

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY

George C. James, Jr., Circuit Court Judge

ORIGINAL

RECEIVED

OCT 03 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID WAYNE THOMPkins, JR.

APPELLANT

APPELLATE CASE NO. 2013-002486

RECORD ON APPEAL

BENJAMIN JOHN TRIPP
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3970

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT (OCTOBER 29 – 30, 2013).....	1
OPENING STATEMENT BY MR. TODD	28
OPENING STATEMENT BY MR. EDGEWORTH	31
TESTIMONY	
KENNETH RAY.....	32
DENNIS LYNN FREEMAN.....	45
HEATH HOLT	55
BRYAN MCKAY	65
MICHAEL THACKER.....	106
CHUCK WEAVER.....	108
MOTION FOR A DIRECTED VERDICT BY MR. EDGEWORTH.....	113
COLLOQUY REGARDING DEFENDANT’S RIGHT TO TESTIFY	118
CLOSING ARGUMENT BY MR. TODD	128
CLOSING ARGUMENT BY MR. EDGEWORTH.....	132
CHARGE ON THE LAW.....	137
VERDICT	152
SENTENCING	156
INDICTMENTS	163
CERTIFICATE OF COUNSEL.....	167

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2013-GS-22-308, 309

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	October 29-30, 2013
	)	
David Wayne Thompkins, Jr.,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable George C. James, Jr.
Georgetown County Courthouse
Georgetown, South Carolina

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

Richard D. Todd, Esquire
Attorney for Plaintiff

William F. Edgeworth, III, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1	I N D E X	
2	October 29, 2013	
3	Voir Dire.	5
4	Jury Selection	12
5	Opening Instructions by Court.	22
6	Opening Statement by State	28
7	Opening Statement by Defense	31
8	Kenneth Ray	
9	Direct by State.	32
10	Cross by Defense	42
11	Dennis Lynn Freeman	
12	Direct by State.	45
13	Cross by Defense	52
14	Redirect by State.	54
15	Heath Holt	
16	Direct by State.	55
17	Cross by Defense	60
18	Redirect by State.	64
19	Bryan McKay	
20	Direct by State.	65
21	Cross by Defense	76
22	Redirect by State.	80
23	October 30, 2013	
24	Questioning of Bryan McKay Re: Contacting Witness .	94
25	Redirect by State (Continued).	98

State v. Thompkins

3

1	Recross by Defense	101
2	Michael Thacker	
3	Direct by State.	106
4	Chuck Weaver	
5	Direct by State.	108
6	Motions.	113
7	Questioning of Defendant Re: Testifying.	118
8	Jury Charges Discussed	122
9	Closing Argument by State.	128
10	Closing Argument by Defense.	132
11	Charge	137
12	Verdict.	152
13	Sentencing	156
14	Certificate.	162
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S			
		Id.	Evd.
1			
2			
3	S-1 Photograph		36
4	S-2 Photograph		36
5	S-3 Photograph		36
6	S-4 Photograph		36
7	S-5 Photograph		36
8	S-6 Photograph		36
9	S-7 Photograph		36
10	S-8 Photograph		36
11	S-9 Photograph		71
12	S-10 Photograph		48
13	S-11 Photograph		48
14	S-12 Photograph		48
15	S-13 Photograph		48
16	S-14 Photograph		48
17	S-15 CD (ID only)		
18	S-16 Redacted CD		99
19	S-17 Drugs	107	111
20			
21			
22			
23			
24			

Voir Dire

5

1 (On the record, October 29, 2013. The following takes
2 place in the presence of the jury venire.)

3 THE COURT: All right, you can call your next
4 case.

5 MR. TODD: Thank you, Your Honor.

6 Your Honor, the next matter before the Court is State
7 versus David Thompkins, Jr. He has been indicted for
8 transporting stolen metals. That is indictment number 2013-
9 GS-22-00308 and also possession of marijuana.

10 THE COURT: The same indictment?

11 MR. TODD: Your Honor, the indictment's one
12 more, 2013-GS-22-00309.

13 THE COURT: Okay, you can hand those up. Oh,
14 I've got them.

15 MR. TODD: You have them, all right.

16 THE COURT: Okay, I'm sorry. I apologize.

17 All right, ladies and gentlemen, we're going to now
18 select a jury for the trial of the case of the State of South
19 Carolina versus David Wayne Thompkins, Jr. As you have
20 probably heard me state, if not I'll say it for your benefit,
21 the fact that a person has been arrested or charged or
22 indicted for any criminal offense is not evidence of anything.
23 The Defendant in this case, Mr. Thompkins, has entered not
24 guilty pleas to these two charges. He has no burden
25 whatsoever. The State has the sole burden of establishing the

Voir Dire

6

1 elements of the crimes charged beyond a reasonable doubt. The
2 fact that I refer now to the indictment is simply to give you
3 information so that you can let me know if you know anything
4 about this case from any source other than the reference to
5 the indictment by me. You are under oath. Please answer all
6 questions truthfully. If I do ask a question that applies to
7 you simply stand and I'll ask appropriate follow-up questions
8 and if need be I'll have you come forward and give me
9 information privately.

10 The one indictment alleges that Mr. Thompkins on or about
11 January 9, 2013, in this county did knowingly have in his
12 possession in a motor vehicle on the highways of this state
13 nonferrous metals that he knew were stolen. The second
14 indictment alleges that on or about the same date, January 9,
15 2013, he knowingly and intentionally possessed a quantity of
16 marijuana of less than one ounce. Those are the charges,
17 ladies and gentlemen.

18 First of all, is there anyone on this panel who knows
19 anything about this case, heard anything about it even in
20 passing other than what I referenced from the two indictments?

21 (No response.)

22 THE COURT: All right, the Defendant is David
23 Wayne Thompkins. Mr. Thompkins, if you could stand, please,
24 and face the jury panel.

25 (Complies with request.)

Voir Dire

7

1 THE COURT: Thank you, sir. Is there anyone on
2 the panel or to your knowledge is there anyone in your
3 immediate family who first of all might be related by blood or
4 marriage to Mr. Thompsons? Second, do you or any immediate
5 family member to your knowledge have any type of connection or
6 acquaintance or association with Mr. Thompsons, of course,
7 that would be now or in the past? All right, come forward,
8 please, ma'am.

9 (Whereupon, an off-the-record bench conference is held
10 with Juror Number 195, counsel for the State and counsel for
11 the Defense.)

12 THE COURT: Yes, sir, come on up, please.

13 (Whereupon, an off-the-record bench conference is held
14 with Juror Number 186, counsel for the State and counsel for
15 the Defense.)

16 THE COURT: Yes, sir. Your name, sir?

17 (Whereupon, an off-the-record bench conference is held
18 with Juror Number 312, counsel for the State and counsel for
19 the Defense.)

20 THE COURT: All right, ladies and gentlemen, the
21 following is a list of possible witnesses in the case. The
22 question will be basically or exactly the same, is there
23 anyone on the panel or anyone in your immediate family who
24 first of all might be related by blood or marriage to any of
25 these witnesses or would you or any family member have any

Voir Dire

8

1 type of connection or acquaintance or association with any of
2 the witnesses aside from any blood or family kin, and if the
3 witnesses are present if they would stand: Investigator Bryan
4 McKay, Georgetown County Sheriff's Office; Investigator
5 Michael Thacker of the Sheriff's Office; Sergeant C. W. Weaver
6 of the Sheriff's Office; Ricky Marlowe; Lynn Freeman, to my
7 left and your right; Heath Holt; Michael Thompson. Again,
8 anyone related by blood or marriage or have any type of
9 connection or acquaintance with any of these possible
10 witnesses?

11 MR. TODD: Your Honor, there is one addition.

12 THE COURT: One more name, you can stay standing,
13 yes, sir. Your name, Sir?

14 MR. RAY: Ken Ray.

15 THE COURT: Ken Ray, R-A-Y?

16 MR. RAY: R-A-Y.

17 THE COURT: Ken Ray. All right, okay, Mr.

18 Saguto, could you lead the way and you five folks get in line.

19 I'll talk to Mr. Saguto first. You can come on up, Mr.

20 Saguto.

21 (Whereupon, an off-the-record bench conference is held
22 with Juror Number 312, counsel for the State and counsel for
23 the Defense.)

24 THE COURT: All right, come on up, sir, and your
25 name again?

Voir Dire

9

1 MR. RICHARDSON: It's Rick Richardson.

2 THE COURT: All right.

3 MR. RICHARDSON: Juror Number 299.

4 (Whereupon, an off-the-record bench conference is held
5 with Juror Number 299, counsel for the State and counsel for
6 the Defense.)

7 THE COURT: All right.

8 (Whereupon, an off-the-record bench conference is held
9 with Juror Number 388, counsel for the State and counsel for
10 the Defense.)

11 THE COURT: Okay.

12 (Whereupon, an off-the-record bench conference is held
13 with Juror Number 24, counsel for the State and counsel for
14 the Defense.)

15 THE COURT: All right.

16 (Whereupon, an off-the-record bench conference is held
17 with Juror Number 361, counsel for the State and counsel for
18 the Defense.)

19 THE COURT: All right, could I see you all for
20 just a minute?

21 (Whereupon, an off-the-record bench conference is held
22 with counsel for the State and counsel for the Defense.)

23 THE COURT: Okay, beginning with the State, the
24 lawyers can stand and introduce themselves and anyone from
25 their offices who might be assisting with the trial. Mr.

1 Todd.

2 MR. TODD: Thank you, Your Honor. My name is
3 Ricky Todd. I'm with the Georgetown County Solicitor's Office
4 and Erin is back here. She works with me as well.

5 THE COURT: All right, thank you. Mr. Edgeworth.

6 MR. EDGEWORTH: Thank you. William Edgeworth, also
7 known as Josh Edgeworth. I have an office in Pawleys Island.

8 THE COURT: Thank you, sir. Is there anyone on
9 this panel or to your knowledge is there anyone in your
10 immediate family who first of all might be related to either
11 of these lawyers by blood or marriage or do you have any
12 connection or acquaintance or association with them of any
13 kind including social or professional which would include and
14 is not limited to anyone on the panel or anyone in your
15 immediate family who has ever been represented by either of
16 these lawyers or their offices?

17 (No response.)

18 THE COURT: All right, no one stood.

19 Is there anyone on the panel who knows of any bias or
20 prejudice that you might have for or against the State or
(21 against - for or against the Defendant, either of the lawyers
22 or any of the possible witnesses?

23 (No response.)

24 THE COURT: Is there anyone on the panel who
25 knows of any reason whatsoever why you should not be selected

Voir Dire

11

1 as a juror for the trial of this case, keeping in mind your
2 ability to be fair and impartial or any other concern that you
3 may have?

4 (No response.)

5 THE COURT: All right, any additional questions
6 from the State?

7 MR. TODD: None, Your Honor.

8 THE COURT: Any from the Defendant?

9 MR. EDGEWORTH: None, Your Honor.

10 THE COURT: Okay, all right, and it will be five
11 and five, one alternate suit you, gentlemen?

12 MR. TODD: Yes, Your Honor.

13 MR. EDGEWORTH: Yes, Judge.

14 THE COURT: Okay.

15 THE CLERK: You ready, Judge?

16 THE COURT: Yes, ma'am.

17 THE CLERK: Okay, when, when I call your name,
18 jurors, you want them to stand where they are or come up here?

19 THE COURT: Whatever is customary.

20 THE CLERK: Okay.

21 THE COURT: Come up here is fine.

22 THE CLERK: All right, when - come stand right
23 where I am and turn around just like I'm facing you when I
24 call your name until I either tell you to - you may return to
25 your seat or you take a seat in the jury box, okay?

Jury Selection

12

1 Juror Number 74, Kimberly Cook.
2 What says the State?
3 MR. TODD: Please accept Ms. Cook.
4 THE CLERK: What says the Defense?
5 MR. EDGEWORTH: Excuse the juror, Your Honor.
6 THE CLERK: You may return to your seat.
7 Juror Number 394, Jerry Wiseman.
8 What says the State?
9 MR. TODD: Please excuse Mr. Wiseman.
10 THE CLERK: You may return to your seat.
11 Juror Number 129, Dora Gamble.
12 What says the State?
13 MR. TODD: The Court's indulgence. Please
14 accept Ms. Gamble.
15 THE CLERK: What says the Defense?
16 MR. EDGEWORTH: Please swear the juror.
17 THE CLERK: Please take a seat in the jury box.
18 No, no, no, no, no, you take a seat.
19 Juror Number 388, Patrick Wilder.
20 What says the State?
21 MR. TODD: Please accept Mr. Wilder.
22 THE CLERK: What says the Defense?
23 MR. EDGEWORTH: Please swear the juror.
24 THE CLERK: Please take a seat in the jury box.
25 Juror Number 157, Shakara Green.

Jury Selection

13

1 What says the State?

2 MR. TODD: Please accept Ms. Green.

3 THE CLERK: What says the Defense?

4 MR. EDGEWORTH: Please excuse the juror.

5 THE CLERK: You may return to your seat.

6 Juror Number 99, Audrey Dew.

7 What says the State?

8 MR. TODD: Please accept Ms. Dew.

9 THE CLERK: What says the Defense?

10 MR. EDGEWORTH: Please swear the juror.

11 THE CLERK: Please take a seat in the jury box.

12 Juror Number 49, Janette Bryant.

13 What says the State?

14 MR. TODD: Please accept Ms. Bryant.

15 THE CLERK: What says the Defense?

16 MR. EDGEWORTH: Please swear the juror.

17 THE CLERK: Please take a seat in the jury box.

18 Juror Number 177, Bathsheba Holmes. \

19 What says the State?

20 MR. TODD: Please accept Ms. Holmes.

21 THE CLERK: What says the Defense?

22 MR. EDGEWORTH: Please seat the juror.

23 THE CLERK: Please take a seat in the jury box.

24 Juror Number 385, K-Lee Wheeler.

25 What says the State?

Jury Selection

14

1 MR. TODD: Please accept Ms. Wheeler.
2 THE CLERK: What says the Defense?
3 MR. EDGEWORTH: The Court's indulgence once second,
4 please. Please excuse the juror.
5 THE CLERK: You may return to your seat.
6 Juror Number 115, Gertrude Evans.
7 What says the State?
8 MR. TODD: Please accept Ms. Evans.
9 THE CLERK: What says the Defense?
10 MR. EDGEWORTH: Please seat the juror.
11 THE CLERK: Please take a seat in the jury box.
12 Juror Number 59, Darlene Cantley.
13 What says the State?
14 MR. TODD: Please accept Ms. Cantley.
15 THE CLERK: What says the Defense?
16 MR. EDGEWORTH: One second. Please excuse the juror.
17 THE CLERK: You may return to your seat.
18 Juror Number 278, Doris Poston.
19 What says the State?
20 MR. TODD: Please accept Ms. Poston.
21 THE CLERK: What says the Defense?
22 MR. EDGEWORTH: Please seat the juror.
23 THE CLERK: Please take a seat in the jury box.
24 Juror Number 105, Lorenzo Drayton.
25 What says the State?

Jury Selection

15

1 MR. TODD: Please accept Mr. Drayton.
2 THE CLERK: What says the Defense?
3 MR. EDGEWORTH: Please seat the juror.
4 THE CLERK: Please take a seat in the jury box.
5 Juror Number 80, Charles Craddock.
6 What says the State?
7 MR. TODD: Please accept Mr. Craddock.
8 THE CLERK: What says the Defense?
9 MR. EDGEWORTH: Please seat the juror.
10 THE CLERK: Please take a seat in the jury box.
11 Juror Number 30, Patrick Board.
12 What says the State?
13 MR. TODD: Please accept Mr. Board.
14 THE CLERK: What says the Defense?
15 MR. EDGEWORTH: Please seat the juror.
16 THE CLERK: Please take a seat in the jury box.
17 Juror Number 184, Doreen Jackson.
18 What says the State?
19 MR. TODD: Please accept Ms. Jackson.
20 THE CLERK: What says the Defense?
21 MR. EDGEWORTH: Please seat the juror.
22 THE CLERK: Please take a seat in the jury box.
23 Juror Number 53, Reginald Burnett.
24 What says the State?
25 MR. TODD: Please accept Mr. Burnett.

Jury Selection

16

1 THE CLERK: What says the Defense?

2 MR. EDGEWORTH: One moment, please. Please excuse
3 the juror.

4 THE CLERK: You may return to your seat.
5 Juror Number 393, Lester Winns.
6 What says the State?

7 MR. TODD: Please accept Mr. Winns.

8 THE CLERK: Any challenges from the Defense?

9 MR. EDGEWORTH: None, please seat the juror.

10 THE CLERK: Please take a seat in the jury box.

11 THE COURT: All right, one alternate.

12 THE CLERK: Juror Number 182, Ted Hyman, Jr.
13 What says the State?

14 MR. TODD: Please accept Mr. Hyman.

15 THE CLERK: What says the Defense?

16 MR. EDGEWORTH: No objection, please seat the
17 alternate.

18 THE CLERK: Please take a seat in the jury box.

19 THE COURT: All right, any matters or motions
20 pertaining to jury selection from the State?

21 MR. TODD: No, Your Honor.

22 THE COURT: From the Defendant?

23 MR. EDGEWORTH: None, Your Honor.

24 THE COURT: Okay, Ms. White.

25 (Court and clerk confer.)

Jury Selection

17

1 THE COURT: All right, ladies and gentlemen who were,
2 not selected as jurors for the trial of this case, call the
3 number that you have. Of course you should have that piece of
4 paper still. Call that number after six this evening and
5 you'll hear that recording and just simply follow the
6 instructions that you hear and thank you again for your time
7 this afternoon. May I see the lawyers up here for just a
8 minute?

9 (Whereupon, remaining jury venire exits courtroom and a
10 bench conference is held in the presence but out of the
11 hearing of the jury.)

12 THE COURT: All right, ladies and gentlemen who
13 were selected as jurors, if you would please go to the jury
14 room with the bailiff. One, one final thing, I don't know -
15 you're going to take them?

16 OFFICER: I will.

17 THE COURT: Okay, don't talk about the case at
18 all. Don't discuss anything about it, or don't - and don't
19 discuss anything about anyone involved in it. We'll have you
20 back out in just a minute. Thank you.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: All right, the statute, the
24 indictment references two statutes, which one is the statute
25 that you're going under?

1 MR. TODD: I'm sorry, Your Honor?

2 THE COURT: The indictment references two
3 statutes. It's got 16-17-680(G)(5), also 16-11-523(B) and
4 (C)(1). Do you have a copy of it handy? I've got the
5 indictment, but I'm just talking about the copy of the
6 statute.

7 MR. TODD: Let me pull it up. I do not have the
8 statute with me.

9 THE COURT: And this, this is dealing with the
10 metals.

11 MR. TODD: I believe it's 608(G)(5), Your Honor.

12 THE COURT: 608 or 680?

13 MR. TODD: I'm sorry, 680(G)(5) I believe is the
14 statute we had.

15 THE COURT: Okay, G(5).

16 MR. TODD: G, G(5), Your Honor.

17 THE COURT: When we were talking earlier you
18 mentioned that knew or should have known, doesn't the statute
19 indicate you have to prove that he knew they were stolen?

20 MR. TODD: I believe it's - I believe it is
21 known they were stolen.

22 THE COURT: Okay.

23 MR. TODD: Had knowledge of.

24 THE COURT: And that would either be proven by
25 some stroke of luck or by circumstantial evidence I'm sure?

State v. Thompkins

19

1 MR. TODD: Yes, Your Honor, it'll be
2 circumstantial.

3 THE COURT: Okay, okay, all right.

4 MR. EDGEWORTH: Yes, sir.

5 THE COURT: I just wanted to make sure that I was
6 looking for the should have known language.

7 MR. TODD: No, I thought it was should have
8 known as most of them are, but this one is very specific, he
9 had to know.

10 THE COURT: Okay, all right, we'll stick with
11 that then.

12 MR. TODD: Okay.

13 THE COURT: All right, anything before we start
14 or you need about five minutes or are you ready to go?

15 MR. TODD: Just a minute, Your Honor, so I can
16 get a cough drop and ---

17 THE COURT: Okay, all right.

18 *****OFF THE RECORD*****

19 (On the record. The following takes places outside the
20 presence of the jury.)

21 (Defendant is sworn by Court.)

22 THE COURT: Okay, in, in a - you can put your
23 hand down. In a moment the trial will have begun. I
24 understand that you have had a bond; is that correct? You've
25 been out on bond?

1 MR. THOMPCKINS: I think so, sir.

2 THE COURT: I mean, you hadn't been in jail to
3 this - in the last few ---

4 MR. THOMPCKINS: I went to jail whenever he come up
5 there to the scrap yard, but I got out like four or five days
6 later.

7 THE COURT: Okay, what I'm going to tell you now
8 is that as we go through this trial I'm going to allow you to
9 stay out of jail. Sometimes I put people in jail once a trial
10 starts just to make sure you show up. I'm going to let you
11 stay out of jail, but I'm going to let you know right now that
12 if you are not back after a break or after a recess when I
13 tell you that you have to be back two things will happen:
14 number one is we'll go on without you, and number two I'll
15 issue a warrant for you to be picked up. Do you understand
16 that?

17 MR. THOMPCKINS: Yes, sir.

18 THE COURT: For example, if we break today and I
19 tell you to be back tomorrow morning at 9:15 and you're late
20 I'm going to take that into account in determining whether or
21 not I think it's reasonable for me to expect you to show up,
22 okay?

23 MR. THOMPCKINS: Okay.

24 THE COURT: All right, thank you.

25 MR. EDGEWORTH: Thank you, Your Honor.

State v. Thompkins

21

1 MR. TODD: We also have - I also have the
2 records of the - my witnesses. I just want to make sure that
3 everyone ---
4 THE COURT: Okay.
5 MR. TODD: --- has them.
6 THE COURT: Anything, anything in there that ---
7 MR. TODD: No, no, Your Honor. As far as the
8 majority of my witnesses they have no record. There is one
9 gentleman that has a record. I'm sure they'll be aware of his
10 record once they see who it is.
11 THE COURT: Which witness is that?
12 MR. TODD: That would be Mr. Michael Thompkins -
13 Thompson.
14 THE COURT: Thompson, okay.
15 MR. TODD: He does have a record.
16 THE COURT: Will he testify today?
17 MR. TODD: It will probably be tomorrow, Your
18 Honor.
19 THE COURT: All right.
20 MR. TODD: Thank you.
21 THE COURT: Any, any motions or anything else
22 before we begin today from the State?
23 MR. TODD: None from the State, Your Honor.
24 THE COURT: Any from the Defendant?
25 MR. EDGEWORTH: None, Your Honor.

Opening Instructions by Court

22

1 THE COURT: Okay.

2 MR. TODD: We're ready.

3 THE COURT: All right, you can - you ready, you
4 ready, Mr. Edgeworth?

5 MR. EDGEWORTH: I am, Your Honor. Thank you.

6 THE COURT: You can bring in the jury.

7 BAILIFF: Thank you, sir.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: Okay, we're ready to begin. The
11 first thing we'll do, ladies and gentlemen, is for you to take
12 an oath. So the clerk will administer that oath to you.

13 (Whereupon, the jury is sworn by the clerk.)

14 THE COURT: Thank you, ma'am.

15 All right, you have now been sworn, ladies and gentlemen,
16 as jurors in this case and I know that some of you may have
17 been on a jury before. If you have ever actually sat on a
18 jury in a jury box raise your hand, please. All right, about
19 half of you. So you may have heard some of these remarks
20 before. Before we begin the trial of the case I want to
21 explain to you what your responsibilities are and let you know
22 a little bit about what my responsibilities are and how you
23 might expect this case to proceed at least procedurally.

24 The Defendant has been charged with two criminal offenses
25 as you've heard. One is called transporting stolen nonferrous

Opening Instructions by Court

23

1 metals and the second is possession of marijuana. The
2 Defendant has entered not guilty pleas to these charges. He
3 does not have to prove or disprove anything and the State has
4 the sole burden of establishing the elements of these crimes
5 that have been charged beyond a reasonable doubt. Now, your
6 responsibility is to be the sole judges of the facts in this
7 case. That means that you are responsible for paying
8 attention to the evidence that is introduced, evaluating the
9 evidence, and at the end of this case reaching a verdict in
10 this case and the verdict will be either not guilty or guilty
11 as to either or both of these two particular charges. As I
12 will tell you at the end, your verdict on one charge will not
13 necessarily control your verdict on the other. In other words
14 based on your view of the evidence and the law you might
15 determine that the Defendant is not guilty of both, guilty of
16 both, or guilty of one and not guilty of the other. In other
17 words you evaluate the evidence independently insofar as these
18 two charges are concerned.

19 Now, evidence is going to come into this case typically
20 in the way it usually does and I'm just kind of guessing right
21 now because you and I right now know as much about this case
22 as one another. I don't know anything about it other than
23 what I reference from the indictment, and as you have
24 indicated by your answers to these questions you don't know
25 anything about it either other than what I referenced from the

1 indictment. Evidence is going to come to you by way of
2 testimony. That is when a witness takes the stand, is sworn
3 to tell the truth and testifies by answering questions that
4 are asked by both lawyers. We have direct examination and
5 then cross-examination, sometimes there is redirect and
6 recross. I'll govern how that goes. When a witness testifies
7 you can believe every word of what that witness has to say.
8 You can disbelieve every word or you can believe parts and
9 disbelieve the rest. That will be entirely up to you and it
10 is purely a common sense exercise on your part. As I
11 typically mention to juries you - when you watch somebody talk
12 everyday, in your mind even subconsciously you might be trying
13 to determine whether or not you believe the person who's
14 talking to you. Again, believe everything that you want,
15 disbelieve everything that you want or believe parts and
16 reject the rest. Now, you can take into account anything you
17 think is appropriate within your common sense such as how the
18 witness appears on the stand. We call that demeanor, was the
19 witness hesitant or straightforward when the witness was
20 answering questions. Was the witness - what was the witness's
21 ability in your mind to really know what he or she claims to
22 know. You can take that into account. You can take into
23 account whether or not the witness's testimony has been
24 strengthened or weakened by other evidence that's been
25 introduced. Also, you can take into account whether or not

Opening Instructions by Court

25

1 that witness may, in your judgment, have a bias or a prejudice
2 for or against a particular result, in other words, does the
3 witness have a reason to say what he or she says. Now, ladies
4 and gentlemen, evidence is going to come to you also by way of
5 exhibits. Those are customarily things that you can see or
6 touch, might be a piece of paper, might be a photograph, it
7 might be some type of physical object, it could be, in any
8 given case it could be a pencil or a pen or a rock, anything
9 such as that can be an exhibit depending upon the
10 circumstances of the case. Also, ladies and gentlemen,
11 evidence may come to you by way of a stipulation. That is
12 when the lawyers will agree that a certain fact or a certain
13 set of facts is true. I'll let you know when a stipulation
14 has been entered. Sometimes those are entered in cases,
15 sometimes they are not. Now, if evidence comes in you can
16 consider it. If I tell you during the course of the trial
17 that you must disregard something that you have seen or heard
18 under the oath that you have taken, which is to follow the
19 evidence and the law, you have to disregard what I tell you to
20 disregard because that is the law. If I tell you to disregard
21 you must do so. Now, that kind of indicates where I come in
22 during the trial. You're the judge of the facts, I'm the
23 judge of the law. I will necessarily have to rule on
24 objections that might be made by the lawyers. I will also
25 make sure that the procedural rules are followed and at the

1 end of this case I will give you what is called a charge on
2 the law, in other words, I will explain to you what the law
3 is. I may read parts of it, but overall I will tell you what
4 the law is.

5 The case itself will be conducted in phases. In a moment
6 the lawyers will give an opening statement. That is their
7 opportunity to tell you what they believe the evidence will or
8 will not establish. After that the State will present its
9 case in chief by calling witnesses and introducing other
10 evidence. After that, if the Defendant chooses, he can
11 present evidence even though he is not required to present
12 evidence. The reason he is not is because he is presumed
13 innocent and does not have the burden of proving or disproving
14 anything, but if the Defendant wants to do that he can. After
15 the evidence is in, the lawyers will give you a closing
16 argument and after that I will give you the charge on the law
17 that I mentioned to you earlier.

18 With regard to objections that might be entered by a
19 lawyer those are typically based on rules of evidence or again
20 on the rules of procedure. If an objection is made that is a
21 lawyer telling me that he has a point of law that he wants me
22 to rule on. I will do that. Don't keep score, don't think
23 that from the way I rule or for that matter from anything that
24 I say or do that I favor one particular verdict over another.
25 My rulings are based strictly on the law and not based on who

Opening Instructions by Court

27

1 I think should prevail in this case. If a lawyer makes an
2 objection that doesn't mean that the lawyer is trying to hide
3 something from you that you ought to see or hear. If a lawyer
4 asks a question that's objected to that does not mean that
5 lawyer is trying to slip something in that's against the
6 rules. The rules that we have are open to debate and
7 interpretation and the lawyers are expected to know the rules
8 and I know they do and my rulings, again, are based on what
9 the law is. I may have to send you out of the courtroom at
10 various times to hear their arguments in full. Blame me if
11 you blame anybody because I want to make sure - one of my
12 responsibilities is to make sure that the record is complete
13 and I'm required to give the lawyers in that respect full
14 opportunity to air their positions and sometimes it may not be
15 appropriate to do that in front of you.

16 At the end of the case you'll be retiring to deliberate
17 and you'll be back in the jury room by yourselves. There will
18 be no cameras, there will be no microphones and we won't be
19 back there with you while you deliberate and that is another
20 indication of how our roles differ. At the end of the case
21 you are what makes the difference because the parties have
22 selected you to be fair and impartial and they are counting on
23 you to fulfill your oath in every respect.

24 I'll be appointing a foreperson at some point this
25 afternoon and that person will be the spokesperson for the

1 jury and will also be responsible for completing the verdict
2 form at the end of the case and making sure that the verdict
3 is unanimous.

4 One final thing, you cannot talk about this case at all
5 until I tell you that you can and that includes talking about
6 it amongst yourselves or with anyone else on earth or anyone
7 else anywhere else. You can't go on a computer and talk about
8 it. You can't get on a blog and blog about it. You can't
9 tweet about it. You can't research anything about it. You
10 cannot engage in casual conversation with anybody about it at
11 all, and I'll tell you that more times than you will want to
12 hear, but that is a very important instruction.

13 All right, any objection to those remarks from the State?

14 MR. TODD: None, Your Honor.

15 THE COURT: Any from the Defendant?

16 MR. EDGEWORTH: None, Your Honor.

17 THE COURT: All right, Mr. Todd.

18 MR. TODD: Thank you, Your Honor.

19 Ladies and gentlemen, you're here today to make a
20 determination on the facts of a case and whether all the facts
21 are there to give a guilty verdict or in the inverse a not
22 guilty verdict. What the Court has presented today and what
23 the State is presenting to you is two different indictments,
24 and you can at them separately, but all - they all kind of
25 came out of the same occurrence. That's why they're both

Opening By State

29

1 together. One of the charges is possession of marijuana, and
2 I'm going to just simplify it because it's how I think about
3 it myself, it's possession of marijuana, what do you need to
4 know, what facts do I need to bring to you to put this case
5 together. That one is relatively easy, marijuana, some sort
6 of leafy substance. We're going to have someone testify
7 whether it is or it isn't, you get to believe them and whether
8 or not the person had it on their possession. That one's
9 pretty easy, seems like there's only about two steps, takes a
10 little bit more than that, but that's really what you're
11 looking for.

12 The other one is a little bit different. It's the
13 transportation of stolen nonferrous metals. What is a
14 nonferrous metal? There's a whole bunch of them, definition I
15 can't give you, you know, the difference between, in short,
16 what a ferrous and nonferrous is, but what we're dealing with
17 today is copper. That one's listed as a nonferrous metal. So
18 we're dealing with the fact that copper, a nonferrous metal,
19 was in the possession of or transported by this man over here,
20 and the fact that it - he knew it was stolen. We're going to
21 have several people. We know where this metal came from. It
22 came from International Paper. We're going to have people
23 testify as to it was their, their metal or at least looked so
24 much like their metal that it's hard to determine if it's not.
25 There's going to be two people that talk about where they

1 believe the metal came from, their building and where it got
2 to.

3 There's also an investigator in this that was doing
4 research on where did this - how did this metal get from one
5 place to the next. We know some metal came from IP, we know
6 some very similar metal ended up at Coastal Recycling. You'll
7 hear from a gentleman from Coastal Recycling as to, "Here's
8 the metal I have. It's very different than others. Here's
9 where it came from and this is who I got it from." Now, the
10 part that's going to be more contested than anything else and
11 the part that I'm going to have to prove more so than others,
12 I have to prove every element, but what will likely be the
13 biggest debate is whether or not it was stolen and that the
14 Defendant here knew that it was stolen. Through that we're
15 going to have a series of pictures. We'll get to those and
16 it's pretty much going to come to a determination of did we
17 show you every piece where you can - any person is going to
18 say that absolutely is, there's no question in my mind, this
19 was stolen, he knew it, he transported it. That's our burden.

20 There's going to be about seven or eight witnesses.
21 You're going to hear their testimony, and like the judge said
22 you can believe what they say or not. All I've asked them to
23 do is tell the truth, tell us what they know, nothing more,
24 nothing less.

25 This should be a relatively quick trial, but that doesn't

Opening by Defense

31

1 mean that it's not important. It matters to everybody in this
2 room, including this gentleman over here. So, please, give us
3 your attention, think about what I'd ask you, are we going to
4 meet our burden. These are our elements we have to prove and
5 at the end we'll talk more about it. Thank you.

6 THE COURT: Thank you, sir. Yes, sir, Mr.
7 Edgeworth.

8 MR. EDGEWORTH: Thank you, Your Honor. May it
9 please the Court?

10 Good afternoon, ladies and gentlemen of the jury. As I
11 informed you earlier my name is Josh Edgeworth and I represent
12 Mr. David Thompkins and I want to thank you for your service
13 and as everyone here will do on numerous occasions.

14 Before I forget I also want to thank my daughter who
15 provided me with that pink notebook that you all probably saw
16 as you walked in because I broke my trial notebook getting
17 prepared and she happily had one she could loan me. So I want
18 to thank her because she asked me to do so, reminded me before
19 I came here today, but as, as you heard from the Solicitor's
20 Office you're charged with a duty of listening to the facts
21 that are going to be presented before you and I can already
22 tell you that there's a couple of things that you would have -
23 you've already heard in the opening statement that are very
24 key, one of which is looks very similar to and seems to be the
25 same, a lot of things like that that raise suspicion as to

1 whether or not - as to the innocence or guilt of Mr.
2 Thompkins, and if I may I'd like to share with you one quick
3 story, indulgence of the Court, and to tell you about my son
4 who recently went out into the marsh, and as he does on
5 occasion he takes the kayak out and walks around and goes out
6 to the, to the - in the pluff mud and on these little banks
7 and digs around for oysters and digs around for clams and one
8 day I was coming, coming home and I saw this item. I'd like
9 to show it to you. It's a very unique item. It was just
10 laying there beside the house, and I asked him, I said, "Where
11 did this come from," and he said, "Well, I found it in the
12 marsh," and I was shocked. He didn't even really care that he
13 found something so neat in the marsh. I mean, it looks old to
14 me. In fact, after we took a look at it he was thinking, "Oh,
15 maybe it was a pirate's at one point in time," because it had
16 like little dagger marks on the side, and so, of course, being
17 the good dad that, you know, you always want to be I'm like,
18 "Well, let's look into it, let's see what it's all about." So
19 we did, but we haven't really found out a whole lot yet, but
20 maybe we can find out a little bit more along the way, but my
21 point in telling you that story is that's what you're going to
22 hear today. You're going to hear similar facts about copper,
23 copper that's strewn all over the riverbanks down here in
24 Georgetown and the main element to this case is in dispute is
25 whether or not my client knew that it was stolen. So listen

Kenneth Ray - Direct by State

33

1 to the testimony, weigh the evidence that's presented before
2 you and listen to determine whether or not you believe that he
3 knew it was stolen, because that's super key, and again, I
4 appreciate your time.

5 THE COURT: Thank you. All right, first witness for
6 the State.

7 MR. TODD: Thank you, Your Honor. The State's first
8 witness Mr. Ken Ray.

9 THE COURT: Come on up, please.

10 MR. RAY: Okay.

11 Whereupon, Kenneth Darby Ray is called to the stand, duly
12 sworn by the clerk and testified as follows:

13 THE CLERK: Thank you. Please be seated and state
14 your full name for the record, spelling your first and last
15 name.

16 MR. RAY: Kenneth Darby Ray, Kenneth, K-E-N-N-E-T-H,
17 Ray, R-A-Y.

18 DIRECT EXAMINATION

19 BY MR. TODD:

20 Q Mr. Ray, who do you work for?

21 A I work for International Paper.

22 Q And how long have you worked for International Paper?

23 A 31 years.

24 Q That's a long time?

25 A Yes.

1 Q All that in Georgetown?

2 A No, only three years in Georgetown.

3 Q Okay, what's your position there?

4 A I am the environmental health and safety manager for the
5 mill.

6 Q What does that mean?

7 A I am basically the guy responsible for all the
8 environmental issues, health and safety issues and security is
9 also part of my responsibility.

10 Q And you say you've been working there for three years,
11 January of last year what kind of security issues did you
12 realize?

13 A I was in - we've had several incidents of metal that has
14 - that have left the mill that we have been pursuing. I was
15 informed in January around that time of last year that we had
16 lost some wire. The Fire Chief, Mr. Marlowe, that works for
17 me informed me that we had lost a portion of a reel - a spool
18 of wire and asked me to come see the site where that was taken
19 from.

20 Q And did you go see the site?

21 A Yes, I did.

22 Q Okay, I'm going to ask you to look at some pictures
23 about this, this site.

24 MR. TODD: The Court's indulgence.

25 BY MR. TODD:

Kenneth Ray - Direct by State

35

1 Q Now, this site, before we get to that ---

2 MR. TODD: The Court's indulgence, Your Honor.

3 BY MR. TODD:

4 Q I want you to take a look at these pictures. They're
5 marked as Exhibits One through Eight just for your purposes
6 right now.

7 A Okay.

8 Q Are these pictures of the site in which you walked?

9 A Some of them. The specific area that I walked was from
10 our storage building, coming out of that building as we left
11 it going west this building is in close proximity of the river
12 and actually down on the riverbank itself.

13 Q Okay, so you walked from the storage department down to
14 the river itself?

15 A Storage to where the woods began, not - then coming out
16 of the woods down to the riverbank.

17 Q Okay, if I'll - if I could?

18 A Uh-huh.

19 Q But you recognize these One through - are there any that
20 you don't recognize?

21 A No.

22 Q Okay.

23 MR. TODD: Your Honor, at this time I would like
24 to place One through Eight.

25 THE COURT: Any objection?

1 MR. EDGEWORTH: Your Honor, I wasn't clear did he
2 say he recognized all the photos?

3 THE COURT: Yes, sir.

4 MR. EDGEWORTH: All, okay. No objection.

5 THE COURT: All right, One through Eight are in.

6 MR. TODD: Thank you, Your Honor.

7 (Whereupon, State's Exhibit's One through Eight
8 [Photographs] introduced into evidence and appropriately
9 marked.)

10 MR. TODD: I'd also like to publish these to
11 the jury.

12 THE COURT: Okay.

13 BY MR. TODD:

14 Q Let's start with Number Six, might be easier for you to
15 look at the monitor their.

16 THE COURT: That's, that's number what?

17 MR. TODD: Number Six. No, I'm sorry, this is
18 Exhibit Number One. It's marked on the back as number six.

19 THE COURT: All right.

20 MR. TODD: But Exhibit Number One.

21 THE COURT: Okay.

22 BY MR. TODD:

23 Q And what is, what is this that we're looking at?

24 A This is the riverbank on the, on the Sampit River on the
25 mill property that we found what it appeared that the metal

Kenneth Ray - Direct by State

37

1 that we believe was taken from the mill site actually left our
2 site. There are branches if you look closely that you could
3 see were recently cut when we discovered that. So this
4 basically appeared the point we saw our wire leave the mill
5 site.

6 Q And this picture is a ---

7 MR. EDGEWORTH: Objection, assumes facts not in
8 evidence. He's speculating.

9 THE COURT: All right, overruled.

10 Q This picture itself do you remember around what time
11 this would have been? Was it after the investigator came to
12 meet with you? Is that ---

13 A No, actually before.

14 Q Before, okay, and you say there's branches. Can
15 describe where you see branches that are ---

16 A Right, on the right side of the picture about middle of
17 the picture you can see where one was cut. They were actually
18 some multiple branches around the area where it appeared a
19 boat had accessed this area.

20 Q Okay, and IP would not cut them?

21 A No.

22 Q Okay, now, this next picture is State's Exhibit Number
23 Three. Do you recognize this?

24 A Yes.

25 Q And where is this located?

1 A We have a fence along the edge of the riverbank that
2 basically is the edge of the property for protecting people
3 from or keeping people out. So this is one of those pieces of
4 fence.

5 Q And it looks like - would you say this fence was cut?

6 A Yes.

7 Q Okay, you guys maintain your fences well there?

8 A Pretty well. We do actually ride the fence or the fence
9 line periodically. In fact, that is when we sometimes find we
10 have a breach on our property line but, yes, we do inspect it.

11 Q Okay, now, when you have a breach do you fix the fence
12 when, when that happens?

13 A Yes.

14 Q Okay, let's go to - now, this is State's Exhibit Number
15 Six. Do you recognize this photograph?

16 A Yes.

17 Q Okay, where is this on the property?

18 A This is further around the fence line where there is
19 actually a gate to an old road in this area.

20 Q Now, where does the old road lead?

21 A The road goes down the, the bank of the Sampit. It
22 basically circles an area of an old tidal marsh that was a
23 discharge point for the mill in the past.

24 Q Now, would this be on the path that you took from, from

25 ---

Kenneth Ray - Direct by State

39

1 A No, this is actually on a different path on the other,
2 essentially the other end of it.

3 Q Okay, so this is the other end of the path?

4 A Right.

5 Q Okay, now, let's look at State's Number Four. Can you
6 describe where that is?

7 A Yes, of course going down the fence along the edge of
8 road this is the old road that I described on the ditch bank.

9 Q Okay, now, did you notice anything on this - along this
10 path that was out of the ordinary?

11 A On this particular path, no.

12 Q Okay, this next one is State's Exhibit Number Five. Do
13 you recognize this picture? I know it's hard to ---

14 A Yeah, a little hard to see. I - it is - this appears to
15 be the dirt area directly adjacent to our storage building
16 where I did see - you could see clear indications where
17 something had been drug through the dirt away from the
18 building that we store the wire in.

19 Q Okay, now, do you see any drag marks in that picture?

20 A I believe that's what I'm seeing there, yes.

21 Q Okay, just want to make sure that was the right picture
22 you were talking about.

23 This next one is State's Exhibit Number Eight. Do you
24 recognize this photograph?

25 A Yes, I do.

1 Q Can you tell us where that is?

2 A All right, this is directly adjacent to the storage
3 building. In fact, you can see it in the background on the
4 left again indications in the dirt right in the middle of the
5 picture where we could see that something had been dragged
6 away to the edge of the woods.

7 Q Now, where would the wire have been stored?

8 A There, there are two storage buildings in this area.
9 The building that you see in the top upper left is one of
10 those two buildings. It's actually an adjacent building to
11 the building seen in the picture.

12 Q Okay, now, on this property do you have cameras or
13 anything set up out there?

14 A Not in this location.

15 Q Not in that location, so any other alarm systems or
16 anything?

17 A No, this is a very remote part of the mill that we
18 typically don't have reason to be in.

19 Q Okay, is it patrolled very often?

20 A Our security force, our contract security force we do
21 have a rover. This is not one of the normal points that we
22 send our rover to.

23 Q Now, what is stored typically in that area?

24 A We typically store wire and other high-value large
25 equipment. This is material that's not used very frequently

Kenneth Ray - Direct by State

41

1 but is critical to the mill operation.

2 Q Now, why would the mill have copper wire?

3 A Wire, if there is a failure in a main power cable to the
4 mill which is what this wire is used for this potentially
5 could shut the mill totally down and we'd have a huge loss of
6 revenue. So this is spare cable to keep us in operation.

7 Q Okay, are you familiar with the wire at all? Have you
8 ordered it?

9 A No, I have not.

10 Q Okay, have you held the wire or done any of that work?

11 A No, I have not.

12 Q Okay, so you just know of the wire?

13 A Correct.

14 Q And you know of its use?

15 A Saw the spool - I did see previously the - a half empty
16 spool of wire and I saw the empty spool of wire.

17 Q And to your knowledge did IP use any of that wire
18 through that time period?

19 A Not to my knowledge, no.

20 Q So this isn't used every day?

21 A Correct.

22 Q Now, would you say you walked this path around January
23 9th, would that be reasonable?

24 A Yes.

25 Q Okay, and you said there were drag marks on the ground.

1 Were they relatively fresh?

2 A Yes, they appear to be.

3 Q Okay, and the marks on the tree was there any new growth
4 or anything on that tree?

5 A No new, no new growth. It was obvious that they were
6 recently cut.

7 Q Okay, thank you. That's all the questions I have for
8 you right now. Please answer anything Mr. Edgeworth may have.

9 THE COURT: Cross examination?

10 MR. EDGEWORTH: Thank you, Your Honor.

11 CROSS EXAMINATION

12 BY MR. EDGEWORTH:

13 Q Good afternoon, Mr. Ray. Now, you - I guess you just
14 testified there at the end that you walked the grounds on the
15 9th, is that, is that what you recall?

16 A Around that time, yes.

17 Q Okay, had you walked the grounds before that time?

18 A I have visited this area multiple times, yes.

19 Q And were there, were there incidences of theft prior to
20 January 9th?

21 A From this specific area we had lost some wire
22 previously, but we have also lost metal in other areas also.

23 Q Can you say that one more time? You lost me.

24 A Yeah, this area we had had a previous incident of wire
25 that had gone missing, yes, there had been.

Kenneth Ray - Cross by Defense

43

1 Q Did you - do you have any knowledge whether the wire
2 that was stolen previously was the same kind of wire that was
3 stolen around January 9th?

4 A I do not.

5 Q Now, you, you talked about the pictures that were, that
6 were shown. Do - and you mentioned, I guess, may we pull up
7 the - it would have been Exhibit Three, whatever it was.

8 MR. TODD: Madam Clerk, hit it. Thank you.

9 THE CLERK: I'm sorry.

10 MR. EDGEWORTH: Thank you.

11 THE COURT: That's Number Three you said?

12 MR. EDGEWORTH: Yes, yes, Your Honor.

13 THE COURT: Okay.

14 MR. EDGEWORTH: Thank you very much, Exhibit Number
15 Three.

16 BY MR. EDGEWORTH:

17 Q Now, you, you testified that that, that appeared to have
18 been cut?

19 A That's correct.

20 Q Do you know who cut that?

21 A No idea.

22 Q Okay, now, may we pull up Exhibit Six? Was there any
23 evidence that anyone had come along that - come to that fence
24 or anything related to, to your January 9th excursion around
25 the property line?

1 A Not that I'm aware of.

2 Q Okay, may we pull up Exhibit Four. Okay, that's Exhibit
3 Five, my apologies. You testified that there was some form of
4 drag marks in that photo; is that correct?

5 A Yes.

6 Q Do you have any idea who made those drag marks?

7 A No idea.

8 Q And so essentially there was an incident in and around
9 where you believe to be January 9th where you lost copper, IP
10 lost some copper; correct?

11 A That is correct.

12 Q And there was potentially some times before January 9th
13 where IP lost some copper; is that correct?

14 A That is correct.

15 Q As you sit here today do you have any knowledge that the
16 Defendant was the one that stole that, that copper?

17 A No, I do not.

18 MR. EDGEWORTH: No further questions, Your Honor.

19 THE COURT: Redirect.

20 MR. TODD: None, Your Honor.

21 THE COURT: All right, you can step down, Mr.
22 Ray. Thank you. Next witness.

23 MR. TODD: Thank you, Your Honor. Mr. Lynn
24 Freeman.

25 Whereupon, Dennis Lynn Freeman was called to the stand,

Dennis Lynn Freeman - Direct by State

45

1 duly sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated and state
3 your full name for the record, spelling your first and last
4 name.

5 MR. FREEMAN: Dennis Lynn Freeman, D-E-N-N-I-S, F-R-E-E-
6 M-A-N.

7 DIRECT EXAMINATION

8 BY MR. TODD:

9 Q Thank you, Mr. Freeman. Mr. Freeman, I need to know a
10 little bit about you as well. Who do you work for?

11 A International Paper.

12 Q And how long have you worked for International Paper?

13 A 29 years.

14 Q All around here?

15 A All in Georgetown.

16 Q So you been here for a while?

17 A I have.

18 Q Now what's your current position at IP?

19 A My current position I'm the IE electrical leader in the
20 powerhouse area.

21 Q So you would know about the power lines that IP uses
22 then?

23 A Yes, sir.

24 Q Are you responsible for ordering these power lines?

25 A At that time I was, yes, sir.

1 Q Okay, and you were somewhat involved with this case
2 around January 9th last year or actually this year?

3 A Yes, that's correct.

4 THE COURT: Was it - you said this year?

5 MR. TODD: This year, it was 2013.

6 BY MR. TODD:

7 Q Tell us a little bit about the cable that you realized
8 was, was missing?

9 A Basically this cable is a relatively new style cable.
10 It's what we call 750 MCM which means it's about the size of a
11 quarter, you know pretty much solid copper. It weighs around
12 two and a half pounds per foot. It cost about in the
13 neighborhood of \$25 a foot.

14 Q This is pretty expensive cable?

15 A Yeah, it's pretty expensive.

16 Q And you said it's relatively new. How long have you all
17 been using it?

18 A As far as I know this is one of the first times we had
19 purchased this type cable.

20 Q Okay, tell us exactly what it's used for, just kind of
21 describe why would IP need copper cable?

22 A Basically what this cable does is it feeds our
23 electrical control centers where our big motors come out of.
24 This particular cable would probably feed like eight or ten
25 300 horse, 400 horse motors.

Dennis Lynn Freeman - Direct by State

47

1 Q Now, you are responsible for purchasing this stuff.
2 Where would you pick this up, Thomas Supply or anywhere in
3 Georgetown?

4 A We order all our cable out of Atlanta.

5 Q Okay, how much cable have you ordered?

6 A I've ordered a good bit of cable.

7 Q Okay, so you're very familiar with it?

8 A Uh-huh, yes, sir, I am.

9 Q Would you recognize this cable if you saw a picture of
10 it?

11 A Yes, I would.

12 MR. TODD: Your Honor, I want to just hand forward
13 the State's Exhibits Number 10 through 14.

14 THE COURT: Ten through 14 for ID?

15 MR. TODD: Yes, Your Honor, for ID purposes.

16 THE COURT: Okay.

17 BY MR. TODD:

18 Q You recognize this, this cable?

19 A Yes, sir, this cable is 7-50 compact.

20 Q Okay, so that is the type of cable that you, you
21 ordered?

22 A Uh-huh, yes, sir.

23 Q Any doubt that it's the same type of cable you ordered?

24 A Sir?

25 Q Any doubt that it's the same type of cable?

1 A No, sir.

2 Q Okay, you would recognize that without ---

3 A Uh-huh, yes, sir.

4 Q --- without any hesitation. You recognize all those

5 pictures?

6 A Yes, I do.

7 Q Okay.

8 A Now, this last one, if I may, this, this is ---

9 THE COURT: The number, the number on the back?

10 Q Wait, not, not yet, I just need you to ---

11 A I'm sorry. Okay, go ahead.

12 Q --- recognize them right now.

13 A Yes, sir.

14 Q We'll get right to that.

15 A Okay.

16 THE COURT: All right.

17 MR. TODD: Your Honor, at this time I would like

18 to move these into evidence.

19 THE COURT Okay, 10 through 14.

20 MR. EDGEWORTH: No objection, Your Honor.

21 THE COURT: All right, 10 through 14 are in.

22 (Whereupon, State's Exhibit Numbers 10 through 14

23 (Photographs) admitted into evidence and appropriately

24 marked.)

25 BY MR. TODD:

Dennis Lynn Freeman - Direct by State

49

1 Q All right, let's take a look at - this might be easier
2 to do if you look at your monitor. Let's look at State's
3 Number Ten. What are we looking at?

4 A This is basically that 7-50 compact that all the outer
5 insulation has been burned off of it.

6 Q Outer insulation, it doesn't come like that?

7 A No, sir.

8 Q Okay, tell us what it looks like when it - when you had
9 - when you have this wire?

10 A When it's brand new the entire cable is probably around
11 an inch and a half in diameter.

12 Q Okay.

13 A You got an outer jacket, then you've got an inner shield,
14 then you have more thicker insulation and then your actual
15 conductor is in the center of it and this is what's here.

16 Q Now let's look at State's Number 11 and this would be
17 that same wire; is that correct?

18 A Yes, sir.

19 Q Can you tell us what this is?

20 A Basically this is what shows you that this is the
21 compact style cable that your strands are rectangular rather
22 than round as in normal cable.

23 Q So the rectangular is unique to this?

24 A Yes, sir.

25 Q Okay, do you know of any other type of cable that comes

1 in that, that shape?

2 A No, sir.

3 Q Okay, this is State's Exhibit Number 12 and what is that
4 we're looking at?

5 A Sir?

6 Q What is that that we're looking at there?

7 A It's the same cable just the end of it.

8 Q It's a different angle. Now you had mentioned one of
9 the photographs that you wanted to talk about specifically.
10 We'll jump to State's Number 14. Now, what are we looking at
11 here?

12 A This is the outer shield that goes - it's your - you
13 have your outer, your outer jacket, but this is the copper
14 shield just below that outer jacket that we use basically if
15 the cable goes bad what this will do is ground your system out
16 and shut it down.

17 Q So it's a safety feature?

18 A Yes, sir.

19 Q And is this specific to this type of cable that you
20 ordered?

21 A Yes, sir.

22 Q Now to the best of your knowledge does anybody else
23 around here order that cable?

24 A Not that I'm aware of. I mean, this is purely
25 industrial style cable.

Dennis Lynn Freeman - Direct by State

51

- 1 Q This is the big, big cable?
- 2 A Yes, it is.
- 3 Q Okay, now, how many feet of this cable did you all have?
- 4 A Originally we had ordered 1000 feet of it.
- 5 Q A thousand feet of this cable?
- 6 A Yes, sir.
- 7 Q And what was the cost of that cable, that roll?
- 8 A It was around \$25,000.
- 9 Q And when did you first notice the cable was missing?
- 10 A The first time we noticed cable was missing was October
- 11 31st of 2012.
- 12 Q Okay, and was all of your cable missing then?
- 13 A No, sir, only around 500 feet of it was missing.
- 14 Q Okay, did you all contact the authorities when that
- 15 happened?
- 16 A I, I don't know. I don't know if they were - contacted
- 17 them or not. I'm not positive. I contacted security.
- 18 Q Okay.
- 19 A Our security, but I'm not sure if they were contacted.
- 20 Q Okay, is that typically what would happen though, you
- 21 contact your security and they would ---
- 22 A Yes, sir, uh-huh.
- 23 Q Okay. That's all the questions I have right now.
- 24 Please answer any questions that Mr. ---
- 25 A Thank you.

1 CROSS EXAMINATION

2 BY MR. EDGEWORTH:

3 Q Good afternoon, Mr. Freeman. You've seen those exhibits
4 today. Have you seen those exhibits before today?

5 A No, sir.

6 Q Okay, were you, were you called in in and around the
7 time in January of 2013 to identify any type of wire?

8 A I was called in to look at the wire to see if that was
9 the type wire we were missing.

10 Q Okay, and where did you go to see that?

11 A At the recycle center.

12 Q Did you, did you appreciate or did you believe that the
13 wire you saw at that time was the wire, were you certain at
14 that time that that was the wire you were missing?

15 A I was certain that was the type wire that we were
16 missing, yes, sir.

17 Q Okay, so, as of January you were certain that that was
18 what was - that was your wire that was missing?

19 A That was the type wire, yes, sir.

20 Q Okay, do you recall giving a statement to the, the
21 Georgetown County Sheriff's Department in and around that
22 time?

23 A Yes, sir.

24 Q Okay.

25 MR. EDGEWORTH: I apologize. Just looking for my

1 copy, Your Honor.

2 BY Mr. EDGEWORTH:

3 Q I'll just show it, show it to you if I may?

4 A Yes, sir.

5 Q And that, that is your signature at the bottom?

6 A Yes, sir, that is mine.

7 Q Okay, and that's your handwriting, you wrote that?

8 A Yes, it is, uh-huh.

9 Q Okay, do you mind reading your statement for the record?

10 A It says, "I was asked to look at the scrap wire at the
11 recycle center. It appears to be the wire we're missing from
12 International Paper."

13 Q Okay, and when you - when you say it appears to be ---

14 A Uh-huh.

15 Q --- were you certain at that time?

16 A I was certain that it is the type wire we were missing,
17 yes, sir.

18 Q Did you identify it specifically as the wire you were
19 missing or that it just looked like it?

20 A There's, there's no way to identify that wire
21 specifically as the wire we were missing.

22 Q So there's no serial numbers?

23 A No, sir, all, all that was not available.

24 Q There's no tags on it?

25 A All that was stripped off of it.

1 Q Okay, so, basically you were just - you believed that it
2 looked like the wire you were missing?

3 A No, sir, it was the type wire we were missing.

4 Q Okay, did you know at that time how it got missing?

5 A No, sir.

6 Q Okay, do you have any knowledge that the Defendant was
7 the one that made it go missing?

8 A No, sir.

9 Q Okay.

10 MR. EDGEWORTH: No further questions.

11 THE COURT: Redirect?

12 MR. TODD: Just one quick question.

13 REDIRECT EXAMINATION

14 BY MR. TODD:

15 Q You were asked to go and look at the wire; is that
16 correct?

17 A Yes, sir.

18 Q And where did you go to look at this wire?

19 A At the recycle center.

20 Q And was this gentleman over here the person you met at
21 the recycling center to look at it?

22 A I, I don't recall.

23 Q It's been a year?

24 A Yes, sir.

25 Q But it was Coastal Recycling you went to; is that

Heath Holt - Direct by State

55

1 correct?

2 A Uh-huh.

3 Q Okay.

4 MR. TODD: That's all the questions I have, Your
5 Honor.

6 THE COURT: Anything else?

7 MR. EDGEWORTH: Nothing further, Your Honor.

8 THE COURT: All right, you can step down. Thank
9 you, sir. Everybody okay on the jury? We can take a break if
10 you want to. All right, next witness.

11 MR. TODD: Mr. Heath Holt.

12 Whereupon, Heath Holt was called to the stand, duly sworn
13 by the clerk and testified as follows:

14 THE CLERK: Thank you. Please be seated and
15 state your full name for the record, spelling your first and
16 last name.

17 MR. HOLT: Heath Holt, H-E-A-T-H, H-O-L-T.

18 DIRECT EXAMINATION

19 BY MR. TODD:

20 Q Thank you, Mr. Holt. Just a couple of quick questions.
21 Where do you work?

22 A Coastal Recycling.

23 Q How long have you worked there?

24 A I've been there about five years.

25 Q Okay, were you working there last year around January,

1 January I believe it was the 8th, 9th, January 9th?

2 A This year, yes, sir.

3 Q This year, and you got involved with this case in a
4 little bit different way. Who contacted you regarding some
5 copper wire?

6 A International Paper, they called and said they had some
7 missing and distinctive wire. Investigator McKay he come up
8 there and I think he came with IP or IP came with him either
9 or, but they were both up there at the same time and I think
10 that the fellow from IP had a sample of it, you know, a couple
11 of inches, something like that and it had distinctive marks on
12 it.

13 Q Distinctive marks, so you think you could recognize a
14 picture of this wire?

15 A That's been about a year ago, but yeah, it had
16 distinctive marks. It wasn't round like normal copper. It's
17 - it was square, rectangle. That's not something that, you
18 know, normal person is going to have in their house.

19 Q Let's take a look at State's Number 11. Does that look
20 like the wire?

21 A That looks like it.

22 Q Okay, and would you say that's a unique design?

23 A Yeah, the, the normal copper wire is, you know, it's got
24 several strands of they're circular, they're round and
25 everything just twisted together. You know, the copper wire

Heath Holt - Direct by State

57

1 inside this right here it's all going to be the same thing,
2 it's going to be round. It's not going to be rectangular.
3 It's not going to be square. It's not going to be - it's
4 going to be round.

5 Q And you've been working there you said five years?

6 A Yes, sir.

7 Q How many times have you seen this type of wire come to
8 your facility?

9 A That would've been the only time.

10 Q So the only time in five years?

11 A Yeah.

12 Q How much metal comes through your facility per year?

13 A Per year?

14 Q Well, let's break it down per month how much metal comes
15 through your facility?

16 A This month I've shipped close to 900 - over 900,000
17 pounds this month, so, you know, you're looking about a
18 million pounds a month give or take.

19 Q So, you see a lot of metal?

20 A I see a lot of metal.

21 Q And this was the only time you'd ever seen that metal?

22 A That's the only time I'd ever seen that style.

23 Q Have you seen it since then?

24 A No.

25 Q Now, I talked with you before I came to your facility;

1 is that correct?

2 A Correct.

3 Q And you're the guy that takes the weight?

4 A Well, I'm in the big scale. If something comes up
5 stolen, missing or you got a question about it they come get
6 me, I go out there, I take a look at it and, you know, kind of
7 make that judgment call, "Hey, is this thing hot or is this" -
8 you got to use that judgment call.

9 Q Okay, but typically you're the guy that gives the check
10 out to ---

11 A Right.

12 Q Okay, on January 9th this gentleman over here come to
13 your facility?

14 A Yes.

15 Q And what did he do?

16 A He backed up to nonferrous scale. He was, I think he
17 offloaded it what I can remember and McKay had just left. He
18 hadn't been gone 10 maybe 15 minutes, "A certain type of wire,
19 that wire right there if it comes back let me know." I called
20 McKay. He come, you know, come back up there and the wire was
21 either still in his truck or they had just offloaded it.

22 Q Okay,~I want you to take a look at State's Number 10.
23 Is that the wire that he offloaded?

24 A Yeah, that's sitting on a pallet inside our warehouse.

25 Q Okay, so that's inside your warehouse right there?

Heath Holt - Direct by State

59

1 A That's inside the warehouse.

2 Q This is State's Exhibit Number 14?

3 A That'd be a light copper. That come in at the same
4 time. That was - I think he had it separated. To kind of
5 give you a little insight, you got different grades of copper.
6 You got different grades of this and grades of that. If
7 anybody knows a little bit about copper the better you got it
8 broke down the more money you can make. So that right there
9 that's a light copper. That's like 20, 30 cent different than
10 number one, which that's what the other wire was number one,
11 and so evidently he - they'd stripped it off, burnt the
12 insulation off of it and then had that pile and had number one
13 pile.

14 Q So this was done by someone that knows copper?

15 A Right.

16 Q And that was also brought in by this gentleman over here?

17 A Correct.

18 Q Okay, did you write him a check for it?

19 A No.

20 Q What did you do?

21 A Basically stalled, stalled him because, you know, I knew
22 it was on the hot list. Don't know whether that was the
23 material or not, called Investigator McKay. He come back up
24 there and he said, yeah, that was it, and his truck was still
25 backed in the warehouse. We used the inside scale because it

1 was cool outside and, you know, it was put on the hot list.
2 They were going through the vehicle. That's when they found
3 the marijuana in his truck.

4 MR. EDGEWORTH: Objection.

5 THE COURT: Sustained. Just go ahead and just
6 do responsive questions - responsive answers.

7 Q All right, as far as the metal itself, around that time
8 what was copper selling for? What were you guys giving,
9 giving for copper?

10 A Roundabout figure three, 3-10 a pound.

11 Q Do remember how many pounds he brought in?

12 A 2-50, 2-80, something like that, might have been a
13 little more, might have been a little less, but it was right
14 in that ballpark.

15 Q So it was a lot of copper?

16 A Right, it would've been about, been about 1200 bucks
17 give or take.

18 Q Okay, that's all the questions I have right now. Please
19 answer any Mr. Edgeworth may have.

20 THE COURT: All right.

21 CROSS EXAMINATION

22 BY MR. EDGEWORTH:

23 Q Good afternoon, Mr. Holt. How much does copper weigh?

24 A How much does it weigh?

25 Q Yeah, what's the ratio, what's the weight of copper?

Heath Holt - Cross by Defense

61

1 A A pound's a pound.

2 Q Well, I just mean like if you - if I bring in a big old
3 tub of it, you know, can you guesstimate how much that is or
4 you just got to throw it out there?

5 A No, you don't guesstimate. We got a scale.

6 Q Well, okay, well, that's my point. Can, you know, if I
7 brought in, I don't know, 200 feet of copper how much is that
8 going to weigh?

9 A Depends on what grade it is, what size it is. You got
10 all kinds of scenarios you got to go by, but we don't go by
11 how long it is. We go by the weight.

12 Q Okay, and you - you're saying it - you were shown that
13 exhibit a little earlier on the - where the copper was on the
14 pallet. Do you know how long that was?

15 A I ain't got a clue. We didn't - when you take something
16 and you cut it up you can't justify how long it is.

17 Q Okay, so there was no way to know at least at that time
18 how much copper it was in something when you're talking about
19 distance or length?

20 A No.

21 Q Okay, fair enough. Do you - have you seen Mr. Thompkins
22 come into your facility any other time other than that day?

23 A I'd seen him in there a few times.

24 Q Okay.

25 A Like I say, I'm the one at the pay window. When you

1 come to turn your ticket in to get paid I was the one you
2 seen.

3 Q Okay, and so he's made transactions at your facility
4 before?

5 A Correct.

6 Q Ones that were not with items that you, you felt the
7 need to keep him there because it was on the hot list;
8 correct?

9 A I didn't know anything about the hot list until McKay
10 had just left and said he had a certain type, a certain style,
11 a certain grade of wire.

12 Q I understand that, but you've been working there for
13 some odd time, three years, etcetera or more?

14 A Right.

15 Q And you're familiar with the hot list I assume?

16 A Right.

17 Q Okay, so my question to you was has Mr. Thompkins been
18 there, made a transaction with items that were not on a hot
19 list?

20 A I would assume so.

21 Q Okay, so he's been paid for items before?

22 A Right.

23 Q And you were talking about the experience one would have
24 with that kind of copper, they, they would know that, you
25 know, they strip it down here and they make it thinner there

Heath Holt - Cross by Defense

63

1 and they could make more money if they know what they're
2 doing; correct?

3 A Right.

4 Q Okay, do you think an individual that knows that much
5 about copper would be - have wherewithal to know he probably
6 shouldn't be taking hot copper to a recycling facility?

7 A Should they know not to?

8 Q Yes.

9 A They should know not to.

10 Q Okay, all right, when you - my apologies. On the copper
11 that and I think you answered this question. My apologies for
12 asking it again, but if that copper came in to you and Mr.
13 McKay not had been there would that transaction have been
14 consummated?

15 A Would it had been paid out?

16 Q That's right.

17 A It probably would have but on any transaction at my yard
18 there is a paper trail. It will come back to haunt you if it
19 comes back stolen.

20 Q Right.

21 A You know, I mean, that's the same thing as you going out
22 stealing a car, you bring it to the yard and you think that's
23 the end of it, that's not the end of it because there's a
24 paper trail. You got the VIN number that's going to come back
25 and haunt you if it comes back stolen, you know, looking for

1 it.

2 Q Sure, I understand that. Are you aware of whether or
3 not Mr. Thompkins has a permit to sell?

4 A Yeah, yeah, you've got to have all that on file.

5 Q And so Mr. Thompkins has a permit?

6 A He had one, whether it's expired or not I don't know.

7 Q Okay, no further questions.

8 THE COURT: Redirect?

9 MR. TODD: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. TODD:

12 Q Now, copper is sold regularly here at the facility; is
13 that right?

14 A Correct.

15 Q And how often do people come in with hundreds of pounds
16 of copper?

17 A Unless it's industrial count, you know, like an
18 electrical shop or something like that, not very often.

19 Q Do you know if this gentleman has an industrial shop?

20 A Not that I'm aware of.

21 Q Had he ever brought in 300 pounds of copper before?

22 A Not that I'm aware of.

23 Q That's all the questions I have.

24 THE COURT: Anything else from the Defendant?

25 Anything, any other questions?

Bryan McKay - Direct by State

65

1 MR. EDGEWORTH: Nothing further, Your Honor.

2 THE COURT: Thank you, sir, you can step down,
3 Mr. Holt. Everybody okay? Just raise your hand, don't be
4 shy. Okay, next witness.

5 MR. TODD: Thank you, Your Honor, Investigator Bryan
6 McKay.

7 Whereupon, Bryan McKay was called to the stand, duly
8 sworn by the clerk and testified as follows:

9 THE CLERK: Please be seated and state your full name
10 for the record, spelling your first and last name.

11 MR. MCKAY: Bryan Wayne McKay, Bryan, B-R-Y-A-N,
12 McKay, M-C-K-A-Y.

13 DIRECT EXAMINATION

14 BY MR. TODD:

15 Q Thank you, Investigator McKay. How long have you been
16 in law enforcement?

17 A Twelve years.

18 Q And where have you done most of that law enforcement?

19 A Georgetown County Sheriff's Office.

20 Q Okay, how long have you been in investigations?

21 A I've been back at the Sheriff's Office for the past
22 three years, two and a half, I've been back in investigations.

23 Q Tell us a little about your training in investigations,
24 what kind of training do you go to to have that position?

25 A We go to any, any continuing education course at - such

1 as fingerprint classes, investigative, interview,
2 interrogation classes, any special classes that we would like
3 to go to.

4 Q So to have your position you have to have experience and
5 additional ---

6 A Yes.

7 Q --- knowledge, okay. Now, specifically with metals how
8 long have you been investigating metals, nonferrous metal
9 cases?

10 A Nonferrous metal cases I've been doing the last two and
11 half years.

12 Q And with the Georgetown County Sheriff's Department are
13 you the person that primarily does that?

14 A I'm the primary lead, the copper investigator or
15 nonferrous metals investigator.

16 Q Is that a specific title or just fell into it?

17 A Just fell into it.

18 Q Okay, so, this isn't your first metals case?

19 A No, it's not.

20 Q Okay, tell us a little bit about your involvement with
21 this case specifically with starting January, how do you get
22 involved?

23 A Well, I got notified or that some, some copper was
24 coming in and I went and looked at it and a couple of days
25 before this and didn't have - didn't know what it was, never

Bryan McKay - Direct by State

67

1 seen copper before, it was square and it also a shape I've
2 never seen before in two years, two and a half years I was
3 doing it, doing all my copper investigations. So I called
4 around to my industrial places. No one had it. No one uses
5 it. I finally got in touch with IP, Mr. Ricky Marlowe, and he
6 described that they were - they had been missing some over the
7 several, last several months. He described it to me, said it
8 come, come in a case. It had a copper sheeting around it and
9 it, it was, it was unique to them because it was, it was
10 almost square and compacted and he described it as it being
11 so tightly compressed together that it was, that it made it
12 square, and so I went riding around looking for some of the
13 places I knew that where just copper, copper was and what I've
14 heard on the street, went by [REDACTED] and see there was a
15 red Toyota truck Tundra sitting in the yard, two guys in the
16 back. I recognized them as David Thompkins and Alex Miller,
17 turned around, came back through the road and they were gone.
18 They ran and hid. The truck was still there, fire was still
19 going in the back, black smoke coming up, looked like rubber
20 or something burning and fire unsure. I went over to Coastal
21 Recycling on Ridge Road, showed them, I was like this is - I
22 described the copper to them. I was like it's, it's, it's
23 unique. It's square. You know, I've never seen it before.
24 It also has a copper sheeting. If you all see it, call me,
25 let me know I'll come look at it whoever brings it in.

Bryan McKay - Direct by State

68

1 While we're there, we're getting ready to leave. The
2 railroad track caught us, you know, there's the railroad track
3 goes right beside Coastal coming out of the driveway on Ridge
4 Road. We were sitting on Ridge Road waiting on the train to
5 pass. As we passed the Toyota truck that was sitting at
6 [REDACTED] drives over the track and a line of traffic behind,
7 in front of us and behind us. By the time I get to Highmarket
8 Street I get a call from Coastal Recycling, you know, "Bryan,
9 this wire come in. Can you come, come look at it?" I knew
10 David Thompkins was, was suspended, had a suspended driver's
11 license. I went around there, placed him under arrest
12 whenever I got cleared to turn around, come back to the shop,
13 placed him under arrest for driving under suspension third,
14 read him his Miranda rights. After that point, you know, he
15 was - he, he was searched, I searched his pockets to make sure
16 he had no contraband or weapons on his person because you
17 can't take that to the jail. So in his right front change
18 pocket there was a small green leafy type substance. I
19 believed it was marijuana. He claimed it was his. There was
20 another small marijuana found in the driver's side of the
21 truck. He was placed under arrest for driving under
22 suspension. Deputy Cameron came and transported him to the
23 jail. His truck was towed by Georgetown Wrecker Service I
24 believe and the wire was left at the - photographed and left
25 at the Coastal Recycling. I contacted Mr. Ricky Marlowe to

Bryan McKay - Direct by State

69

1 come identify it as his because, like I said, I've never seen
2 it before. It was compacted square, just what he described.

3 Q Now, when you contacted the people at IP did they come
4 out that second?

5 A Mr. Ricky Marlowe came out from IP and looked at it and
6 he said that he would bring an electrician on the next day,
7 the following day to, to actually look at it and he'd be able
8 to identify it because Mr. Ricky is security and fire.

9 Q Okay, and was the electrician here?

10 A Mr., Mr. Lynn, Mr. Lynn Freeman showed up the next day
11 with Mr. Ricky Marlowe and he said it believed to, to be
12 theirs, their wire.

13 Q And you had said a minute ago that you had called around
14 several places looking to see who owned this wire originally?

15 A Uh-huh.

16 Q What, what places did you contact?

17 A I contacted Santee Cooper. I've, I worked with them on
18 several cases, also Georgetown City that works with the steel
19 mill they contacted their people and no one, no one has that
20 wire.

21 Q So no industrial places around here carry it?

22 A Not that I, not that I'm aware of and through the cases
23 that I've worked I've not seen that kind, type of wire.

24 Q So, there's only one place that had that wire?

25 A That I know of.

1 Q Now, did you go to International Paper to look at their
2 facility?

3 A I did, I believe it was the 10th or 11th, those few days
4 after, after all that. I'm not, I'm not sure on the day. I
5 went and actually took those pictures. Mr. Ricky Marlowe took
6 me around and showed me where the wire was stolen from,
7 actually took the pictures from the building to the river.
8 There was - you could see the drag marks all the way to the
9 river and down to that - to the tree where it was loaded from
10 the river.

11 Q So this was a day or two after picked up ---

12 A A day or two after.

13 Q --- this gentleman here?

14 A Yes, it's a day or two after.

15 Q And would you say the marks were fresh marks?

16 A They were fairly fresh, yes.

17 Q Okay, now, you had mentioned that you found something
18 you believed to be marijuana in the vehicle?

19 A Uh-huh.

20 MR. TODD: Your Honor, we'll fast forward State's
21 Exhibit Number Nine.

22 BY MR. TODD:

23 Q Do you recognize that photograph?

24 A Yes, I took that in the patrol room when I was weighing
25 the marijuana.

Bryan McKay - Direct by State

71

1 Q Is that the marijuana you took from him?

2 A Yes.

3 Q This gentleman over here?

4 A Yes.

5 Q No doubt that that's the same one?

6 A That's the same one.

7 Q Okay, do you remember what day you took that picture?

8 A That was on the 9th.

9 Q Okay.

10 MR. TODD: Your Honor, at this time I'd like to
11 move State's Exhibit Number Nine into evidence.

12 THE COURT: Any objection?

13 MR. EDGEWORTH: No objection.

14 THE COURT: All right, Nine is in.

15 (Whereupon, State's Exhibit Number Nine [Photograph]
16 admitted into evidence and appropriately marked.)

17 BY MR. TODD:

18 Q If we could look at Number Nine, please. Just describe,
19 you've already gone through it but just since we can look at
20 the picture.

21 A This, this right here is the road going ---

22 MR. TODD: The Court's indulgence, this - we'll
23 take care of this, this matter and we'll go back to the other
24 one.

25 A This is the marijuana that was pulled out of his truck

1 or one was pulled out of his - the right change pocket of his,
2 of his jeans on his person. The other one was found, the one,
3 the bigger baggie was found in the driver's side and this,
4 this circular thing is the grinder that was found in the
5 center console which is used to grind marijuana.

6 Q Okay, so it was found in the driver's side, the big bag
7 was ---

8 A The big, the big bag was found in the driver's
9 floorboard.

10 Q Okay, and who was driving the vehicle?

11 A David Thompkins.

12 Q This gentleman over here?

13 A Yes, sir.

14 Q Now, I know we flipped through a lot of these pictures.
15 Let's look at a few of them just specifically. This is
16 State's Number Eight. Can you describe where State's Number
17 ---

18 A This is up at the warehouses, the buildings. You can
19 see to the upper left corner and the drag marks going over the
20 - there was actually a pile of stumps I think right around
21 there that you'd have to cross over. It actually drug over
22 the, over them and then down towards the river and the drag
23 marks are right there in the center of the, of the gravel
24 there.

25 Q This next one is State's Number Seven.

Bryan McKay - Direct by State

73

1 A This, this is the tree that's in between the gated
2 fence. You can see the actual fresh drag marks across the -
3 where something's rubbed, rubbed the bark off the tree right
4 there.

5 Q And that something you believe is the wire?

6 A Yeah, I believe that was the wire because actually the
7 drag marks would, would be right in the bottom of that picture
8 across the top of it. There was basically drag marks from the
9 building all the way to the river.

10 Q And this is State's Number One and we keep saying river.
11 We've already looked at this picture. Can you tell us where
12 on the river, what river this - where would we find this
13 place?

14 A This, this would be the - on the Sampit River. It's
15 back behind IP. If you go - if you're standing at those
16 buildings you'd go west and then it's a good, it's a good ways
17 and there are drag marks all the way down where somebody
18 actually made a landing right here and that's the - they cut,
19 they cut the limbs off the cypress tree right there to gain
20 access and to tie, I guess, I would assume to tie off, but to
21 gain access to the, to the IP property.

22 Q So you believe this was the access point to getting the
23 copper wire?

24 A I believe that was the access point, yes.

25 Q Okay, now, with your investigation did you interview

1 this gentleman over here?

2 A \ I did. I interviewed him on the 11th at the Georgetown
3 County Detention Center.

4 Q Okay, tell us a little bit about the interview, what
5 kind of questions did you ask him?

6 A Well, I mirandized him again for the second time and
7 asked him if he wanted to talk and he - I asked him where the
8 wire came from, you know, he, he stated he, he pulled it out
9 of the river.

10 Q Did he tell you where he pulled it out of the river?

11 A Behind IP.

12 Q Did he tell you how he did that?

13 A He got out of the - on a canoe and got out and put it in
14 the canoe or a boat.

15 Q Did he tell you how much wire he had pulled from the
16 river?

17 A He pulled, I think he pulled a lot. I mean, he said, he
18 said it was like 15 - each section was cut in 15 foot sections
19 and it was like 500 pounds.

20 Q So he pulled 500 pounds of - what he told you is he's
21 pulled 500 pounds of wire onto a canoe?

22 A Uh-huh.

23 Q Did he tell you how he did it I mean as far as did he
24 use any tools?

25 A He said he just - he'd pull, he'd pull it up until it

Bryan McKay - Direct by State

75

1 gave and then he'd pull up, pull up some more.

2 Q Do you know how long he's been doing this?

3 A He said he's been doing it for a while getting copper
4 and stuff out of the river.

5 Q And you've worked a lot of copper cases before; is that
6 correct?

7 A Yes, sir.

8 Q Has anybody else pulled copper out of the river that you
9 know of?

10 A I've had several people tell me, I mean.

11 Q Have those several people pulled that type of wire out
12 of the river?

13 A Not that type.

14 Q Okay.

15 A This, this is the first, first incident I've done, I've
16 dealt with that, that compacted square wire or triangular.

17 Q How about volumes of wire, how much volume of wire, how
18 many pounds of wire had other people pulled from the river you
19 know of?

20 A I'm not - I'm unsure. That seems like to be the going,
21 going thing whenever they're not in electrical, in the
22 business of wire.

23 MR. TODD: The Court's indulgence.

24 BY MR. TODD:

25 Q That's all the questions I have right now. Please answer

1 anything Mr. Edgeworth may have.

2 THE COURT: Cross examination.

3 MR. EDGEWORTH: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. EDGEWORTH:

6 Q Good afternoon, Mr. McKay.

7 A Good afternoon.

8 Q I'm confused by a couple of things here. The testimony
9 earlier was that the stuff starting going missing in October
10 of 2012 from IP. Did you hear that testimony?

11 A I did.

12 Q And the - you got called randomly in January about
13 missing, missing copper at that time?

14 A No, no, sir, I actually contacted IP.

15 Q Why did you contact IP?

16 A Because I did not know where specifically this wire was
17 coming from at that time. This was the first reported
18 incident we had of this wire missing.

19 Q Yeah, but why would you call IP?

20 A Because I called all the businesses, the big businesses
21 that was, that had wire.

22 Q Yeah, but why? I mean, did you come across some wire
23 randomly? I don't understand.

24 A What, what - you have to re-ask.

25 Q Sure, I mean, you said you called IP, but why would you

1 need to call IP if, if they didn't report anything missing?

2 A Because I knew that it wasn't, wasn't supposed to be,
3 being sold at scrap yards. I mean, that was just too much
4 wire - when something like that comes in, when big loads of
5 copper comes in that's suspicious they call me to come look at
6 it and see if I can figure out where it comes from.

7 Q Well, that's not what you said though. You testified
8 that your - you went to Coastal Recycling and then you got
9 called back out there. So why would you call IP before then I
10 mean?

11 A I didn't call IP until the 9th whenever I was looking -
12 some, some other people had brought in loads of wire and I had
13 been looking for possible suspects in it, in it.

14 Q Exactly, that's what I'm saying, I mean, you, you called
15 - why were you at Coastal Recycling to begin with?

16 A Because I'm, like I said, I am the copper investigator
17 and I go, I actually go in there once or twice a week no
18 matter if I got a case or not just looking to see who, who
19 brought stuff in.

20 Q Yeah, but the testimony is that the gentleman from
21 Coastal Recycling called you right back identifying some wire.
22 How did you know at that time that the wire was missing?

23 A Because I spoke to Ricky Marlowe before that at one
24 o'clock in the afternoon.

25 Q Okay, so the same day, but you called them the day after

1 for them to come back out?

2 A The day after?

3 Q You just said you called them after you, you went out to
4 Coastal Recycling?

5 A Yeah, I called them that day, the - right after we
6 locked up or we arrested David Thompkins on driving under
7 suspension third and Coastal, at four o'clock Coastal called
8 me and said that he come in with that wire. I called Mr.
9 Ricky and he came out and looked at it that day and then the
10 next day he brought Mr. Lynn Freeman.

11 Q Why, why were you riding by [REDACTED]? What, what's
12 the significance of that address?

13 A Because there's known to have stolen property and other,
14 other items going on there. Actually they've been involved in
15 some other stolen copper at that address.

16 Q So you were pigeon-holing whoever was, whoever's living
17 at [REDACTED]?

18 A I'm not pigeon-holing them. I was riding around
19 patrolling the area. There happens to be suspicious activity
20 going on at that residence.

21 Q Okay, well, what was suspicious about it?

22 A There's all kinds of suspicious activity. We get alerts
23 on - tips on stuff all the time.

24 Q Okay, so you're just riding around and someone has a
25 fire going in their yard, you know, and you believe there's

1 suspicious activity going on you wouldn't pull up in there?

2 A I did not pull up in there.

3 Q I said but you wouldn't?

4 A Huh? I ---

5 Q You rode by thinking there's suspicious activity going
6 on ---

7 A Well, people ---

8 Q --- you see fire and then you don't stop?

9 A Well, people burn trash in the county out here all the
10 time, I mean, there's a lot of people that burn trash and just
11 in their backyard.

12 Q Okay, you, you were talking about a statement that you,
13 you gave or you took of, of the Defendant and he told you he
14 pulled it from the river; right?

15 A Yes, sir.

16 Q And you just chose not to believe him; is that correct?

17 A I believe - I - he could have pulled it from the river.

18 Q He could have. That was ---

19 A He could have.

20 Q --- perfectly, yes, and in fact other people have told
21 you that they've pulled things from the river as well?

22 A It was specific to IP that wire that he said - he - he
23 showed and Mr. Ricky actually took me out to where it was
24 stolen from, from the river.

25 Q Right.

1 A Somebody drug it to the river.

2 Q So if the stuff has been going missing since October 31st
3 prior to all of this it's not possible that Mr. Thompkins rode
4 up on the river bed and found something that someone had
5 already pulled out there back in October?

6 A Could be I guess. It's possible.

7 Q Absolutely, in fact, didn't you take a statement of a
8 gentleman by the name of Shane Prince?

9 A I did not take a statement. I interviewed him on
10 January 31st. I talked to him on the phone on the 29th and I
11 sat down with him at Harmon and Felts on the 31st.

12 Q And what did he tell you?

13 A He said he pulled it from the - he said he pulled some,
14 some copper from the river.

15 Q So, so do you know who lives at [REDACTED]?

16 A Shane - well, it's registered to Shane Prince.

17 Q Thank you very much.

18 MR. EDGEWORTH: No further questions.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. TODD:

22 Q Now, you had questioned the Defendant about this wire
23 before?

24 A Yes, sir.

25 Q And you had also asked him about that location where he

Bryan McKay - Recross by Defense

81

1 was, he was at that, that day?

2 A Yes, sir.

3 Q And just so we can be clear, did you video - did you
4 audiotape all this stuff when you interviewed him?

5 A Yes, I did.

6 Q Okay, did you send a copy of it to our office?

7 A I did.

8 Q Okay.

9 MR. TODD: Your Honor, just to clarify, you have
10 those; is that correct?

11 MR. EDGEWORTH: That's correct.

12 MR. TODD: Okay.

13 THE COURT: Mark, mark it for ID first.

14 BY MR. TODD:

15 Q We'll just look at it this way. I don't want to touch
16 it too much because these things are - is that your
17 handwriting?

18 A It is.

19 Q Is this a tape?

20 THE COURT: What exhibit number?

21 MR. TODD: This is Exhibit Number 15.

22 THE COURT: Fifteen for ID?

23 MR. TODD: For ID purposes, Your Honor.

24 BY MR. TODD:

25 Q Is this the tape you provided our office?

1 A It is.

2 Q And what is on this tape?

3 A This is my interview with David Thompkins at the
4 Georgetown County Detention Center.

5 Q Okay.

6 MR. TODD: Your Honor, at this time I would like
7 to enter this into evidence State's Exhibit Number 15.

8 THE COURT: All right, any objection?

9 MR. EDGEWORTH: No objection, Your Honor.

10 THE COURT: Are you going to play it now?

11 MR. TODD: Yes, Your Honor, would like to
12 publish this.

13 THE COURT How long is it?

14 MR. TODD: It's about 20 minutes.

15 THE COURT All right.

16 MR. TODD: But so we can be clear on what was
17 said between the two.

18 THE COURT Does anybody need to take a break
19 before this?

20 MR. TODD: Your Honor, it might be a good idea
21 to take five minutes. That way we could set it up.

22 MR. EDGEWORTH: Plus may we approach real briefly?

23 THE COURT: All right, ladies and gentlemen,
24 please go to your jury room. You may not discuss the case in
25 any way at all. Thank you.

1 (Whereupon, the following takes place outside the
2 presence of the jury.)

3 THE COURT: Yes, sir.

4 MR. EDGEWORTH: And Your Honor, there's - I believe
5 there's a component of the tape that ---

6 MR. TODD: There's a question that Mr. McKay
7 asks about this other individual along with some other
8 activity and that was one of the reasons I wasn't going to
9 play this tape just because there would be several cuts in it.
10 However, Defense did ask questions about why was he going by
11 that location around that period of time and why was he
12 targeting this one gentleman. He was asking questions, in the
13 interview asked questions about why he was with certain people
14 on certain dates and other things that were investigated,
15 other potential crimes. There's a mention of, I believe, a
16 motorcycle or another piece of metal from a previous charge.
17 That's, that is something that's questionable there. However,
18 I think the Defense has opened the door on, "Why were you
19 targeting him at this location?"

20 THE COURT: Okay, and what, what is it that you
21 have a problem with on the video or is it a video or just
22 audio or what is it?

23 MR. TODD: It's just audio, Your Honor.

24 THE COURT: Okay, what is it that you have a ---

25 MR. EDGEWORTH: Well, I mean, I just believe that

1 it's prejudicial for him - the conversation - there is
2 interruption in the communication during the conversation and
3 where there are statements made about another crime or alleged
4 crime and I just believe that it's prejudicial. I don't know
5 that, that, that opening the door on that issue is, is quite
6 accurate because the comment was, the testimony was or, excuse
7 me, the statements that he's referring to in that thing are
8 not, I don't believe, the same, isn't the reason why he's
9 riding by the, by the house.

10 THE COURT: Well, he said - the witness said he
11 was riding by the house because it was an area of suspicious
12 activity to him on any given occasion and that I don't know
13 why he immediately did it then, but I think that's what the
14 witness said but how, how has he opened the door to using the
15 statement, you know, the questions in an interview aren't
16 evidence. I don't know what the Defendant said when Mr. McKay
17 asked him, "Well, how about the motorcycle, how about this
18 other metal?" What did the Defendant say?

19 MR. TODD: He said, "I didn't do it, I didn't do
20 it," which is - he maintains it through the entire thing and
21 through the entire interview that he is innocent and as far as

22 ---

23 THE COURT: Okay.

24 MR. TODD: --- what he did in those other cases
25 and the issue that I had that I didn't want to present to a

Bryan McKay - Recross by Defense

85

1 jury beforehand that any other possible cases where this
2 gentleman and his - the house that he was at were being
3 investigated. However, since we've already asked why was he
4 there, why was the officer targeting that area, well, these
5 other gentlemen have been charged in various other metal
6 cases.

7 THE COURT: But ---

8 MR. EDGEWORTH: But he's testified to it.

9 THE COURT: Okay, in the, in the interview was
10 there any questioning by Investigator McKay of the Defendant
11 as to whether the Defendant was doing this or whether the
12 other people were doing this?

13 MR. TODD: He had asked whether the Defendant
14 was doing them.

15 THE COURT: And the Defendant said no.

16 MR. TODD: He said no and then he went on
17 specifically to talk about what he did do. He didn't
18 implicate himself but he gave a lot more information.

19 THE COURT: All right, okay, and where is the
20 prejudice? We've already heard that the investigator had
21 suspicions about Mr. Thompkins and others in other let's call
22 them transactions. What's the harm in the jury hearing
23 basically the same exchange that the officer has already
24 testified to?

25 MR. EDGEWORTH: Well, I just worry about bringing up

1 a whole totally unrelated crime but ---

2 THE COURT: Okay, I'm going to allow it and I
3 want to make sure I understand. Is the State trying to prove
4 that Mr. Thompkins stole this copper or that he was
5 transporting it with knowledge that it was stolen?

6 MR. TODD: We're trying to prove that he has
7 knowledge that it was stolen because of his intimate knowledge
8 of where it was on the dates that it was there and it's going
9 to be mostly circumstantial. However, the fact that he was
10 there and even admits to where he was, how he got it, where he
11 got it from, it was one very specific tiny section of the
12 river.

13 THE COURT: All right.

14 MR. TODD: And his statement is what puts him
15 there.

16 THE COURT: Okay, now, I haven't heard the tape.
17 I don't have a clue what's on it other than what you gentlemen
18 have summarized. If somebody wants to pinpoint the specific
19 thing that the Defendant has a problem with the jury hearing
20 I'll be glad to listen to that. Otherwise, if you can't find
21 it I will have to rule on your generic, or excuse me, your
22 general arguments.

23 MR. EDGEWORTH: And I believe, Your Honor, I was just
24 reminded that there is also conversation about an old charge
25 on there, a forgery charge conversation.

Bryan McKay - Recross by Defense

87

1 THE COURT: Well, that, that, that's not going to
2 come in. I mean, is it a conviction?

3 MR. EDGEWORTH: I'm not - I don't recall off the top
4 of my head.

5 MR. TODD: I don't think we have a forgery
6 conviction on his record, Your Honor.

7 MR. EDGEWORTH: No.

8 THE COURT: Well, let me ask the investigator.
9 Do you remember talking to him about a forgery case?

10 MR. MCKAY: Not a forgery case. It was about
11 some counterfeit money.

12 MR. EDGEWORTH: Oh, well.

13 MR. TODD: Which he actually says ---

14 MR. MCKAY: That, that he was never charged with.

15 THE COURT: All right, what'd you ask him? Well,
16 what'd you ask him?

17 MR. MCKAY: Where the counterfeit money come from?

18 THE COURT: What did he say?

19 MR. MCKAY: The drug dealer that, that he is
20 acquainted with that owed him some money.

21 THE COURT: All right, well, that - all that
22 stuff needs to be cleaned up and I don't know whether you all
23 can clean it up this afternoon or not, but it's all a matter
24 of degree that creates undue prejudice. So while I think that
25 there may be some relevance so the jury can have a flavor of

1 the overall comments made by the Defendant about the metal
2 enterprise, I don't think that counterfeit money has got
3 anything to do with that.

4 MR. TODD: Well, actually, that has to do with
5 the marijuana charge with this case.

6 THE COURT: Well, but he's charged with
7 possessing it.

8 MR. TODD: Right, which he - means he had to get
9 it from somewhere.

10 THE COURT: Well, he had to buy it or grow it or
11 be - it was a gift or he might have stolen it, so.

12 MR. TODD: Well, in that conversation is how he
13 says how he got the marijuana.

14 THE COURT: Well, he got the marijuana how? Is
15 that where you were talking about the counterfeit money?

16 MR. MCKAY: Well, he said he had the - I mean, to
17 be honest he said he had the, the marijuana on him for a
18 while.

19 MR. EDGEWORTH: Well, he's already ---

20 MR. MCKAY: I mean, that's ---

21 MR. TODD: I, I can redact.

22 MR. EDGEWORTH: You've already established that, I
23 mean.

24 MR. MCKAY: I mean.

25 THE COURT: Well, what I might suggest is that we

Bryan McKay - Recross by Defense

89

1 perhaps break for the day and listen to the recording and then
2 either you can agree what's to be taken out or you can give it
3 to me and I can tell you what can be taken out. So and that
4 might be the best thing to do.

5 MR. TODD: Okay.

6 THE COURT: And then let the jury go because if
7 there's any redacting to be done as, as the tape is played
8 that's one thing, but if you're going to redact it and present
9 it in a different format with that information taken out
10 that's another. I don't know what - how much time it's going
11 to take.

12 MR. TODD: Well, as far as redacting a portion
13 of it it's just an audiotape. I can mute it for a time period
14 until we - and those conversations that are off of main topic
15 are relatively short. I could mute what's necessary. There
16 might be 30 seconds of conversation that I mute and start up
17 again.

18 THE COURT: All right, is there anything else on
19 there that you have a concern about that you haven't raised?

20 MR. EDGEWORTH: I don't think so, Your Honor.

21 THE COURT: Okay, and you want to do this - you
22 said you'd like to go ahead and do this this afternoon?

23 MR. TODD: Yes, Your Honor, that would be good.
24 I could, I could sit down and we could listen to it and that
25 way he can - any objections he has or if you want to listen to

1 it, Your Honor.

2 THE COURT: So you want, you want the jury to
3 hear this this afternoon?

4 MR. TODD: I mean, we could break - well, this
5 might take a while. So if we could break for the day and
6 start this up tomorrow morning.

7 THE COURT: All right, okay, Investigator, you
8 can step down.

9 MR. MCKAY: Yes, sir.

10 THE COURT: Well, let me, let me bring the - you
11 can step down. Between now and tomorrow when you retake the
12 stand you can't talk about your testimony or - well, you can't
13 talk about your testimony with anyone.

14 MR. MCKAY: Okay.

15 THE COURT: Okay.

16 MR. MCKAY: Yes, sir. You want me - can I step
17 down?

18 THE COURT: That - yes, sir, you can step down.
19 That includes Mr. Todd, okay?

20 MR. MCKAY: Thank you, sir.

21 THE COURT: All right, you can bring in the jury.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: Mr. Craddock, you all can just all
25 stand right there kind of in the little well. I don't want

Bryan McKay - Recross by Defense

91

1 you to have to stand up because we're going to basically stop
2 for the day. I think everybody is coming. Four, eight, we
3 need five more. You can just stay right there. Okay, you all
4 kind of look like a choir. We're going to break for the day,
5 ladies and gentlemen. It's a logical stopping place. You've
6 been here since 2:30 without much of a break. We're going to
7 start back tomorrow morning at 9:30. One final instruction,
8 you cannot talk about anything involving this case even
9 remotely amongst yourselves or with anyone else in the
10 universe. As I mentioned to you earlier don't do any research
11 about it. Don't undertake to do any investigation or
12 communication of any kind at all. You may have heard
13 terminology locations and things of that nature. Just, just
14 put this out of your mind until tomorrow. I'll see you back
15 at 9:30. Mr. Board, where's Mr. Board? I'm going to appoint
16 you as foreperson of the jury. When you come back tomorrow
17 you'll sit it in a spot that Mr. Knowlin will assign you to
18 and I'll talk to you specifically about what your
19 responsibilities are as foreperson. Have a nice evening. See
20 you back tomorrow morning at 9:30. Okay, thank you.

21 (Whereupon, the following takes place outside the
22 presence of the jury.)

23 THE COURT: Okay, thank you, gentlemen. Anything
24 else before we break?

25 MR. TODD: Your Honor, may Mr. Holt, Mr. Freeman

1 and Mr. Ray be released from their subpoena?

2 THE COURT: Any objection?

3 MR. EDGEWORTH: No objection, Your Honor.

4 THE COURT: All right, gentlemen, of course, it's
5 a public courtroom. You can stay or you can come back
6 tomorrow if you want or you can leave, come and go as you
7 please, okay?

8 MR. TODD: Thank you, Your Honor.

9 THE COURT: All right, as far as the editing of
10 the - I'm drawing a blank, the, the ---

11 MR. EDGEWORTH: CD?

12 MR. TODD: CD.

13 THE COURT: The CD, I'll be around if you want me
14 to play a part in that, but I'll tell the court reporter she
15 can go ahead and go and we'll get back together about 10 after
16 nine. Now, Mr. Thompkins, you remember what I said earlier
17 about you being here?

18 MR. THOMPKINS: Yes, sir.

19 THE COURT: I want you to be back in this
20 courtroom no later than 10 minutes after nine. If your lawyer
21 wants you here earlier you follow his instructions, but you
22 need to be seated at that table no later than 10 minutes after
23 nine. For some reason if I give that instruction to some
24 people they just come walking in at about 12 after nine. If
25 that happens I'm going to put you in jail for the rest of the

Bryan McKay - Recross by Defense

93

1 trial, okay?

2 MR. THOMPCKINS: Okay.

3 THE COURT: So 10 minutes after nine means 10
4 minutes after nine, not 11 minutes after nine; okay?

5 MR. THOMPCKINS: I'll be here at nine.

6 THE COURT: All right, good enough. Thank you.

7 MR. THOMPCKINS: Thank you, sir.

8 THE COURT: I'll be in the back for a while,
9 okay?

10 MR. TODD: Thank you, Your Honor.

11 MR. EDGEWORTH: Thank you, Judge.

12 COURT REPORTER: Judge, he is going to hold onto that
13 CD because I had marked it and all.

14 THE COURT: They're going to have to. It's been
15 marked for ID but I'm going to leave it in your gentlemen's
16 custody, okay?

17 MR. TODD: Okay.

18 MR. EDGEWORTH: Thank you, judge.

19 MR. TODD: Thank you, Your Honor.

20 THE COURT: All right, if you reach any point of
21 impasse or an agreement I'll be in the back for 20, 30 more
22 minutes, okay?

23 MR. TODD: Okay, thank you, Your Honor.

24 MR. EDGEWORTH: Thank you.

25 OFF THE RECORD

1 (On the record, October 30, 2013. The following takes
2 place outside the presence of the jury.)

3 THE COURT: All right, is there anything that we
4 need to do before we begin?

5 MR. EDGEWORTH: Yes, Your Honor, if I may, the
6 Defendant and due to our conversation in chambers there's a
7 question as to whether an Investigator McKay contacted a
8 potential witness following leaving the witness stand and your
9 admonishment and we would like to inquire as to whether that,
10 indeed, took place following court yesterday.

11 THE COURT: All right, would you - you want to
12 ask those questions or would you like for me to do it?

13 MR. EDGEWORTH: We will defer to the Court if that's
14 okay.

15 THE COURT: Okay, Mr. McKay.

16 MR. MCKAY: Yes, sir.

17 THE COURT: You can come on back up, please, sir,
18 and you're still under oath.

19 MR. MCKAY: Yes, sir.

20 Whereupon, Bryan McKay returned to the stand and
21 testified as follows:

22 THE COURT: Mr. Edgeworth, who was the person who
23 was - who perhaps was contacted?

24 MR. EDGEWORTH: Yes, Your Honor, yesterday following
25 court I was contacted by my client who received a phone call

Bryan McKay - Recross by Defense

95

1 from a witness that's listed on the witness list or a
2 potential witness by the name of Michael Thompson and Michael
3 Thompson informed him that he had been contacted by
4 Investigator McKay - purportedly contacted by Investigator
5 McKay for the purposes of encouraging and/or forcing per the
6 words on the telephone him to be here in court today.

7 THE COURT: Okay, all right.

8 EXAMINATION

9 BY THE COURT:

10 Q Mr. McKay, you've heard that comment from Mr. Edgeworth?

11 A Yes, sir.

12 Q Did you have any contact with, first of all, anyone about
13 this case at all?

14 A No, sir.

15 Q Specifically then did you have any contact with someone
16 by the name of Michael Thompson?

17 A No, sir, not yesterday.

18 THE COURT: Okay, any follow-up questions?

19 MR. EDGEWORTH: Just one.

20 EXAMINATION

21 BY MR. EDGEWORTH:

22 Q Do you have - did you speak to anyone following court
23 yesterday to include any individual that may have contacted
24 Mr. Thompson?

25 A No, sir, other than you all in the courtroom, just ---

1 MR. EDGEWORTH: Thank you, Your Honor.

2 THE COURT: Okay, all right, any questions you'd
3 like to ask, Mr. Todd?

4 MR. TODD: Your Honor, I have no questions, but
5 I could clarify the situation.

6 THE COURT: All right, that'll be fine.

7 MR. TODD: And, and I do know that Investigator
8 Brown who's sitting beside me we had contacted Mr. Thompson
9 who's on our witness list.

10 THE COURT: Okay.

11 MR. TODD: And I was in there for the
12 conversation. He was informed that he was under subpoena.

13 THE COURT: All right.

14 MR. TODD: He was supposed to be here yesterday.

15 THE COURT: Okay.

16 MR. TODD: And did not show and I just - we
17 reminded him of we need him here in court and the purpose of
18 the subpoena and that was the, pretty much the end of the
19 conversation at that point in time.

20 THE COURT: Okay, all right. Thank you. You can
21 stay right there because I think the jury might be coming in.
22 Any - anything, anything else before we begin from the State?

23 MR. TODD: None from the State, Your Honor.

24 THE COURT: The Defendant?

25 MR. EDGEWORTH: Nothing further.

1 THE COURT: Okay, all right, when the jury comes
2 back in I'll tell them that we'll continue with the direct
3 examination of Investigator McKay. Will the - are you going
4 to ask any questions before the exhibit is played for the
5 jury?

6 MR. TODD: Your Honor, just so I can kind of
7 refresh the jury's memory of where we were.

8 THE COURT: All right.

9 MR. TODD: We were at the point where I asked
10 him about the recorded conversation.

11 THE COURT: And, and the recording has been
12 redacted to everyone's satisfaction?

13 MR. EDGEWORTH: Yes, Your Honor.

14 MR. TODD: Yes, Your Honor.

15 THE COURT: Do you have any objection to what was
16 and I assume still is Exhibit Number 15 coming into evidence?

17 MR. EDGEWORTH: No objection, Your Honor.

18 THE COURT: All right, is it still Number 15?

19 REPORTER: Well, I actually marked the redacted
20 copy as 16.

21 THE COURT: 16, so the - 15 for ID is the
22 original and 16 for ID is the redacted copy. So 16 is in; is
23 that right, Mr. Edgeworth?

24 MR. EDGEWORTH: Yes, Your Honor.

25 THE COURT: All right, so 16 will be in and you

1 can formally move to introduce 16 for ID and just need not
2 mention 15 anymore.

3 MR. TODD: Okay.

4 THE COURT: And the witness can stay on the stand
5 even during the recording. Are you okay to go forward?

6 MR. MCKAY: Yes, sir.

7 THE COURT: Okay, all right, ready for the jury?

8 MR. TODD: Yes, Your Honor.

9 MR. EDGEWORTH: Yes, Your Honor.

10 THE COURT: All right, you can bring them in, and
11 of course, I did appoint Mr. Board as foreperson yesterday.

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right, we're ready to move
15 forward, ladies and gentlemen, with the direct examination of
16 Investigator McKay. Of course, the witness is still under
17 oath. Mr. Todd, you can continue.

18 MR. TODD: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. TODD:

21 Q Investigator McKay, yesterday we had discussed that you
22 had interviewed Mr. Thompkins is that correct?

23 A That's correct.

24 Q And where was this interview conducted?

25 A At the Georgetown County Detention Center.

Bryan McKay - Redirect by State

99

1 Q And did you record this interview?

2 A I did record it.

3 MR. TODD: And Your Honor, we have this marked
4 as State's Exhibit Number 16.

5 THE COURT: All right, any objection to that?

6 MR. EDGEWORTH: None, Your Honor.

7 THE COURT: All right, 16 is going to - you, you
8 can continue. It's in evidence.

9 MR. TODD: Thank you, Your Honor.

10 (Whereupon, State's Exhibit Number 16 [CD - Interview,
11 Redacted] admitted into evidence and appropriately marked.)

12 MR. TODD: At this time I would like to publish
13 this to the jury.

14 THE COURT: All right, ladies and gentlemen, it's
15 going to be published to you and about how long is it?

16 MR. TODD: It's about 16 minutes, Your Honor.

17 THE COURT: Okay, it's about 16 minutes long. So
18 get - it is evidence in the case and please listen as it's
19 being played.

20 (Whereupon, State's Exhibit Number 16 is played in open
21 court.)

22 BY MR. TODD:

23 Q Officer McKay, is that a fair and accurate depiction of
24 the questions that were asked that day?

25 A It is. It is.

1 Q So that's the interview that was conducted on the
2 Defendant at that time?

3 A Yes, it was.

4 MR. TODD: Your Honor, at this time I'd like to
5 move this into evidence as State's Exhibit 16.

6 THE COURT: All right, that's in as Number 16.
7 The Defendant has no objection, is that right?

8 MR. EDGEWORTH: That's right, Your Honor.

9 THE COURT: Okay.

10 BY MR. TODD:

11 Q That was a pretty long interview and at the end of it
12 the Defendant said he would go out and show you where he picks
13 up all this wire?

14 A He did.

15 Q Did that ever happen?

16 A It did not.

17 Q And the marijuana that was discussed, where was it
18 found?

19 A There was a baggy found in his right front change pocket
20 and also in the driver's side floorboard of the truck.

21 Q Okay, and he said he had no knowledge that that was even
22 on him?

23 A Yeah, that's correct, but he was mirandized at the scrap
24 yard also that day and he said it was his.

25 Q Okay, and what did you do with the marijuana at that

Bryan McKay - Recross by Defense

101

1 point?

2 A Took it, logged it into evidence in a control bag and
3 placed it into evidence to be processed or to be checked for
4 marijuana.

5 Q That's all the questions I have right now. Thank you.

6 RE CROSS EXAMINATION

7 BY MR. EDGEWORTH:

8 Q Good morning ---

9 A Good morning.

10 Q --- Investigator McKay. Obviously the jury has heard
11 all of that. How many times have you - did you count how many
12 times he told you that he pulled the wire out of the water?

13 A I'm unsure, several.

14 Q And was there any time during that time period that he
15 said he got it any other way?

16 A Well, he said he got it from IP - from behind IP in the
17 river.

18 Q Right, okay, well, it sounded to me like that you
19 believe that or you didn't believe the story that he got it
20 out of the water; right?

21 A I didn't believe it, no, sir.

22 Q Okay, but when you, when you went and spoke to Shane who
23 you spoke about several times on the tape having stolen wire
24 he told you that he got it out the water. Did you believe
25 him?

1 A No, sir.

2 Q Well, he's not charged, is he?

3 A He, he, he was being questioned in another incident of
4 stolen property during that time, too.

5 Q But he's not charged with stealing or transporting
6 stolen copper?

7 A I never saw it in his possession.

8 Q Okay, you would agree with me that there's no direct
9 evidence that Mr. Thompkins went up on the, on the banks all
10 the way up into Santee and he cut the thing and went in there
11 and stole it; correct?

12 A Not other than being tipped off, no, sir, there's no
13 direct evidence.

14 Q Okay, there's no direct evidence. In other words you
15 have no fingerprints?

16 A No, sir.

17 Q Okay, you have no DNA?

18 A No, sir.

19 Q Okay, have no footprints that match his shoes, nothing,
20 no physical evidence whatsoever that he actually went up
21 there, cut the wire and brought it back?

22 A No, sir, like I said other than tips coming in,
23 anonymous tips.

24 Q I don't know what tips we're talking about but, okay?

25 A But ---

Bryan McKay - Recross by Defense

103

1 Q You - there's several mention on there, I guess, that,
2 that they were cut up into short pieces; is that, is that,
3 that what, what you were saying?

4 A About 15, 15 foot pieces or so, yes, sir.

5 Q Do you recall the pictures from yesterday where it was
6 the wire that you all found him with was on the pallet at the
7 Coastal Recycling?

8 A Yes, sir.

9 Q It's a big old bundle, wasn't it?

10 A It was cut in pieces I believe.

11 Q But those were big old bundles?

12 A They could be, yes, sir.

13 Q Okay, and in fact, that - you all were talking to him
14 about 500 pounds worth of, worth of stuff and how much was the
15 weight? Do you recall the weight that was testified to
16 yesterday?

17 A I believe somebody said it was 200, but I believe
18 actually it was 400, 400 to 500 pounds what I recall from the
19 incident report.

20 Q Okay, and you recall from the conversation not only
21 being there but also rehearing it just now that, that the
22 Defendant continuously says that he got it out of the water;
23 correct?

24 A Yes, sir.

25 Q Okay, and that he, he acknowledged that he, that he was

1 burning it and then he had it with him when he went over there
2 to the, to the Coastal Recycling?

3 A Yes, sir.

4 Q Okay, and at no time did he say that he knew it was
5 stolen?

6 A No, he said he got from the water.

7 Q And he, he never said he knew it was stolen; right?

8 A He claimed he didn't steal it.

9 Q Right, but he's not on trial for stealing it?

10 A No, sir; no, sir.

11 Q Right?

12 A He's charged ---

13 Q I mean, if you, if you had proof that he stole it you
14 would have charged him with ---

15 A Oh, yes, sir.

16 Q --- you would have the Solicitor's Office ---

17 A That - definitely.

18 Q --- you would charge with him - what he stole it;
19 right?

20 A Definitely.

21 Q But you, you were here today because he was transporting
22 ---

23 A Possession of stolen.

24 Q --- possession of ---

25 A Stolen.

Bryan McKay - Recross by Defense

105

1 Q --- nonferrous metals ---
2 A Nonferrous metals, yes, sir.
3 Q --- that he knew was stolen.
4 THE COURT: Wait, let's, let's one at a time.
5 A Yes, sir.
6 THE COURT: Let him finish the question.
7 A Yes, sir.
8 THE COURT: And then you answer it.
9 A Sorry.
10 THE COURT: All right, go ahead.
11 Q That, that's the charge we're here for today?
12 A Yes, sir.
13 Q You don't have any evidence that he stole it, right?
14 A That he stole it, no, sir.
15 Q Okay.
16 MR. EDGEWORTH: No further questions, Your Honor.
17 THE COURT: All right, redirect.
18 MR. TODD: No, Your Honor.
19 THE COURT: All right, you can step down. Thank
20 you, sir.
21 A Thank you, Your Honor.
22 THE COURT: Next witness.
23 MR. TODD: Thank you, Your Honor. Investigator
24 Michael Thacker.
25 Whereupon, Michael Thacker was called to the stand, duly

1 sworn by the clerk and testified as follows:

2 THE CLERK: Please state your full name for the
3 record.

4 MR. THACKER: Michael Thacker.

5 DIRECT EXAMINATION

6 BY MR. TODD:

7 Q Investigator Thacker, who do you work for?

8 A Georgetown County Sheriff's office.

9 Q And how long have you been there?

10 A 13 years.

11 Q And what is your role at the Sheriff's Office right now?

12 A In charge of the evidence, evidence custodian, as well
13 as crime scene.

14 Q So in your capacity as evidence custodian what is it
15 that you do?

16 A I do all the intake for evidence that's brought in by
17 individual officers, log it in, place it into a secure
18 location that we have there.

19 Q Okay, and did you receive any evidence from Investigator
20 McKay roughly January 9th, 2013?

21 A Yes.

22 Q And what was that evidence?

23 A It was a package of suspected marijuana, a grinder, I
24 think - believe those were packaged together.

25 Q Do you have that evidence with you?

Michael Thacker - Direct by State

107

1 A I do.

2 Q Let me see it, please.

3 (Whereupon, State's Exhibit Number 17 [Marijuana] marked
4 for identification.)

5 Q And if you would please take a look at this package,
6 State's Exhibit Number 17 for identification purposes only.
7 Tell us about that package, where did it come from?

8 Q Okay, this is a - this sealed envelope was turned in by
9 Investigator McKay. It's dated for the 9th of January, 2013.

10 Q And when he says it was turned in how does, how does
11 that go about happening?

12 A Once they complete this and seal it they fill out an
13 evidence sheet for me and we have a secure drug box. They
14 drop it in the box. It's locked and I have the key to it and
15 once I'll come in, unlock the box, take it out and enter it in
16 the computer system and then place it into evidence pending
17 analysis.

18 Q Okay, now, does anybody else touch that evidence at all?

19 A Well, I have Sergeant Weaver he also tests marijuana, I
20 test it, he tests it as well. In this particular case
21 Sergeant Weaver tested the marijuana.

22 Q Okay, so you didn't test it?

23 A I did not.

24 Q You just controlled where it went?

25 A Exactly.

1 Q Okay, that's all the questions I have right now. Please
2 answer.

3 THE COURT: Cross?

4 MR. EDGEWORTH: No questions, Your Honor.

5 THE COURT: You can step down. You can leave.

6 Has that been marked at all?

7 MR. TODD: It has been marked, Your Honor.

8 THE COURT: It's number what?

9 A 17.

10 MR. TODD: 17.

11 THE COURT: 17, 17 for ID, okay, you can leave

12 that right there. Thank you.

13 A Thank you, Your Honor.

14 THE COURT: Mr. Todd.

15 MR. TODD: Thank you, Your Honor. Sergeant

16 Chuck Weaver.

17 Whereupon, Charlie Weaver was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Please state your full name for the
20 Court.

21 MR. WEAVER: Charlie Weaver.

22 DIRECT EXAMINATION

23 BY MR. TODD:

24 Q Sergeant Weaver, who do you work for?

25 A Georgetown County Sheriff's Office.

Charlie Weaver - Direct by State

109

- 1 Q How long have you been with the Sheriff's Office?
- 2 A Ten years.
- 3 Q And what is your capacity there at the Sheriff's Office?
- 4 A I'm the special operations supervisor, assistant
- 5 evidence custodian under Investigator Thacker.
- 6 Q And what does that mean?
- 7 A Assistant custodian what I do is I help Investigator
- 8 Thacker when he is out of town or - and take control of the
- 9 evidence, make sure it's logged in the computer. We also do
- 10 marijuana testing and packaging for SLED to be transported.
- 11 Q Okay, with marijuana testing do you have to do any
- 12 special classes to learn how to do that?
- 13 A Yes, sir, we're required to go to SLED for a four-day
- 14 class that you have to do a series of testings in reference to
- 15 visual, chemical and written testing in order to pass that and
- 16 then updates every year.
- 17 Q And did you pass that exam?
- 18 A Yes, sir.
- 19 Q Okay, and have you ever testified before as to being an
- 20 analyst of marijuana?
- 21 A Yes, sir.
- 22 Q How many times roughly?
- 23 A This will be my third.
- 24 Q Okay, now, have you ever seen that package before?
- 25 A May I see the package, please?

1 Q Oh, I'm sorry, I thought it was sitting in front of you.
2 It's the package marked State's Exhibit Number 17?

3 A Yes, I have.

4 Q Okay, where did that package come from?

5 A Investigator Thacker. He places it into a holding area
6 for it to be tested which would be in the, what we call the
7 marijuana and drug room.

8 Q Okay, and was it sealed in that package?

9 A Yes, sir.

10 Q Was the seal broken when you received it?

11 A No, sir.

12 Q So, it was a sealed, closed package?

13 A It was, yes, we do not touch it if it's - the seal's
14 broken.

15 Q Okay, so, you wouldn't even touch it?

16 A Wouldn't attempt to do the analysis, no, sir.

17 Q Okay, and how do you know where, where it came from as
18 far as keeping track of the - your package?

19 A On the front of the, the evidence we have a log system
20 where the officer such as Investigator McKay would place it
21 into evidence and once it's taken from the evidence drop box
22 and moved in to be logged in into the computer it is placed
23 into another secure area where nobody can have access other
24 than myself and Investigator Thacker until we can test it.

25 Q Okay, and you tested these drugs?

Charlie Weaver - Direct by State

111

1 A Yes, sir.

2 Q And what were they?

3 A My visual confirmation for the strands, the three
4 visuals we have to have confirmed that it was marijuana.

5 After we move from there we would do a chemical analysis which
6 is tested prior. Once the chemicals were added to it, it was
7 positive to be marijuana.

8 Q So through your testing?

9 A Through two testings, yes, sir, it was positive for
10 marijuana.

11 Q Okay.

12 MR. TODD: Your Honor, at this time I would like to
13 move State's Exhibit Number 17 into evidence.

14 THE COURT: Any objection?

15 MR. EDGEWORTH: No objection, Your Honor.

16 THE COURT: 17 is in.

17 MR. TODD: Okay.

18 (Whereupon, State's Exhibit Number 17 [Marijuana] moved
19 into evidence and appropriately marked.)

20 BY MR. TODD:

21 Q Now, once you tested what do you do with the marijuana
22 at that point?

23 A Once I, once it's tested it is sealed in separate
24 containers of how it was wrapped up originally with all the
25 packaging and the marijuana individually. I sign it, date it,

1 put my positive sign on there, the weight and then I re-seal
2 it in the evidence bag.

3 Q Okay.

4 MR. TODD: That is all the questions I have
5 right now, Your Honor. Please answer anything.

6 THE COURT: Cross examination.

7 MR. EDGEWORTH: None from Defense.

8 THE COURT: You can step down. Thank you.

9 A Thank you, Your Honor.

10 MR. TODD: And Your Honor, may we have
11 Investigator Thacker and Sergeant Weaver relieved from their
12 subpoena?

13 MR. EDGEWORTH: No objection.

14 THE COURT: All right, you can leave if you'd
15 like or you can stay.

16 MR. TODD: Thank you, Your Honor.

17 THE COURT: Okay, Mr. Todd.

18 MR. TODD: Your Honor, that is the State's case
19 in chief.

20 THE COURT: All right, ladies and gentlemen, as
21 you've heard the State has rested, which means that the State
22 has presented all the evidence it is going to present in its
23 case in chief. The rules that we operate under require me to
24 take a recess at this point. So if you would please go to
25 your jury room. You may not discuss the case in any way.

Motions

113

1 Thank you.

2 (Whereupon, the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right, any motions from the
5 Defendant?

6 MR. EDGEWORTH: Yes, Your Honor, briefly. The
7 Defendant moves for a motion for directed verdict in favor of
8 the Defendant on the charge of transporting nonferrous metals
9 with knowledge that it had been stolen. As the evidence
10 presented here today there's no or in yesterday there's no
11 evidence, direct evidence, one, that he stole the items which
12 doesn't even appear to be their theory, and number two,
13 there's been no secondary testimony from any other witnesses
14 to say, "I told him it was stolen, I gave it to him and I
15 stole it." The only testimony that's out there is from the
16 audiotape and from the comments from the officers that my
17 client repeatedly tells or the Defendant repeatedly tells them
18 that he found it in the water, and I don't believe that leaves
19 any facts left for the jury to decide as to whether there's
20 any reasonable doubt that that, in fact, that's the way it
21 happened, and therefore, if there's no, if they can't complete
22 every single element of the, of the statute or the crime
23 that's charged then we believe that a directed verdict is in
24 order.

25 THE COURT: All right, Mr. Todd.

1 MR. TODD: Thank you, Your Honor. Your Honor,
2 the knowledge and I have a case, South Carolina versus Atkins.
3 This is a receiving stolen goods case but it does discuss what
4 guilty knowledge is and I've highlighted the section where it
5 talks about knowledge and specifically states that, "Guilty
6 knowledge is seldom susceptible by proof of direct evidence."
7 It may be ---

8 THE COURT: It says is seldom susceptible.

9 MR. TODD: Oh, "seldom susceptible of proof by
10 direct evidence and may be proved by circumstances from which
11 such knowledge may be inferred," and Your Honor, because of
12 the circumstances which I have tried to lay out in this case,
13 the timing as well as the very specific incident where this
14 took place where he pulled the wire from the IP canal, the
15 time in which it was taken was in December or January and the
16 fact that it was brand-new metal that they had had for a short
17 period of time and is the only type of metal, the only place
18 that uses that type of metal in this area. We had two people
19 testify, one of them saying that works at the recycling center
20 saying he has never seen that metal before and he's worked
21 there for five years, as well as the engineer from IP say,
22 "We're the only people that we know has this. I can't even
23 order it from anywhere locally." So though we don't have
24 direct evidence of him taking it, which he's not charged with,
25 the knowledge is what would be the question for the jury that

Motions

115

1 he either knew he did it, knew it was there because he did it
2 himself or he knew someone that did it, and tipped him off to
3 go and pick it up at that point in time. Our time bracket is
4 so short that it just - it leaves a question for the jury to
5 say did he know, did he know this was stolen because how else
6 could he have been in the right place at the right time and
7 get that much of this type of metal.

8 THE COURT: All right, anything else?

9 MR. EDGEWORTH: Well, I believe that I've, you know,
10 made my case, made my statement, but the circumstances that
11 he's referring to are not related to the knowledge. I mean,
12 there's - there was testimony, yes, that at some point in time
13 this stuff was stolen but that's not even circumstantial
14 evidence that my client knew that it was stolen. So the
15 inference - I don't even know how you can make the inference
16 based on the testimony that's been presented because there's
17 been no other individuals or any other testimony that would
18 even give other circumstantial evidence to point to a question
19 of fact for the jury. The evidence that's been presented is
20 it was stolen, he got it out of the ground. There's no
21 evidence that he knew when he got it out of the ground it was
22 stolen.

23 THE COURT: All right.

24 MR. EDGEWORTH: It's kind of like they're trying to
25 piggyback the fact that they think he stole it with knowledge

1 that it was stolen.

2 THE COURT: Okay.

3 MR. EDGEWORTH: Thank you, Your Honor.

4 THE COURT: All right, the legislature passed
5 this statute. I don't, I don't recall the effective date, but
6 I think it's been less than a year on the books.

7 MR. TODD: Yes, Your Honor.

8 THE COURT: I would assume and it reads, "If a
9 person transports nonferrous metals that the person knows are
10 stolen in a vehicle or has in the person's possession in a
11 vehicle on the highways of this state nonferrous metals that
12 he knows are stolen that's unlawful." It is a little bit
13 surprising that the legislature didn't choose to include
14 language that under circumstances that the Defendant or that
15 the person should have known. It is almost impossible to
16 prove someone knew something by direct evidence, especially in
17 the criminal setting because typically folks don't say, "Well,
18 yeah, I knew it was stolen," and that's why in my mind the
19 statute in many instances is tailored to deal with people who
20 just admit they knew it was stolen. It does present a
21 difficult chore for the State to prove beyond a reasonable
22 doubt that anybody knew something when they're charged with a
23 crime. The law does say that knowledge may be proved by
24 direct evidence or by circumstantial evidence and in State
25 versus Logan the Supreme Court authorized at least a jury

Motions

117

1 charge that says, "To the extent the State relies on
2 circumstantial evidence, all of the circumstances must be
3 consistent with each other and when taken together point
4 conclusively to the guilt of the accused beyond a reasonable
5 doubt. If the circumstances merely portray the behavior of
6 the Defendant as suspicious the proof has failed." In my
7 judgment the word know means to have conscious knowledge that
8 the metal was stolen. I think in this particular case there
9 is enough to send that to the jury. What you've indicated,
10 Mr. Edgeworth, is certainly an argument that may hit home with
11 the jury. I know that a lot of time was spent during the
12 questioning on the tape as to whether or not Mr. Thompkins was
13 the one who stole the metal. I suppose if you steal something
14 and then you have it in your possession, you also knew it was
15 stolen. So I think that's a logical thing at least for the
16 law enforcement people to inquire into. It'll be interesting
17 to hear how you gentlemen argue that to the jury, but there's
18 certainly a lot you can argue about to the jury, but overall I
19 think it's a jury question on the question of whether or not
20 the State has presented sufficient proof that the Defendant
21 knew the nonferrous metals were stolen. So I'll respectfully
22 deny your motion at this time.

23 MR. EDGEWORTH: Thank you, Your Honor.

24 MR. TODD: Thank you, Your Honor.

25 THE COURT: If you could have your - if Mr.

1 Thompkins could please - you finished with your motions?

2 MR. EDGEWORTH: I have no further motions, Your
3 Honor.

4 THE COURT: Okay, please stand, sir, and raise
5 your right hand again.

6 (Whereupon, the Defendant is sworn by the Court.)

7 THE COURT: All right, Mr. Thompkins, we've reached
8 the stage of the trial now during which you may present your
9 defense. That includes your right if you choose to call
10 witnesses, offer other evidence, and it also includes your
11 right to testify and your right not to testify. Specifically
12 on the point whether or not you'll testify you have the right
13 to claim the protections granted to you by the Fifth Amendment
14 to the United States Constitution which says in pertinent part
15 that no person in any criminal case shall be compelled to be a
16 witness against himself. What that basically means is that no
17 one can make you testify in this case. Even your own lawyer
18 can't call you to the witness stand against your will. The
19 Prosecutor can't call you to the stand nor can I nor can
20 anyone else in the world. The reason for that is is that your
21 right to claim those protections under the Fifth Amendment
22 those are personal rights. Since they're personal rights no
23 one can give them up except for you. Do you understand that?

24 MR. THOMPkins: Yes, sir.

25 THE COURT: In addition, if you want to testify

Questioning Re: Rights

119

1 and your lawyer doesn't think that's wise under the law as it
2 exists now he has to let you testify. Do you understand that?

3 MR. THOMPkins: Yes, sir.

4 THE COURT: All right, if, if you testify your or
5 the direct examination and cross examination that you've seen
6 of other witnesses, those same basic rules will apply to you,
7 too. Do you understand that?

8 MR. THOMPkins: Yes, sir.

9 THE COURT: In addition if you have any
10 convictions for crimes that involve dishonesty or false
11 statement those can be admitted to impeach or attack your
12 believability. Do you understand that?

13 MR. THOMPkins: Yes, sir.

14 THE COURT: Also, if you have any convictions for
15 crimes that were punishable by imprisonment for more than one
16 year and if I find that the probative value of admitting that
17 evidence outweighs its prejudicial effect to you those
18 convictions can be introduced as well. Do you understand
19 that?

20 MR. THOMPkins: Yes, sir.

21 THE COURT: Now, in the end the decision to
22 testify must be made by you and you alone. Of course, you can
23 consult with your lawyer about it, but in the end it has to be
24 made freely, intelligently and voluntarily by you and you have
25 to make that decision with full knowledge of your rights under

1 the Fifth Amendment and with full knowledge of the
2 consequences of your decision to testify. Now, do you have
3 any questions so far about what we've been over?

4 MR. THOMPkins: No, sir.

5 THE COURT: If you decide not to testify I will
6 emphasize to the jurors that they cannot give that fact any
7 weight whatsoever. I'll tell them that you - that they can't
8 think about it, talk about it and it cannot enter into their
9 decisions in any way. Also I tell the jury that if you do
10 testify that that does not mean that you have taken on any
11 burden of proving or disproving anything. Do you understand
12 that?

13 MR. THOMPkins: Yes, sir.

14 THE COURT: As I mentioned, in the end it's left
15 entirely up to you as to whether or not you will or won't
16 testify. You can talk to your lawyer and anyone else you
17 think is appropriate who's immediately available, but again,
18 the final decision will be yours. Is all that clear?

19 MR. THOMPkins: Yes, sir.

20 THE COURT: Do you want to talk to your lawyer
21 about it some more?

22 MR. THOMPkins: Yes, sir.

23 THE COURT: All right, we'll take a few minutes
24 and I'll come out and ask you what your decision is. All
25 right?

Questioning Re: Rights

121

1 MR. THOMPCKINS: Okay.

2 THE COURT: If the Defendant does not testify
3 will there be any other witnesses or evidence that you will
4 offer?

5 MR. EDGEWORTH: Well, obviously it depends on the
6 answer to this question but I believe not, Your Honor.

7 THE COURT: Okay, all right, we'll take about
8 five minutes and then I'll come back out and you can let me
9 know.

10 MR. EDGEWORTH: Thank you, Your Honor.

11 THE COURT: If that's not enough time please ---

12 MR. EDGEWORTH: That's plenty of time, Your Honor.

13 THE COURT: --- please let me know.

14 MR. EDGEWORTH: Thank you.

15 OFF THE RECORD

16 (On the record. The following takes place outside the
17 presence of the jury.)

18 THE COURT: Mr. Thompkins, have you made your
19 decision?

20 MR. THOMPCKINS: Yes, sir.

21 THE COURT: Have you had enough time to talk to
22 your lawyer about it and to think about it?

23 MR. THOMPCKINS: Yes, sir.

24 THE COURT: And what is your decision?

25 MR. THOMPCKINS: I'm not, I'm not going to take it to

Questioning Re: Rights

122

1 that.

2 THE COURT: Not going to testify?

3 MR. THOMPCKINS: Not going to testify.

4 THE COURT: Has anybody forced you to make that
5 decision?

6 MR. THOMPCKINS: No, sir.

7 THE COURT: Okay, and do you have any questions
8 at all about anything that we discussed earlier?

9 MR. THOMPCKINS: No, sir.

10 THE COURT: All right, if you change your mind
11 even as the jury is walking in in just, in just a few minutes
12 will you please let me know?

13 MR. THOMPCKINS: Yes, sir.

14 THE COURT: All right, will you be, you can have
15 a seat, will you be offering any other witnesses?

16 MR. EDGEWORTH: No, Your Honor.

17 THE COURT: All right, so we can talk for a few
18 minutes about the jury charge. Is that okay?

19 MR. EDGEWORTH: Yes, Your Honor.

20 MR. TODD: Yes, Your Honor.

21 THE COURT: All right, what I have in front of me
22 is a general explanation to the jury about what their
23 responsibilities are, the fact that their verdict on one
24 charge does not control their verdict on the other,
25 credibility of witnesses, circumstantial evidence charge that

Review of Charges

123

1 I referred to earlier from State versus Logan. Do you want
2 that one, Mr. Edgeworth, or do you want the one that's been
3 used up until August? I've got a copy of it if you gentlemen
4 want to take a look at it. That's my copy so don't, don't run
5 off with it.

6 MR. EDGEWORTH: Sure, I'm not as familiar with the
7 newer one that's ---

8 THE COURT: Okay, take a look at that. It's,
9 it's the part that's in blue.

10 MR. EDGEWORTH: I'm okay with Logan.

11 THE COURT: Okay, all right, and what Logan says
12 is even if the State wants the other one I have to give Logan
13 if that's what the Defendant wants. Presumption of innocence
14 also, reasonable doubt charge which the gist of it is a
15 reasonable doubt is the kind of doubt that would cause a
16 reasonable person to hesitate to act. It goes on to say later
17 that proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt. There are very few
19 things that we know with absolute certainty and the law does
20 not require the State to present proof that overcomes every
21 possible doubt, but it requires the State to present proof
22 that is established beyond a reasonable doubt. If based on
23 your consideration of the evidence you are firmly convinced
24 the Defendant is guilty of the charge you are considering you
25 must find him guilty. If on the other hand you think there is

1 a real possibility he is not guilty you must give him the
2 benefit of the doubt and find him not guilty. I will also
3 tell the jury that they cannot consider in any way the fact
4 that the Defendant did not testify. Then moving forward to
5 the specific charge I will tell them first that he is charged
6 with transporting nonferrous metals when he knew they were
7 stolen. I will define nonferrous metals to the extent that
8 makes a difference. It means metals not containing
9 significant quantities of iron or steel including copper wire,
10 copper clad steel wire, copper pipe, so forth and so on. I
11 will tell the jury that it is unlawful to have in ones
12 possession in a motor vehicle on the highways of this state
13 nonferrous metals that one knows are stolen, and the State
14 must prove beyond a reasonable doubt that the Defendant had in
15 his possession in a motor vehicle on the highways of this
16 state nonferrous metals and the state must prove beyond a
17 reasonable doubt that the Defendant knew the metals were
18 stolen. To know under the - in that context means to have
19 conscious knowledge of or conscious knowledge that the metals
20 were stolen.

21 Possession of marijuana I will charge about knowingly,
22 intentionally and actual and constructive possession and mere
23 presence at a scene - well, mere presence is not applicable
24 here because they were in his pocket, weren't they?

25 MR. TODD: Yes, sir.

Review of Charges

125

1 MR. EDGEWORTH: Yes, Your Honor.

2 THE COURT: Okay, criminal intent is also

3 charged. That would be the last substantive charge. Anything

4 else the State would request?

5 MR. TODD: No, Your Honor, that's ---

6 THE COURT: Anything the Defendant would request?

7 MR. EDGEWORTH: Nothing, Your Honor.

8 THE COURT: The verdict form will say as to the

9 charge of transporting nonferrous metals, we, the jury

10 unanimously find the Defendant not guilty or guilty. Number

11 two, as to the charge of possession of marijuana same two

12 choices. All right, anything else?

13 MR. TODD: Nothing from the State, Your Honor.

14 MR. EDGEWORTH: None from the Defense.

15 THE COURT: The Defendant will get the last

16 argument. How long do you want to argue for the State, Mr.

17 Todd?

18 MR. TODD: Your Honor, this should probably take

19 ten minutes I would imagine.

20 THE COURT: All right, Mr. Edgeworth?

21 MR. EDGEWORTH: The same, Your Honor.

22 THE COURT: Okay, you ready to go forward?

23 MR. TODD: Yes, sir.

24 THE COURT: I'll allow you to rest in front of

25 the jury unless you just want me to - well, I have to ask you

1 on the record in front of the jury whether or not you'll be
2 offering any evidence. You can just say that you rest.

3 MR. EDGEWORTH: Yes, Your Honor.

4 THE COURT: Of course, Mr. Thompsons, as that
5 jury's coming out if you change your mind will you let me know
6 - will you let your lawyer know?

7 MR. THOMPSONS: Yes, sir.

8 THE COURT: Okay, are you ready to go?

9 MR. EDGEWORTH: Thank you. Yes, Your Honor.

10 THE COURT: All right, you can bring in the jury.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: Okay, ladies and gentlemen, we're
14 ready to continue. Will the Defense be offering any
15 witnesses?

16 MR. EDGEWORTH: The Defense rests, Your Honor.

17 THE COURT: All right, all right, ladies and
18 gentlemen, Mr. Edgeworth did alert me to that during the break
19 and what, just to give you an explanation of what we're doing
20 when you're in that jury room, when all the evidence is in
21 typically - when all the evidence is in the rules require me
22 to go over with the lawyers on the record outside of your
23 presence the jury charge that I'm going to give you and since
24 Mr. Edgeworth alerted me to, to the - well, what he just
25 indicated, we took that time to go over the jury charge.

Closing Argument by State

127

1 Otherwise, if you had come back out and he'd rested I'd have
2 to send you right back out and we'd do the same thing. So we
3 took care of it all at once. So we're going to move forward
4 now to the portion of the trial during which the lawyers will
5 be permitted to give you their closing arguments. I will
6 remind you that what the lawyers say to you is not evidence.
7 They are permitted in the course of their argument, certainly,
8 to refer to evidence, but if they refer to the evidence in a
9 way that does not correspond with your collective memory or
10 view of what the evidence actually was you go with what you
11 view the evidence to be not what - not necessarily what the
12 lawyers tell you it is. Likewise, during their arguments they
13 are permitted to refer to the law that I'm going to charge
14 you. Similarly, if they refer to the law that does not
15 correspond to what I tell you the law is during my jury charge
16 you must go with the law exactly as I tell you it is and not
17 necessarily what the lawyers tell you it is. Now, under the
18 rules they are permitted to argue to you the conclusions that
19 they believe that the evidence or lack of evidence would
20 compel you to reach in this case. It is a very important part
21 of the trial so please give them your undivided attention.
22 Under the rules the State will present the first argument and
23 the Defendant will present the last argument. After that,
24 depending upon the timing, we may take a break. Likely I'll
25 go straight into the jury charge, but I will ask you at the

1 end of the arguments whether or not you would like to take a
2 break. So we're ready to move forward now. Mr. Todd, you can
3 begin.

4 MR. TODD: Thank you, Your Honor. Yesterday I talked
5 about what you were going to hear throughout this trial. We
6 had talked about the two different charges, the charge with
7 possession of marijuana. That one seems to be pretty simple.
8 What do you have that's been presented to you? That he had
9 marijuana on him, it was, in fact, marijuana, and I don't even
10 think it's been argued the fact that it was his. So that's
11 pretty much a given. Take what you want - hear from it, but I
12 don't think that's even been argued.

13 Let's talk about what else hasn't been argued. We've got
14 the charge of transportation of nonferrous metals that the
15 Defendant knows is stolen. There's no question that he
16 transported these metals. They were in his truck. They had
17 to get to, as he says, the river to the recycling center.
18 They were seen in the back of his truck and there's no
19 question that it is or is not a nonferrous metal because it's
20 copper. It's in the statute. It's listed and the Judge will
21 go over that in a few minutes. What we're arguing about is
22 knowledge that it was stolen.

23 You know, it's impossible or almost impossible for me to
24 tell you what's in his head. So we have to use our common
25 sense and put all the pieces together, and let's just think

Closing Argument by State

129

1 about what we have heard, and like the Judge said I'm going to
2 try to wrap up our whole theory and tell you why we think this
3 person is the one that had knowledge of it. How did he know?
4 There's a whole bunch of different circumstances, but let's
5 start with the first one. Gentleman from IP got up and talked
6 about that there was a breach in their security. He's in
7 charge of their security. So he went out and checked the
8 breach. He walked the property in January from the back of
9 their warehouse down to the river, and I'll pull up some
10 pictures in a minute, but when he was walking the property
11 right after they were contacted about the stolen wire they saw
12 the scrapings, fresh scrapings on the ground where someone had
13 drug a bunch of wire from their facility out to the river.
14 Scrapings don't stay around forever, wind blows, it rains. We
15 even have trees that don't have any bark on them. We have a
16 little tiny tree and I'll pull that up. Here's, here's some
17 scrapings in the ground. You all will be able to take these
18 back with you and look at it, fresh scrapings in the ground
19 and this is big pieces of copper wire dragging on the ground.
20 There's a tree right in the middle of the path where they were
21 dragging this copper wire. It's missing bark on it. It's not
22 growing back. It's pretty recent. So we have a timetable, a
23 guesstimate of how long this wire has been in this water or so
24 they say. So we go from this short timetable of within a few
25 days because we can still see the scrapings from trees not

1 growing back bark yet to the other guy from IP get up and say,
2 "Look, we're the only people that order this wire around here.
3 I don't know anybody else that does." It's very specific
4 wire, big, thick wire. It's square because it's compressed so
5 hard. They use it for powering their powerhouses for cutting
6 and drilling and everything else that they do there, the
7 grinding. It's expensive. A big roll is \$25,000. It's
8 missing. It shows up at a scrap yard. The gentleman from the
9 scrap yard is the one that points out who brought it, "who
10 brought us this stuff?" "This man over here brought, brought
11 us the wire." He didn't even argue that. "Yeah, he did bring
12 it." He brought it in on January 9th and he'd been working
13 there for five years and never seen this type of wire before,
14 500 pounds is what the investigator said. He said about 300.
15 So we got a little discrepancy in the weight, but it's been a
16 year and he didn't even buy it from him because he knew that
17 it was, it was hot wire. That was what he called it. It was
18 the hot wire, it's on the hot list of what to look for. So a
19 very specific type of wire taken in a short period of time and
20 it's very expensive, it was taken to a scrap yard? That's
21 like taking a new set of golf clubs to the pawn shop. Big
22 expensive metal, "I want to get rid of that for real cheap
23 real fast."

24 The investigator, investigator goes out, walks the path.
25 He sees where the trees have been cut back in this one area

Closing Argument by State

131

1 and it's drug down to the water. Now, the Defendant says he's
2 not the one that took it and officer was even asked, "Do you
3 know if this is the man that take it?" No, we don't. We
4 don't know if he's the one that actually took it. That's
5 true, but look at the timetable, look at how specific this is.
6 He's not the one that took it. How in the world did he find
7 it in such a quick period of time and load it into his boat by
8 himself? We have some discrepancies in, you know, that's
9 things to look at when people are getting their story about
10 how they get things. You know, first we hear that it was one
11 big long piece of wire he pulled in his boat, he does it all
12 the time right up behind IP. First he says it's on the bank.
13 Then he says it's in the water. Then he sticks with, "Well,
14 it's in the water just off the bank." How did he see it?
15 "Oh, I saw it at low tide." Says he took a canoe up to find
16 it, 500 pounds, between 300 and 500 pounds of this copper wire
17 and he saw it. I've been in a canoe before. I can't lift
18 anything out of the water other than the little anchor and get
19 it into a canoe. That's one story. Also I've lived here my
20 whole life. The Sampit River is not the cleanest river in the
21 world. On a good day it's the color of tea. If you stick
22 your hand down in the water and go up to your elbow you can't
23 see your hand and he says it was in the mud. I've lived here,
24 again, my whole life. I've been on the beaches. I've found
25 change before. I think I might have even found a broken watch

1 before, and true, there's people out there, treasure hunters
2 they'll find a sunken ship off the coast. They'll go out with
3 their little metal swipers and they'll find some stuff on the
4 beach. This guy was just out in his canoe found 500 pounds of
5 copper wire just by luck off of IP and had no idea how it got
6 there?

7 Also he burnt the wire to get the sheeting off. He was
8 seen burning the wire. He admits to burning the wire. I
9 don't know why you would do that but which that does make it
10 very hard to pick out whose wire it is. There's no serial
11 numbers on it. Everything is going to be on that tubing.

12 We've heard a bunch of stories today and the Judge is
13 going to charge you with the law, and again, the argument is
14 going to be did he have knowledge. We're not trying to prove
15 that he did, but common sense can bring you to the conclusion
16 if he didn't he knew who did and they told him where to go.
17 Think about that as the Judge charges the law. Think about
18 how reasonable it is to go out and just find this much metal
19 one day out in the canoe just by luck and how that luck just
20 turned out to be the same period of time this metal was stolen
21 in a very short period of time. I just ask you to think about
22 that, think about the evidence that's been presented to you,
23 to look at it all, come back with a guilty verdict.

24 THE COURT: Mr. Edgeworth.

25 MR. EDGEWORTH: Thank you, Your Honor. Ladies and

Closing Argument by Defense

133

1 gentlemen of the jury, once again I'd like to thank you for
2 your time and service because I know that your attention to
3 this case is important to my client, the Defendant in this
4 case, Mr. David Thompkins, and I was actually going to start
5 my comments by saying, you know, what have you not heard, but
6 I think the Solicitor's Office filled in that blank for me.
7 What have you not heard? He fixed it. We don't have any
8 evidence that he stole it. That is telling. There is no
9 evidence that he stole this.

10 What have you not seen? The photos were published to you
11 earlier. There's a tree limb, some copper, marijuana, some
12 more copper, copper. Go back out to the scene and I look at
13 these pictures and the State will agree there's no evidence at
14 all that the Defendant, Mr. David Thompkins, was there.
15 They're trying to sell you on a story that somehow he had
16 knowledge to go out there to pick it up and then go sell it.
17 Where is that evidence? If they have this theory, where is
18 someone to come in and testify and say, "Hey, I told him where
19 it was." You heard the investigator on the stand talking
20 about some CI. Where's that guy? Where is these people that
21 lead them to believe that somehow now my client has gone out
22 there and found this copper. Too many holes in this
23 circumstantial case. The Judge is going to charge you that at
24 any point in each and every circumstance you don't have - you
25 have reasonable doubt at any point in time that Mr. Thompkins

1 is not guilty. Did he have the copper? Yes, he admitted
2 that. You heard, you heard the tape. "I had it on me and
3 took it to the recycling center, tried to sell it." He
4 admitted that, but what did he always say on the tape? "I
5 found it in the mud. I found it in the mud. I found it in
6 the mud. We go out all there all the time. We found it in
7 the mud." Why is that important? The investigator also told
8 you that he talked to another individual and the individual
9 told you or told him that he found his copper in the mud. Was
10 that guy charged? He said no. What's the difference? Why
11 are we here on this case when it's the same case? Interesting
12 questions for you to think about when you go back.

13 What, what are some key points here? Mr. Thompkins is
14 not charged with stealing it because they have no evidence.
15 There's no testimony anywhere in the entire case that he knew
16 it was stolen. Another point just recently made, another
17 person had the same story. He's not charged.

18 So let's talk about these witnesses. What did they
19 actually say? First up was, my apologies, I believe it was
20 Mr. Ken Ray. What did he really tell us? "I walked the
21 perimeter. There was a breach at some point in time. We
22 fixed the breaches." When they go back there is another
23 breach and then what else did he say? He has no knowledge
24 that Mr. Thompkins stole anything from IP.

25 Then we had Mr. Freeman. He purportedly identified the

Closing Argument by Defense

135

1 wire, but he said there's no way to conclusively do it. He
2 said, "It appears to be our wire," appears to be, no 100
3 percent guarantee, pretty close. Mr. Holt from Coastal
4 Recycling knows Mr. Thompkins, been there numerous times. He
5 knows the law that he's not supposed to buy stolen property.
6 He's bought numerous things from him, numerous things. Must
7 not believe him to be a thief, seems like he would have an
8 obligation to say, "Hey, this guy is a thief. I can't buy his
9 stuff," and the only reason why he called the cops this time
10 is because they had been there just moments before. Kind of a
11 funny story, huh? Just moments before they just happened to
12 be riding down the road and saw him in his truck constituting
13 the transportation.

14 Then Investigator McKay, what did he really say? Well,
15 he just told us he don't believe anybody because he heard the
16 same story over and over and over again, and he - well, not
17 anybody, just the Defendant. He didn't believe his story that
18 he got it out of the mud but he believed Mr. Prince's story
19 that he got it out of the mud. Well, he might not have
20 believed it but he sure as heck didn't charge him with a
21 crime.

22 We have all these little tidbits that, you know, this -
23 they want you to think about this real close in time. There's
24 no real close in time. The testimony was is they first got
25 something stolen on October 31st, 2012. The testimony was they

1 had several incidences of theft, none of which they believe my
2 client did. They said, "We have no proof he stole it," but
3 somehow on this one instance where he's transporting the
4 metals they somehow think that he has knowledge that it's
5 stolen. That's not proof. That's not circumstantial evidence
6 either. There's too many links and half of them are broken
7 and that's what you're going to be charged with. You can
8 believe all, all the facts in the world, but none of the facts
9 that were presented to you will tell you that he had any
10 knowledge. "Maybe he did, I don't know," that's reasonable
11 doubt and they have to prove their case beyond a reasonable
12 doubt. That is the law. That is your constitutional right
13 and I think you can agree with me that he did not do so or the
14 State did not do so.

15 This case - I started out with a little story about my
16 son, right? You know, and I showed you a little item that he
17 found in the mud. Now, I'm a dad. I believe him, right? He
18 comes back from the creek, finds something in the mud, I
19 believe him, he found it in the mud, but what happens if that,
20 that item is somehow copper? I don't know if it's copper,
21 hadn't had it tested. It might be gold for all I know. Maybe
22 it's worth a lot of money, but what if we found out that that
23 same item was stolen and I put that item in my car and drive
24 it down the street, does that mean I'm going to be charged
25 with transportation of nonferrous metals if it's copper? I

Charge

137

1 don't know. My kid just found it in the mud.

2 I want you to go back there and think about all of these
3 things they want you to believe and look at the chain. Each
4 chain in this circumstantial case you must believe beyond a
5 reasonable doubt in order to find guilt and I don't think you
6 can do that. I think you will uphold your oath and uphold the
7 law and find that Mr. Thompkins is not guilty. Thank you.

8 THE COURT: Thank you, Mr. Edgeworth. All right,
9 ladies and gentlemen, let me have your attention for a few
10 minutes. I assume everybody is okay. Does anybody need to
11 take a break?

12 (No response.)

13 THE COURT: I'm going to give you what is called a
14 charge on the law and in simple terms what you're required to
15 do under your oath to render a verdict according to the
16 evidence and the law is to take your common sense view of the
17 evidence that has been introduced and put it together with the
18 law as I charge it to you and reach unanimous verdicts, and
19 again, I'm confident that you'll do that. Your verdicts must
20 be unanimous. That means all of you must agree. This is not
21 going to be a nine to three, 10 to two or even an 11 to one
22 proposition. In order for your verdicts to be recorded by
23 your foreperson your verdicts must be absolutely unanimous
24 which again means that all of you must agree.

25 Now, ladies and gentlemen, during the course of the trial

Charge

138

1 obviously you have witnessed the fact that you and I have
2 different duties to perform. You, ladies and gentlemen, are
3 the sole judges of the facts and it's important in that regard
4 for you to understand that it matters what you think about the
5 evidence that has been introduced. It does not matter what I
6 think. If I've said or done anything during the course of
7 this trial that makes you think that I favor one particular
8 result over another, put that out of your mind because I
9 sincerely do not because I trust your judgment and I know that
10 you'll fulfill your oath. It's my responsibility to preside
11 over the trial in two basic particulars. One is to rule on
12 objections as to admissibility or inadmissibility of evidence.
13 If evidence has come in, you can consider it, and again, that
14 is by way of the witness testimony and by way of exhibits. No
15 additional evidence will be provided to you that has not
16 already been introduced. No additional documents, no
17 additional testimony will be provided. However, if during the
18 course of your deliberations you would like to hear replayed
19 any testimony that can certainly be done, but nothing new will
20 be introduced that has not already been introduced. You will
21 have the exhibits in the jury room with you. You will also
22 have access to that audiotape that has been introduced and
23 depending upon the lay of the land regarding any devices that
24 can play it back that can certainly be accomplished for you,
25 too, either a recording or the player will be sent back into

Charge

139

1 the jury room or the - you can hear it again out in the
2 courtroom. We'll leave that entirely up to you.

3 Now, I have the additional duty to charge you the law.
4 You must accept the law exactly as I give it to you. You may
5 come into the case with a preconceived notion of what you
6 think the law is or what you think it ought to be. You have
7 to put that out of your mind and accept the law exactly as I
8 give it to you even if you might disagree with it. If I make
9 a mistake in charging you the law there's a different time and
10 a different place for that error to be corrected. So for
11 today's purposes, for the purposes of this trial you have to
12 accept the law exactly as I give it to you.

13 Now, ladies and gentlemen, the Defendant is charged with
14 two criminal offenses in the two indictments. One is
15 possession of marijuana and one is transporting nonferrous
16 metals when the Defendant knew the metals had been stolen.
17 Those are two separate and distinct charges. Your verdict on
18 one charge does not control your verdict on the other. In
19 your judgment depending on your view of the evidence in
20 accordance with the law if you conclude that the State has
21 proven both charges beyond a reasonable doubt you find the
22 Defendant guilty of both or depending on your view of the
23 evidence you can find him not guilty of both or you can find
24 him guilty of one and not guilty of the other. So in essence
25 your verdict on one charge does not control your verdict on

1 the other.

2 Also, I remind you that the Defendant has entered not
3 guilty pleas to both of these charges. The State has the
4 burden of proving the elements of the crimes charged beyond a
5 reasonable doubt. The Defendant does not have to prove or
6 disprove anything and the State does have the sole burden of
7 proof.

8 Necessarily in your considering testimony that has been
9 introduced you have to pass upon or decide upon the
10 believability of witnesses. As I mentioned to you, you can
11 believe every word that comes out of a witness's mouth,
12 disbelieve every word or believe parts and reject the rest.
13 That's entirely up to you and it's a common sense exercise.
14 You can take into account the witness's demeanor, whether or
15 not the witness's testimony is consistent or inconsistent with
16 other evidence. You can take into account whether or not the
17 witness has a bias or a prejudice for or against one
18 particular result and anything else that you think is
19 appropriate within your common sense. You can believe one
20 witness over several or several over one and that's entirely
21 up to you.

22 Now, in a trial there are generally two types of evidence
23 that are presented. These types of evidence are direct
24 evidence and circumstantial evidence. Direct evidence is
25 evidence that directly proves the existence of a fact and does

Charge

141

1 not require deduction. For example, if a witness were to say,
2 "I saw the dog cross the road," if you believe that witness
3 you could conclude from that direct evidence that the dog, in
4 fact, did cross the road. That's a very fundamental example
5 of that. Circumstantial evidence is proof of a chain of facts
6 and circumstances that indicate the existence of a fact.
7 Crimes may be proven by either direct evidence or
8 circumstantial evidence or by both. The law makes no
9 distinction between the weight or value to be given to either
10 direct or circumstantial evidence. However, to the extent the
11 State relies on circumstantial evidence, all of the
12 circumstances must be consistent with each other and when
13 taken together point conclusively to the guilt of the accused
14 beyond a reasonable doubt. If the circumstances merely
15 portray the Defendant's behavior as suspicious the State's
16 proof has failed. The State has the burden of proving the
17 Defendant guilty beyond a reasonable doubt and that burden
18 rests with the State regardless of whether the State relies on
19 direct evidence, circumstantial evidence or some combination
20 of the two.

21 I'm going to talk to you now about the presumption of
22 innocence and what reasonable doubt means. The presumption of
23 innocence - well, first of all the Defendant has entered not
24 guilty pleas to the indictments and as I mentioned those pleas
25 put the burden on the State to prove him guilty. A person who

1 is charged with a criminal offense in this State is never
2 required to prove himself innocent or not guilty and it's a
3 very important rule of law that the Defendant in a criminal
4 trial no matter what the charge is always presumed innocent of
5 the crime for which the indictment has been issued unless
6 guilt has been set forth by the State establishing guilt
7 beyond a reasonable doubt. Now, the presumption of innocence
8 will not end in a moment when you get up and retire to your
9 jury room to deliberate. The presumption of innocence
10 accompanies the Defendant throughout the trial and throughout
11 your deliberations unless and until you reach a verdict of
12 guilt based on evidence satisfying you of guilt beyond a
13 reasonable doubt. So, in essence, the words presumption of
14 innocence that's not a casual legal theory we toss around.
15 It's not a simple legal phrase. The presumption of innocence
16 is a substantial right to which every Defendant is entitled
17 unless you, the jury, are satisfied from evidence of guilt
18 beyond a reasonable doubt.

19 So, now, what is a reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause an
21 honest, sincere and conscientious person in search of the
22 truth to hesitate to act. The State does have the burden of
23 proving the Defendant guilty beyond a reasonable doubt and
24 what that means is as I charge you in a moment about the
25 elements of these crimes, the State has to prove each element

Charge

143

1 beyond a reasonable doubt. Now, some of you might have been
2 on a jury in a civil case where you were told that the
3 Plaintiff, who has the burden of proof, must prove something
4 by the greater weight of the evidence and an illustration is a
5 set of scales that are even. A person who has the burden of
6 proving something by the greater weight of the evidence has to
7 tip those scales ever so slightly in that person's favor.

8 Now, in criminal cases the State's burden is more
9 powerful than that. Now, the State must prove the elements of
10 the crimes beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced of
12 the Defendant's guilt. Now, there are very few things on this
13 earth that we know with absolute certainty and the law does
14 not require in criminal cases for the State to present proof
15 that overcomes every possible doubt. It requires the State to
16 present proof that overcomes reasonable doubt. Now, if based
17 on your consideration of the evidence you are firmly convinced
18 that the Defendant is guilty of the charge you are considering
19 at that time, you must find him guilty. If on the other hand
20 you think there is a real possibility that the Defendant is
21 not guilty, then you must give him the benefit of the doubt
22 and find him not guilty.

23 All right, now, ladies and gentlemen, I instruct you and
24 I emphasize to you that the fact that the Defendant did not
25 testify in this case is not a factor to be considered by you

1 in any way during your deliberations and in your consideration
2 on the guilt or non-guilt of the Defendant. The fact that the
3 Defendant did not testify in this case is not to be even
4 thought about by you. You cannot talk about it, think about
5 it and it cannot enter into your decisions in any way
6 whatsoever in reaching your verdict. So I repeat under your
7 oath that you are to draw no conclusions whatsoever from the
8 fact that the Defendant did not testify. A Defendant does
9 have the constitutional right to remain silent and the
10 assertion of that right must not be considered by you in your
11 deliberations at all, and again, the State has the sole burden
12 and the Defendant has no burden whatsoever.

13 I'll talk to you now specifically about the two charges
14 in these two indictments. In one indictment and they're on
15 the verdict form. I don't even know - there'll be two verdict
16 forms, one for the marijuana charge and one for the nonferrous
17 metals charge.

18 Now, the Defendant is charged with knowingly having in
19 his possession in a motor vehicle on the highways of this
20 state nonferrous metals that he knew were stolen. Now, our
21 legislature has adopted a statute dealing with nonferrous
22 metals and transportation of nonferrous metals when a person
23 knows they were stolen. Nonferrous metals, that term means
24 metals not containing significant quantities of iron or steel,
25 including copper wire, copper clad steel wire, copper pipe,

Charge

145

1 copper bars, copper sheeting, aluminum or a product that is a
2 mixture of aluminum and copper, catalytic converters and
3 stainless steel beer kegs or containers. That's a definition
4 of nonferrous metals.

5 Now, it is unlawful to have in ones possession in a motor
6 vehicle on the highways of this state nonferrous metals that
7 one knows are stolen. In that regard, the State must prove
8 beyond a reasonable doubt that the Defendant had in his
9 possession in a motor vehicle on the highways of this state
10 nonferrous metals and the State must prove beyond a reasonable
11 doubt that the Defendant knew the nonferrous metals were
12 stolen. In the context of that statute to know the metals
13 were stolen means to have conscious knowledge that the metals
14 were stolen.

15 Now, ladies and gentlemen, the Defendant is also charged
16 with possession of marijuana. The State must first prove
17 beyond - the State must prove beyond a reasonable doubt that
18 the Defendant knowingly or intentionally possessed marijuana.
19 The word knowingly means with knowledge, consciously and not
20 accidentally. The word intentionally means willfully and
21 intending the result which actually occurs, and as I will tell
22 you more closely in just a moment intent may be shown by acts
23 and conduct of the Defendant and other circumstances from
24 which you may naturally and reasonably infer intent. To prove
25 possession the State must prove beyond a reasonable doubt that

1 the Defendant had both the power and intent to control the
2 disposition or use of the marijuana and possession can be
3 either actual or constructive. Actual possession means the
4 marijuana was in the Defendant's actual physical custody,
5 constructive possession means that the Defendant had dominion
6 and control or the right to exercise dominion and control over
7 either the marijuana itself or the property in or upon which
8 it was found.

9 All right, now, ladies and gentlemen, with regard to any
10 criminal charge in order to establish guilt the State must
11 prove the element of criminal intent. Now, criminal intent
12 can be proven by direct evidence or by circumstantial evidence
13 or by a combination of the two.

14 Criminal intent is always a matter that must be
15 determined by a jury if at all from circumstances surrounding
16 the situation. There is no way that medical science can at
17 least yet dissect a person's brain, look at the brain and
18 determine what if anything that person intended to do at any
19 given time. So the law says that criminal intent may be
20 established from circumstantial evidence as long as that is
21 proven beyond a reasonable doubt. It is not necessary to
22 establish criminal intent by direct evidence, but again, it
23 may be established by circumstantial evidence in the same way
24 as any other fact by taking into consideration the actions of
25 the parties and all facts and circumstances. Essentially,

Charge

147

1 criminal intent is a mental state, it is a conscious
2 wrongdoing and it's up to you to determine what if anything
3 the Defendant intended based on the circumstances that are
4 shown to have existed.

5 Now, ladies and gentlemen, your verdicts will end with
6 your foreperson's completion of these verdicts forms and I
7 remind you that your verdicts have to be absolutely unanimous.
8 You can consider either one in either order that you want, and
9 as I remind you, I will remind you that your verdict on one
10 does not control your verdict on the other. The verdict form
11 for transporting nonferrous metals with knowledge they were
12 stolen here's what it says, as to the charge of transporting
13 nonferrous metals with knowledge they were stolen, we, the
14 jury unanimously find the Defendant, there are two choices,
15 not guilty, guilty. You put a check or an X in the
16 appropriate space once you're sure the verdict is unanimous
17 and then you sign that verdict form and move - and date it and
18 move to the next one, again, no particular order for these
19 forms.

20 The verdict form for the marijuana indictment says as to
21 the charge of possession of marijuana, we, the jury
22 unanimously find the Defendant, again, two choices, not
23 guilty, guilty. There's also a certification on both forms
24 that you sign that both verdict or that your verdict is
25 unanimous.

1 Now, if you have any questions during the course of your
2 deliberations there'll be a notepad in the jury room. Write
3 the question down, sign it, date it, tap on the door and let
4 the bailiff know you have a question. Again, no additional
5 evidence, no new evidence is going to be provided to you, but
6 if you want to hear other evidence that has been put before
7 you or if you have any questions about the evidence or the
8 law, write the question down, the bailiff will hand it to me
9 and the law dictates, number one, if I can respond, and number
10 two, how I can respond.

11 Now, once you have reached verdicts you record by your
12 signature and the date on the verdict forms, tap on the door
13 and let the bailiff know that you have reached verdicts and
14 we'll receive those as soon as possible. Sometimes I might be
15 having a hearing in another case and I may try to finish that
16 real quickly before we get to you.

17 I have every confidence that you will give the issues in
18 the case the honest and sincere discussion that they deserve,
19 and I want to make sure that you understand that your job is
20 really just beginning. You have in your laps and your charge
21 the responsibility to give both sides a fair and impartial
22 verdict and the only way that you can do that is to conduct
23 your deliberations honestly and forthrightly. Now, if anybody
24 has to leave the jury room to use the phone or for any other
25 reason first of all you've got to get my permission. If a

Charge

149

1 person does leave, Mr. Foreman, please stop your deliberations
2 until he or she gets back. Also, even if someone were to step
3 into the restroom wait until they come back before you begin
4 your deliberations. We may, depending on the timing of the
5 morning with other cases, I may have lunch ordered in for you
6 and we'll, we'll play that as it comes. You will have in your
7 jury room three basic things, your collective memory of my
8 jury charge, your common sense and all of the exhibits, and
9 you put all that together and I'm confident that you will
10 reach verdicts that do speak the truth.

11 The next order of business will be for you to leave this
12 courtroom. Under the rules I will ask the lawyers if I left
13 anything out of my charge or if I said anything incorrectly.
14 Your signal to deliberate will be when the bailiff comes to
15 the door with these two verdict forms and with the exhibits
16 and tells you that you can begin, and as I mentioned, please
17 make sure your verdicts are unanimous and let me know if you
18 do have any questions at all.

19 All right, if you'll go to your jury room, please, ladies
20 and gentlemen. Do not begin discussion of the case quite yet.
21 That time will be coming very shortly.

22 Mr. Hyman, do you have anything in the jury room? Do you
23 have any personal belongings in the jury room?

24 MR. HYMAN: No, sir.

25 THE COURT: Okay, you can wait right outside.

Charge

150

1 I've never been back there but I understand there's a little
2 room before you get into the jury room. If you'd wait right
3 outside there; okay?

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, any exceptions or
7 additions from the State?

8 MR. TODD: No, Your Honor.

9 THE COURT: Any from the Defendant?

10 MR. EDGEWORTH: None, Your Honor.

11 THE COURT: Okay, if you'd make sure with the
12 court reporter that all the exhibits are in order then the
13 bailiff or clerk can pass the verdict forms and the exhibits
14 to the jury room. Any objection, Mr. Todd ---

15 MR. TODD: None, Your Honor.

16 THE COURT: --- to the alternate being excused?

17 MR. TODD: No, sir.

18 THE COURT: Mr. Edgeworth?

19 MR. EDGEWORTH: No, Your Honor.

20 THE COURT: You can bring Mr. Hyman out. I'll
21 talk to him while they get that straight. This doesn't have
22 to be on the record.

23 (Alternate discharged by Court. Exhibits reviewed by
24 counsel for State and Defense and approved.)

25 THE COURT: All right, everything in order?

Charge

151

1 MR. TODD: Yes, Your Honor.

2 MR. EDGEWORTH: Yes, Your Honor.

3 THE COURT: Okay, it's according to that clock

4 11:22. The jury can begin now. Mr. Thompkins, if you would

5 please stay in the immediate area of the courtroom, either

6 outside or inside the courtroom. Don't leave the building

7 without my permission and if the jury has a question or a

8 verdict I want you to be close at hand. Do you understand

9 that?

10 MR. THOMPCKINS: Yes, sir.

11 THE COURT: If you don't come back, the same

12 thing as I mentioned yesterday, I'll send, I'll issue a

13 warrant for you to be picked up and also we'll receive the

14 verdict or any question in your absence. Do you understand

15 that?

16 MR. THOMPCKINS: Yes, sir.

17 THE COURT: All right, of course, anybody from

18 the State who wants to remain close at hand they need to be

19 real close so we can get the verdict or a question read.

20 MR. TODD: Yes, sir.

21 MR. EDGEWORTH: Your Honor, if I may, ask my client

22 would like to step outside briefly to smoke a cigarette if

23 that's ---

24 THE COURT: That's fine as long as you can - can

25 you smoke on the property or you got to step off the property?

1 MR. EDGEWORTH: Step across the way.

2 THE CLERK: There's ashtrays out on the, the
3 platform area, the steps.

4 THE COURT: All right, just don't go any further
5 than that. I had somebody who went and got lunch one day and
6 he ended up having to stay in jail the rest of the trial.

7 MR. THOMPCKINS: I'll be right back in.

8 THE COURT: Okay.

9 MR. EDGEWORTH: Thank you, Your Honor.

10 MR. THOMPCKINS: Thank you, sir.

11 (Deliberations begin at 11:22 a.m.)

12 OFF THE RECORD

13 (On the record. Verdict reached at 11:56 a.m. The
14 following takes place outside the presence of the jury.)

15 THE COURT: Okay, I understand the jury has a
16 verdict; is that right?

17 MR. TODD: Yes, Your Honor.

18 THE COURT: Is the State ready?

19 MR. TODD: Yes, Your Honor.

20 THE COURT: Is the Defendant ready?

21 MR. EDGEWORTH: Yes, Your Honor.

22 THE COURT: Okay, you can bring in the jury. You
23 all can have a seat.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

Verdict

153

1 THE COURT: All right, Mr. Foreman, has the jury
2 reached verdicts in both cases?

3 FOREMAN: We have.

4 THE COURT: And are the verdicts unanimous?

5 FOREMAN: They are.

6 THE COURT: You can hand those to the bailiff and
7 he'll hand them up to me. Thank you.

8 (Court reviews verdict forms.)

9 THE COURT: All right, Mr. Thompkins, please
10 stand and face the jury.

11 THE CLERK: Mr. Thompkins, in the State of South
12 Carolina versus David Wayne Thompkins, Jr., indictment number
13 2012-22-00309 the verdict is as to the charge of possession of
14 marijuana, we, the jury unanimously find the Defendant guilty.

15 In the State of South Carolina versus David Wayne
16 Thompkins, Jr., indictment number 2012-GS-22-00308 the verdict
17 is as to the charge of transporting nonferrous metals with
18 knowledge that they were stolen we, the jury unanimously find
19 the Defendant guilty.

20 THE COURT: All right, ladies and gentlemen, if
21 this is your - if this was your verdict and is still your
22 verdict please signify that by raising your right hand.

23 (All jurors raise right hand.)

24 THE COURT: All right, thank you. The record
25 will show that all jurors did raise their right hand. So you

1 can have a seat, Mr. Thompkins. All right, anything from the
2 State before - anything from the State before the jury is
3 released?

4 MR. TODD: No, Your Honor.

5 THE COURT: Anything from the Defendant before
6 the jury is released?

7 MR. THOMPCKINS: Nothing, Your Honor.

8 THE COURT: All right, could I see Ms. Bailey up
9 here perhaps?

10 (A bench conference is held with Solicitor Bailey.)

11 THE COURT: All right, ladies and gentlemen, that
12 does conclude your service in this particular case and I want
13 to thank you for the attention that you've paid throughout the
14 trial. Now you can talk about this case all that you want.
15 However, if you do not want to talk about it that's entirely
16 up to you. Someone may see you, speak to you and ask you some
17 questions about your verdict and if you want to answer those
18 you can. I would prefer that you not do that until your
19 service for the week is over, so if you would follow that one
20 last instruction not to talk about the case until your service
21 for the week is over.

22 Speaking of that, well, one more thing, if someone does
23 want to talk to you about the case and you don't want to talk
24 to them about it tell them that. They should resist asking
25 you any further questions. If they persist and that disturbs

Verdict

155

1 you simply contact the Clerk of Court's Office and Ms. White
2 will let me know and I'll take care of any problem in that
3 regard.

4 Now, with regard to further service for the week you are
5 released for the rest of today. You call the number that you
6 have after six o'clock this evening. You will hear the
7 recording again and the recording will tell you one of several
8 things. It may say your service for the week is over. It may
9 tell you to call back at some time tomorrow or it may tell you
10 to come back sometime tomorrow. Simply whatever the
11 instructions are follow those and I know that if you don't
12 understand perhaps what the voice recording says, you can, you
13 can call the Clerk's Office and they can give you the
14 information firsthand. You are free to go for the balance of
15 the afternoon, but again, call the number that you have after
16 six this evening. Thank you.

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right, Mr. Edgeworth, I will give
20 you ten days to file any post-trial motions if that's what you
21 would like.

22 MR. EDGEWORTH: Yes, Your Honor.

23 THE COURT: Make sure that you first of all file
24 the motion, serve the Solicitor's Office, serve Mr. Todd and
25 please send a copy to my P.O. Box in Sumter. If you want to

1 get that I'll give it to you before you go. I will not
2 calculate the ten days for you, but make sure that you do -
3 the motions that are filed make sure you do that within 10
4 days.

5 MR. EDGEWORTH: Yes, Your Honor.

6 THE COURT: Would, would the State like to go
7 forward with sentencing at this point?

8 MR. TODD: Yes, Your Honor.

9 THE COURT: All right, you can stay seated right
10 now, Mr. Thompkins, and I first of all would like to hear if
11 there's anything from the victim. I don't see anyone from
12 International Paper here.

13 MR. TODD: No, Your Honor.

14 THE COURT: But is there anything that you or law
15 enforcement would like to say before we go - before I sentence
16 the Defendant?

17 MR. TODD: Your Honor, just briefly, you know,
18 the possession of marijuana charge is a second offense. He
19 does have one of those before - on his record before the
20 State.

21 THE COURT: So that would be zero to one year?

22 MR. TODD: Yes, Your Honor.

23 THE COURT: All right.

24 MR. TODD: And then the transporting of metals
25 this is his first charge in that matter. That's a zero to ten

Sentencing

157

1 and the State did offer him four years to sum up all of his
2 charges that he has with us.

3 THE COURT: Okay, does he have a record?

4 MR. TODD: Yes, Your Honor, it's a rather small
5 record. The Court's indulgence, Your Honor. Your Honor, he
6 has a possession with intent to distribute conviction from
7 looks like 2005.

8 THE COURT: Is that marijuana?

9 MR. TODD: It's one - it's - doesn't say
10 specifically. It has the possession of schedule I, II or III.

11 THE COURT: Okay.

12 MR. TODD: He has another possession charge in
13 2006 and that is of marijuana. He has a possession of
14 paraphernalia charge in 2006 and then everything else is the
15 charges we have leading up to today, plus we have some pending
16 charges in another matter, but that is all that's on his
17 record.

18 THE COURT: All right, what's the State's
19 position on sentencing if any?

20 MR. TODD: Your Honor, the State's position is
21 we offered him four years. We believe that was a fair offer
22 and that was the one in which he rejected our offer and that's
23 how we came to trial, Your Honor. So we would just ask that
24 you take that into consideration upon sentencing.

25 THE COURT: All right, anything from law

1 enforcement?

2 INVESTIGATOR: No, Your Honor.

3 THE COURT: Okay, all right, Mr. Edgeworth, of
4 course, the Defendant still has the right to remain silent and
5 I'll leave it to his judgment and yours as to whether or not
6 he says anything to me. I'll be happy to hear from you or him
7 or both of you; okay?

8 MR. EDGEWORTH: Yes, thank you, Your Honor.

9 Your Honor, I just make sure the Court's aware that my
10 client, of course, well, he's 29 years old. He has two
11 children, both young, has a girlfriend with whom he operates a
12 small business, among other things. He is by trade he is a
13 fisherman, commercial and otherwise, and also does
14 construction. The children rely on him for support as well as
15 his girlfriend and we certainly believe that given the facts
16 and circumstances surrounding the case that potentially or
17 possibly time served on the marijuana charge and certainly a
18 suspended sentence and probation in regards to the, the guilty
19 verdict related to the transportation of nonferrous metals.

20 THE COURT: All right, anything your client would
21 like to say?

22 MR. THOMPSON: No, sir.

23 THE COURT: All right, anything else from the
24 State?

25 MR. TODD: No, Your Honor.

Sentencing

159

1 THE COURT: And you said his record is PWID of
2 some substance in '05, possession of marijuana in '06 and drug
3 paraphernalia in '06. The pending charges, they're not in a
4 position that there's any plea that's been in the works?

5 MR. TODD: Your Honor, the plea originally was
6 with all of this.

7 THE COURT: I see. What were the - what are the
8 pending charges?

9 MR. TODD: He has another metals charge and
10 actually McKay was working that one as well.

11 THE COURT: Okay.

12 MR. MCKAY: Santee Cooper.

13 MR. TODD: Oh, Santee Cooper was actually the
14 one on that, but another metals charge which that one included
15 actually going in and cutting some of the, that's what he's
16 charged with, cutting the metal away from one of their
17 faculties, stopping the electrical current going to it and
18 other places.

19 THE COURT: All right, all right, we'll take five
20 minutes. You can have a seat. Mr. Thompkins, you are not
21 free to go. You have to stay right there; okay?

22 MR. EDGEWORTH: Thank you, Your Honor.

23 MR. THOMPCKINS: Yes, sir.

24 THE COURT: All right, so, he, he is in custody
25 now.

1 MR. EDGEWORTH: Thank you, Your Honor.

2 OFF THE RECORD

3 (On the record.)

4 THE COURT: All right, you can stand, please, Mr.
5 Thompkins. All right, I want the record to reflect obviously
6 that the jury has reached guilty verdicts in both cases,
7 different, the jury could have reached different conclusion
8 but this jury weighed the evidence and concluded beyond a
9 reasonable doubt the Defendant was guilty of both charges. I
10 will not - when I sentence a Defendant after a trial I do not
11 in any way punish a Defendant for taking or exercising his
12 right to a jury trial. So even though Mr. Todd has put on the
13 record that an offer was made I typically don't take that into
14 consideration at all because that's, that has nothing to do
15 with me, has nothing to do with what a jury does or does not
16 decide.

17 On the indictment - do you have the sentencing sheets?

18 MR. TODD: Yes, Your Honor.

19 THE COURT: On indictment 2012-GS - 2013-GS-22-
20 00309, possession of marijuana, second offense, the Defendant
21 is committed to the Department of Corrections for a period of
22 one year. He'll get credit for any time he served.
23 Concurrently with that, which means the sentences will be
24 served at the same time, indictment 2013-GS-22-00308, the
25 Defendant is committed to the Department of Corrections for a

Sentencing

161

1 period of six years. He'll get credit for any time he's
2 served. At some point hopefully during our lifetimes the
3 theft of copper and other nonferrous metals by people who just
4 choose to take it, and of course, he wasn't accused of taking
5 it, but this is just an absolute scourge. It's got to stop
6 sometime. This, this sentence, since you have been found
7 guilty, will perhaps send a signal to those out there that
8 they don't need to get into the business of dealing with
9 copper they know has been stolen. So I think those sentences
10 are appropriate under the circumstances. Again, they will be
11 concurrent. You will get credit for any time you have served.
12 The local detention center and the Department of Corrections
13 will calculate that time. All right, thank you, gentlemen.

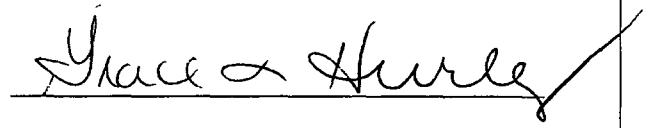
14 MR. EDGEWORTH: Thank you, Judge.

15 (Adjourned.)
16
17
18
19
20
21
22
23
24

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus David Wayne Thompkins, Jr., held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on October 29 and 30th, 2013.

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

A handwritten signature in dark ink, appearing to read "Grace L. Hurley", is written over a horizontal line. A checkmark is visible to the right of the signature.

Grace L. Hurley, CVR-CM-M

Official Reporter

April 3, 2014.

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the Grand Jurors of Georgetown County present upon their oath:

TRANSPORTING STOLEN NONFERROUS METALS

CDR: 3585 §16-17-0680(G)(5)

That David Wayne Thompkins, Jr. did in Georgetown County on or about January 9, 2013, knowingly have in his possession, in a motor vehicle on the highways of this State, nonferrous metals that he knew were stolen, in violation of Section 16-11-523(B)(C1), S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown County Sheriff's Office

DOCKET NO. 2013GS2200308

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr.

13G00068

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

REST WARRANT NUMBER

2013A2210500031

CDR: 3585 §16-17-0680(G)(5)

DOI: 1/9/2013

THE STATE

vs.

DAVID WAYNE THOMPkins, JR.

DOB: [REDACTED]

W / M

910 Garrison Rd

ACTION OF GRAND JURY

TRUE BILL

ATTORNEY: Edgeworth, Josh

Indictment for

**TRANSPORTING STOLEN NONFERROUS
METALS**

Jimmy A. Richardson, II, Solicitor

[Signature]

reperson of Grand Jury

Date: 3-13-2013

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT

At a Court of General Sessions, convened on March 13, 2013, the Grand Jurors of Georgetown County present upon their oath:

POSSESSION OF MARIJUANA,
LESS THAN ONE OUNCE

CDR: 0182 §44-53-0370(d)(4)

That David Wayne Thompkins, Jr. did in Georgetown County, on or about January 9, 2013, knowingly and intentionally possess a quantity of Marijuana of less than one ounce, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law and such being the defendant's second or subsequent offense, in violation of Section 44-53-0370(d)(4), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Georgetown County Sheriff's Office

REST WARRANT NUMBER

2013A2210500029

CDR: 0182 §44-53-0370(d)(4)

DOI: 1/9/2013

ACTION OF GRAND JURY

TRUE BILL

[Signature]
reperson of Grand Jury

Date: 3-13-2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS2200309/

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr.

13G00073

COURT OF GENERAL SESSIONS

MARCH, 2013 TERM

THE STATE

vs.

DAVID WAYNE THOMPkins, JR.

DOB: [REDACTED]

SSN: [REDACTED]

W / M

910 Garrison Rd

ATTORNEY: Edgeworth, Josh

Indictment for

**POSSESSION OF MARIJUANA,
LESS THAN ONE OUNCE**

Jimmy A. Richardson, II, Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 3, 2014



Benjamin John Tripp
Appellate Defender

RECEIVED

OCT 03 2014

SC Court of Appeals

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

W

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 03 2014

SC Court of Appeals

Appeal from Georgetown County

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

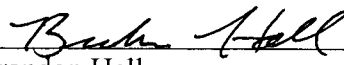
DAVID WAYNE THOMPkins, JR.

APPELLANT

APPELLATE CASE NO. 2013-002486

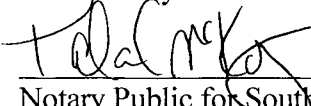
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of October, 2014



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
This 3rd day of October, 2014.



(L.S)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.