 THE COURT: All right.

7 REDIRECT EXAMINATION

8 BY MS. MOODY:

9 Q. Mr. Artis, do you know where Mr. Alfonso is?

10 A. No, ma'am.

11 Q. And at the time that you went to trial, he was
12 working at Mr. Fanning's location -- excuse me, he was
13 working at the scrap yard?

14 A. Yes, ma'am.

15 Q. And you indicated to your attorney that that's where
16 Mr. Alfonso was?

17 A. Right.

18 Q. And at the time of your trial, were you still
19 renting from the Masseys?

20 A. No, ma'am.

21 Q. Well, you -- you knew where they were at that time?

22 A. Know where who were?

23 Q. The Masseys.

24 A. The Masseys, yes, ma'am.

25 Q. And as far as Officer Bailey was concerned, you

1 wanted your attorney to have him come because he was the
2 original officer?

3 A. Right. Correct.

4 **MS. MOODY:** All right. No further questions of
5 this witness.

6 **THE COURT:** You can step down.

7 (Witness excused.)

8 **MS. MOODY:** No further witnesses, Your Honor.

9 **MR. JOHNSON:** The State calls Dan Hall to the stand.

10 **THE COURT:** All right.

11 DANIEL D. HALL,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q. Good afternoon, Mr. Hall. Can you, please, tell
16 the Court how you became involved in this case?

17 A. I was appointed by the Court on November 14, 2011,
18 to represent Mr. Artis. I work in the Public Defender's
19 office.

20 Q. And how long have you been practicing criminal law?

21 A. Since 1988.

22 Q. And did you file discovery in this case?

23 A. I did.

24 Q. And did you review that discovery with Mr. Artis?

25 A. I did.

Daniel D. Hall - Direct by Mr. Johnson

1 Q. And what all did that discovery contain?

2 A. There was some documentation where he had taken a
3 piece of scrap metal or a piece of metal aluminum to a
4 recycling yard and there was a video of him allegedly
5 bringing the scrap metal there and then receiving
6 payment for it.

7 Q. And did you actually view the video?

8 A. I did.

9 Q. Did you recognize Mr. Artis on that video?

10 A. I did.

11 Q. And you reviewed it with Mr. Artis?

12 A. I did.

13 Q. Did he ever claim that was not him?

14 A. No.

15 Q. Okay. And what was your trial strategy in this
16 case?

17 A. Because it appeared to be clear that he was there
18 with a piece of aluminum metal that seemed to be readily
19 identified, it was sort of unique, it was a square piece
20 of aluminum with green on one side of it, and that's
21 what the victim had alleged had been taken, and so the
22 strategy was that Mr. Artis lived beside this business
23 where the -- it's a body shop business where the scrap
24 metal had been taken. There was a trailer park
25 neighborhood that was right behind it and part of

1 strategy was that -- or the defense was that the State
2 would not be able to prove beyond a reasonable doubt
3 his involvement because there were lots of other people
4 who had -- that may or may not have had access to that
5 piece of metal, it was located outside the building,
6 and we believed that they -- the argument was that the
7 State had failed to prove beyond a reasonable doubt
8 Mr. Artis's guilt.

9 Q. And the State brought two charges in this case;
10 one, receiving stolen goods and the other being petit
11 larceny. What motion did you make pre-trial concerning
12 those two charges?

13 A. I moved -- the motion was that -- to require the
14 State to elect which one to go forward on; that it
15 appeared that the case law would not allow both of those
16 to go to the jury. The judge ruled against me on that,
17 but he did -- he was gonna allow that to go -- be
18 presented -- the State to present that to the jury. I
19 also argued that it would be prejudicial to have both
20 of those go to the jury. The judge denied that motion.
21 He did direct a verdict on one of the charges, the
22 receiving stolen goods, and allowed the petit larceny
23 to go to the jury.

24 Q. And did you review Mr. Artis's prior record in this
25 case?

1 A. I did.

2 Q. And did you make a motion to keep this case in
3 magistrate court?

4 A. I did. Not based on his prior record. His prior
5 record -- I had been given certified -- at least
6 certified copies of two prior records; one, the forgery
7 was a certified copy from a General Sessions case in
8 2007, and the other was a certified conviction in
9 General Sessions on a receiving stolen goods in 1994.
10 He had indicated that he thought that they shouldn't
11 have been able to go forward because they were more
12 than ten years old. That's not the law. I did make an
13 argument that because it was a petit larceny and that
14 was in the -- petit larcenies are in the conclusive
15 jurisdiction of the summary court that it was not the
16 intent of the Legislature for petit larcenies to be
17 brought to General Sessions; that -- I argued that the
18 language of the enhancement statute was meant to include
19 any charge that was a General Sessions offense like
20 grand larceny, which carries up to five years, that the
21 enhancement statute applies simply to those where the
22 Court would be able to give like a ten year sentence on
23 a charge that was clearly in General Sessions, but I was
24 denied that motion as well.

25 **THE COURT:** Judge Baxley took longer to deny that

1 than I would have. He let you go on and on on that.

2 BY MR. JOHNSON:

3 Q. Another accusation Mr. Artis brings is that you did
4 not investigate the ownership of the piece of metal.
5 What, if any, investigation did you do involving that
6 piece of metal?

7 A. I tried to find the owner of Samuel Strapping.
8 I went out to the business that had an address on
9 Celriver Road. It was closed. I tried to locate the
10 -- the person who was listed on the incident report or
11 through discovery learned that a Jeff Shaver was the
12 person who managed or ran Samuel Strapping. I had an
13 address in Rock Hill and a phone number. In fact, I
14 ended up getting three phone numbers. I was unable to
15 locate him. I did try to locate someone with a similar
16 name, a Jeff Shaver in Mount Holly, North Carolina, but
17 was unable to locate him as well. I -- I tried to find
18 -- the business was closed, it had been closed. I made
19 an effort to locate this Jeff Shaver and never could
20 find him.

21 Q. And he also states that you failed to track down
22 other witnesses including an Alfonso, Officer Bailey and
23 a Ms. Massey. Did you try to track those witnesses
24 down?

25 A. Mr. Alfonso, I think that's not his last name. He

1 was not working -- Alfonso McCroy. He had worked at
2 Palmetto Recycling. He was obviously working there the
3 day Mr. Artis brought the piece of metal, but he had
4 been fired from working there, and then what I'd been
5 informed by talking with Mr. Taylor at Palmetto
6 Recycling in preparation for trial, that Mr. McCroy --
7 they had brought a suit against him. In fact, I also
8 learned that Mr. McCroy had a pending criminal charge
9 resulting on some of his activity at the recycling, so
10 I decided that in a trial strategy that Mr. McCroy
11 would not likely be a very good witness if I was able
12 to locate him.

13 Q. How about Officer Bailey?

14 A. Officer Bailey was merely the investigating officer.
15 As a trial strategy, I have -- my experiences has been
16 the defense calling uniformed police officers in
17 criminal cases is generally not in the defendant's best
18 interest to try to elicit favorable testimony from a
19 uniformed police officer in a criminal case.

20 Q. And then a Ms. Massey?

21 A. Ms. Massey -- I believe Ms. Massey, I think, was --
22 the owner of the body shop, that was his sister, who had
23 an interest in the house that Mr. -- in fact, I think
24 that's who Mr. Artis was renting from. She and the
25 owner -- well, actually I think she was a sister-in-law

1 of the owner of the body shop. They had -- I did talk
2 to her. She did not have much favorable to say about
3 the owner, her brother-in-law, but she, likewise, didn't
4 have anything favorable to say about my client and I
5 determined that it was not in his best interest to call
6 her as a witness as well.

7 Q. So you did, in fact, do more prep work than just
8 looking at the video itself?

9 A. Yes.

10 **MR. JOHNSON:** Okay. That's all the questions I
11 have at this time, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MOODY:

14 Q. Mr. Hall, as relates to the forgery, I believe you
15 said you received certified copies on the forgery for
16 2007?

17 A. Yes.

18 Q. Okay. And during the trial, how many charges --
19 prior charges were going to be used against Mr. Artis?

20 A. Nothing was used in trial. They were -- they
21 were presented as evidence for the foundation of the
22 jurisdiction of the Court in pre-trial outside the
23 presence of the jury and then the jury did not hear any
24 of that. The Court was made aware of those charges at
25 the conclusion of the trial when we came to sentencing.

1 Q. So if he had testified, which we know he didn't
2 testify, had -- did you receive or go over -- I
3 shouldn't say receive, did you go over his prior
4 convictions with Mr. Artis?

5 A. I did.

6 Q. And so that's based off of the certified copies that
7 you received?

8 A. And his NCIC.

9 Q. Yes, sir. So what was stated in the record in
10 terms of on Page 9 where Ms. Hamilton refers to a
11 forgery under \$5,000 that was in Chester, South Carolina
12 on October 25, 2006, is that the 2007 forgery?

13 A. I'm looking at what was provided to me, the
14 certified copy from Chester County. Yes, the date of
15 the offence on the forgery that he was sentenced was
16 -- the date of the offense was October 25, 2006, and he
17 was sentenced on January 10, 2007.

18 Q. Okay. And then as far as the -- there's another
19 charge from Chester County. Did you have that charge?

20 A. The other certified copy, yes, was a receiving
21 stolen goods. It was in January of 1994.

22 Q. Were there any other certified copies you were
23 given?

24 A. That's the only certified copies I had, but, again,
25 I had his NCIC.

1 Q. And so did you have an opportunity to discuss the
2 NCIC with Mr. Artis specifically?

3 A. It's my practice to go over their record when I
4 meet with them. I do not have any notes to that effect.

5 Q. Now as to this ownership of this metal, you
6 mentioned looking for the Strapping -- I guess that's
7 how you say it, the Strapping company?

8 A. Samuel Strapping.

9 Q. And that's on Celriver?

10 A. At some point it was located at 640 Celriver Road.

11 Q. Now how did you come across that information? How
12 did you get the address? Did you --

13 A. I had to -- that was not included in the discovery.
14 At some point I had learned that it had come from Samuel
15 -- or Samuel Strapping. I was able to locate through
16 searching businesses in Rock Hill that Samuel Strapping
17 was located at 640 Celriver Road.

18 Q. Is this the same Samuel Strapping that's a national
19 company?

20 A. That's my understanding; that it was -- yeah, it
21 was not just a local business, but it was some type of
22 national company, yes.

23 Q. And was there one located in Fort Mill?

24 A. I don't know.

25 Q. So when you pulled it up, you did your search, the

1 only thing that came up in your search was Rock Hill?

2 A. Yeah, and I drove out there to where the business
3 was. There was still a -- I think there was still a
4 sign up there that said Samuel Strapping, but it was
5 closed. It was clearly out of business.

6 Q. Did you have an opportunity to discuss that with
7 Mr. Artis?

8 A. I had an opportunity -- I don't have any notes that
9 I did -- whether I did or not, I don't have any notes to
10 that.

11 Q. So during the trial, during this whole time, do you
12 recall what Mr. -- I understand that you were trying to
13 go through the trial and discuss the jurisdictional
14 issue, you put that on the record, you all discussed his
15 prior record. At any point during the trial did you all
16 have a disagreement as to how to question the witnesses
17 or what to ask the witnesses?

18 A. I -- I don't remember a specific time. It's not
19 uncommon at trial to have a client to sometimes ask
20 you to do stuff and you just don't -- you know, you
21 determine it's not in his best interest to do that. I
22 don't -- I don't recall that.

23 Q. Now as to Mr. Fanning and his recitation of the
24 facts, that he saw Mr. Artis drive up, can you tell us
25 why or how you chose to deal with that situation of his

1 not knowing truly who the ownership of that metal was
2 to?

3 A. Now, Mr. Fanning was the owner of the -- of the body
4 shop.

5 Q. Right. I'm sorry. I keep saying Mr. Fanning.

6 A. Mr. Taylor was the owner of Palmetto Recycling. He
7 didn't -- yeah, he didn't. He just had the video. He
8 came to trial and laid the basis for the introduction of
9 the video. He did not know Mr. Artis or the metal. In
10 fact, the metal wasn't at trial. It had been buried
11 under a stack of -- a pile of metal and never was seen
12 again.

13 Q. So did you make any argument with the State
14 regarding where was the location of that metal?

15 A. Absolutely I did, I think, in closing arguments,
16 you know, they didn't have the metal. They had a
17 picture, but, you know, no metal.

18 Q. And did you discuss that with your client to
19 explain to him?

20 A. He and I knew -- yeah, he and I knew that there
21 was no metal. Every time we met, I mean, there was
22 never any -- the metal was never present. That was
23 always certainly a part of an argument as the weakness
24 of the State's case is they don't even have any
25 evidence. Obviously that's an argument the jury has

1 to decide, but they did have the picture of -- of the
2 metal he brought.

3 Q. So like going into the trial and throughout the
4 trial, did you -- I mean, you discussed obviously the
5 case with your client, but did you talk about the
6 weaknesses with your client?

7 A. Yes.

8 Q. And did he seem to understand those weaknesses?

9 A. I assume -- to be honest with you, he's had a lot
10 of experience with the criminal system. I assumed he
11 understood a lot. Now he didn't understand things like
12 prior record more than ten years, and I explained that,
13 and he never -- or he never -- whether he didn't
14 understand it or whether he didn't want to understand
15 it, but as far as the strengths and the weaknesses of
16 his case, we went over those and we had a long, detailed
17 -- many discussions, several discussions, about his
18 right to testify and right to remain silent, and he
19 understood that clearly and exercised his right not to
20 testify at trial.

21 **MS. MOODY:** I beg the Court's indulgence. No
22 further questions for this witness. Thank you.

23 **MR. JOHNSON:** No redirect.

24 **THE COURT:** All right. You can step down.

25 (Witness excused.)

1 **MR. JOHNSON:** The State has no further witnesses.

2 **THE COURT:** All right. Ms. Moody, I don't
3 understand a couple of things. One, they had certified
4 copies of at least two prior property crimes within ten
5 years. Even if he was correct, which I said he's not,
6 so what's his complaint about that?

7 **MS. MOODY:** Based -- as I understand it from him
8 presenting it, he stated that the State incorrectly
9 commented, I guess that's the only way to say it, she
10 said the same charge -- she said he had a conviction of
11 2007 and then she came back and said 2006, so he thinks
12 that she used that --

13 **THE COURT:** I read that, but obviously it happened
14 in '06 and '07, but he still had --

15 **MS. MOODY:** Two priors.

16 **THE COURT:** -- two priors, certified copies, put
17 in, so that fails. And then about not cross-examining
18 Fanning, I mean, he cross-examined him a good bit, but
19 Fanning -- I wasn't there, but it sounds like he's a
20 pretty forceful witness. When they said how do you know
21 the Defendant, he said I've seen him every day for six
22 years and he's the one unloading the stuff and that's
23 the lid that's got this green stuff on it. And actually
24 an attorney can't say -- unless he's got some prior
25 inconsistent statement, he can't say are you lying

1 today? You just can't ask that and that's the only way
2 he could have asked that. He was questioned pretty
3 thoroughly.

4 **MS. MOODY:** I think that's where Mr. Artis wanted
5 him to --

6 **THE COURT:** He wanted him to ask him --

7 **MS. MOODY:** Well, he wanted him to say it was -- he
8 said perjury.

9 **THE COURT:** I know, but you can't ask him that
10 because he's sworn to tell truth. You can point out
11 inconsistencies, but that's not much there. What else
12 did he have that I don't know about?

13 **MS. MOODY:** Well, he talked about the video.

14 **THE COURT:** Well, I can understand that, but that's
15 backed up by Fanning's testimony. Taylor brought it,
16 Fanning identified it and said he'd seen him every day
17 for six months. It's pretty hard to challenge that
18 identification.

19 **MS. MOODY:** Yes. And then he talked about Samuel
20 Strapping, finding out that there wasn't a Samuel
21 Strapping -- well, on that day --

22 **THE COURT:** Well, not -- not calling the witnesses.
23 I mean, the witnesses aren't here and he can't testify
24 to what they could have said, but --

25 **MS. MOODY:** Well, no, not saying what --

1 **THE COURT:** I understand that.

2 **MS. MOODY:** He's saying his attorney didn't
3 produce --

4 **THE COURT:** I understand, but at this stage he's
5 got to present testimony showing me if they had been
6 called they would have given testimony favorable to him
7 to such an extent that it might have impacted the jury
8 verdict, that's all.

9 **MS. MOODY:** I don't think that he could -- since
10 the piece of metal was gone, I don't know if that would
11 have been possible to get it back.

12 **THE COURT:** But, anyway, the metal was gone, the
13 picture was there, and that's it.

14 **MS. MOODY:** I believe that's it, Your Honor, based
15 on what I have.

16 **THE COURT:** Well, I can't -- I can't help him. I
17 mean, I don't -- I don't have any way I can help him.
18 He has the burden of proof and he doesn't do it. And
19 the attorney argued strategy in front of the judge on
20 various motions and things and made a pretty good jury
21 argument.

22 **MS. MOODY:** Thank you, Your Honor.

23 **THE COURT:** Denied.

24 (Proceedings were concluded at 1:17 PM.)

25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
5th day of August, 2014.

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I do further certify that I am neither of kin,
counsel, nor have an interest to any party hereto.

December 10, 2014

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Robert T. Artis, #189722,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

2014-CP-46-0278

ORDER OF DISMISSAL

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

FILED-RECEIVED
2014 SEP 26 AM 8:00

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 4, 2014. The Respondent made its Return on May 22, 2014. An evidentiary hearing into the matter was convened on August 5, 2014, at the Moss Justice Center in York, SC. Leah B. Moody, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. Dan Hall, Esquire also testified. This Court had before it a copy of the records of the York County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return and the trial transcript.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted by the March 22, 2012 term of the York County Grand Jury for Petit Larceny/Property Enhancement (2012-GS-46-1098). Dan Hall, Esquire, represented him. On April 17, 2012, Applicant proceeded to a jury trial pursuant to which he was found guilty of Petit Larceny, 3rd or subsequent offense. The Honorable J. Michael

Baxley sentenced Applicant to confinement for seven (7) years.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Artis, 2013-UP-491 (filed December 23, 2013). The Remittitur was issued on January 8, 2014.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel (Trial)"
2. "Ineffective Assistance of Counsel (PCR)"
3. "Due Process of Law"

At the hearing, Applicant proceeded on his claims of ineffective assistance of trial counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified his grounds for ineffective assistance of counsel were Counsel's failure to challenge the State's usage of a 2006 conviction for Forgery, failure to properly cross-examine a witness concerning the video that was introduced into evidence and failure call witnesses on Applicant's behalf.

As to the failure to challenge the 2006 conviction, Applicant testified he did not have a 2006 conviction for Forgery and that Counsel failed to investigate this. Applicant stated this conviction

was brought up during the trial by the State and should not have been.

As to the failure to sufficiently cross-examine a witness concerning a video, Applicant alleged that a witness made a false statement while on the stand during the trial. Applicant claims Counsel failed to explain to the trial court that the witness committed perjury. Applicant also claims Counsel failed to question Victim concerning the video.

As to the failure to call witnesses on Applicant's behalf at trial, Applicant testified Counsel should have called the witnesses listed in the incident report. Specifically, Applicant wanted Counsel to call as witnesses: Alphonso McCrory, an employee at the scrap metal plant, Officer Bailey, who was the initial officer to respond, and Ms. Messy, Applicant's landlord, who could have testified that the piece of scrap metal was stolen before Applicant moved into the trailer he was renting.

On cross-examination, Applicant admitted he did not have documentation to prove his ownership of the scrap metal in question. Applicant also admitted he did not have any of the witnesses he wanted called at trial at the PCR hearing to provide testimony on his behalf. Applicant also stated he understood the State can retry this case if he is successful on PCR and he could receive ten years instead of the seven years he is serving.

Counsel testified he was appointed as a public defender in 2011 and has practiced criminal law since 1988. Counsel testified he received discovery and reviewed it with Applicant. Some of the documents he and Applicant reviewed were the pictures of the aluminum scrap metal at the scrap yard and the video. Counsel testified his trial defense strategy was that while it was clear that Applicant was at the scrap yard with the metal and that Applicant lived beside the business from which the metal was taken, the State could not prove Applicant's involvement because there were

other individuals who had access to the metal. Counsel also testified he made a pre-trial motion that the State should have to pick which charges to go forward on: either petit larceny or receiving stolen goods. While the trial judge denied this motion, he later granted a motion for directed verdict as to the receiving stolen goods charge.

Concerning Applicant's 2006 Forgery conviction, Counsel testified he received a certified conviction report of Applicant's 2007 Forgery conviction: Applicant was charged in 2006. Counsel also testified he argued that the petit larceny charge should be tried in magistrate's court and not circuit court. This motion was denied as Applicant had at least two prior convictions for petit larceny. Additionally, Counsel testified he researched the ownership of the metal by travelling to the business that owned the metal, but that business had closed down. Counsel stated he attempted to locate the witnesses named in the incident report. Counsel testified Alphonso McCrory was fired from his job for stealing from the scrap metal business and that Counsel used this as a trial strategy. Counsel also testified that, in his lengthy criminal law experience, calling a uniformed police officer on Applicant's behalf would not have produced a favorable outcome. Further, Counsel testified Ms. Messy, Applicant's landlord, would not have provided favorable testimony on Applicant's behalf. Counsel lastly stated he was prepared for trial and reviewed much more than just the video, as Applicant claimed.

On cross-examination, Counsel testified there were no other charges in the trial and that the jury did not hear the charges. Counsel testified he reviewed Applicant's prior convictions with him. As to the ownership of the scrap metal, Counsel tried to locate Strapping, even though his name was not included in the discovery. Counsel then stated he learned that the metal had come from Sam Strapping and he discussed this with Applicant. Counsel lastly stated he discussed the strengths and

weaknesses of the case with Applicant.

Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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.

Failure to challenge Applicant's 2006 Forgery conviction

Applicant alleged Counsel was ineffective for failing to challenge a 2006 Forgery conviction.

Counsel testified Applicant was charged in 2006 but convicted in 2007. Counsel also testified he received a certified copy of this conviction. The Court finds the testimony of the Applicant concerning ineffective assistance of counsel not credible while finding the testimony of Dan Hall, Applicant's trial counsel, very credible. Therefore, this allegation is denied.

Failure to properly cross-examine a witness concerning the video

Applicant alleged Counsel was ineffective for failing to properly cross-examine a witness concerning the video that was played for the jury and entered into evidence during Applicant's trial.

The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). Applicant did not proffer any questions Counsel allegedly failed to ask, and did not present any testimony showing the witness's (Dennis) or Victim's (Fanning) answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. Therefore, this allegation is denied.

Failure to call witnesses on Applicant's behalf

Applicant alleged Counsel was ineffective for failing to call Alphonso McCrory, Officer Bailey and Ms. Messy on his behalf at trial.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991).

The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An 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. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Counsel was not ineffective for failing to interview or subpoena witnesses on the Applicant's behalf. The Applicant failed to produce any testimony or evidence at the PCR hearing to show what these witnesses would have testified to at trial or how their testimony would have altered the outcome of his trial. Additionally, the Applicant has failed to prove any resulting prejudice from Counsel's alleged shortcoming. Accordingly, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

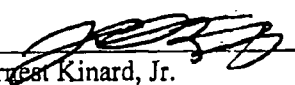
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South

Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



J. Ernest Kinard, Jr.
Presiding Circuit Court Judge
Sixteenth Judicial Circuit

9/3, 2014

Beaufort, South Carolina

DOCKET NO. 2012-GS-46- 01098

WITNESSES

RHP/Dennis

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

March 22, Term 2012

jwg

ARREST WARRANT NUMBER

DIRECT INDICTMENT Re: J132275

THE STATE

VS.

ACTION OF GRAND JURY

ROBERT TIMOTHY ARTIS

TRUE BILL

Paul W.
Foreperson of Grand Jury
Date: 3/22/12

VERDICT

Guilty

X *John*

Preperson of Petit Jury

23
Date: 4-17-12

Indictment for

PETIT LARCENY/PROPERTY ENHANCEMENT

SC Code: 16-01-0057

CDR Code: 2367

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

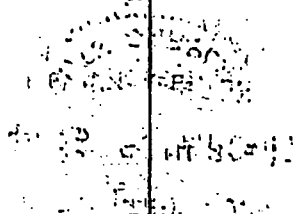
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.



STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK

CERTIFIED TRUE COPY

2014 FEB -5 AM 8:47

At a Court of General Sessions convened on March 22, 2012, the Grand Jurors of York County present upon their oath

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

PETIT LARCENY/PROPERTY ENHANCEMENT

The Defendant, Robert Timothy Artis, did in York County, South Carolina, on or about March 29, 2011, unlawfully take and carry away the goods of the victim, James Fanning, valued at Two Thousand Dollars or less described as follows: a piece of aluminum, with intent to deprive the owner permanently of such property, said crime being Defendant's third or subsequent offense for which the term of imprisonment is contingent upon the value of the property involved. All in violation of Section 16-01-0057, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Marie Hamilton
ASSISTANT SOLICITOR