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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JAN 11 2017

Appeal from Oconee County

S.C. SUPREME COURT

Honorable Brooks P. Goldsmith, Circuit Court Judge

JAMES TINSLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001435

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

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

PATRICK SCHMECKPEPER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

)
) COURT OF GENERAL SESSIONS
)

JAMES DOUGLAS TINSLEY, JR.)
)

PLAINTIFF,)
)

vs.)
)

TRANSCRIPT OF RECORD
2007-GS-37-881 - 885
)
)

STATE OF SOUTH CAROLINA)
)

DEFENDANT.)
)

JULY 28, 2008
WALHALLA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. C. NICHOLSON, JR., JUDGE.

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

DAVID WAGNER, ASSISTANT SOLICITOR
Attorney for the State

J. DOUGLAS TINSLEY, JR.
Pro Se Defendant

A L S O P R E S E N T

R. DANIEL DAY, ESQUIRE

Donna Brady
Official Court Reporter

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July 28, 2008

(WHEREUPON, court convened with all parties present,
when the following proceedings were had:)

THE COURT: Thank you. Ladies and gentlemen of the
jury, I have to tend to some motions. I can't do it in
front of the jury panel. I'd ask you to leave the
courtroom. And if you'll be back in the courtroom at
12:00, we'll draw a jury at that time. Be back in the
courtroom at 12:00.

(Whereupon, the following proceedings were had
outside the presence of the jury:)

THE COURT: Mr. Tinsley, Solicitor, you going to call
all five indictments?

MR. WAGNER: Yes, sir.

THE COURT: Mr. Tinsley, I'm looking at an indictment
for receiving stolen goods, two indictments, a third
indictment, fourth indictment -- five indictments for
receiving stolen goods. And I understand the solicitor is
planning on calling those indictments for trial.

And you were before Judge Maddox previously and he
ordered that you would proceed pro se. I understand you
have some motions you would like for me to hear. Is that
correct?

THE DEFENDANT: Correct.

THE COURT: I'll be glad to hear them.

1 THE DEFENDANT: Your Honor, I'm sure you may not be
2 aware of it. But for the last five months I've been
3 trying to get counsel appointed to assist me, or at least
4 a legal adviser. There's a lot of complicated issues
5 here. I filed several motions to have funds available to
6 get an expert witness and an investigator to assist in the
7 case. Some of the witnesses that I would like to call
8 that are material to the case live in other states. And I
9 have made these motions trying to get the court's
10 assistance and the State has continuously refused to put
11 it on the docket to be heard on the matter. There's a lot
12 of information came to my attention the last few days the
13 solicitor's office doesn't even know about yet. And I
14 would ask for -- just ask for a continuance and some
15 assistance to get the discovery and evidence and stuff
16 that I need.

17 My understanding, I have a right to put up a defense,
18 according to State versus Schmidt, which includes calling
19 witnesses favorable to my case. One of the witnesses, the
20 dates on the indictment I think are from January 23 to
21 29th or something like that. One of the witnesses was
22 present with me 95 percent of the time, 24 hours a day
23 during that time. And his testimony would be relevant.
24 He can testify to the fact that Mr. Justice, my
25 codefendant, admitted to him that he had owned the

1 backhoe, one of the charges; that he purchased a camper,
2 which is another charge; that he bought various ATV's at
3 auction.

4 THE COURT: Who is this individual?

5 THE DEFENDANT: Clyde Boles.

6 THE COURT: Where is he?

7 THE DEFENDANT: He is in Florida. So there's some
8 difficulty maybe getting him here. I'm down at the jail,
9 I don't have access to the law library or anything.

10 THE COURT: Unfortunately, Mr. Tinsley, you made the
11 decision to proceed pro se. I'm sure Judge Maddox
12 explained to you the detriments or the dangers of
13 proceeding pro se.

14 THE DEFENDANT: I understand.

15 THE COURT: That decision was made by you. Now, the
16 fact that you haven't been able to get these witnesses
17 here from Florida, I'm not going to continue it for that
18 reason. Because you should have done that a month ago.

19 THE DEFENDANT: I just found out we were going to
20 have a trial a few days ago. I thought it would be six
21 months from now.

22 THE COURT: Mr. Tinsley, these indictments were
23 returned true bill May 27, 2008, over a year ago. You've
24 had a over a year ago. Excuse me, May 27, 2008.

25 THE DEFENDANT: I just received them a few days ago.

1 THE COURT: Excuse me, June, July. Two months. When
2 were you arrested on the indictments?

3 THE DEFENDANT: January 29.

4 THE COURT: You had since January 29 --

5 THE DEFENDANT: Right.

6 THE COURT: -- to either hire an attorney --

7 THE DEFENDANT: I don't have the funds to hire an
8 attorney.

9 THE COURT: -- or proceed pro se.

10 THE DEFENDANT: I don't mind speaking for myself,
11 that's all I wanted to do, speak for myself. I understand
12 I might not have a right to represent myself and have an
13 attorney, but I believe it's within the court's discretion
14 to give me someone who can assist me, getting some of this
15 stuff done. Just because I want to represent myself, I
16 don't think that means that I also forfeit the right to
17 have witnesses be able to testify for me and in my
18 defense. There's nothing that I can do about, you know,
19 getting them here by myself from jail.

20 I would love to represent myself, but I don't think I
21 should be entitled to waive my right to put up a defense.
22 I have a constitutional right to do that.

23 THE COURT: That's correct. You decided to proceed
24 pro se, which is fine. What other witnesses -- the clerk
25 informed me before we started the motion that you made a

1 request for 14 subpoenas for trial.

2 THE DEFENDANT: Correct.

3 THE COURT: Who are these 14 people?

4 THE DEFENDANT: My father is one. I think there are
5 a couple of investigators. There's Clyde Boles. There's
6 a gentleman from North Carolina that Mr. Justice had done
7 some backhoe work for, and had the backhoe at his property
8 for some time prior to this. And there's a lot of
9 evidence and witnesses dealing with that, and trying to
10 get them all here. I believe a jury might infer that if
11 he had possession of all that property.

12 THE COURT: That may well be, but it's sort of the
13 midnight hour to be doing this.

14 THE DEFENDANT: Your Honor, I have been filing
15 motions for five months trying to get help with this.
16 This is not something I just came to court today for the
17 first time and asked for. I've been filing motions for
18 five months. The solicitor's office refused to put them
19 on the docket so I can be heard. It's not my fault.

20 THE COURT: Let me see the file, please. Solicitor,
21 any, motions -- what motions have not been heard?

22 MR. WAGNER: Your Honor, most of his motions have
23 come within the last 30, 60 days wanting any of this
24 stuff, a lot of them within the last week.

25 THE COURT: Here is a motion that was filed July 25,

1 another motion July 25, another on July 18. All these are
2 handwritten. Another one on July 14. Looks like another
3 one on July 18. Another one on July 14. All the
4 motions -- let me see if there's anything else. Another
5 one May 20th. Have any of the motions been heard,
6 Solicitor?

7 MR. WAGNER: No. None of these motions -- we haven't
8 had court since the end of June. He filed a lot of these
9 when he found out he was on the trial docket this month.
10 I think it's just delay tactic on his part.

11 THE COURT: When did you put out the trial roster?

12 MR. WAGNER: Three weeks ago.

13 THE COURT: What was that date in relation to these
14 motions?

15 MR. WAGNER: It was before he did most of these
16 motions here. We put it out on the 14th. He was actually
17 notified probably ten days prior to that, that he was up
18 for trial first on the list. We just we noticed him.

19 THE COURT: So he's known the trial is coming up for
20 at least --

21 MR. WAGNER: Close to a month.

22 THE COURT: All right. Mr. Tinsley, I'm going to go
23 through each one of these motions and look and see if
24 there's any merit to any of these motions. If there are,
25 we'll hear them. I will order Mr. Day to sit with you

1 during the trial to assist you, answer any of your
2 questions. He's not going to participate during the
3 trial, but will be available to answer your questions.

4 THE DEFENDANT: I appreciate that.

5 THE COURT: Are they all handwritten by you?

6 THE DEFENDANT: Yes, sir, your Honor.

7 THE COURT: The first motion I'm looking at is a
8 motion, apparently it was filed April 24, 2008. It's a
9 brief on appeal from the preliminary hearing.

10 THE DEFENDANT: That's appellate brief, your Honor,
11 not a motion.

12 THE COURT: There's no such thing as an appeal from a
13 preliminary hearing. Okay. No such animal.

14 THE DEFENDANT: We do it all the time, your Honor.

15 THE COURT: No, we don't.

16 THE DEFENDANT: To the circuit judge.

17 THE COURT: Let me say this. No, that's not correct.
18 Let me say this. There's also sanctions that can be
19 imposed for frivolous motions. There's no such animal as
20 a motion to -- there's no appeal from a preliminary
21 hearing. Do you understand?

22 THE DEFENDANT: No, I don't understand.

23 THE COURT: It does not exist in the law. Do you
24 understand that?

25 THE DEFENDANT: No, I've seen it in the law. But

1 it's okay.

2 THE COURT: I'm not going to argue with you.

3 THE DEFENDANT: Already got indictments, your Honor,
4 so it's moot now anyway.

5 THE COURT: I'm not going to argue with you about it.
6 There is no motion that can be filed, no appeal from a
7 preliminary hearing. Okay. So I'm not going to argue
8 with you about it. Do you understand?

9 THE DEFENDANT: I understand.

10 THE COURT: That appeal is denied.

11 THE DEFENDANT: Okay.

12 THE COURT: All right. I'm looking at a petition for
13 a writ of mandamus dated April 30. What is that about?

14 THE DEFENDANT: Same thing, your Honor. I was trying
15 to get the court to protect my constitutional rights, and
16 get me some assistance. It's not something I started
17 raising since I found out I was going to court, although I
18 didn't realize I was going to court so soon. I have been
19 trying to get assistance.

20 THE COURT: Who was appointed to represent you as
21 public defender, anyone?

22 THE DEFENDANT: Derrick Enderlin was originally
23 appointed.

24 THE COURT: All right. What happened to his
25 representation?

1 THE DEFENDANT: He said he didn't -- I wanted him to
2 assist me, and he said he didn't want to assist me.

3 THE COURT: When was he relieved as counsel?

4 THE DEFENDANT: A few months back.

5 THE COURT: Did you make a request for anyone else?

6 THE DEFENDANT: I made these other motions.

7 THE COURT: No, you made a motion to proceed pro se.
8 Have you made a request for anybody else to be appointed
9 since Mr. Enderlin was relieved?

10 THE DEFENDANT: I've asked, yes.

11 THE COURT: Where and when?

12 THE DEFENDANT: In the motions.

13 THE COURT: There's a writ of mandamus. The writ for
14 mandamus is denied. Here is a motion to dismiss certain
15 warrant numbers. It was filed on May 20th. I'll be glad
16 to hear you on that. I assume that's to dismiss warrants
17 or dismiss the indictments?

18 THE DEFENDANT: That's to dismiss the warrants
19 because they haven't sought an indictment within 90 days.
20 I guess since they have an indictment now it would be
21 difficult for me to show that I was prejudiced by it.

22 THE COURT: That's a moot issue. That motion is
23 denied.

24 Looking at a motion for bond reduction, May 5 that
25 was filed.

1 THE DEFENDANT: Correct. I was seeking a bond
2 reduction because the State stacked five charges on me for
3 the same exact thing. And according to the statute the
4 possession of multiple items at one time constitutes one
5 offense. I was out on bond on two charges. So I felt I
6 should have been released so that I could do some
7 discovery and stuff myself, have access to a law library
8 and seek some assistance that way if the court wouldn't
9 appoint me an attorney. So I was trying to go at it any
10 way I could to get some assistance.

11 THE COURT: Okay. The motion -- your bond was what,
12 \$20,000?

13 THE DEFENDANT: No, I paid \$20,000 bond.

14 THE COURT: You have a \$20,000 bond.

15 THE DEFENDANT: I paid -- there was two charges I
16 paid \$20,000 bond on. As soon as I paid it, they brought
17 three more charges for the same thing. Then it was like
18 \$80,000 bond.

19 THE COURT: So it was 80,000 for the three additional
20 charges?

21 THE DEFENDANT: Something like that, roughly.

22 THE COURT: Why do you think the motion for bond
23 should be granted?

24 THE DEFENDANT: I thought it should be granted
25 because they were all the same charges. The way I saw it,

1 I was out on bond on two charges and there shouldn't be
2 but one charge anyway because the possession of multiple
3 items at one time constitutes one offense. So I should
4 have one charge. Because of my position and wanting to
5 represent myself being in jail, I thought it was
6 appropriate that I be allowed out on bond to conduct my
7 research and investigations and stuff for myself if the
8 court wouldn't appoint me an attorney.

9 THE COURT: The motion for a bond reduction is
10 denied. Now I'm looking at a motion to produce
11 exculpatory evidence. Solicitor, have you provided
12 everything to Mr. Tinsley under the Rule 5 and any other
13 cases that he would be entitled to? We do not have open
14 discovery in South Carolina in criminal cases; but it's
15 limited to stuff you can receive. Solicitor, have you
16 complied with Rule 5?

17 MR. WAGNER: Yes, sir.

18 THE COURT: Or has a Rule 5 motion even been
19 delivered to you?

20 MR. WAGNER: Yes, sir. We complied with that. We've
21 given him everything we've got. In addition, Detective
22 Smith here, based on one of his motions that we just
23 received last week, went and looked through -- he was
24 wanting some paperwork dealing with this backhoe that he
25 and his codefendant are charged with having, it's a stolen

1 backhoe. And something about a septic tank business.
2 Mr. Smith spent a good portion of his day the other day
3 trying to find, flip through some of the paperwork,
4 brought a box up here with some of the stuff in it. Some
5 of the stuff he asked for they couldn't find it. They
6 don't have it.

7 THE COURT: Have you given him what he found?

8 MR. WAGNER: No, sir. It is sitting here in a box.
9 We haven't had time to give it to him, but he is welcome
10 to look through it this morning.

11 THE COURT: What they have brought today, you'll get
12 today.

13 THE DEFENDANT: I was able to locate myself what I
14 was talking with other witnesses from North Carolina --

15 THE COURT: Locate what?

16 THE DEFENDANT: Has to do with that backhoe.

17 THE COURT: They're going to give you what they have
18 found. Do you understand?

19 THE DEFENDANT: I understand.

20 THE COURT: What else do you want them to locate?

21 THE DEFENDANT: I don't. I'm saying I already got it
22 through my own source.

23 THE COURT: You already got what, what they found?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So is there anything else you know that

1 they found that you should be entitled to?

2 THE DEFENDANT: Only if they have located information
3 about an ID that was found, I think might be a friend of
4 Mr. Justice's or something. Other than that, I can't
5 think of anything else.

6 THE COURT: Solicitor, have you found that?

7 MR. WAGNER: There was some ID's of other people. We
8 failed to see how it was relevant to anything. But he is
9 welcome to a copy of it.

10 THE COURT: We'll give you a copy of Mr. Smith's ID.
11 Anything else you think you should be entitled to?

12 THE DEFENDANT: I believe that would be it.

13 THE COURT: Anything else now on this motion?

14 THE DEFENDANT: I don't believe so at this time.

15 THE COURT: Based upon the motion and the response
16 solicitor, motion to produce exculpatory evidence filed on
17 July 14 has been met.

18 Motion for appointment of standby counsel. Mr. Day
19 has been appointed to sit with you.

20 Mr. Tinsley, motion to assist defendant subpoena
21 witnesses. I'm going to let the clerk talk to you, get
22 the names of witnesses, and we'll get the subpoenas filled
23 out properly. But you're going to have to give some
24 addresses and information. And I'll let Mr. Day get that
25 from you, get that to the clerk, make whatever efforts are

1 necessary to get people here in Oconee County or adjoining
2 counties. Do you understand?

3 THE DEFENDANT: Yes, sir, your Honor. All my
4 witnesses seem to be out of state, though.

5 THE COURT: I can't help you there, my friend. I can
6 help you with anybody in South Carolina. I can't help you
7 out of state.

8 THE DEFENDANT: I think it's unfair for me to go to
9 trial without my witnesses. It's not my fault the
10 witnesses are from out of state.

11 THE COURT: Well, Mr. Tinsley, you should have
12 thought about that six months ago, not on July 18.

13 THE DEFENDANT: I did, your Honor. I have been
14 trying. Only found out about this witness -- I thought
15 they were calling Mr. Boles. I just found out the other
16 day that they're not.

17 THE COURT: Mr. Tinsley, I'm looking at all the
18 motions. We're going through them. I've gone through
19 every motion I have found in the file. This motion was
20 filed on July 18th. Today is July 26. That was eight
21 days ago. So don't stand there and tell me you been
22 filing motions and requesting this for months.

23 THE DEFENDANT: I have, your Honor. I just found out
24 we were going to trial this time. That's the reason I've
25 been seeking an attorney prior to this, to help me with

1 this. When I realized we were going to trial so soon, and
2 nobody had ruled on my motion for appointment of counsel,
3 I decided to try to get the court to help me do it myself.
4 I don't want any special attention. All I want is to be
5 able to put up a defense. I think I'm entitled to do
6 that. There are witnesses that can help me. I believe
7 it's unfair to force me to go to trial without the ability
8 to put up a defense when I have one.

9 THE COURT: Mr. Tinsley, I'm looking at an order
10 signed by Judge Maddox from April 29. That was a motion
11 for you to proceed pro se that you filed on March 30. He
12 advised you of the dangers of self-representation. You
13 indicated you desired to represent yourself, public
14 defender indicated his desire to be standby counsel, which
15 has occurred. And the public defender, Mr. Enderlin, was
16 relieved by this order on April 29, 2008. And you were
17 allowed to proceed pro se.

18 The problem, Mr. Tinsley, is this. You make a
19 motion, have a hearing, the judge rules. The judge ruled
20 on that April 20. Approximately three months later you
21 are standing before me wanting to continue it again
22 because you want a lawyer. So the next go-around you may
23 want to proceed pro se.

24 THE DEFENDANT: I do. I still want to proceed pro
25 se. I'm not saying that I don't want to proceed pro se.

1 I'm saying that I should -- I have a constitutional right
2 to have a defense. I shouldn't have to waive that simply
3 because I want to represent myself.

4 THE COURT: Mr. Tinsley, you're not waiving anything.
5 I'm sure Judge Maddox explained to you when you proceed
6 pro se, you're required to know the law. There's certain
7 processes you have to go through to subpoena people.

8 THE DEFENDANT: And I told the judge I only wanted to
9 be able to speak for myself in the courtroom. And that's
10 why I wanted assistance from someone else to help me with
11 the subpoenas and stuff.

12 THE COURT: You either have a lawyer represent you or
13 you don't. You been proceeding pro se. I can't help it
14 that you're ignorant in the law, how to get witnesses and
15 subpoenas issued. That's your problem because you decided
16 to proceed pro se. Do you understand that?

17 THE DEFENDANT: I understand that.

18 THE COURT: Okay. Now, let me hear you on this
19 motion for funds to hire an investigator, an expert, that
20 was filed on July 18. That motion is denied as not being
21 timely. Let me hear you on the motion for continuance.
22 Are there any other motions we have not gone through?
23 These are the only ones I found in the file.

24 THE DEFENDANT: I believe that's it, your Honor.

25 THE COURT: Let me hear you on the motion for

1 continuance.

2 THE DEFENDANT: As I stated before, I need a
3 continuance. I just got assistance from Mr. Day. I
4 haven't talked to him at all about the case.

5 THE COURT: He doesn't represent you.

6 THE DEFENDANT: Excuse me?

7 THE COURT: He does not represent you.

8 THE DEFENDANT: I know. I thought he could answer
9 questions.

10 THE COURT: He can answer questions. He does not
11 represent you. There's no obligation on his part to talk
12 to you at all prior to trial.

13 THE DEFENDANT: Okay. Well, my problem is trying to
14 get my witnesses here for the trial, your Honor. Prepare
15 a defense. Obviously, there's a bunch of new stuff. I
16 believe Mr. Justice may be pleading guilty to try to
17 reduce his culpability in this and possibly even try to
18 blame me for it. So I don't even know really what's going
19 on with that. I'm locked up down there in the jail. And
20 the reason I wanted a continuance is to try to get this
21 stuff together. I only found out a few weeks ago we were
22 going to trial. As soon as I found out that we were going
23 to trial, without the other stuff being addressed first, I
24 got on the ball as to trying to get everything together to
25 prepare for trial.

1 THE COURT: Your motion for continuance is denied.

2 THE DEFENDANT: Note my objection for the record,
3 your Honor.

4 THE COURT: Is there any other motions you have that
5 are pending that you want to be heard this morning?

6 THE DEFENDANT: Not prior to picking a jury, your
7 Honor.

8 THE COURT: All right.

9 Now, Mr. Day, would you please get the names and
10 addresses of the witnesses that he would like to be
11 subpoenaed and give them to the clerk? I need some
12 addresses. I need some information. I need some
13 directions. If they're all from out of state, we're
14 probably wasting our time. But at least get the names and
15 addresses from anybody locally that he wants subpoenaed.
16 When I say locally, the State of South Carolina.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Can you do that?

19 MR. DAY: I will do that, your Honor.

20 THE COURT: Take him to the holding cell right here.
21 The clerk will get the witness list to issue for the
22 subpoenas. Thank you very much, Mr. Tinsley.

23 (WHEREUPON, other matters were heard before the
24 court, after which the following proceedings were
25 had:)

1 THE COURT: Put on the record concerning Mr. Tinsley,
2 Mr. Tinsley requested a driver's license from Shannon Lee
3 Smith and Shannon Lee Smith, Texas identification, South
4 Carolina driver's license. Mr. Tinsley received it from
5 the solicitor's office. I have got xerox copies of those
6 driver's license. He signed that he received copies of
7 those documents on 7-28-08. I'm marking them as Court's
8 Exhibit Number 1. Anything else that he wanted that you
9 have?

10 MR. WAGNER: Not to my knowledge, Judge. But I'm not
11 totally sure that's what he asked for.

12 THE COURT: But if you give this to Donna, mark it as
13 a Court's Exhibit. You ready to start the jury draw or do
14 you want to wait until later?

15 (WHEREUPON, Court's Exhibit No. 1 is marked for
16 identification.)

17 THE COURT: Solicitor, I believe you're going to call
18 the State versus James Douglas Tinsley; is that correct?

19 MR. WAGNER: Yes, sir. The State calls 2008-881,
20 882, 883, 884, and 885. All those charging James Douglas
21 Tinsley with possession of stolen property valued at more
22 than \$5,000.

23 THE COURT: Ladies and gentlemen of the jury panel,
24 we're getting ready to start the trial the State versus
25 James Douglas Tinsley, that's indicted for receiving,

1 possession of stolen vehicle, receiving stolen goods on
2 four indictments, and one indictment for possession of
3 stolen vehicle. The indictments are merely a means by
4 which the State has administratively brought the case
5 before the court. It is not any indication whatsoever as
6 to the guilt or innocence of the defendant.

7 The process is an arrest warrant is issued, the
8 solicitor's office takes the arrest warrant, takes the
9 information to the grand jury, and the grand jury returns
10 a true bill or a no bill. But it's not evidence. It's
11 not any indication, as I said earlier, of the innocence or
12 the guilt of the defendant. That will be determined by
13 you, the jury, based upon the testimony that you hear and
14 the evidence that you receive during the trial.

15 I'm going to ask you certain questions.

16 Solicitor, can I get your witness list?

17 MR. WAGNER: Yes, sir.

18 THE COURT: The first thing I'm going to do is to
19 call out a list of names. I'm going to ask you the same
20 question about each name. I'm going to ask you, do you
21 know the individual. Are you related by blood or
22 marriage, or have you had any contact with the individual
23 in any manner whatsoever?

24 When I say marriage, I'm talking about past marriages
25 as well as present marriages. I've had some people that

1 didn't want to reveal they were divorced from the
2 witnesses. I'm talking about past marriages. If there's
3 a future marriage on the horizon, I'd like to know that,
4 too. If you're getting ready to get married to one of the
5 witnesses, I'd like to know that too.

6 The first name is Detective Russ Conner of the
7 Haywood County Sheriff's Office. That's up in North
8 Carolina, is that correct?

9 MR. WAGNER: Yes, sir.

10 THE COURT: Is anybody related by blood or marriage
11 or know Ross Conner? Anybody had any contact with Ross
12 Conner? If so, please stand.

13 The next name is Detective Errin Jenkins. Sheriff's
14 office in Iredell County, North Carolina. Anybody know
15 Errin Jenkins? Is anybody related by blood or marriage,
16 had any contact with Errin Jenkins? If so, please stand.

17 The next name is James and Patricia Couch.
18 Solicitor, where are they from?

19 MR. WAGNER: Here in Oconee, your Honor.

20 THE COURT: Here in Oconee County. Anybody related
21 by blood or marriage to Mr. and Mrs. Couch, know Mr. or
22 Mrs. Couch?

23 (prospective juror stands.)

24 PROSPECTIVE JUROR: Town.

25 THE COURT: Yes, ma'am, do you know your number?

1 PROSPECTIVE JUROR: 148.

2 THE COURT: 148. Yes, ma'am. How do you know James
3 and Patricia Couch?

4 PROSPECTIVE JUROR: We live in the Lake Jocassee
5 area. We see them quite a bit. They have a pontoon
6 service, you know, guide service.

7 THE COURT: Do you trade there?

8 PROSPECTIVE JUROR: Do I trade there?

9 THE COURT: Yeah. Do you do business there?

10 PROSPECTIVE JUROR: No. We just had a pontoon. And
11 my husband knows him. We see them quite a bit.

12 THE COURT: Where? On the lake or just in passing?

13 PROSPECTIVE JUROR: Like at the boat dock, different
14 things.

15 THE COURT: You go out to supper or anything with
16 them?

17 PROSPECTIVE JUROR: No.

18 THE COURT: You just see them in restaurants or in
19 the community?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: Is that correct?

22 PROSPECTIVE JUROR: Uh-huh. They live in our area.

23 THE COURT: You ever invited them into your home?

24 PROSPECTIVE JUROR: He did some work for us.

25 THE COURT: Some work on what?

1 PROSPECTIVE JUROR: He cut some trees on our
2 property.

3 THE COURT: Okay. Were you satisfied with the work?
4 You don't have any grudge against him because of bad work,
5 do you?

6 PROSPECTIVE JUROR: No. He did good work.

7 THE COURT: Would that cause you any difficulty,
8 assuming they would testify in this case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Can you base your decision on the
11 testimony you hear in the courtroom?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Can you be fair to both the State and
14 defendant?

15 PROSPECTIVE JUROR: Yes. I don't feel comfortable
16 knowing, if they were on trial or anything.

17 THE COURT: They're not on trial, they're just going
18 to testify.

19 PROSPECTIVE JUROR: Okay. That would be fine with
20 me.

21 THE COURT: I don't know what they're going to
22 testify to, but they're going to testify.

23 PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: Would that cause you any difficulty?
25 Fine. I'm not trying to pressure you one way or the

1 other.

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Can you be fair to both the State and
4 defendant?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Thank you, Mrs. Tucker. Next name is
7 Alex Rodriguez. That's not A-Rod with the Yankees,
8 either. Anybody know Alex Rodriguez? Works at
9 Sonny's Campers. Anybody related by blood or marriage or
10 anybody know him? If so, please stand.

11 The next name is Jamal Lewis Haddad, Carolina Power
12 Sports. Anybody know him, related by blood or marriage?
13 If so, please stand. The next name is Eric Spears,
14 Carry-On Trailer. Is that here in Oconee County?

15 MR. SMITH: No, sir. That's Lavonia, Georgia.

16 THE COURT: In Lavonia, Georgia. Does anybody know
17 him, neighboring, home? Anybody related by blood or
18 marriage? Anybody had any contact with Eric Spears in
19 Lavonia? If so, please stand. The next name is Steven
20 Metzger. Is that -- where?

21 MR. WAGNER: Your Honor, he owned a trailer that was
22 reported stolen.

23 THE COURT: Does he live here?

24 MR. WAGNER: North Carolina.

25 THE COURT: Where in North Carolina?

1 MR. WAGNER: Haywood County.

2 THE COURT: In Haywood County, North Carolina. Does
3 anybody know Steven Metzger? Anybody related by blood or
4 marriage, or anybody had any contact with Steven Metzger?
5 If so, please stand. Next name is Terry Tobin. Anybody
6 related by blood or marriage? Does anybody know Terry
7 Tobin? If so, please stand.

8 The next name is Wesley Todd Crawford. Does anybody
9 know Wesley Todd Crawford? Related by blood or marriage,
10 had any contact with Mr. Crawford? If so, please stand.

11 Next name is Hogan Justice. Does anybody know Hogan
12 Justice? Has anybody had any contact with Hogan Justice?
13 If so, please stand.

14 The next name is Darrell Slusser. Is that right?
15 Where is he from, Oconee County? Anybody related by blood
16 or marriage? Anybody know Mr. Slusser? If so, please
17 stand.

18 The next name is Sergeant David Smith. Stand and
19 face the jury please.

20 (Witness stands.)

21 Thank you. Sergeant David Smith. Anybody related by
22 blood or marriage or anybody know David Smith? If so,
23 please stand. Yes, your name?

24 PROSPECTIVE JUROR: Amber Smith.

25 THE COURT: You kin?

1 PROSPECTIVE JUROR: No. I attend church with him.

2 THE COURT: You go to church with him?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: You see him every Sunday?

5 PROSPECTIVE JUROR: Yes, sir. Every Sunday that I'm
6 there and he's there.

7 THE COURT: Okay. All right. Are you friends with
8 him?

9 PROSPECTIVE JUROR: I hope so. I believe so.

10 THE COURT: Juror number 107.

11 PROSPECTIVE JUROR: I believe so.

12 THE COURT: Do you see him other than at church?

13 PROSPECTIVE JUROR: No. Randomly at Wal-Mart maybe.

14 THE COURT: At Wal-Mart.

15 PROSPECTIVE JUROR: Maybe.

16 THE COURT: Okay.

17 THE CLERK: Or his twin at Wal-Mart. Would it cause
18 you any difficulty, assuming he would testify in this
19 case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Can you be fair to both the State and
22 defendant?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: You base your decision on the testimony
25 you hear here in the courtroom?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Do you see him any other place, other
3 than church and occasionally at Wal-Mart?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Thank you, Ms. Smith.

6 Yes, ma'am, your name?

7 PROSPECTIVE JUROR: Kay Moxley.

8 THE COURT: Do you know your number?

9 PROSPECTIVE JUROR: 146.

10 THE COURT: Yes, ma'am, Ms. Moxley.

11 PROSPECTIVE JUROR: David probably doesn't remember
12 me. I worked with his dad at New Hope Church in the
13 office there for years. That's how I know him.

14 THE COURT: How long ago?

15 PROSPECTIVE JUROR: Twelve years ago.

16 THE COURT: Twelve years ago. Have you seen him
17 since then?

18 PROSPECTIVE JUROR: Just once in a while, like at
19 Wal-Mart.

20 THE COURT: Is that a local hangout? Is that where
21 everybody hangs out in Oconee County?

22 PROSPECTIVE JUROR: Oh, yeah.

23 THE COURT: Would that cause you any difficulty
24 sitting on this jury?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Can you base your decision on the
2 testimony you hear in the courtroom?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Can you be fair to both the State and
5 defendant?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Thank you, Mrs. Moxley. All right. The
8 next name is Sergeant Jerry Moss, Oconee County Sheriff's
9 Department. Anybody know Sergeant Jerry Moss? Does
10 anybody know Sgt. Jerry Moss? Is anybody related by blood
11 or marriage? If so, please stand.

12 PROSPECTIVE JUROR: I know him.

13 THE COURT: What's your name?

14 PROSPECTIVE JUROR: Mary Brazeale.

15 THE COURT: Number ten?

16 PROSPECTIVE JUROR: Number ten.

17 THE COURT: How do you know him?

18 PROSPECTIVE JUROR: Just from the community. He used
19 to live down below me years ago.

20 THE COURT: How many years ago?

21 PROSPECTIVE JUROR: Probably over 15 years ago.

22 THE COURT: Fifteen years ago. So you see him in
23 passing?

24 PROSPECTIVE JUROR: Yeah. See him in Wal-Mart.

25 THE COURT: Do they have a Target in Oconee County?

1 PROSPECTIVE JUROR: Not yet.

2 THE COURT: Okay. All right, Mrs. Brazeale. Can you
3 base your decision on the testimony you hear in the
4 courtroom?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Can you be fair to both the State and
7 defendant?

8 PROSPECTIVE JUROR: (Nods head up and down.)

9 THE COURT: All right. Thank you, Ms. Brazeale.
10 Your name?

11 PROSPECTIVE JUROR: Robert Brazeale.

12 THE COURT: Okay, Mr. Brazeale. How do you know
13 Jerry Moss?

14 PROSPECTIVE JUROR: We kind of grew up together.

15 THE COURT: You either grew up together or kind of.
16 What's the difference?

17 PROSPECTIVE JUROR: We lived in the same town, went
18 to the same school. I did some work on his house.

19 THE COURT: When was the last time you did any work
20 on his house?

21 PROSPECTIVE JUROR: Seven years ago, I'd say.

22 THE COURT: Several. Have you seen him recently?

23 THE DEFENDANT: Maybe a couple of years ago.

24 THE COURT: So you haven't seen him in two years?

25 PROSPECTIVE JUROR: No, not really.

1 THE COURT: Would it cause you any problems assuming
2 he will testify in the case?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Can you be fair to both the State and
5 defendant?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Thank you very much, Mr. Brazeale.

8 Next name is Corporal John McGuffin, Oconee County
9 Sheriff's Department. Does anybody know Officer McGuffin?
10 Anybody related by blood or marriage? If so, please
11 stand.

12 The next name is Sgt. Scott Arnold, Oconee County
13 Sheriff's Office. Anybody know Scott Arnold? Is anybody
14 related by blood or marriage? If so, please stand. Yes,
15 sir, your name?

16 PROSPECTIVE JUROR: Chris Mealer.

17 THE COURT: Do you know your number?

18 PROSPECTIVE JUROR: No, sir.

19 THE CLERK: He is number 84.

20 THE COURT: Yes, sir, Mr. Mealer.

21 PROSPECTIVE JUROR: I've known Scott probably 15
22 years, just friends.

23 THE COURT: Where do you see him?

24 PROSPECTIVE JUROR: His brother-in-law and I do some
25 farming together.

1 THE COURT: His brother-in-law, you all farm
2 together?

3 PROSPECTIVE JUROR: Yes, sir, Frank Green.

4 THE COURT: How often do you see him?

5 PROSPECTIVE JUROR: Scott is a next-door neighbor of
6 Frank. I'd probably say --

7 THE COURT: He's your next-door neighbor?

8 PROSPECTIVE JUROR: No, sir, he's next door neighbors
9 with Frank Green. I probably see him once or twice a
10 month.

11 THE COURT: Once or twice a week?

12 PROSPECTIVE JUROR: A month.

13 THE COURT: A month. Okay. Do you see him any other
14 place?

15 PROSPECTIVE JUROR: Wal-Mart.

16 THE COURT: You go anywhere else besides Wal-Mart --

17 PROSPECTIVE JUROR: Work.

18 THE COURT: -- in Oconee County? Would it cause you
19 any problems sitting on the jury?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Can you be fair to both the State and
22 defendant?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Can you base your decision on the
25 testimony you hear in the courtroom?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Thank you, Mr. Mealer.

3 Yes, sir?

4 PROSPECTIVE JUROR: I'm number 15. I see him just at
5 work. I've known him a long time, went to school with
6 him.

7 THE COURT: How long you known him?

8 PROSPECTIVE JUROR: He was a couple years older than
9 I was. I'd say 20 years.

10 THE COURT: Juror number 15. Where do you see him,
11 Wal-Mart?

12 PROSPECTIVE JUROR: I don't know if I've seen him at
13 Wal-Mart. I've seen him at Bountyland. His wife works
14 there.

15 THE COURT: His wife works there?

16 PROSPECTIVE JUROR: I think that's where she works.
17 I'm usually -- that's about the only place I see him at.

18 THE COURT: Would that cause you any difficulty
19 sitting on the jury?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Can you be fair to both the State and
22 defendant?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you. Mr. Burrell.

25 Yes, sir, your name?

1 PROSPECTIVE JUROR: Walt Davis, number 34. I went to
2 school with Scott, knowed him pretty much all my life. I
3 don't see him on a regular basis, but pretty often. Just
4 in and out a store or whenever. And know his wife, also,
5 you know, insurance agency, but I don't have that much
6 contact with him.

7 THE COURT: Okay. Mr. Davis, would it cause you any
8 difficulty or problems assuming he would testify?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Can you be fair to both the State and
11 defendant?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Thank you, Mr. Davis.

14 The next name is Sgt. Mike McGowan, Oconee County
15 Sheriff's Department. Does anybody know Mike McGowan? Is
16 anybody related by blood or marriage to Mike McGowan? If
17 so, please stand.

18 Yes, sir, Mr. Burrell?

19 PROSPECTIVE JUROR: I just know he's an officer, and
20 I see him around. Don't see him very often, but I know
21 who he is.

22 THE COURT: Would it cause you any problems sitting
23 on the jury?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Can you be fair to both the State and the

1 defendant?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Thank you, sir.

4 Next name is Sgt. Kevin Cain. Is anybody related by
5 blood or marriage to Kevin Cain? Does anybody know Kevin
6 Cain? Miss Moxley.

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: You're way down in the hundreds.

9 PROSPECTIVE JUROR: 146.

10 THE COURT: 146. Yes, ma'am, Miss Moxley?

11 PROSPECTIVE JUROR: He's our closest neighbor in
12 Mountain Rest, and he attends church where I attend
13 church.

14 THE COURT: So you see him at church? He's your
15 closest neighbor, how close is he?

16 PROSPECTIVE JUROR: Quarter of a mile.

17 THE COURT: Quarter of a mile. Okay. Do you see him
18 every day?

19 PROSPECTIVE JUROR: When he's at home. His daughter
20 and my daughter are good friends. So we cross paths in
21 that way.

22 THE COURT: His daughter comes to your house and your
23 daughter goes to his house?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: So you cross paths, and see him pretty

1 regular?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: How would that affect you, assuming he
4 will testify in this case?

5 PROSPECTIVE JUROR: I don't think it would affect --
6 I could be impartial.

7 THE COURT: Can you be fair to both the State and
8 defendant?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Thank you, Miss Moxley. The next name is
11 Lieutenant Greg Reed, Oconee County Sheriff's Department.
12 Is anybody related by blood or marriage, does anybody know
13 Greg Reed?

14 (Prospective Juror 15 stands.)

15 THE COURT: Yes, sir, Mr. Burrell?

16 PROSPECTIVE JUROR: Just know him, who he is, seen
17 him around town. I've known him probably 15 years.

18 THE COURT: Would that cause you any problems sitting
19 on the jury?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Can you be fair to both the State and
22 defendant?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Thank you, Mr. Burrell.

25 PROSPECTIVE JUROR: Number 97, Rebecca Pruitt.

1 Simply attend the same church he attends. But I don't
2 know him on a personal level.

3 THE COURT: What now?

4 PROSPECTIVE JUROR: I attend the same church he
5 attends.

6 THE COURT: Okay. What was your number again? I'm
7 sorry?

8 PROSPECTIVE JUROR: Ninety-seven.

9 THE COURT: Okay, Mrs. Pruitt. Where do you see him?

10 PROSPECTIVE JUROR: Simply at church.

11 THE COURT: At church?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Do you just see him at church, talk with
14 him at church? Speak to him at church?

15 PROSPECTIVE JUROR: Just like I would anybody else.
16 Not like -- he doesn't come to my home. I don't go to his
17 home or anything like that.

18 THE COURT: Not a social friend.

19 PROSPECTIVE JUROR: Right.

20 THE COURT: Would that cause you any difficulty
21 sitting on the jury?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Can you be fair to both the State and
24 defendant?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Can you base your decision on the
2 testimony you hear in the courtroom?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you, Ms. Pruitt. The next name is
5 Douglas Tinsley. Mr. Tinsley, would you stand and face
6 the jury please.

7 (Defendant stands.)

8 Thank you, sir. You may have a seat.

9 THE COURT: Is anybody related by blood or marriage
10 to Douglas Tinsley of Greenville, South Carolina? Anybody
11 know Douglas Tinsley? If so, please stand.

12 The next name is Teresa F. Dean, of Horseshoe, North
13 Carolina.

14 THE DEFENDANT: Your Honor, Doug Tinsley I think is
15 my father, rather than me. I thought you were referring
16 to me. You might want him to stand.

17 THE COURT: Okay. Mr. Tinsley, would you stand.

18 (Prospective witness stands.)

19 THE COURT: Mr. Doug Tinsley is standing to your
20 left. Does anybody know Mr. Tinsley? Is anybody related
21 by blood or marriage? If so, please stand. Thank you,
22 Mr. Tinsley.

23 All right. Mr. James Douglas Tinsley has stood. Is
24 anybody related by blood or marriage to James Douglas
25 Tinsley or anybody know James Douglas Tinsley? If so,

1 please stand.

2 Next name is Teresa F. Dean, of Horseshoe, North
3 Carolina. Does anybody know Teresa Dean? Is anybody
4 related by blood or marriage, had any contact with
5 Mrs. Dean? If so, please stand. The next name is Richard
6 Bradshaw of Roof, North Carolina. Does anybody know
7 Richard Bradshaw? Is anybody related by blood or marriage
8 to Richard Bradshaw? If so, please stand.

9 The next name is Joy Borum of Greenville, South
10 Carolina. Is anybody related or know Joy Borum,
11 B-O-R-U-M? Anybody related by blood or marriage to Joy
12 Borum? If so, please stand. Next name is Terry Hudgens
13 of Belmont, North Carolina. Does anybody know Terry
14 Hudgens? Is anybody related by blood or marriage to Terry
15 Hudgens? If so, please stand.

16 Next name is Clyde Boles of North Ft. Myers, Florida.
17 Does anybody know Clyde Boles? Is anybody related by
18 blood or marriage to Clyde Boles? If so, please stand.

19 The next name is Terry Tobin of Tamassee, South
20 Carolina. Does anybody know Terry Tobin? Is anybody
21 related by blood or marriage to Terry Tobin? If so,
22 please stand.

23 Mr. Tinsley, if you have any questions you would like
24 for me to ask, I suggest you write them down on a notepad
25 and I'll look at it after I have asked all the questions

1 I'm going to ask. The same thing for the solicitor.

2 MR. WAGNER: Yes, sir.

3 THE DEFENDANT: I have a few, your Honor. I'll go
4 ahead and hand them up.

5 THE COURT: Thank you, sir.

6 Has any member of the jury panel formed or expressed
7 an opinion about any issue or matter involved in this
8 case? If so, please stand. Has anybody heard anything
9 about this case, other than what I told you this morning
10 or the solicitor stated when he called the indictment?
11 You heard anybody talking about it, read anything about
12 it, or heard anything on TV or radio? If so, please
13 stand. Is any member of the jury panel aware of any bias
14 or prejudice toward either the State or defendant in this
15 case? If so, please stand.

16 Is there any member of the jury panel who is a member
17 of MADD or any other victims rights group? Either
18 contribute or a member? If so, please stand. Have any
19 members of the jury panel been a victim of a crime? If
20 so, please stand.

21 (Prospective jurors stand.)

22 THE COURT: Yes, sir. Your name?

23 PROSPECTIVE JUROR: Ron Cobb.

24 THE COURT: Collins.

25 PROSPECTIVE JUROR: Cobb, C-O-B-B.

1 THE COURT: Okay. Mr. Cobb, when were you a victim?

2 PROSPECTIVE JUROR: Me and my father had some
3 equipment stolen a couple of years back off our property
4 up in Mountain Rest.

5 THE COURT: Was it ever recovered?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Was anybody ever charged?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Do you have any bias or prejudice as a
10 result of that towards the police officers, the
11 prosecutor, or anyone involved in that?

12 PROSPECTIVE JUROR: No, sir. I don't have any
13 prejudice towards any people at all. I've also had things
14 stolen out of Rock Hill, South Carolina. My father was a
15 truck driver at the time down there. We had vehicles
16 broken into twice down there.

17 THE COURT: Because of this experience, Mr. Cobb,
18 would you have any bias or prejudice towards a defendant
19 that's been charged with receiving stolen goods or
20 possession of stolen goods because of those experiences?

21 PROSPECTIVE JUROR: I'd have to say, yes, sir.

22 THE COURT: All right. Now, Mr. Cobb, I'll excuse
23 you from service on this particular jury.

24 PROSPECTIVE JUROR: Thank you, sir.

25 THE COURT: Thank you very much. You can have a

1 seat.

2 Yes, sir, your name?

3 PROSPECTIVE JUROR: Jammie Smallwood.

4 THE COURT: Do you know your number?

5 PROSPECTIVE JUROR: 106.

6 THE COURT: Okay, Mr. Smallwood, tell me, you were a
7 victim of what crime and when and where?

8 PROSPECTIVE JUROR: It was on private property. I
9 was cut by an individual about three years ago. He pled
10 guilty to that crime, I think assault and battery with
11 intent to kill.

12 THE COURT: Is that what he pled to or high and
13 aggravated? Or do you know?

14 PROSPECTIVE JUROR: I think that's what he pled to.

15 THE COURT: High and aggravated.

16 PROSPECTIVE JUROR: Pretty sure.

17 THE COURT: You have any bias or prejudice towards
18 police officers involved in that case?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: You have any bias or prejudice towards
21 the solicitor's office that handled the case?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: You have any bias or prejudice towards
24 defendants in general as a result of your experience of
25 being cut?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Can you be fair in this case?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Can you set that aside and listen to the
5 testimony, base your decision on the testimony you hear in
6 the courtroom?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Thank you, Mr. Smallwood.

9 PROSPECTIVE JUROR: Could you repeat the question?

10 THE COURT: Has anybody been a victim of a crime?

11 (Prospective juror stands.)

12 Yes, ma'am, your name?

13 PROSPECTIVE JUROR: Patricia Land, number 77.

14 THE COURT: Yes, ma'am, Miss Land.

15 PROSPECTIVE JUROR: I was the victim of assault and
16 battery high and aggravated while I was a student at
17 Clemson University.

18 THE COURT: How long ago?

19 PROSPECTIVE JUROR: That would have been 1994.

20 THE COURT: Ninety-four. Was anybody prosecuted as a
21 result of it?

22 PROSPECTIVE JUROR: Yes, sir.

23 THE COURT: Were you involved in the prosecution?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Any bias or prejudice towards the

1 solicitor's office of Pickens County?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Any police officers involved in it?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: How about towards defendants in general,
6 since you were the victim of a crime?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: Can you be fair in this case?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Can you base your decision on the
11 testimony you hear in this courtroom?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Thank you, Ms. Land.

14 Yes, ma'am, your name?

15 THE COURT: Sheila Towe, 14.

16 PROSPECTIVE JUROR: When we were building our home 16
17 years ago, a lot of our building materials were stolen and
18 they, the criminals, were caught and convicted. And we
19 got just a few checks back. That's all we received for
20 our stolen --

21 THE COURT: Do you have -- do you have any bias or
22 prejudice towards anybody who would be charged with stolen
23 property as a result of your experience?

24 PROSPECTIVE JUROR: I don't think I would in another
25 case. But I don't think we got what we should have. They

1 were supposed to have sent checks monthly, and we got just
2 a little bit, and then they just stopped.

3 THE COURT: Well, do you have any bias or prejudice
4 towards the police officers involved in that case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: How about towards defendants in general
7 that were charged with stealing stuff? I mean, we all
8 have bias or prejudices. If you are, that's fine.
9 There's nothing wrong with that. That's human nature.
10 I'm just trying to find out if you do or don't.

11 PROSPECTIVE JUROR: I felt like they should have --

12 THE COURT: Pardon?

13 PROSPECTIVE JUROR: I felt like they should have held
14 up with their end of the deal and give everybody back what
15 was due them. We didn't get that.

16 THE COURT: Okay. In other words, you didn't get the
17 restitution?

18 PROSPECTIVE JUROR: If you call ten dollars, about
19 two months' restitution. But I don't know if they let
20 them go or what. We just sent a paper. That's all we
21 got.

22 THE COURT: How would that affect you in this case?

23 PROSPECTIVE JUROR: I think I could do another case
24 justly.

25 THE COURT: You think what?

1 PROSPECTIVE JUROR: I think I could do justly.

2 THE COURT: You think you could be fair?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: Thank you, Mrs. Towe.

5 Yes, sir, your name?

6 PROSPECTIVE JUROR: Jerald Hughes, six I think. I'm
7 a salesman at the John Deere dealer in Anderson,
8 Williamston, South Carolina. We have over the past
9 several years been broken into, have had a lot of cases
10 similar, something like this. I'm not -- I don't own the
11 company, it didn't affect me directly, but I was in a
12 management role down there at that particular time and
13 participated in trying to help, you know, with the
14 officers and this kind of thing, to find evidence and this
15 kind of thing. So I'm just wondering, I don't know if I
16 could be completely unbiased in this.

17 THE COURT: Can you? Nobody knows that but you. Can
18 you?

19 PROSPECTIVE JUROR: I feel like I have a little bit
20 of bias in that, to tell you the truth.

21 THE COURT: Okay. I'll excuse you from service in
22 this particular case. Okay. Thank you very much. You
23 can have a seat.

24 PROSPECTIVE JUROR: I have had property --

25 THE COURT: What's your number?

1 PROSPECTIVE JUROR: Ten, I think.

2 THE COURT: Number ten. Okay.

3 Okay, Mrs. Brazeale?

4 PROSPECTIVE JUROR: My shop was broken into. I had a
5 car stole from me. I did file a police report. Then my
6 home was broken into and few items like a flat-screen TV.

7 THE COURT: How would all that affect you in this
8 case?

9 PROSPECTIVE JUROR: I don't think it would.

10 THE COURT: You don't think it would?

11 PROSPECTIVE JUROR: No.

12 THE COURT: You think you can be fair?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Can you base your decision on the
15 testimony you hear in the courtroom?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Thank you, Mrs. Brazeale. In this case
18 the defendant --

19 THE CLERK: One more in the back.

20 PROSPECTIVE JUROR: Bruce Justice.

21 THE COURT: Do you know your number?

22 PROSPECTIVE JUROR: No, I don't.

23 THE CLERK: Number 143, Bruce H. Justice.

24 THE COURT: Yes, sir, Mr. Justice?

25 PROSPECTIVE JUROR: My residence at one point was

1 broken into. And where I live, live in another place,
2 broke into about three times.

3 THE COURT: How would that affect you in this case?

4 PROSPECTIVE JUROR: It wouldn't affect me.

5 THE COURT: Why not?

6 PROSPECTIVE JUROR: I just don't have any prejudice.

7 THE COURT: Do you think you could be fair in this
8 case?

9 PROSPECTIVE JUROR: Yes, I think I could.

10 THE COURT: Can you base your decision on testimony
11 you hear in the courtroom, Mr. Justice?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Thank you very much.

14 All right. In this particular case the defendant is
15 representing himself, proceeding what the law refers to as
16 pro se. Any pro se -- anybody have any bias or prejudice
17 towards a defendant representing himself in a criminal
18 case? If you have any bias or prejudice towards someone
19 as a result of self-representation, please stand.

20 All right. Any member of the jury panel believe the
21 police cannot make mistakes? In other words, if you
22 believe police can never make mistakes? If you believe
23 that, please stand. Any further questions from the
24 defendant? I've gone over the list. I've asked some of
25 them. I will mark it as Court's Exhibit Number 2. Some

1 of them I do not think are appropriate.

2 THE DEFENDANT: I have no other.

3 THE COURT: You have anything else you would like to
4 submit to the court for me to ask?

5 THE DEFENDANT: No, sir, your Honor.

6 THE COURT: I'll mark this as Court's Exhibit Number
7 2, and I'll put a check mark by the ones that I did ask.
8 Any further questions?

9 MR. WAGNER: No, sir.

10 THE COURT: Any questions from the State?

11 MR. WAGNER: No, sir.

12 THE COURT: Any member of the jury panel have any
13 reason, personal or otherwise, as to why they could not
14 serve on this jury? If so, please stand.

15 (No response elicited.)

16 Ladies and gentlemen of the jury, I asked Mr. Day,
17 who works with the public defender's office, to sit with
18 the pro se. He's not representing him, but I've asked him
19 to sit with him, if the pro se has questions, he can ask
20 him. He will not be participating in the trial.

21 (WHEREUPON, Court's Exhibit No. 2 is marked for
22 identification.)

23 THE COURT: Ready to strike?

24 MR. WAGNER: Yes, sir.

25 MR. DAY: Could I have one moment just to explain

1 some of the procedure?

2 THE COURT: Yes, sir.

3 Mr. Tinsley, before he explains it to you, I will be
4 happy to hear any motions you have concerning any jurors
5 that stood up that I did not excuse for cause. Mr. Day
6 can explain that to you. I'll be glad to hear those
7 motions if you have any motions. If you don't, that's
8 fine.

9 THE DEFENDANT: I don't have any, your Honor.

10 THE COURT: Listen to Mr. Day about the process and
11 how we're going to go through it.

12 (Pause.)

13 THE COURT: State ready to strike?

14 MR. WAGNER: State's ready.

15 THE COURT: Defense ready to strike? Mr. Tinsley,
16 are you ready to strike?

17 THE DEFENDANT: I am, your Honor.

18 THE COURT: Madam clerk, we will draw two alternates.
19 You can explain about the strikes on the alternates, two
20 and one.

21 THE DEFENDANT: I am, your Honor.

22 THE CLERK: Ladies and gentlemen, as I call your name
23 if you would please come forward to the podium and turn
24 and face the audience. Just as Mr. Bibb is doing now.
25 Number 10, Mary Brazeale.

1 (Prospective juror 10, black female, steps forward.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the defense?

5 MR. TINSLEY: Excuse the juror.

6 THE CLERK: Ma'am, you have been excused from this/
7 case. You may be seated.

8 Number 115, Judy Stevens, white female.

9 (Prospective juror 115, white female, steps forward.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the defense?

13 MR. TINSLEY: Seat the juror.

14 THE CLERK: Number 110, Jason Sosebee.

15 (Prospective juror 110, white male, steps forward.)

16 THE CLERK: What says the State?

17 MR. WAGNER: Present the juror.

18 THE CLERK: What says the defense?

19 MR. TINSLEY: Seat the juror.

20 THE CLERK: Sir, you may take a seat in the jury box.

21 Number 141, James Harrison.

22 (Prospective juror 141, black male, steps forward.)

23 THE CLERK: What says the State?

24 MR. WAGNER: Present the juror.

25 THE CLERK: What says the defense?

1 MR. TINSLEY: Present the juror.

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

3 Number 29, Steve Crooks.

4 (Prospective juror 29, white male, steps forward.)

5 THE CLERK: What says the State?

6 MR. WAGNER: Present the juror.

7 THE CLERK: What says the Defense?

8 MR. TINSLEY: Excuse the juror.

9 THE CLERK: Sir, you have been excused. You may be
10 seated.

11 Number 143, Bruce Justice.

12 (Prospective juror 143, white male, steps forward.)

13 THE CLERK: What says the State?

14 MR. WAGNER: Present the juror.

15 THE CLERK: What says the defense?

16 MR. TINSLEY: Present the juror.

17 THE CLERK: Sir, if you would, please take a seat in
18 the jury box.

19 Number 19, Wanda Campbell.

20 (Prospective juror 19, white female, steps forward.)

21 THE CLERK: What says the State?

22 MR. WAGNER: Present the juror.

23 THE CLERK: What says the defense?

24 MR. TINSLEY: Excuse the juror.

25 THE CLERK: Ma'am, you have been excused from this

1 case. You may be seated.

2 Number 146, Kay Moxley.

3 (Prospective juror 146, white female, steps forward.)

4 THE CLERK: What says the State?

5 MR. WAGNER: Present the juror.

6 THE CLERK: What says the defense?

7 MR. TINSLEY: Excuse the juror.

8 THE CLERK: Ma'am, you have been excused from this
9 case. You may be seated.

10 Number 15, Robert Burrell.

11 (Prospective juror 15, white male, steps forward.)

12 THE CLERK: What say you for the State?

13 MR. WAGNER: Please excuse the juror from this case.

14 THE CLERK: Sir, you have been excused from this
15 case.

16 Number 107, Amber Smith.

17 (Prospective juror 107, white female, steps forward.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the defense?

21 MR. TINSLEY: Please excuse the juror, your Honor.

22 THE CLERK: Ma'am, you've been excused from this
23 case. You may be seated.

24 Number 131, Sharon Yoder.

25 (Prospective juror 131, white female, steps forward.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What says the defense for cause?

4 MR. TINSLEY: Seat the juror.

5 THE COURT: Whoa, whoa, whoa. That was five.

6 THE CLERK: He seated her.

7 THE COURT: Oh, he said seat her. Okay. I thought
8 he said excuse her. Excuse me.

9 THE CLERK: 137, Rosemary Fuller.

10 (Prospective juror 137, white female, steps forward.)

11 What says the State?

12 MR. WAGNER: Present the juror.

13 THE CLERK: What says the defense for cause?

14 MR. TINSLEY: Present the juror.

15 THE CLERK: Ma'am, if you would, please take a seat
16 in the jury box.

17 Number 117, Jeanne Taylor.

18 (Prospective juror 117, white female, steps forward.)

19 THE CLERK: What says the State?

20 MR. WAGNER: Present the juror.

21 THE CLERK: What says the defense for cause?

22 MR. TINSLEY: Seat the juror.

23 THE CLERK: Ma'am, if you would, please take a seat
24 in the jury box.

25 Number 137, George Duncan.

1 (Prospective juror 137, white male, steps forward.)

2 THE CLERK: What says the State?

3 MR. WAGNER: Present the juror.

4 THE CLERK: What says the defense for cause?

5 MR. TINSLEY: Seat the juror.

6 THE CLERK: Sir, if you would, please take a seat in
7 the jury box.

8 Number 132, Judith Zuverink.

9 (Prospective juror 132, white female, steps forward.)

10 THE CLERK: What says the State?

11 MR. WAGNER: Present the juror.

12 THE CLERK: What says the defense?

13 MR. TINSLEY: Present the juror.

14 THE CLERK: Ma'am, if you would please take a seat in
15 the jury box.

16 Number 70, Samuel Jenkins.

17 (Prospective juror 70, black male, steps forward.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the defense for cause?

21 MR. TINSLEY: Seat the juror.

22 THE CLERK: Sir, if you would, please take a seat in
23 the jury box.

24 Number 111, Claudia Spearman.

25 (Prospective juror 111, white female, steps forward.)

1 THE CLERK: What says the State?

2 MR. WAGNER: Present the juror.

3 THE CLERK: What says the defense for cause?

4 MR. TINSLEY: Seat the juror.

5 THE CLERK: If you would, please take a seat in the
6 jury box.

7 Number 23, Glenn Churchill.

8 (Prospective juror 23, white male, steps forward.)

9 THE CLERK: What says the State?

10 MR. WAGNER: Present the juror.

11 THE CLERK: What says the defense for cause?

12 MR. TINSLEY: Seat the juror.

13 THE CLERK: Sir, if you would, please take a seat in
14 the jury box.

15 This is for alternate number one.

16 THE COURT: Do you understand, Mr. Tinsley? You get
17 two strikes.

18 THE CLERK: Number 95, Brian Popa.

19 (Prospective juror 95, white male, steps forward.)

20 THE CLERK: What says the State?

21 MR. WAGNER: Present the juror.

22 THE CLERK: What says the defense?

23 MR. TINSLEY: Seat the juror.

24 THE CLERK: If you would, please take a seat in the
25 jury box.

1 This is for alternate number two. Number 74, Cynthia
2 Keese.

3 (Prospective juror 74, white female, steps forward.)

4 THE CLERK: What says the State?

5 MR. WAGNER: Present the juror.

6 THE CLERK: What says the defense?

7 MR. TINSLEY: Excuse this juror, your Honor.

8 THE CLERK: Ma'am, you have been excused from this
9 case. You may be seated.

10 Number 34, Mark Davis. Mark A. Davis.

11 (Prospective juror 34, white male, steps forward.)

12 THE CLERK: What says the State?

13 MR. WAGNER: Please excuse the juror on this case.

14 THE CLERK: Sir, you have been excused from this
15 case. You may be seated.

16 Number 32, Donald Davis.

17 (Prospective juror 32, white male, steps forward.)

18 THE CLERK: What says the State?

19 MR. WAGNER: Present the juror.

20 THE CLERK: What says the defense?

21 MR. TINSLEY: Seat the juror, your Honor.

22 THE CLERK: Sir, if you would, please take a seat in
23 the jury box.

24 THE COURT: Members of the jury, what I'm going to
25 ask you to do, is go to the jury room, elect either a

1 forelady or foreman. You may elect anyone except the two
2 alternates, Mr. Popa or Mr. Davis. After you've done
3 that, knock on the door, let the bailiff know. I'll get
4 you back in the courtroom shortly thereafter. Don't
5 discuss the case. If you'll follow the bailiff, he'll
6 take you to the jury room.

7 (Whereupon, the following proceedings were had
8 outside the presence of the jury:)

9 THE COURT: Any motions from State on drawing the
10 jury?

11 MR. WAGNER: No, your Honor.

12 THE COURT: Any motions from the defendant on drawing
13 the jury, Mr. Tinsley?

14 MR. TINSLEY: No, Your Honor.

15 THE COURT: Thank you very much. All right. What
16 about the rest of the panel?

17 (Jury panel excused.)

18 I understand we're not going to start the trial until
19 Wednesday morning; is that correct? Do you understand,
20 Mr. Tinsley?

21 MR. TINSLEY: Yes, sir, your Honor.

22 THE COURT: The clerk's going to have the subpoenas
23 done after lunch. And, Mr. Day, can you understand --
24 you'll be able to give him somebody to try to get somebody
25 served. You come by after lunch, pick them up.

1 MR. DAY: I'll be here.

2 THE COURT: Do you understand, Mr. Tinsley?

3 MR. TINSLEY: Yes.

4 THE COURT: Do you have any questions?

5 MR. TINSLEY: No.

6 MR. DAY: Your Honor, he does -- asked me to ask, he
7 does have some motions he wants to bring out. Wants to
8 know whether the court wants to do them now or wait and do
9 them Wednesday morning.

10 THE COURT: What's the subject matter, Mr. Tinsley?

11 MR. TINSLEY: Some of the motions I want to do after
12 we swore the jury, but there is a motion for, your Honor,
13 a supression hearing, Fourth Amendment seizure of
14 property.

15 THE COURT: You have a supression motion and what
16 else?

17 MR. TINSLEY: Just some other motions, more
18 appropriate after we swore the jury.

19 THE COURT: We will take those up Wednesday before we
20 start testimony.

21 MR. TINSLEY: All right.

22 THE COURT: Have you served them on the State or are
23 they going to be made orally?

24 MR. TINSLEY: Orally.

25 THE COURT: See you Wednesday morning. Have a good

1 day.

2 Mr. Justice, congratulations on the election. We're
3 not going to start the testimony in this trial until
4 Wednesday morning. Be back in the jury room Wednesday
5 morning at 10:00. I have to hear some motions in this
6 case before we get started. Hope to start those at nine;
7 hopefully, get them done by the time you get here at ten.
8 Be back in the jury room at 10:00 Wednesday morning. If
9 you'll go with him, he'll show you where to come at 10:00.

10 Please don't discuss the case with anyone. If
11 there's anything in the paper or radio or TV, please don't
12 look at it, read it. I want you make a decision on what
13 you hear in the courtroom, not what someone writes in the
14 paper or says on the radio.

15 PROSPECTIVE JUROR: Excuse me, your Honor, able to go
16 to work tomorrow, come back Wednesday?

17 THE COURT: Yeah. Go to work tomorrow. Tomorrow is
18 your day. I'll see you Wednesday. All right.

19 (Whereupon, the trial is adjourned to Wednesday, July
20 30, 2008.)

21 * * * * *

22 * * *

23 *

24 July 30, 2008

25 (Whereupon, court convened with all parties present,

1 when the following proceedings were had outside the
2 presence of the jury:)

3 THE COURT: All right. Mr. Tinsley, you have some
4 motions you want heard. I'm going to hear those motions,
5 set some guidelines for the trial and for motions. Do you
6 understand? I want you to listen to these guidelines
7 because I'm going to enforce them.

8 Number one, you're not to approach the bench. If you
9 have something you want to give to the Court, give it to
10 the bailiff. The bailiff will bring it up, the deputy.
11 Okay?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Number two, when you're questioning
14 witnesses, I want you to stand over by the corner of the
15 jury box, over there where the deputy sits, right over
16 here. Question the witness from there. If you want to
17 approach the witness, you ask the Court's permission. Do
18 you understand?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Now, if you -- during the trial if you
21 have something you want to say to the Court, make an
22 objection, or whatever you want to say, just stand up and
23 I will recognize you. And I will listen to whatever you
24 want to say. Do you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Now, we're going to do this in an orderly
2 fashion. When I'm talking, I don't want to be
3 interrupted. When you're talking, I will try to refrain
4 from interrupting you. I don't want you interrupting the
5 other lawyers. If you want to make an objection, just
6 stand up, say, "Objection." That's all you have to do and
7 I will acknowledge you. I will listen to your arguments
8 before I rule. Do you understand?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Anything you want to tell me, I will
11 listen to before I make a decision and rule. However,
12 once I have ruled, it's over. You sit down and we move
13 on. Do you understand?

14 THE DEFENDANT: I understand.

15 (WHEREUPON, State's Exhibit No. 1A-Z, 1AA-ZZ,
16 1AAA-FFF is marked for identification.)

17 (WHEREUPON, State's Exhibit No. 2 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 3-13 is marked for
20 identification.)

21 THE COURT: Now, I don't know what Mr. Day told you
22 about opening statements. Opening statements are not for
23 arguments. Opening statements are to tell the jury the
24 facts you plan on proving. Do you understand? It's a
25 narrative of what you are planning on proving in your

1 case. It's not an argument of innocence or guilt. Do you
2 understand?

3 THE DEFENDANT: I understand.

4 THE COURT: I'm going to give you some latitude, but
5 the solicitor is entitled to make objections. Once he
6 makes an objection, I have to rule on it. You, under the
7 law, are charged with knowing the rules of evidence. I
8 don't know how much you know about rules of evidence or
9 how much you do not know; but I'm going to rule on the
10 rules of evidence just as though you were an attorney,
11 because I have to assume you know the rules of evidence
12 since you're proceeding pro se. Do you understand?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Now if there's something you want to take
15 up out of the presence of the jury, tell me. I'll send
16 the jury out. Do you understand?

17 THE DEFENDANT: I understand.

18 THE COURT: Now, when you are acting as an attorney,
19 it's not an opportunity for you to testify. It's a
20 question and answer process. Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, do you have any questions about what
23 we've gone over?

24 THE DEFENDANT: I don't believe so, your Honor.

25 THE COURT: Do you have any questions about the trial

1 process?

2 THE DEFENDANT: I don't think so, your Honor.

3 THE COURT: During the trial if you have any
4 questions about the trial process, let me know. We'll
5 stop, I will try to explain it to you. I want you to have
6 a fair trial and represent yourself. Do you understand?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: But we're going to conduct the trial
9 according to the rules of court and rules of evidence even
10 though you are a layperson. Do you understand?

11 THE DEFENDANT: I understand.

12 THE COURT: The law imposes that you know the rules
13 of court and the rules of evidence. Do you understand?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Just because you're pro se doesn't mean
16 I'm going to try the case for you or assist you in trying
17 the case. I don't mind explaining things to you. I'm not
18 going to tell you what to do or assist you in trying the
19 case. Do you understand?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Once I tell you to sit down, be quiet, I
22 expect you to sit down and be quiet. If you don't do
23 that, there are going to be some consequences to that. Do
24 you understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And the consequences can be anywhere from
2 chaining you in the chair, putting duct tape on your
3 mouth, finding you in contempt of court, or both. We're
4 going to conduct the trial in a normal orderly fashion is
5 what I want you to understand. Do you understand?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you have any questions?

8 THE DEFENDANT: Where may I stand in giving opening
9 and closing arguments?

10 THE COURT: In front of the jury. Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You can stand in front of the jury during
13 opening and closing arguments, at the corner asking
14 questions. If you want to approach the witness, give him
15 a piece of paper, ask permission or I'll instruct the
16 deputy to give it to the witness. Do you understand?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Anything else? Any other questions?

19 THE DEFENDANT: No.

20 THE COURT: Mr. Day is there not to represent you but
21 to answer any questions that you may have. And any time
22 you want to take a break, discuss something with Mr. Day,
23 let me know. I'll be happy for you to do that. Do you
24 understand?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Let me hear your motions.

2 THE DEFENDANT: Basically I'd like to get stipulated
3 for the record all the charges the State is going to
4 bring. I don't want to go through this at the end of the
5 trial, want to charge lesser-included offense after the
6 trial, bring additional charges based on the same facts.
7 I'd just like a stipulation on that.

8 THE COURT: Mr. Tinsley, I don't know the facts of
9 the case, but under the law the State can always move to
10 have the indictment modified based on the facts. I
11 understand that the State is going to withdraw something
12 about the forklift. Solicitor, let me hear you on that.
13 Tell Mr. Tinsley about the forklift.

14 MR. WAGNER: Initially yesterday, based on my
15 conversations, in going through the file, I think at this
16 time -- I think we're going to go ahead after all and
17 proceed on that particular one. We're not going to
18 withdraw anything as far as that goes.

19 THE COURT: That's only concerning indictment 885; is
20 that correct? Mr. Tinsley, as far as your motion and
21 stipulation -- not a stipulation, the State is required to
22 try you basically on the indictments. And the indictments
23 have sufficient notice to advise you what you're being
24 tried for. They're not going to come up with some
25 additional indictments at the end of the trial. As far as

1 lesser included are concerned, if the facts require that,
2 then the Court will make a determination whether or not
3 there will be a charge on something lesser included. Do
4 you follow me?

5 THE DEFENDANT: Yeah.

6 THE COURT: It won't be a new charge. I can't tell
7 you what the facts are. I can't tell you whether there
8 will be anything lesser included. The Court makes that
9 decision, not the State. If that answers your question.
10 Does that answer your question?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: What else?

13 THE DEFENDANT: Your Honor, I'd move to dismiss the
14 possession of a vehicle. Under the statute I don't
15 believe that an ATV is a vehicle. There's a case law I
16 have, two statutes are identical, it says that a vehicle
17 is an item they can take out on the highway. An ATV is
18 not lawfully drivable on the highway.

19 THE COURT: All right. That's which indictment? Is
20 that 882, the Polaris four wheeler?

21 THE DEFENDANT: I believe so, your Honor.

22 THE COURT: Is that the only indictment referring to
23 the four wheeler?

24 THE DEFENDANT: There's other indictments referring
25 to other four wheelers but they're not possession of a

1 vehicle.

2 THE COURT: All right. Looking at the indictments,
3 the only one that is possession of stolen vehicle is the,
4 it looks like indictment number 881 refers to a Polaris
5 Ranger, camo; and a 2008 Polaris Ranger, green in color.
6 Are those the two four wheelers you're talking about?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: The 2008 Polaris Ranger 70 and 2008
9 Ranger 70, one's camo and one's green.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Indictment number 881, you're asking for
12 those to be stricken because it's not a vehicle?

13 THE DEFENDANT: Correct.

14 THE COURT: Do you have any law to substantiate that
15 position?

16 THE DEFENDANT: Section 56-5-120 and---

17 THE COURT: Fifty-six what?

18 THE DEFENDANT: 56-5-120, 59-19-10, paragraph 38.
19 There's a definition of a vehicle. In Mini-tow versus
20 South Carolina, 244 SE 2d 519.

21 THE COURT: What's the name of the case?

22 THE DEFENDANT: Mini-tow versus South Carolina.

23 THE COURT: How do you spell it?

24 THE DEFENDANT: T-O-W. And it basically addresses
25 those two statutes there. And they specifically say that

1 it has to be usable on a highway.

2 THE COURT: Do you have copies of the statutes and
3 the case?

4 THE DEFENDANT: I do not.

5 THE COURT: Let my law clerk get them pulled up, I'll
6 take a look at them. Any other law you're referring to as
7 far as the, I guess the four wheeler not being a motor
8 vehicle?

9 THE DEFENDANT: No, your Honor. That's all I have.

10 THE COURT: All right. I'll be glad to hear you. Do
11 you want an opportunity to look at the statute and the
12 case?

13 MR. WAGNER: Your Honor, I just looked at first he
14 cited 56-5-120, says every device in upon by which any
15 person or property is or may be transported or drawn upon
16 a highway, except devices used by human power, used
17 exclusively on stationary rails or tracks, is a vehicle.
18 I think certainly ATV's would be included in that
19 definition. You see ATV's often in the country. I would
20 refer you to 16-11-430, which is actually the 16 code,
21 which is in the same area that this charge is, 16-21-80.
22 It defines vehicle as a means of conveyance of any kind
23 which is or is not motorized, designed to transport people
24 or property. I think it's a vehicle, it can haul people,
25 move people up and down the roads. It is definitely a

1 vehicle.

2 THE COURT: Under any requirement under statutes has
3 to meet certain requirements to be on the highway.

4 THE DEFENDANT: There are, but I don't think --

5 THE COURT: The statute you just read, do they refer
6 to qualified ride on the highway?

7 MR. WAGNER: No, sir. There's nothing in there about
8 that. No requirement for that at all.

9 THE COURT: All right.

10 All right. While she's pulling up those statutes and
11 that case, Mr. Tinsley, anything you would like to say
12 briefly in rebuttal to his argument?

13 THE DEFENDANT: Only that motorized vehicle I believe
14 ATV doesn't qualify as a motor vehicle. A motor vehicle
15 has a different definition. And the statute is not
16 possession of a motor vehicle, it's possession of a
17 vehicle. And the definition --

18 THE COURT: The indictment is possession of a stolen
19 vehicle. It doesn't clarify whether it's a vehicle or
20 motor vehicle. It just says stolen vehicle.

21 THE DEFENDANT: Right.

22 THE COURT: All right. Anything else?

23 THE DEFENDANT: That's it.

24 THE COURT: While she's pulling up the two statutes
25 and the case, go on to your next motion.

1 THE DEFENDANT: Your Honor, I would state that the
2 indictments do not place me on notice of the charges.
3 There's no information in the indictments as to the
4 transaction or event. That's important. If I received
5 property, to know who I received it from, when I received
6 it from, where I received it at. There's nothing in the
7 indictments that tells me how to answer that.

8 THE COURT: Solicitor?

9 MR. WAGNER: Although the title of the statute, the
10 way the legislature worded it, titled receiving stolen
11 goods; but the body of the actual statute itself is mainly
12 about possession. In the body of the indictment informs
13 him that he did receive or possess stolen goods and it
14 lists what he -- what stolen goods he did receive or
15 possess. In fact, here in this case -- all these cases
16 not so much he received them as possessed them knowing at
17 the time they were stolen or with reason to believe that
18 they were stolen. I think all these things put him on
19 notice exactly what he's charged with and he knows what
20 he's charged with.

21 THE COURT: Mr. Tinsley, having read the indictments,
22 that motion is denied. I think the indictments are clear
23 enough, factually based enough to place you on notice of
24 what you're being tried for. That motion is denied.

25 THE DEFENDANT: Can I stipulate you are going --

1 THE COURT: Not stipulating anything. You talk to
2 me, not to him.

3 THE DEFENDANT: I'd like to know.

4 THE COURT: In other words, everything in this
5 courtroom goes through the judge, not directly to the
6 solicitor. Do you understand?

7 THE DEFENDANT: I understand. I'd just like to know
8 whether or not he is going to argue possession, not
9 receiving.

10 THE COURT: You have to wait and see. I don't know
11 what he's going to do. What's your next motion?

12 THE DEFENDANT: Move to consolidate all the charges.
13 The statute specifically states possession of multiple
14 items one time, a single event, should be a single charge.

15 THE COURT: What do you mean? When you say
16 consolidate, all five being tried at the same time? If
17 that's what you mean by five consolidation --

18 THE DEFENDANT: I mean, there would just be one
19 charge, possession of stolen property.

20 THE COURT: Solicitor, what is your response to that?

21 MR. WAGNER: At the time these charges were brought
22 they were made on different days, especially because of
23 the ongoing investigation. The initial --

24 THE COURT: They were separate events?

25 MR. WAGNER: Well, kind of. It was all based on one

1 set of circumstances, but all different days. And when
2 the investigators got involved in it, the initial property
3 they charged him with was the indictment number 881. They
4 recovered those items listed in that indictment at a
5 separate place from where he was living.

6 The investigation evolved, and days later they
7 charged him with these other different ones. There was
8 stolen property all over the campsite where he lived. He
9 was living in a stolen camper. As the stolen property
10 became apparent to the officers through their
11 investigation, that it was indeed stolen, they added new
12 charges. And that's how it kind of evolved into several
13 different charges for the same stuff. Different victims,
14 too.

15 THE COURT: Anything else?

16 MR. WAGNER: No, sir.

17 THE COURT: Mr. Tinsley, anything briefly in
18 rebuttal?

19 THE DEFENDANT: Only that the indictments all claim I
20 have possession of this property on the same dates. So I
21 believe that that qualifies as possession of the same
22 property at the same time.

23 THE COURT: Okay. Motion denied. What's your next
24 motion?

25 THE DEFENDANT: Just like to note my objection for

1 the record.

2 THE COURT: Let me explain something. You don't have
3 to note your objection for the record, the record is
4 clear. I make the ruling, it's over. You don't have to
5 say --

6 THE DEFENDANT: You don't have to object to preserve
7 it?

8 THE COURT: No. You don't have to object to my
9 rulings. Okay?

10 THE DEFENDANT: Next thing, move for motion to limit
11 anything in the Statements -- anything that has to do with
12 maybe a possible prior bad act or criminal record.

13 THE COURT: I haven't seen criminal history. Do you
14 have it?

15 MR. WAGNER: Yes, sir.

16 THE COURT: Are you planning on using it?

17 MR. WAGNER: Only if he testifies, which try to
18 figure, that's---

19 THE COURT: Does he have a copy of his criminal
20 record?

21 MR. WAGNER: Yes, he does.

22 THE COURT: Let me have a copy. Tell me what you are
23 planning on using if he does testify.

24 MR. WAGNER: I think all of them, per my knowledge,
25 are outside the realm of ten years. I don't know of any

1 we could use.

2 THE COURT: My question to you, are you planning on
3 using any of them?

4 MR. WAGNER: No, sir.

5 THE COURT: Not planning on using any of your prior
6 convictions, okay? Because it's outside the ten years.

7 THE DEFENDANT: They were overturned as well on PCR.

8 THE COURT: I haven't seen your criminal history.
9 He's not going to use them.

10 THE DEFENDANT: Even if I testify --

11 THE COURT: Is that correct, Solicitor? I'm not
12 trying to box you in because I haven't seen the record.

13 MR. WAGNER: Yes, sir. To my knowledge all of them
14 were outside the ten-year window as far as the rules go.

15 THE COURT: Okay.

16 MR. WAGNER: Furthermore, all the witnesses from the
17 State's side, they know not to mention anything about his
18 prior criminal history.

19 THE DEFENDANT: There's statements of --

20 THE COURT: He said he's not going to do it, he won't
21 do it. I won't let him. What's your next motion?

22 THE DEFENDANT: The prior bad acts, which is
23 different under Lyles, than the record.

24 THE COURT: I don't know if you are going to try to
25 go into any of the prior bad acts other than the ones he's

1 indicted for.

2 MR. WAGNER: No, sir.

3 THE DEFENDANT: They're in documents. I'm worried
4 they're going to get introduced in the record.

5 THE COURT: You just have to make those objections at
6 the time.

7 THE DEFENDANT: Have them redacted?

8 THE COURT: Yeah. If it needs to be redacted, I'll
9 redact it.

10 THE DEFENDANT: Next motion is to suppress the
11 evidence seized in violation of the Fourth Amendment, the
12 police officers searched and seized this evidence before
13 they got the warrant, went and got a warrant after the
14 fact.

15 THE COURT: Give me a little factual background, Mr.
16 Tinsley. You got to understand, I don't know anything
17 factually about this case at all. Give me a little
18 factual background as to why you feel like they were
19 illegally seized.

20 THE DEFENDANT: I have it briefed. If you would like
21 to see it with all the facts.

22 THE COURT: Give it to the deputy. I'd be happy to
23 look at it.

24 Solicitor, have you had a copy of this?

25 MR. WAGNER: No, sir, I don't.

1 THE COURT: Do you have a copy for the State?

2 THE DEFENDANT: I do, your Honor.

3 THE COURT: All right. Give it to the State. Now
4 what are you specifically asking the court to do,
5 Mr. Tinsley?

6 THE DEFENDANT: Suppress all the evidence.

7 THE COURT: Suppress what? You don't suppress all
8 evidence. What are you specifically asking the court to
9 suppress?

10 THE DEFENDANT: All the photographs, all the tangible
11 evidence, all the testimony that they learned from the
12 unlawful search and seizure anyway would not have.

13 THE COURT: Tell me what was unlawful. Where, when,
14 and why it was unlawful.

15 THE DEFENDANT: They went to the property and
16 searched.

17 THE COURT: What property did they go to?

18 THE DEFENDANT: 475 LDMA Lane.

19 THE COURT: Whose property is that?

20 THE DEFENDANT: Gold mining camp where I'm a member
21 and we were staying there.

22 THE COURT: It's a gold mining camp?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What was there?

25 THE DEFENDANT: A backhoe, some ATV's, closed

1 trailer, and camper.

2 THE COURT: Were out in the open? Covered? Under
3 lock and key, what?

4 THE DEFENDANT: They were out in the open, but
5 locked; and, you know, on private property; and they
6 searched and seized those.

7 THE COURT: Were they concealed in barns?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Just out in the open, sitting on the
10 property.

11 THE DEFENDANT: Right.

12 THE COURT: What transpired?

13 THE DEFENDANT: They went, searched and seized the
14 place, and they discovered it might be stolen so they then
15 went and got an indictment. They did not tell the
16 magistrate.

17 THE COURT: Didn't get indictments, they may have got
18 a search warrant.

19 THE DEFENDANT: I'm sorry. They got a warrant,
20 didn't tell the magistrate they already searched the
21 property. Then the warrant itself doesn't have probable
22 cause to search some of the items, and then they searched
23 and seized a bunch of items not even particularly
24 described.

25 THE COURT: You keep saying a bunch of items. I have

1 to know specifically what you're referring to. In other
2 words, if I suppress something, I need to know
3 specifically what we're talking about suppressing. I'm
4 not trying to give you a hard time, just trying to make
5 sure I understand what you want the court to do.

6 THE DEFENDANT: ATV, backhoe, closed trailer, the
7 backhoe, all of it.

8 THE COURT: Any of these concealed in a barn or
9 garage?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: They were outside?

12 THE DEFENDANT: That's correct.

13 THE COURT: Then why do you think they should be --

14 THE DEFENDANT: Because it was not immediately
15 recognizable, their stolen character wasn't. They only
16 learned after the fact it was stolen. They seized it,
17 took it to impound.

18 THE COURT: That's probably true in every
19 investigation the police do in the United States. How
20 does that make it an illegal search and seizure?

21 THE DEFENDANT: The law is they're supposed to have
22 the warrant first and then get the property.

23 THE COURT: That depends on where they're searching
24 and what they're searching for.

25 THE DEFENDANT: It was a generalized search, just

1 searching to see if they could find something.

2 THE COURT: Anything else? I don't want to cut you
3 off.

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Don't get discouraged when I ask you
6 these questions. Say what you want to say. You're not
7 going to hurt my feelings. I want to understand what your
8 argument is before I rule.

9 THE DEFENDANT: It's just complicated, that's the
10 reason I briefed it.

11 THE COURT: I read your brief. Your brief doesn't
12 shed a whole lot of light on it. Go ahead, anything else
13 you want to tell me?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Go ahead, Solicitor.

16 MR. WAGNER: Your Honor, this all started around mid
17 to end of January of this year. The ball started rolling
18 with Detective Errin Jenkins who's here today from Iredell
19 County Sheriff's Office. He was -- one of their locals up
20 there with no prior criminal record, approached them,
21 said, "Hey, I bought a four wheeler off of eBay in South
22 Carolina, right off Highway 11, one off Highway 11 named
23 the exact place it was. My buddy tells me I probably paid
24 too little for it, think it may be stolen, please run the
25 VIN number."

1 Detective Jenkins ran the VIN numbers. It came back
2 stolen a few days prior to that from Haywood County, near
3 Waynesville, kind of west of Asheville. Based on that,
4 found it was in Oconee County in his discussions with this
5 citizen.

6 He called the detectives here. David Smith was on
7 call that weekend. He took the call, went out to this
8 location, was able to corroborate exactly what happened.
9 He talked to the owner, James Couch, who said, "Yes, James
10 Tinsley was renting some units here."

11 There was an enclosed trailer that had been stolen
12 from Haywood County sitting there with locks on it.
13 Having been able to corroborate this information from the
14 Iredell County Sheriff's Office, he went and obtained a
15 search warrant. Left people on the scene, got the search
16 warrant before they searched any of the property. They
17 searched the two -- also found out through Mr. Couch this
18 defendant had been out there numerous times taking
19 pictures, had a new, almost -- like new in the wrap type
20 ATV's with stickers on them, taking pictures prior to
21 that. They knew from their investigation there had been
22 over a dozen four wheelers stolen from a Polaris
23 dealership in Waynesville, one of which these Polaris
24 turned up with this guy in Iredell County.

25 Based on their information, they applied for a search

1 warrant. Magistrate here granted it. Search warrant of
2 the units empty, searched two of the trailers and trailer
3 also stolen out of Haywood County. That's where the first
4 warrant came from. Based on that they talked to --

5 THE COURT: This is a closed trailer?

6 MR. WAGNER: Yeah, one of those enclosed trailers,
7 homebuilders, guys use because it's sealed up, can put a
8 lot in it. They're quite expensive. They seized the
9 property right then and there because it was all stolen
10 property. They asked for the guy, Mr. Couch, the security
11 RV store asked him to be on lookout. These guys came
12 back, didn't know quite who they were dealing with, didn't
13 know where to find them. He showed back up out there a
14 few days later.

15 THE COURT: When you say he --

16 MR. WAGNER: The defendant, excuse me. The defendant
17 showed back up a few days later wanting to know where his
18 trailer was. And Mr. Couch called Detective Smith, who
19 immediately took off up in that direction. He ended up
20 passing, had a description of their vehicle, ended up
21 stopping them and did a traffic stop on them for the
22 warrant that he had at that point in time. He found out
23 where they were staying.

24 They went down to the campsite a short distance away,
25 off Highway 11, Troy Valley Road. They were staying at a

1 campground owned by the gold mining place and had been
2 staying there for approximately a month, I believe, in a
3 stolen camper. They walked up to the campsite. In plain
4 view was another Polaris six-by-six, four wheeler in plain
5 view, read the VIN number; it was stolen from the same
6 dealership in Waynesville. VIN number on the camper,
7 great big VR-1 camper, would have been scratched off.

8 Based on that, they got a search warrant for the
9 premises there. Figured out who the camper had been
10 stolen from, Sonny's Place, a few weeks prior to that over
11 in Duncan, South Carolina. There was also another stolen
12 trailer and backhoe, later determined to be stolen --
13 trailer out of Lavonia, backhoe out of North Carolina.
14 Search warrants based on those came out of the stuff in
15 plain view along with prior search warrant issued by the
16 magistrate.

17 They did all the returns, did everything by the book,
18 and there was no illegal search.

19 THE COURT: All right. Thank you very much.

20 All right. Mr. Tinsley, what I'm going to do, I'm
21 not going to do it at this point in time. Normally the
22 State would offer sworn testimony to substantiate his
23 argument. I'm not going to do that at this time. I will
24 take your motion under advisement. I will listen to the
25 testimony as we go through. You can make your objection

1 at the proper time, I'll make a decision whether it will
2 be suppressed or not suppressed. Do you understand?

3 THE DEFENDANT: I understand.

4 THE COURT: All right. What's your next motion?

5 THE DEFENDANT: Your Honor, I would move to exclude
6 evidence of alleged bill of sales. On April 3 this year,
7 I was provided with the Brady material and those bill of
8 sales were not in the Brady material. And the State
9 provided them to me on 7/7, this month. And that
10 immediately afterwards is when I filed my motion asking
11 for funds to hire an expert, because I said that I was
12 going to claim it's not my handwriting, my signature.

13 This Court has already ruled that that wasn't timely,
14 but it was filed as soon thereafter as I received these
15 documents and knew what I wanted to argue on them. So
16 since them coming in so late prevented me from the ability
17 to get an expert or funds to get an expert to testify that
18 it's not my handwriting, I feel that they should be
19 excluded.

20 THE COURT: Bills of sale?

21 THE DEFENDANT: Yes. They claim they have several
22 bill of sales.

23 THE COURT: Bills of sales from who to who?

24 THE DEFENDANT: It just has my name on it. It's not
25 from anybody.

1 THE COURT: Were you the purchaser or the seller?

2 THE DEFENDANT: They're saying I was the purchaser,
3 correct.

4 THE COURT: What is he talking about?

5 MR. WAGNER: I have them here, they're already
6 premarked as State's exhibits. These I wasn't quite aware
7 of until we gave them to him, but they were recovered.
8 They're essentially just bills of sale that had been
9 filled out, they were in the camper when they did the
10 search. They involved like this here, this particular one
11 for the stolen camper they were living in.

12 THE COURT: Let me look. Are they all the same?

13 MR. WAGNER: Yes, sir, they're on different trailers
14 and different campers but all basically the same.

15 THE COURT: What's the significance? It has a
16 buyer's name, no seller on it. Is it signed by James
17 Tinsley?

18 MR. WAGNER: Significance to us, he's filling those
19 out.

20 THE COURT: What's the significance, as far as this
21 case is concerned? Relevancy, I should say.

22 MR. WAGNER: One on top, actually the stolen camper
23 they were living in. It was stolen a few weeks prior to
24 that. It was in the camper where they were living when
25 they did the search. Those things were sitting there in a

1 stack. And, basically, as they're getting these stolen
2 campers, making out bills of sale, I think probably to try
3 to cover himself.

4 THE COURT: None of them are signed by any seller,
5 basically they're worthless.

6 MR. WAGNER: Yes, sir.

7 THE COURT: All right. Let me make sure I understand
8 what you're asking the court to do. Asking to suppress
9 bills of sale because you didn't receive them until
10 sometime the first part of July?

11 THE DEFENDANT: Correct.

12 THE COURT: You didn't have time to hire a
13 handwriting expert. From that I presume you're denying
14 your signature on the bills of sale; is that correct?

15 THE DEFENDANT: Absolutely.

16 THE COURT: All right. That motion is denied.
17 What's your next motion?

18 THE DEFENDANT: That's it, your Honor.

19 THE COURT: You ready for opening statements?

20 THE DEFENDANT: I believe so.

21 THE COURT: Is the State ready for opening
22 statements?

23 MR. WAGNER: Yes, sir.

24 THE COURT: Madam Clerk, ready to swear the jury?

25 THE CLERK: Yes, sir.

1 (Whereupon, other matters were heard before the
2 court, after which the following proceedings were
3 had:)

4 THE COURT: All right. State ready to proceed?

5 MR. WAGNER: Yes, sir, your Honor.

6 THE COURT: Defense ready to proceed?

7 THE DEFENDANT: Yes, sir, your Honor.

8 THE COURT: All right. Bring us the jury. For the
9 record, Mr. Bruce Justice is foreman of the jury.

10 (WHEREUPON, a jury of 12 and two alternates is sworn
11 at 10:37 a.m.)

12 THE COURT: Ladies and gentlemen of the jury, we're
13 getting ready to start the trial of the State versus James
14 W. Tinsley. The process we go through will be opening
15 statements to begin with. The State, through the
16 prosecuting attorney, will make an opening statement; and
17 the defendant, who represents himself, will make an
18 opening statement to you.

19 After that, the State will start calling witnesses to
20 prove their case. They'll have the witnesses on direct
21 and after each witness is finished, the State's finished
22 with that witness, the defense will have an opportunity to
23 ask that witness questions. After all the State's
24 testimony has been placed in evidence through sworn
25 testimony or documents or whatever they plan on proving,

1 the defendant will have an opportunity to put up testimony
2 in his behalf if he so chooses. After all the testimony
3 has been presented, there will be closing arguments and at
4 the end of the case, I will charge you on the law that's
5 applicable in this particular case.

6 Throughout the trial, when certain issues come up, I
7 may take a brief pause, explain to you what's transpired,
8 what some of the terminology means, depending upon what
9 happens during the trial.

10 Solicitor, you ready for opening statements?

11 MR. WAGNER: Yes, sir, your Honor.

12 THE COURT: You may proceed.

13 OPENING STATEMENT

14 BY MR. WAGNER:

15 This case started back essentially January 25.
16 Actually started prior to that. January 25 is kind of
17 when it broke here at the sheriff's office here in Oconee
18 County. Back on January 25th Detective David Smith,
19 sitting at the table with me, got a call from Errin
20 Jenkins, detective with Iredell County Sheriff's Office.
21 Tell you one of the citizens brought in a four wheeler,
22 identified it as being bought from the defendant in Oconee
23 County. It was stolen just a few days prior to when this
24 guy bought it. There was also a large number of other
25 four wheelers stolen at the same dealership in

1 Waynesville, Haywood County, North Carolina.

2 Based on that information, Detective Smith acted, he
3 went and found this place where it had been allegedly
4 stole, was able to determine that a lot of the stuff that
5 was coming from Iredell County, from their end, was indeed
6 true. Based on that, he got a search warrant, did a
7 search warrant, found some stolen four wheelers had been
8 stolen out of Haywood County.

9 The investigation progressed from there, leading to
10 the campsite where the defendant was living with his
11 friend. And they had a large amount of other stolen
12 property: Camper, four wheeler, backhoe, a large utility
13 trailer, a number of other things, where those charges
14 stem out of.

15 My name is David Wagner, prosecutor on the case. I
16 work for Solicitor Adams here in Oconee County. I'm going
17 to be presenting you with a number of witnesses today.
18 Some of them may kind of seem out of place. It's just
19 because this has a quite a few witnesses, lots of them are
20 short witnesses. You'll get different pieces of the
21 puzzle, different order, sometimes it's just because who
22 is available at a certain time of day to testify. I don't
23 want you to get confused, why I'm calling something if it
24 doesn't seem relevant. We'll tie it in later.

25 I think once you hear all the witnesses, the picture

1 you will get is that back in January this defendant and
2 his friend were dealing in stolen four wheelers, campers,
3 trailers, had possession of all these stolen items and the
4 values of those items would be, essentially every count
5 more than five thousand dollars. Which there's different
6 limits in the law here, there's a thousand dollars, to
7 five thousand, over five thousand, and then petit larceny
8 which is under a thousand.

9 The items in these four wheelers, ATV's, whatever you
10 want to refer to them, were all pretty expensive, as well
11 as the trailers and things, too. The two statutes we're
12 going to be dealing with today, going to hear what the
13 defendant is charged with, charged with four counts of
14 receiving stolen goods. Receiving stolen goods is the
15 title, it's the way the legislature named it, but actually
16 receiving or possession and reads as follows:

17 "It's unlawful for a person to buy, receive, or
18 possess," which is the main thing we're dealing with here
19 today, "stolen goods, chattels, or other property if the
20 person knows or has reason to believe that the goods,
21 chattels, or property is stolen. A person is guilty of
22 this offense whether or not anyone ever is convicted of
23 the theft of the property."

24 So it doesn't really matter so much who stole it,
25 necessarily anything like that. It's did he have

1 possession of it in Oconee County, did he know or have
2 reason to know that the property was stolen?

3 He's also charged with a very similar statute, he's
4 charged with one count of that, which is essentially
5 stolen vehicle. 16-2-180, A person is not entitled to the
6 possession of a vehicle. A person is not entitled to the
7 possession of a vehicle who receives, possesses, conceals,
8 or disposes of it, knowing it to be stolen or converted
9 under circumstances constituting a crime, is guilty of the
10 charge.

11 So those are the two charges you're going to hear.
12 Just because you hear receiving stolen property in this
13 case, mainly talking about possession. Did the defendant
14 have possession? Did he know it was stolen, or should he
15 have reason to believe that it was stolen? And I think at
16 the end of this case, when you hear the witnesses testify,
17 we're going to be asking, and I think you're going to find
18 the defendant is guilty on all charges. Thanks.

19 THE COURT: Mr. Tinsley?

20 OPENING STATEMENT

21 BY THE DEFENDANT:

22 Ladies and gentlemen of the jury, my name is James
23 Tinsley. I'm the defendant in this case. I'm
24 representing myself, which is a little unusual in today's
25 courtrooms.

1 THE COURT: Let me interrupt you just a second.
2 Anyone wants to take notes? Yes, I'll allow you to take
3 notes if you want to. If you want to take notes, raise
4 your right hand. I'll get the clerk to give you notepads
5 and pens.

6 (Jurors comply.)

7 Write your name on the pad. When you leave the
8 courtroom, leave the notes in your chair. At the end of
9 the trial you will be able to take your notes to the jury
10 room. In the meantime, they'll stay in the courtroom.

11 THE COURT: Go ahead, Mr. Tinsley.

12 THE DEFENDANT: As I was saying, this is a little
13 unusual for a person to represent yourself. I was
14 originally appointed an attorney. He came to court one
15 day, didn't even know my name. I decided to try to
16 represent myself. Originally, it was going to be simple.
17 I had witnesses going to tell you; they had witnesses, get
18 on the stand, they were going to tell you what they were
19 told, what was told to them, give you an idea what my
20 thoughts was, how I now understood the situation, going to
21 see what happened, understand I'm innocent, find me not
22 guilty.

23 We were all going home. Things don't work out the
24 way I thought they would. Come to court Monday. I find
25 out two of my witnesses live in other states, one in

1 Florida, one in North Carolina, and the Court doesn't have
2 authority to subpoena them to court. So I'm forced to
3 proceed with what little evidence I have.

4 On top of that, I'm locked up down here in a jail
5 cell. So it's hard from a jail cell to gather evidence
6 and witnesses. So the deck is stacked against me. But,
7 hopefully, we can get to the truth through calling the
8 State's witnesses, asking them questions. I believe they
9 have the information that we can bring it out, you can see
10 what actually happened.

11 I am nervous, scared to death that I'm going to not
12 present the case the way it should be or that I'm not
13 going to ask a question that needs to be asked for you to
14 find for me. I'm not skilled at cross examination. I
15 don't know anything about trial tactics. And, as a
16 result, I have to resort to questions and notes on paper
17 to keep up with what I want to say. And, as a result,
18 that's going to make it difficult on you because my
19 questioning and discussions are not going to be eloquent.
20 It's going to be difficult for you to understand probably
21 what I'm trying to ask to convey. So you're going to have
22 to listen harder. And I'm sorry.

23 I just ask that you not hold it against me that I'm
24 trying to represent myself, and that I will try my best to
25 move the case along as quickly as possible.

1 When I was a little boy I used to watch Matlock and
2 Perry Mason on TV. My grandmother and I complain every
3 time an attorney come on, start talking. We reasoned that
4 everything attorneys had to say was gibberish. When I
5 became older, started studying constitutional law, I began
6 to realize what attorneys were trying to say meant
7 everything. They were trying to explain the elements that
8 constitute a crime.

9 Our lawmakers created numerous criminal statutes.
10 various elements must be proven in order for a defendant
11 to be found guilty of a crime. That's why so many
12 elements -- well, the legislature is pretty smart, and
13 they foresaw in the future some poor old soul, wrong
14 place, wrong time, associating with the wrong person,
15 would end up on trial for a crime they didn't commit.
16 Said to themselves, what is it we can do to protect
17 innocent person? Said, well, create elements. If the
18 defendant is innocent, the State not be able to prove if
19 guilty, easily establish. So the elements were created to
20 protect the innocent people. That's why they're so very,
21 very important.

22 In this case the State must prove the property was
23 stolen, I had possession of it, and that I knew it was
24 stolen, I knew it was stolen. They must prove every
25 element beyond a reasonable doubt. One or two of them is

1 not good enough --

2 In this case there's three things you need to
3 understand, to get a grasp of in order to find the truth.
4 The initial story, what happened, who, what, when, where,
5 why. Who was with me, what was I told, gives you idea
6 into what I thought. Then there's a reason for why I'm
7 here today. And it has nothing to do with theses crimes.
8 You need to understand it to understand the third thing,
9 the scam. There's a scam going on in this courtroom.
10 You're going to be able to see it. It is linked to the
11 others. I want to talk to you about these things for a
12 minute so you understand what the evidence is you're going
13 to see and how it all connects.

14 I had a friend, Clyde Boles from Florida. He's
15 retired. He and I wanted to go gold mining. Now, I'm a
16 member of a gold mining club, and I used to live in
17 Alaska, worked in a gold mine there. And there's
18 memberships to these gold mining clubs. They have gold
19 mines across the country in different states. And we were
20 going to go to this gold mine and camp and gold mine.

21 The one we were going to initially was in North
22 Carolina. We went there and a friend of mine,
23 Mr. Justice, he's a codefendant of mine, and he's going to
24 testify for the State, he lived not far from there, so I
25 introduced him to Mr. Boles. He heard me and Mr. Boles

1 discussing gold mining and we were planning a trip to
2 Alaska when summertime came, and the ground thawed, we
3 could dig for gold there.

4 Mr. Justice decided to get involved, sounded like fun
5 to him. The evidence is going to show Mr. Justice is very
6 well-to-do. He owns a lot of property, he owns a lot of
7 vehicles, he owns several businesses. He lives an
8 extravagant lifestyle. One of those businesses is a
9 backhoe company -- or septic tank business, he has a
10 backhoe.

11 The plan was that he was going to come down after
12 Christmas to an Oconee County gold mine camp that's here.
13 This is where we were going to spend the winter, gold
14 mining. He was going to bring down the backhoe to dig
15 down to the bedrock. The gold is heavy and settles to the
16 bottom. You have to dig to get down to it. He also
17 claimed he was going to buy us a camper we could stay in
18 while gold mining, that we would take to Alaska when we
19 got ready to go there to stay in. He also claimed he that
20 purchased a number of ATV's at a government auction and
21 was going to keep two of those to take to Alaska and he
22 wanted to sell the remaining.

23 I used to own an eBay business. So he asked me if I
24 would take photographs of them, put them on eBay. And I
25 agreed to do that. I helped him deliver some of them when

1 they were sold and tried to help him all I could. As it
2 turns out, all of this property, including his backhoe,
3 was all stolen. And I had no idea that any of it was
4 stolen. And if I did, I wouldn't have been around it.

5 So if I'm so innocent, why am I here? Well, that
6 leads us to the second problem. You need to understand
7 this. I'm all for the police doing their best to ferret
8 out crime, as long as they do so lawfully. In this case
9 the police searched and seized my personal property, my
10 vehicle, my---

11 MR. WAGNER: Your Honor---

12 THE COURT: Stick to the facts you plan on proving.

13 MR. WAGNER: Goes to bias, your Honor.

14 THE COURT: Not arguing bias. Okay? Opening
15 statements, stick to the facts you plan on proving in your
16 case. Don't get into arguments now.

17 THE DEFENDANT: I'm not trying to argue.

18 THE COURT: Don't get into arguing bias and prejudice
19 and searches. Testify factually what you are trying to
20 prove.

21 THE DEFENDANT: I'm trying to prove all this.

22 THE COURT: Tell the jury what you plan on proving.
23 Do you understand?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Thank you very much.

1 THE DEFENDANT: I believe the evidence is going to
2 show that my property was stolen. I mean my property was
3 seized. And I think the evidence that we're going to
4 present is that there was no warrant to seize it. As a
5 result, they took my vehicle, my property, clothes,
6 underwear, even my dog, Radar. They still have it to this
7 day, won't return it. The evidence will show not one
8 single piece of my personal property was stolen, not one
9 single piece of my personal property is evidence in this
10 case or any other case.

11 The evidence will show that I had to sue the
12 defendants to try to get my property back in federal
13 court. That is why I'm here. Evidence that's a little
14 suspicious, I believe, found its way into this case. I
15 believe it's here to try to make me look sinister, to try
16 to get the State to get me convicted. They need me
17 convicted so that the federal case will be dismissed.
18 That's why I'm here. Not because I'm guilty, but because
19 they need me convicted in order to cover up their own
20 unlawful actions.

21 As a jury you should be watching for the facts that
22 really matter. You should not be misled by the comments
23 by the State or the witnesses designed to make me look
24 sinister. There's going to be a lot of that in this
25 trial. This trial is going to turn on the issue of

1 credibility.

2 That takes us to the third reason. How is the deck
3 stacked against me? Well, it has to do with a scam. And
4 the scam has to do with Mr. Justice. Mr. Justice, the
5 evidence is going to show, is in big trouble. His boot
6 prints were found at crime scenes. His vehicle, when they
7 searched, was full of burglary tools. North Carolina,
8 South Carolina, Georgia, Spartanburg, all these
9 jurisdictions have charges against him. He's facing at
10 least 150 years in prison. He's desperate.

11 MR. WAGNER: Objection, your Honor.

12 THE COURT: Sustain the objection. Move on to
13 something else.

14 THE DEFENDANT: He's desperate, looking for a way
15 out.

16 THE COURT: Mr. Tinsley, move on to another subject
17 matter.

18 THE DEFENDANT: He knows about my lawsuit. He knows
19 that I filed a summary judgment motion a month ago.

20 THE COURT: Mr. Tinsley, I'll tell you, again, move
21 on to another subject matter. Get off Mr. Justice. Get
22 on to what you are planning on proving to this jury.

23 THE DEFENDANT: I'm trying to do that, your Honor.

24 THE COURT: I said get off the subject matter of Mr.
25 Justice. Go ahead.

1 THE DEFENDANT: I don't know how else to explain it.
2 A scam was concocted to get out of trouble and to help the
3 State win the federal lawsuit. And all that had to be
4 done was to implicate me, he gets out of trouble, they get
5 their lawsuit dismissed, everybody's happy, goes home. He
6 goes home with probation.

7 He's going to take the stand, tell you he stole all
8 the property from all these different states, and the
9 State is offering him probation to try to implicate me.
10 That's an important clue. Man stole all this stuff,
11 they're going to give him probation. That's indicative
12 their case is weak against me. They have nothing against
13 me. They have to give the man, this career criminal with
14 a record 19 pages long---

15 MR. WAGNER: Objection, your Honor.

16 THE COURT: Sustain the objection. Mr. Tinsley, I'm
17 not going to tell you again to move off of the subject of
18 Mr. Justice. Do you understand? You can ask Mr. Justice
19 questions if he testifies. Okay? But we're not going to
20 argue about Mr. Justice in opening statements. Please
21 proceed.

22 THE DEFENDANT: All I can do is ask that you think,
23 think during the trial. Ask questions. Why? Why would
24 someone be given probation to testify against someone
25 else, to implicate them in a crime, possession of stolen

1 property if they knew it was stolen? Equivalent to giving
2 a murderer, setting him free to convict someone else for
3 what, driving too fast on a highway?

4 Criminal trial is not a game which State's function
5 to try to outwit. The State's pursuit should be justice,
6 not a victim. Placing my life in your hands to know the
7 difference between a truth and a scam, to try to cover up
8 the police's vested interest. Do I think all of these
9 witnesses for the State are acting in concert with the
10 police and Mr. Justice? No, I don't. Most of them
11 probably don't even know about my lawsuit. Most of them
12 are victims. They've been done wrong. They deserve
13 justice.

14 I know for a fact Mr. Crawford lost a lot of money,
15 needs to be repaid. He wants his money, has a right to
16 come up here and complain about it. But Mr. Crawford
17 doesn't know whether I'm innocent or not. I'm not going
18 to browbeat him to death on the stand or any other witness
19 that's not relevant, can't help us get to the truth.

20 There's only three or four people in this case that
21 know the truth, that we can get the information and the
22 truth out of so you can see what really happened. Mr.
23 Justice knows I'm innocent. Some of these detectives know
24 I'm innocent. I believe the State probably knows I'm
25 innocent. So those are the witnesses I want to cross

1 examine. If I'm not vigorously attacking some of the
2 other witnesses, that's why. Because I feel their
3 testimony can't help us get to the truth.

4 All I can really ask is that you not make a premature
5 decision. Everybody seems guilty when you only hear one
6 side of the story. I would ask that you wait until all
7 the evidence is in and then make your decision and that
8 way both you and the legislature will be able to protect
9 me from a wrongful conviction. Thank you.

10 THE COURT: Thank you, Mr. Tinsley. Call your first
11 witness, please.

12 MR. WAGNER: Call Detective Errin Jenkins.

13 ERRIN JENKINS, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WAGNER:

17 Q Detective, can you give us your name? Spell your
18 last name for the record, please.

19 A Detective Sergeant Errin Jenkins, J-E-N-K-I-N-S.

20 Q Who do you work for?

21 A Iredell County Sheriff's Office.

22 Q Explain where it is. I know where it is, but just
23 tell us briefly.

24 A It's in Statesville, North Carolina. About 50 miles
25 above Charlotte.

1 Q You came down 85 to get here this morning?

2 A Yes, sir, 77 to 85.

3 Q Back in the middle of January did you get involved
4 with Wesley Crawford as far as a stolen four wheeler?

5 A Yes, sir.

6 Q How did that come about?

7 A Mr. Crawford actually in a restaurant, he had
8 purchased two SUV-type four wheelers, what I call
9 them, the larger four wheelers. One of his friends
10 had a conversation about the price he paid for them
11 and he told him, he said, "You may want to catch up
12 with somebody from the sheriff's office, police
13 department, get them to check the serial numbers,
14 verify for the price you paid for them they're not
15 stolen." That's what he did, actually had it on the
16 trailer, brought up to the office, asked us to check
17 the serial numbers on them.

18 Q Did you check the serial numbers, VIN numbers?

19 A Yes, I did.

20 Q What was the status?

21 A Came back stolen.

22 Q How did you do -- one first, then the other?

23 A Did ones first he brought one at that time on trailer
24 in his pickup, first one came back stolen out of
25 Haywood, Waynesville area.

1 Q Approximately what day was this that he came or that
2 he talked to you?

3 A He came to the office on January 25, 2008. Roughly
4 1:30, 1:40 in the afternoon.

5 Q Okay. And what -- when, according to what you were
6 able to discover, when had the four wheelers been
7 stolen?

8 A I have to refer to a couple other agencies' reports.
9 I'm not familiar with on the exact days, but one of
10 them had been stolen from Gorge State Park on
11 December 24. That's when it was actually reported.
12 I'm sorry, I don't have the report from the Haywood
13 County. I know they had numerous stolen a short time
14 prior to this.

15 Q Okay. That's good enough. Based on your decisions
16 with, well, Wesley Crawford, did you find out where
17 and from whom he purchased these vehicles?

18 A Yes, sir. He actually had a bill of sale for one of
19 the units, which I've got a copy of it. It was for
20 the Kawasaki mule. The name he give me on there is a
21 James Travis, in parentheses, D. Tinsley, [REDACTED]
22 Welcome Road, address here in Greenville, South
23 Carolina.

24 Q Okay. And did he tell you where, and were you able
25 to refer to David Smith at the sheriff's office here

1 where this purchase had taken place?

2 A He didn't know the actual physical address. He knew
3 the roads he traveled, a description of the storage
4 units, and that kind of thing. He was able to tell
5 me which county that it was in. And that's why I
6 called the Oconee County Sheriff's Office, and they
7 referred me to Mr. Smith.

8 Q When you talked to David Smith, did you tell him what
9 you knew about the cases or what you found out and
10 where for him to go look?

11 A Yes, sir, I did.

12 Q And based on your knowledge, did he go look there
13 where you told him to?

14 A Yes, sir, I got off the phone with him. He and I
15 were in contact two or three times back and forth.
16 He called me when he found the storage units and told
17 me there was actually two storage units in the guy's
18 name Mr. Tinsley's, that I had given him.

19 Q Okay. Did you return the four wheelers back to their
20 owners?

21 A Yeah. For the time being we kept them in our storage
22 unit. Haywood County was notified, they actually
23 sent folks down a day or two later to pick them up;
24 and also at the Gorges State Park, local state park
25 in our county, actually collected it for him, picked

1 it up and got it back to him.

2 Q Okay.

3 MR. WAGNER: That's the only questions I have. Thank
4 you.

5 THE COURT: Cross examination, Mr. Tinsley?

6 Sorry, you got another question?

7 MR. WAGNER: Yes, sir.

8 THE COURT: Go ahead.

9 A I have the exact date from the Haywood County one
10 stolen, I have found the report.

11 Q When was that?

12 A January 13, 2008, and reported on January 14, 2008.

13 Q Okay. Thank you. If you would, answer any questions
14 the defendant has.

15 THE WITNESS: Yes, sir.

16 THE COURT: Mr. Tinsley, cross examination.

17 CROSS EXAMINATION

18 BY MR. TINSLEY:

19 Q Detective, you have any information at all as to
20 whether or not -- I know this stuff is stolen? You
21 personally.

22 A I don't understand what you're asking me.

23 Q Did you hear me ever say this stuff is stolen, were
24 you there when somebody told me it was stolen?

25 A No, sir, I was not.

1 Q You say there's a bill of sale that was given to the
2 person that bought this?

3 A That bought one of the ATV's. Yes, sir.

4 Q And does it have my name on it, you say?

5 A Yeah.

6 Q My address?

7 A It's got [REDACTED] Welcome Road.

8 Q Do you believe that's my address?

9 A At the time, yes. I -- at the time I do believe it
10 to be.

11 Q Don't have a phone number on it, does it?

12 A No, sir.

13 Q Would it not be strange that a person, if they were
14 trying to sell something stolen, would give their
15 proper name and address and in a bill of sale, a
16 receipt for it? If it was stolen the person could
17 lead it right back to them.

18 A No, sir, that's not uncommon.

19 Q Not uncommon?

20 A No, sir, it's not.

21 Q No further questions.

22 THE COURT: Any redirect?

23 REDIRECT EXAMINATION

24 BY MR. WAGNER:

25 Q What were the price that that was sold for?

1 A According to the bill of sale and also according to
2 my victim, five thousand dollars.

3 Q What kind of condition was that unit in?

4 A It roughly had about 60 hours on it. Basically brand
5 new. Hardly no damage, anything wrong with it.

6 Q So it was a five thousand dollar sale. What would
7 the value be, to your knowledge? What was the value
8 of it?

9 A According to the reports, the value of the vehicles
10 that were stolen -- and I'll be honest with you, I
11 don't know which one it is. They range anywhere from
12 \$7,900 on the report to the highest priced one is
13 \$12,771.

14 Q So, it was quite a good deal?

15 A Yes, sir.

16 Q And that itself, would not lend somebody selling
17 almost a brand-new unit, five thousand dollars, worth
18 a lot more than that, in your experience as a police
19 officer and investigator, that lead you to believe
20 somebody knew it was stolen?

21 A Yes, sir.

22 Q Was that, in fact, what essentially tipped
23 Mr. Crawford up, to see you in the first place, he
24 felt funny about it?

25 A It was him and his friends discussed it, why he

1 brought it to the office.

2 THE COURT: Thank you. May step down, Detective.
3 Call your next witness.

4 I know you're going to have a long ride back. You
5 may be excused.

6 Mr. Tinsley, you have any objection to him being
7 excused?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Have a safe trip back to Statesville.
10 You're welcome to stay if you want to stay.

11 THE WITNESS: Yes, sir.

12 THE COURT: May step down. Thank you. Call your
13 next witness.

14 MR. WAGNER: Call James Couch.

15 JAMES COUCH, being first duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. WAGNER:

19 Q Mr. Couch, would you give us your name, spell your
20 last name for the record.

21 A James A. Couch, C-O-U-C-H.

22 Q Where do you live, Mr. Couch?

23 A [REDACTED] North Highway 11, Salem, South Carolina.

24 Q Can you explain where that is.

25 A That's about a half mile from the log cabin BP

1 station on Highway 11, and about a mile from Highway
2 130.

3 Q What kind of business are you in?

4 A Fishing and touring guide, Jocassee Lake, is my
5 primary business. And I have a boat storage facility
6 there where I live out of and run my businesses out
7 of that one. Yes, sir.

8 Q Did you get a visit from the sheriff's office back on
9 December -- January 25th, excuse me, of this year?

10 A I can't recall what date it was. You know, I---

11 Q Okay. Did David Smith come see you about some stolen
12 four wheelers?

13 A Yes.

14 MR. DAY: Could I have a moment?

15 THE COURT: Excuse me. Come up please, Solicitor.

16 Mr. Tinsley, you may join us.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but outside the hearing of the
19 jury.)

20 You may continue.

21 BY MR. WAGNER:

22 Q Part of your business with the storage facility, do
23 you rent like units to people to store boats or other
24 things in?

25 A Yes. It's primarily for boats. We do have other

1 people store cars and even, you know, just
2 miscellaneous stuff.

3 Q And I got a picture here for you to look at. Let me
4 show you State's Exhibit 1H for identification. Do
5 you recognize that? I know it's kind of hard to tell
6 just up close. Does that look like your warehouse?

7 A Yes. That looks like my storage place. Yes.

8 Q Do you know the defendant, James Tinsley, in this
9 case?

10 A I met him the day they came up to rent the storage
11 building from us.

12 Q Do you remember, you say they, who came up there?

13 A I remember it was on a Sunday afternoon. They were
14 in a pickup truck. My wife and I were outside. And
15 the other gentleman introduced himself as
16 Mr. Justice, you know, Hugh's. And then he was the
17 driver. And he was on the driver's side, and then
18 Mr. Tinsley was on the passenger side.

19 Q And did they rent a storage unit or two from you?

20 A Actually rented two units that joined, usually a
21 divider wall in between. But they was asking about
22 renting two or three units. We had two available at
23 the time, they were open in between. And they signed
24 a contract. My wife took the paper. My wife is
25 here. She dealt with them, with the contract, and

1 they paid us cash in advance for like two or three
2 months. I'm not sure who, two or three months for
3 the two units. Did mention to us the possibility of
4 renting outside space to store trailers or some other
5 items at.

6 Q Okay. And in whose name? Who rented it? Who
7 actually rented the unit?

8 A I didn't actually see. I saw Mr. -- the Hughes man
9 hand the cash money across and it was transported
10 across by Mr. Tinsley to my wife, who had the
11 contract, and who -- in other words, who signed it,
12 I'm not sure.

13 Q Okay. Did they actually -- so they actually rented
14 these things. What time frame we talking about? Is
15 that earlier January?

16 A To the best of my knowledge it was sometime in
17 earlier January.

18 Q It was just the two of them together?

19 A Yes.

20 Q Did you ever see them? Did you see them coming in
21 and out? Who did you see most of the time?

22 A I personally don't recall seeing them together except
23 the first and last time I saw them. The rest of the
24 time I saw Mr. Tinsley there, a couple of other
25 times.

1 Q Mr. Tinsley was the one coming in and out?

2 A Yes, a couple of times.

3 Q All right. And what was he doing when you saw
4 Mr. Tinsley coming in and out?

5 A One day I came in and the door was open and I was
6 under the impression that the stuff that they were
7 having in there was military surplus stuff they would
8 find.

9 Q Why was that?

10 A That was what we were told, bought and sold military
11 surplus stuff. I was eager to take a glance. Since
12 the door was open and Mr. Tinsley was there, I
13 proceeded to stop and walk in the stall and there was
14 a bunch of brand-new-looking ATV's. They looked
15 brand new. I walked all around them. And at the
16 time Mr. Tinsley had a nice digital camera, taking
17 pictures of them. He said that he was actually
18 selling them on eBay.

19 I thought to myself, "This doesn't look like military
20 surplus to me." I don't recall any response about
21 it, but we did talk. And, you know, I said I'd like
22 to have one of these. He even mentioned the fact
23 there might be some chance to, you know, work out
24 something with some storage property. I said, "I
25 need the money more than I do the four wheelers."

1 That was the end of that.

2 Q Did he ever show up with trailers?

3 A The trailers came at a later time. I wasn't there
4 when they actually drove the trailers in. There was
5 some confusion in my mind whether they were their
6 trailers or someone elses. We have people that come
7 and go at various times. So I wasn't 100 percent
8 certain. When I noticed the trailers there later, I
9 was not sure my wife knew who drove them in. At
10 first I was not certain who they belonged to.

11 Q And did you find out later who they belonged to?

12 A Yes.

13 Q Who did they belong to?

14 A I'm not sure who they were titled to or who they
15 belonged to. I knew the day it was raining and I
16 looked outside and I heard a sound outside like a
17 boat motor running. And I looked outside of where my
18 house is. I can look on the outside storage. And I
19 saw Mr. Tinsley. Mr. Tinsley on one of the new
20 ATV's, driving it inside one of the new white
21 trailers, a white, boxed-in trailer. And I looked
22 out and saw him driving into it in the rain to load
23 it in a trailer. That's all I saw.

24 Q So did you ever see this Justice guy on any of the
25 four wheelers or riding around or you ever see

1 Justice with any of the four wheelers?

2 A No. No.

3 Q Okay. Let me show you a couple of pictures.

4 Let me show you what's marked State's Exhibit 1C, D,
5 I; 1J, 1F, and 1E. And I apologize they're not in
6 order. I've gotten them out of order. And if you
7 could take a look at them, and by the number so the
8 court reporter can get it down. Explain, if you
9 recognize it, explain what it is.

10 THE COURT: Mr. Tinsley, you seen the pictures?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right.

13 A The picture I'm looking at now, is there supposed to
14 be a number on it?

15 Q On the back, handwriting.

16 A 1E is a black closed-in trailer with a side door on
17 it. It also has, the picture doesn't show it, but it
18 does have a big let-down door at the back, could
19 drive in an ATV. That's what this picture shows.
20 And then the picture 1F shows the black trailer from
21 the front. The picture 1I shows the same black
22 trailer from the side. And the picture 1J shows the
23 white trailer from the back with the tailgate down
24 with the four wheeler inside of it. And then picture
25 1C shows a camouflage Polaris four wheeler from the,

1 looking over the hood. And then the picture 1D shows
2 a green, solid green Polaris, photograph taken from
3 the very front of it.

4 Q Are you able to recognize the location and able to
5 recognize any of the items in the pictures?

6 A Yes. The location, our storage facility right below
7 my house.

8 Q That appear to be the trailer the defendant had
9 parked out there?

10 A Yes. Yes.

11 Q I believe you also said he had a white one?

12 A The white trailer is the one I saw him driving the
13 ATV in it.

14 Q Then had the black one next to it?

15 A I didn't know whether the black one was his or not.
16 I didn't find that out until the police did the
17 search to find out who it was registered to. I had
18 no knowledge who the black trailer belonged to it.

19 Q Okay. When the sheriff's office came up there, did
20 you talk to David Smith?

21 A Yes.

22 Q Did they end up doing a search warrant on the
23 premises?

24 A They were able to retain a search warrant on -- to
25 open the -- had two padlocks on the back of the white

1 trailer, we found out later had the two ATV's in it.
2 They were able to retain a search warrant, after my
3 testimony of saying I did see Mr. Tinsley driving it
4 in. I had no idea it was still there or not, but I
5 did see him one day. I don't recall what day it was,
6 but I did see him driving it in there.

7 Q Did they at that time confiscate the trailer and
8 ATV's inside of that one?

9 A Yes.

10 Q Also go inside the two units you rented?

11 A I have a master key. When someone rents a stall from
12 us, we furnish the lock, but also have a master key
13 so we can get in. But each individual has a
14 different one. So I had told the police that I had
15 saw the ATV's in the stall when he was taking
16 pictures that day. And I also assumed they had the
17 -- I had the key to the lock. I said, "We'll look
18 and see if they're in there." I proceeded to try to
19 put my key in the lock and found out they had changed
20 both locks. I had no way of getting into the stalls;
21 but we were able to take a flashlight and the gravel,
22 just a couple of inches, gravel floor, we were able
23 to take a flashlight, look under and see nothing in
24 the stalls at all, either one.

25 Q All the ATV's were gone?

1 A Uh-huh.

2 Q Did the defendant come up looking for his trailer
3 after the sheriff's office left?

4 A Yes. That's the time they were both together.

5 Q They were together again?

6 A Uh-huh.

7 Q What happened when they found out it was missing?

8 A Well, the way it happened, they both drove up; but
9 only one of them got out. And I'm pretty sure it was
10 Mr. Tinsley got out first and asked me, did I see who
11 got the trailer? And, you know, I hated to lie; but
12 I don't like lying, but the police asked me, I
13 couldn't say I wanted to help if these were
14 criminals. I wanted to help apprehend them and see
15 justice was done, so I told them that I didn't know.
16 And then they drove off.

17 While I was talking to them, a white Mercedes drove
18 up and drove between the two buildings. And when
19 they saw the white Mercedes they drove down to it.
20 In other words, I didn't know what happened to the
21 white Mercedes until later. And then as soon as,
22 like a couple of minutes went by, that's when I was
23 on the phone to let the police know they were on the
24 property, on the premises, because I didn't, you
25 know, I don't want any criminals operating out of my

1 place of business.

2 I had no idea this was stolen until the police
3 arrived. So I wanted to do everything I could to
4 help, you know, put the criminals behind bars if, you
5 know, they were guilty.

6 And they drove back up two or three minutes later. I
7 didn't see the white Mercedes anymore. I didn't even
8 know at first the white Mercedes was with them. But
9 the other guy, Mr. Hughes got out. Walked up to me,
10 and said, "I just want to ask you one thing." He
11 looked very upset. "And you're telling me you didn't
12 see who took the trailers?"

13 I said "No, I did not."

14 So he just shook his head and got back in his vehicle
15 and drove off. That was when I, you know, made sure
16 the police knew which direction they were heading in.

17 Q Is that the last time you seen them?

18 A Yes.

19 Q That you saw either of them?

20 A Yes.

21 Q That's the only questions I have, Mr. Couch.

22 THE COURT: Cross examination, Mr. Tinsley?

23 CROSS EXAMINATION

24 BY MR. TINSLEY:

25 Q Mr. Couch, you say you're a fishing guide?

1 A Yes.

2 Q Jocassee, as a fisherman, I guess sunup to sundown,
3 that's an important thing to a fisherman?

4 A Yes.

5 Q You don't know anything else, you know when it gets
6 dark, don't you?

7 A Uh-huh.

8 Q Were you there when these enclosed trailers were
9 actually searched, the doors opened on it?

10 A Yes.

11 Q When they opened the enclosed trailer, the door, and
12 you saw the ATV's, was it daylight?

13 A It was still, it was before dark. It was right
14 before dark.

15 Q It was still daylight, though?

16 A Yes.

17 Q Not nighttime?

18 A Yes.

19 Q And an investigator called you here not long ago, and
20 asked you about that?

21 A Yes.

22 Q All right. And you told that person that they came,
23 did the search, and was pretty much wrapped up and
24 gone around dark or right after dark?

25 A Yeah. It was two or three hours they were there. It

1 was dark whenever they left. Yes.

2 Q All right. I'd like to show you something,
3 Mr. Couch. Is that okay?

4 THE COURT: You can hand it to him. You can read
5 fairly well?

6 A When I got glasses on.

7 Q Take your time. You never seen this document, I'm
8 sure, have you?

9 A No.

10 Q Can you examine it, tell us what you're looking at?

11 A Well, it just says U.S. Naval Observatory,
12 Astronomical Observations Department, sun and moon
13 data for one day. Says the following information is
14 provided by Salem to Oconee County, South Carolina,
15 longitude, west 83 degrees; latitude, north 34.9.
16 Friday, the 25th of January, 2008, eastern standard
17 time: Begin civil twilight 7:08 a.m; sunrise 7:35
18 a.m.; sun transit 12:44 p.m.; sunset 5:53 p.m.; end
19 civil twilight, 6:20 p.m. Moon---

20 Q That's sufficient. So based on that, as you said,
21 they opened the closed trailer and searched it prior
22 to dark. Based on that, it would indicate that they
23 had searched it before 5:53 p.m. Would that be about
24 right?

25 A I think that -- I'm thinking they were there around

1 six.

2 Q Five fifty-three is pretty close to six?

3 A I know they waited a while before they got the search
4 warrant to cut the locks to get in.

5 Q It was daylight when they did that. If it was dark
6 at 5:53, this all took place before dark?

7 A Well, dark is about, you know, a little---

8 Q Sunset at 5:53; twilight, set at 6:20. Okay, 6:20.
9 It was done before 6:20.

10 A I'm not sure of the time it was done. But I do -- I
11 have nightlights there at the property. It's lit up
12 pretty well. I'm just giving you the best of my
13 memory of what happened.

14 Q Your testimony is that they did search everything, it
15 was still daylight or right around dark?

16 A Yes.

17 Q They were completely gone shortly after dark?

18 A Yes.

19 Q You testified that you believed -- or you did see
20 Mr. Justice pay the cash for it, even though he
21 handed it to me, right?

22 A He handed it to my wife. I was there.

23 Q Right. But he is the one that paid for it?

24 A Yes. Yes.

25 Q You testified you had no idea any of this stuff was

1 stolen?

2 A Yes. Absolutely.

3 Q Thank you. I have no more questions.

4 THE COURT: Any redirect?

5 MR. WAGNER: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. WAGNER:

8 Q Mr. Couch, those pictures you looked at there taken
9 at your place of business, those were taken in
10 daylight or nighttime?

11 A Well, this picture here, I see headlights on a
12 vehicle and it's -- this picture is taken at
13 nighttime as far as I can tell. I see my nightlight
14 in the background. These pictures that I'm seeing
15 here, most of those are taken after dark except the
16 pictures I'm looking at. Well, I'm not even sure on
17 the storage facility, they look like -- most of these
18 pictures look like they were taken at dark.

19 Q The sheriff's office took those right before they
20 left or thereabouts, might you be just confused as to
21 what time they were actually there and what time they
22 left?

23 A Yes, I could very easily be confused about what time
24 everything took place.

25 MR. WAGNER: Thank you. Those are the only questions

1 I have.

2 THE COURT: You may step down. Thank you very much.

3 MR. WAGNER: Ask Mr. Couch be excused.

4 THE COURT: Any objection to Mr. Couch being excused,
5 Mr. Tinsley?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Mr. Couch, you may be excused. Thank you
8 so very much. You are welcome to stay if you want to
9 stay.

10 Mr. Foreman, ladies and gentlemen of the jury, it's
11 11:30. We're going to take a 15- or 20-minute recess. If
12 any of you are smokers, let the bailiff know. He'll take
13 you to the appropriate place for smoking. Leave your
14 notepads in the chair. Don't discuss the case among
15 yourselves. I want you to hear all the testimony before
16 you discuss the case, at the end of the case, after
17 closing arguments and charge. Don't discuss the case
18 among yourselves. See you in about 20 minutes.

19 All right. We'll recess for about 20 minutes.

20 (Recess taken.)

21 STEPHANIE COUCH, being first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WAGNER:

25 Q Ms. Couch, would you give us your full name, please.

- 1 Spell your last name.
- 2 A Stephanie L. Couch, C-O-U-C-H.
- 3 Q I believe was this your husband a few minutes up
4 here, Mr. Couch?
- 5 A That is correct.
- 6 Q You own the business up here, Highway 11 boat and RV
7 storage?
- 8 A That is correct.
- 9 Q Are you familiar with the defendant and codefendant?
- 10 A Oh, yes, sir.
- 11 Q When they came in and rented the storage units?
- 12 A Yes, sir.
- 13 Q Were you there?
- 14 A Oh, yes, sir.
- 15 Q Let me show you what's been marked State's Exhibit 14
16 for identification. Do you recognize that, ma'am?
- 17 A Yes, sir.
- 18 Q What is that?
- 19 A This is one of our standard contracts that we give to
20 our renters when they want to rent a storage bay or
21 outside storage unit.
- 22 Q Is that the contract you gave the defendant that day?
- 23 A Yes, it is.
- 24 Q Did he in fact lease the buildings from you guys?
- 25 A He's the gentleman that signed the contract. But

1 there were two of them present when this was done.

2 Q But it's rented in whose name?

3 A James Tinsley.

4 Q Did you see he and his codefendant out there?

5 A All the time.

6 Q What were they doing when they were out there?

7 A See them about two to three times a week. The reason
8 I see them, I have a storage unit of my own, that I
9 have my stuff in. I was doing a lot of reorganizing.
10 And, you know, we kind of cut up back and forth.
11 They told me when they came in, they were doing
12 government surplus auctions. And, of course, I'm a
13 stuff person so I wanted to know where they were
14 going, what they were doing, what they had, stuff
15 like that. I didn't really get very many specifics
16 about what they were going to have in there.
17 They asked me if they could put shelving units and
18 stuff in there. But I seen them driving in and out,
19 and they did ask me about outside storage, if they
20 could bring in some storage trailers.
21 And I said, well, if they only brought them in once
22 in a while, that would be fine; but if they brought
23 them in any more regularly than once in a while, I
24 would have to start charging. In fact, I was going
25 to start to speak to them about it, because it was

1 getting to be more and more regular, bringing them
2 in. I wasn't aware there was that many of them. I
3 knew they were there.

4 But as far as seeing anything outside a golf cart, I
5 didn't see them with anything and didn't know what
6 they had in there.

7 Q So you never saw---

8 A I always saw them together, always together.

9 Q You never saw the four wheelers?

10 A No, I did not.

11 Q Did you see the storage trailers there?

12 A Yes, I did.

13 Q What day did they actually come in and rent the
14 place?

15 A I can only go on what I remember by the contract,
16 which was January 6, because I always sign it the day
17 the people move in.

18 Q Of this year?

19 A Yes, sir.

20 Q So the time frame when you were observing the two of
21 them, when would that have been?

22 A It would have been in a series of weeks after that.
23 I can't give you specific dates. I just, I mean, my
24 renters come in and out so frequently that I couldn't
25 begin to tell you. But I can tell you I know it was,

1 I know it was a couple of times, almost every week.
2 It was usually midday, between the times of -- I
3 don't know, could be anywhere from ten to five. I
4 didn't see them really, really late at night most the
5 time, because I was out there during the day. Like
6 when it was cooler, obviously January, a cooler
7 month, and February, when I was out there,
8 reorganizing stuff. Does that answer your question?

9 Q Yeah. But you say when you saw them, usually the two
10 of them were together?

11 A Oh, always. Yeah.

12 Q And who actually signed the contract?

13 A James Tinsley.

14 Q Thank you. I don't have any further questions.

15 Excuse me, I do.

16 Your Honor, at this time we'd move State's Exhibit 14
17 into evidence.

18 THE COURT: Any objection to State's Exhibit 14?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: All right. State's Exhibit 14 admitted
21 without objection.

22 (WHEREUPON, State's Exhibit No. 14 is admitted into
23 evidence.)

24 CROSS EXAMINATION

25

1 BY MR. TINSLEY:

2 Q Miss Couch, what vehicle did you see coming and going
3 most of the time?

4 A The one both of you all were in when we first signed
5 the contract was a truck, had a toolbox, a little
6 one, a Tacoma -- it wasn't, if I remember correctly,
7 a very large truck, like what I've got, a 250. But
8 most other times it was a van, and it was a, I
9 believe a brown colored. In fact, it was even in a
10 wreck. I believe you were driving it that day it was
11 in a wreck, somebody hit you with an open storage
12 flat-like trailer, but that was the one I saw you
13 guys in all the time, was that van.

14 Q The truck?

15 A That van. Most time I saw you guys, when you guys
16 were there, most the time, if I remember correctly,
17 you guys were in the van.

18 Q You said there were trailers there. Did you ever see
19 them coming and going, being brought in or taken out?

20 A I'm trying to remember if it was y'all. I'm almost
21 sure it was. It was snowing one night and it was
22 extremely late. And I believe it was -- forgive me,
23 I'm not trying to accuse you of anything -- I believe
24 it was you all two gentlemen. They were there very
25 late, and it was snowing. And I remember aggravating

1 somebody about, "Good, gosh, what are you doing out
2 here? Don't you realize it's snowing?"

3 And we laughed about it. And I do remember saying
4 something about it being sold and it left. I saw
5 them coming in and out, but I couldn't tell you who
6 was driving the vehicles or what they were. I did
7 see one come in and go out.

8 Q That night that it was snowing, did you notice which
9 vehicle it was that was hooking up to the---

10 A It wasn't the van.

11 Q It wasn't a van?

12 A It was an SUV, I believe. I believe. I didn't
13 really make a horrible note of it.

14 Q You said you cut up a lot, sometimes, back and forth?

15 A But the guy that was there that night, I don't think
16 it was you, was it? I can't remember. I apologize.
17 Go ahead.

18 Q Do you recall in your cutting up and stuff who it was
19 you talked with, spoke with, most of the time, cut up
20 with?

21 A It was one of you off and on, because Hugh would pick
22 on me. You guys were always picking on me about the
23 stuff in my shed, looked like a pack rat. I got
24 stuff stuffed all in there. So, it wasn't really --
25 I can't really distinguish or remember it either

1 being one prominently over the other of the two of
2 you picking on me. It usually was just one or the
3 other that you guys would make an offhanded comment
4 about my stuff and, you know, that I might want to
5 actually get rid of some of it or do something with
6 it, whatever. It was all lighthearted.

7 Q Okay. But as far as all this stuff is concerned,
8 trailers and the SUV's, you said you never saw?

9 A I never saw any of the four wheelers. No.

10 Q As far as any of the property that was there, you had
11 no reason to believe any of it was ever stolen?

12 A No. None.

13 THE COURT: Redirect?

14 MR. WAGNER: Ask this witness be excused.

15 THE COURT: Any objection?

16 THE DEFENDANT: None, your Honor.

17 THE COURT: You're welcome to stay, otherwise you may
18 be excused. Thank you very much.

19 THE WITNESS: Thank you.

20 THE COURT: Call Terry Tobin.

21 TERRY TOBIN, being first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WAGNER:

25 Q Mr. Tobin, tell us your name. Spell your last for

1 the record, please.

2 A Terry Tobin, T-O-B-I-N.

3 Q What do you do for a living?

4 A Basically retired, but I do contract work as a
5 caretaker for the Lost Dutchman's Mining Association
6 in Oconee County.

7 Q Basically what is that?

8 A A gold mining camp, it's for recreational
9 prospecting. We have members all over the country.
10 We have about 20 properties now across the country.
11 We have one in Georgia, one here in South Carolina,
12 and we have one in North Carolina.

13 Q Okay. Did you have the defendant, Mr. Tinsley, and
14 his codefendant staying out at the campground you
15 manage there?

16 A Yes, I did. Mr. Tinsley had joined the association
17 and was a member; and as a member you can take up to
18 four guests.

19 Q Okay. And they have a camper out there?

20 A They had a very nice camper out there.

21 Q When did they bring the camper out there?

22 A I'm not sure which day it was. I had been to town.
23 When I came back, the camper was there. There was a
24 note on the sign-in sheet saying, "Terry, this is my
25 camper. If it's in the way, you're allowed to move

1 it."

2 Q Who was that note from?

3 A From Mr. Tinsley.

4 Q Had he been the only person you knew up to that time,
5 had he been the guy you had been dealing with?

6 A Yeah. I had met the other man, but -- what's his
7 name? Justice or something like that? I had met
8 him. But it was basically Mr. Tinsley and his dog.

9 Q I think what you just told me was when the camper
10 appeared, Mr. Tinsley left you a note that it was his
11 camper?

12 A It was his camper, he was going back to the RV camp
13 in North Carolina to pick up the rest of his
14 equipment, that he would be back down the next day;
15 if not that day, the next day. If I had to move the
16 camper, that I was, you know, free to move it.

17 Q And shortly thereafter, his codefendant started
18 staying there with him?

19 A Yes.

20 Q Like how soon thereafter?

21 A I don't know. See, I had people in and out of there
22 all the time. It's -- they sign in and put down
23 their guests.

24 Q Let me show you a few pictures here, Mr. Tobin. Show
25 you what's been marked State's Exhibit for

1 identification 1WW, 1FF, 1EE, and 1T, as in Tom, 1Y.

2 A The first one I'm looking at is a six wheeler, Ranger
3 or something like that. Polaris -- is that a
4 Polaris? Yeah. And a backhoe. Another picture of
5 the Polaris.

6 Q If you could refer to them, I -- read the writing on
7 the back. The lady, the court reporter has to take
8 down---

9 A On the Polaris, that was 1Y, the backhoe 1T, as in
10 Tom; another one of the Polaris with a utility
11 trailer behind it and a box trailer behind it.
12 That's one double E. A picture of the camper with
13 slide-outs, that's 1FF. Another photograph of the
14 camper, 1WW.

15 Q Do you recognize those things in those pictures?

16 A Yes, I do.

17 Q Where are those taken?

18 A This one, I don't know, some storage area. 1WW is,
19 it's not on the property.

20 Q But do you recognize --

21 A I recognize the camper. One FF is a photo of the
22 camper, and that's taken on the property in the camp
23 spot they were in. The four wheeler with a box
24 trailer behind, 1EE, it's on the property at their
25 campsite. The backhoe, 1T is on the property at a

1 hole they were starting to dig to look for gold; 1Y
2 is a picture of a six wheeler with utility trailer,
3 and that's on the property at their campsite.

4 Q When is the first time you saw that six wheeler?

5 A I don't remember the date.

6 Q Do you remember talking to Detective Conner from
7 Haywood County?

8 A Yes, I do.

9 Q Do you remember talking with him, I believe you told
10 January 30th?

11 A Somewhere around that, towards the end of January.

12 Q Do you remember telling him you seen the four wheeler
13 about two weeks prior to that?

14 A It seems like I did, yes.

15 Q Approximately, when do you think---

16 A That would put it a couple of weeks before, like the
17 middle of January.

18 Q That's when you first saw it at the campsite?

19 A I notice stuff. Like I said, I don't go -- I check
20 the sign-in sheets. People have problems, they
21 normally leave me a note or something. My job, I'm
22 not required to stay on the property 24/7. I'm free
23 to come and go as I want, and I try to check with
24 people, see how they're feeling and see if they're
25 finding any gold.

1 Q When is the first time you saw the backhoe there?

2 A The backhoe, the day of the -- that they busted them.
3 I came in, I had been to town, I came back, and the
4 backhoe that I had been promised -- they told me
5 that -- I think Mr. Justice, he stated that he did
6 septic tank work, when they finished up a job, they'd
7 bring me a backhoe to work on the drive, maybe dig a
8 couple of pits for prospecting. I kept waiting and
9 waiting and waiting. I pulled in the drive one day
10 and it's sitting there. And they had scraped the
11 driveway, and they wanted to know where to dig a
12 hole. I showed them. And they dug for about an hour
13 and a half or so. Then said they were going to
14 dinner. They never came back from dinner.

15 Q When you saying "they," Who was that?

16 A Mr. Justice and Mr. Tinsley.

17 Q They were operating the backhoe together?

18 A No. Mr. Justice was operating a backhoe.

19 Q Was Mr. Tinsley present?

20 A Yeah. He came down, showed him where to dig the
21 hole. And we stood down and looked at the material
22 they were digging up. It all looked like good
23 material, gold bearing.

24 Q Are all those pictures fair and accurate?

25 A Yes, of the property and the equipment they had.

1 MR. WAGNER: Your Honor, at this time we would ask to
2 admit those exhibits.

3 THE COURT: Any objection, Mr. Tinsley?

4 One WW, FF, T, Y, admitted without objection.

5 (WHEREUPON, State's Exhibit No. 1WW, 1FF, 1T, and 1Y
6 are admitted into evidence.)

7 MR. WAGNER: If I could publish to the jury?

8 THE COURT: Yes, sir.

9 MR. WAGNER: As well as State's Exhibit 14?

10 THE COURT: Yes, sir.

11 MR. WAGNER: All the questions I have. Answer any
12 questions Mr. Tinsley has for you.

13 CROSS EXAMINATION

14 BY MR. TINSLEY:

15 Q Did Hugh Justice have a conversation with you about
16 possibly putting in septic tanks, add the shower
17 houses at the camp?

18 A Yes, he did.

19 Q And he claimed he owned the backhoe and septic tank
20 business and would bring a backhoe there?

21 A Yes.

22 Q Do you recall Mr. Justice ever telling you that he
23 had purchased that camper, spent a bunch of money on
24 it?

25 A No.

1 Q You don't remember that?

2 A No.

3 Q Did Mr. Justice ever have a large black trailer there
4 that he claimed belonged to his son?

5 A I don't recall if it was the black trailer or the
6 silver. There is a -- if there was a white
7 trailer -- one of them he said belonged to his son.
8 I don't recall which was which.

9 Q Did Mr. Justice ever tell you any of this property
10 was stolen?

11 A No, he did not.

12 Q Did I ever tell you any of this property was stolen?

13 A No. You told me the camper was yours.

14 Q Did you have any reason to believe any of the
15 property was stolen?

16 A No, I did not.

17 Q No further questions.

18 THE COURT: Redirect examination.

19 MR. WAGNER: No, sir. Ask this witness be excused,
20 please.

21 THE COURT: You may step down. Any objection to
22 having Mr. Tobin excused?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Call your next witness.

25 MR. WAGNER: Darrell Slusser.

1 DARRELL SLUSSER, being first duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WAGNER:

5 Q Mr. Slusser, give us your full name. Spell your last
6 for the record.

7 A Darrell Slusser, S-L-U-S-S-E-R.

8 Q What kind of business are you in?

9 A RV dealer in Spartanburg, South Carolina,
10 Sonny's Camp and Travel.

11 Q Is that an RV dealer?

12 A Yes, it is.

13 Q How long you been in that type of work?

14 A Thirty years.

15 Q Did you have a camper turn up missing the earlier
16 part of January?

17 A Actually, turned up missing December 11.

18 Q What kind of camper was it? How much was it worth?

19 A 2008 VR1, new model, just came out this past year.
20 One of most popular sellers. It's a \$30,000 camper.

21 Q Let me show you some pictures. Here is 1XX, 1YY,
22 1KK, 1LL, 1MM, 1 double O. Do you recognize those?

23 A Yes, I do. They are the VR-1 that we had reported
24 stolen. I have an incident report for it. I wanted
25 it recovered. They said I had to wait, it had to go

1 through some processing.

2 When I came to see it, I recognized it, "Said, yeah,
3 that's our 319 VR-1. When I looked at the decal on
4 the side, had Jayco, it wasn't the original sticker.
5 In order for us to find out this was ours, I had to
6 go pull all the paperwork from the factory. They
7 send us a package, so if any warranty issues, you can
8 make sure that the appliances match that particular
9 vehicle. We were able to match up using that to make
10 sure this was our unit.

11 Q So was the original VIN number, whatever you call it,
12 was it missing?

13 A Yes. The decal had been peeled off, replaced by
14 Jayco. I would have known instantly when I saw it
15 that somebody was trying to cover up. This is not a
16 Jayco camper, which is a whole different manufacturer
17 that makes this.

18 Q What kind of camper is this? Is it unique?

19 A The VR1 is unique. It's because it's the first time
20 -- I've been preaching for years, I wish somebody
21 would build a camper that has a nose, makes it easier
22 for towing. And they finally came up with a way to
23 use the tongue. There was all this wasted space. So
24 it was our most popular seller. The way we found
25 out, I came in on 11th, I didn't think anything about

1 it, not usually the first one there. But when I was
2 leaving that evening, I noted a clip of the chain
3 link was laying there when I locked the gate. So the
4 whole day had gone by without realizing it. So I
5 asked my certified tech who came in earlier, I said,
6 "Was the gate open yesterday morning when you came
7 in?"

8 He said, "Yeah." He said, "I thought you got in
9 earlier."

10 I said, "No, I haven't."

11 Got with the sales, checked inventory. We have over
12 200 some RV's on the lot, noticed the VR-1 missing.
13 Called the police and verified that the chain had
14 been cut, gate slid open, someone had taken the time
15 to, slid the rooms in, which is not easy. You had to
16 know what you were doing, hook up a battery, slide
17 the rooms in, and tow it out.

18 Q How much you say this camper was worth?

19 A Well, invoice over 20,000, had MSRP of 31.

20 Q Those pictures you looked at, do they fair and
21 accurately depict the camper?

22 A The exterior, yes, sir. Wouldn't recognize the
23 interior. Obviously someone was living in it. It
24 is, yeah, VR-1.

25 THE COURT: Any objection? 1XX, 1YY 1KK 1LL, 1MM,

1 100 admitted without objection.

2 (WHEREUPON, State's Exhibit No. 1XX, 1YY, 1KK, 1LL,
3 1MM, are admitted into evidence.)

4 BY MR. WAGNER:

5 Q Mr. Slusser, you actually came in person to Oconee
6 County and identified it at the campsite there?

7 A No, it had been recovered and it was at the police
8 holding facility.

9 Q Where, the sheriff's office?

10 A At the sheriff's office.

11 Q Okay. And that's, without a doubt, your camper?

12 A Yes.

13 Q Thank you. Those are the only questions I have.

14 THE COURT: Cross examination?

15 CROSS EXAMINATION

16 BY MR. TINSLEY:

17 Q Mr. Slusser, you never seen me on your property
18 before, have you?

19 A No.

20 Q You have any evidence I was involved stealing this or
21 anything?

22 A No.

23 Q Any fingerprints from the crime scene, property,
24 anything linking it to me?

25 A I have no idea any of that, no.

1 Q How did you know that the sticker said Jayco?

2 A I looked at it.

3 Q Did the police tell you to look at it or did you find
4 it and tell the police about it?

5 A No. I found it, told the police about it.

6 Q You found it and told the police about it?

7 A They didn't know that.

8 Q What day was this?

9 A This was on the day that, whatever day that the
10 officer called me and told me that it was at the
11 facility. I mean, I don't know that they don't know
12 it. But he seemed surprised that I said, "This is
13 not my" -- I said, "This is my camper. I know it
14 is." I said, "But somebody is trying to cover it up
15 because they put a Jayco sticker on this to hide the
16 original decal."

17 I said, "I'll have to get the appliance paperwork."
18 I actually happened to have the kit with me. When I
19 came in, I brought a package to make sure, verify it
20 was mine. I looked at the fridge, hot water heater,
21 furnace, all three serial numbers matched up with
22 mine, to make sure I could verify it was my camper.

23 Q You basically noticed the sticker was on there, you
24 called the police?

25 A Yeah. The first thing, verified the sticker with the

1 MSO's missing, covered up by the Jayco covering.

2 Q You told the police?

3 A Looked at the others to verify.

4 Q No further questions.

5 THE COURT: Redirect examination?

6 MR. WAGNER: No, your Honor. We'd ask this witness
7 be excused.

8 THE COURT: Any objection?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: You may be excused. Thank you very much.

11 MR. WAGNER: Your Honor, can I publish those set of
12 exhibits?

13 THE COURT: Yes, sir.

14 ERIC SPEARS, being first duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WAGNER:

18 Q Mr. Spears, will you state your name for the record?

19 Spell your last name.

20 A Eric Spears, last name S-P-E-A-R-S.

21 Q What do you do for a living?

22 A General manager for Carry-On Trailer at the Lavonia
23 plant.

24 Q Okay. Where is that?

25 A Lavonia, Georgia, approximately ten miles across the

1 State line.

2 Q From here?

3 A Yes, sir.

4 Q Okay. Back in the first part of January did you have
5 a large utility-type travel trailer stolen?

6 A Approximately January 8, on a Monday, I had --
7 actually there was a total of four trailers, and the
8 biggest, the main reason that we was able to find
9 this was, I actually had a new dealership, was going
10 to load the trailers, my plant manager was out of
11 town. When went to load it, the trailers weren't
12 there, I went to verify, at that point I noticed that
13 the gate around the fencing was cut and the trailers
14 were missing.

15 Q What kind of -- describe this trailer and I have some
16 pictures to show you. How much was that trailer
17 worth?

18 A Okay. The trailer in question is eight and a half by
19 16, eight-and-a-half wide by 16-foot cargo trailer.
20 It was pewter in color, had three ladder racks, and
21 approximately retails for, what we sell them,
22 \$8,264.10.

23 Q Let me show you State's Exhibit for identification
24 10, 1P, 1PP, 1GG, and 1HH. If you could please refer
25 to those by the number and letters on the back.

1 A Okay. All right. 1HH, which that's a side picture
2 of the 8.5 x 16 cargo. As you can tell, it's pewter
3 in color, got the large Carry-On logo on front, right
4 here, three ladder racks, that we manufacture out of
5 our plant in Callio, Virginia.
6 One thing that designates our trailers compared to
7 any other competitor, we use a five-inch channel on
8 the tongue that goes under the base frame. We have
9 the Salem side vents.
10 Then I'll go to 1GG which, when I look at it, it's
11 just the rear of the trailer with a Carry-On logo.
12 Another picture, of course, it shows the ladder
13 racks. One thing that kind of sets our trailers
14 apart from other people's, if you look down here, we
15 use a LED taillight. At the bottom we have rear
16 reflectors on the trailer also to make sure we meet
17 DOT specifications.
18 1PP is just another side view of the trailer. Which
19 one thing that we can look at, the kind of, you know,
20 our fenders on the 8.5 wide, they are inch-and-a-half
21 wide aluminum fenders. Some of our competitors use
22 their own special brand or a plastic fender.
23 Of course, one thing I want to -- do know on 1P that
24 I would like to note, on the tongue itself, it shows
25 a VIN tag. At our, you know, we sell the Lowe's big

1 box retailers. Normally when trailers are in the
2 yard, because we build so many, we distribute so
3 many, as the trailers get ready to ship, that's when
4 we put a VIN tag and titles for each individual
5 trailer. When this trailer right here, I can tell
6 you, that's not a Carry-On VIN tag that was on the
7 trailer. Because it was actually, it never was
8 shipped by us, as a matter of fact,
9 Picture 10, it looks like, that's just another
10 picture of the rear ramp gate with the Carry-On logo,
11 pewter color. Of course, one thing that denotes all
12 these, all of them has the Carry-On trailer logos on
13 the tongue, our combo safety warning labels, and
14 things like that on the pictures.

15 Q So what are you telling us, the VIN number that's on
16 there is not your VIN number?

17 A No, sir, it is not.

18 Q It's a fake?

19 A It's a fake. It's a fake.

20 Q And somebody added that after they stole it?

21 A Somebody added that after they stole it. Yes, sir.
22 Like I say, once we put them on a truck, before it
23 leaves our lot, that's when we VIN and title them, at
24 that time.

25 Q Is that your trailer?

1 A Yes, sir, it is.

2 Q Is that picture fairly -- fairly and accurately
3 depict the trailer when recovered?

4 A It is, exactly.

5 Q At this time move those---

6 THE COURT: Five pictures of the Carry-On trailer
7 admitted without objection.

8 MR. WAGNER: Last question I have, we'd ask that we
9 can publish these?

10 THE COURT: Yes, sir.

11 MR. WAGNER: Please answer anything Mr. Tinsley may
12 have.

13 THE COURT: Cross examination.

14 CROSS EXAMINATION

15 BY MR. TINSLEY:

16 Q Can you tell me whether you ever seen me on your
17 property?

18 A I've never seen you.

19 Q Do you have any other evidence besides what you
20 testified to that would link me to that crime scene,
21 fingerprints, bootprints, or anything of that nature?

22 A I do not have any fingerprints, bootprints, or
23 anything of that nature.

24 Q You testified that your trailer did not have a VIN
25 number on it because---

1 A Okay.

2 Q It gets put on there when you get ready to ship; is
3 that right?

4 A When we load on the truck, we have normally -- we're
5 the largest manufacturer of utility trailers in the
6 country as far as cargo trailers. Out of the plant
7 that I manage alone, we shipped out over 59,000
8 trailers last year. When I know who the customer is
9 and where it's going to, at that point is when I VIN
10 and tag them. So, as they're loaded on the truck, I
11 have an individual that puts the VIN tags on each
12 individual trailer at that time.

13 Q Well, in this picture one of these photos you said
14 that it showed it?

15 A Yeah, there is a VIN tag on one of them.

16 Q Could that be because this is not the same trailer?

17 A No, sir, would not be.

18 Q How can you tell from a photograph?

19 A That's not the same type VIN we use. We have a
20 VIN-ease machine that we use. That's not the same
21 type VIN. Plus I know for a fact that the trailer,
22 the day we went to ship it, it was already missing at
23 that time. And so we wouldn't have had a VIN on it
24 at all.

25 Q Okay. No further questions.

1 THE COURT: Any redirect?

2 MR. WAGNER: No, sir, ask that he be excused.

3 THE COURT: Any objection?

4 MR. TINSLEY: No objection, your Honor.

5 THE COURT: Mr. Spears, you're welcome to stay,
6 otherwise you may be excused. Thank you very much.

7 All right. Mr. Foreman, members of the jury, it's
8 about 20 minutes until one. We normally stop for lunch at
9 one o'clock. We're going to stop at this time, a little
10 earlier. Leave your notepads in the chairs. Don't
11 discuss the case with anyone or among yourselves, anyone
12 else. I want you to make a decision on what you hear, not
13 what someone tells you on the street or at home.

14 Leave your -- be back in the courtroom at 2:10. Be
15 back in the courtroom -- excuse me, back in the jury room
16 at 2:10. When you come to the courthouse, come straight
17 to the jury room. See you at 2:10. Have a good lunch.

18 (Whereupon, the following proceedings were had
19 outside the presence of the jury:)

20 THE COURT: State ready to bring the jury?

21 MR. WAGNER: Yes, sir, your Honor.

22 THE COURT: Mr. Tinsley, ready to bring the jury?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Solicitor, call your next witness,
25 please.

1 MR. WAGNER: Thank you, your Honor. Call Jamal
2 Haddad.

3 JAMAL HADDAD, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WAGNER:

7 Q Sir, give us your name for the record. Spell your
8 last name for the court reporter, please.

9 A Jamal Haddad, H-A-D-D-A-D.

10 Q Where are you from? Where do you live?

11 A I'm from Waynesville, North Carolina.

12 Q What do you do there?

13 A I own a Polaris dealership.

14 Q What is the name of it?

15 A Polaris of Waynesville.

16 Q I've seen Carolina Power Sports on some of the
17 paperwork.

18 A That's the primary name, yes.

19 Q What do you do there, sell Polaris ATV's and things
20 like that?

21 A Yes. We sell utility machines and repair them.

22 Q So you also have ATV's and four wheelers there that
23 are maybe getting worked on?

24 A Yes. We have some machines left overnight a few days
25 for repair.

1 Q Back on January 13, a weekend I believe --

2 A Yes.

3 Q -- did anything unusual happen that weekend on
4 Saturday?

5 A Yes, I was working by myself, just took the forklift
6 out of the fencing area, the storage place, to pull
7 the machines out. And I had a phone call, I answer
8 it, went back to finish the work, and I found out
9 that my keys was missing.

10 Q Keys to what?

11 A Keys for the forklift.

12 Q What do you use---

13 A And all the locks.

14 Q What do you use the forklift for?

15 A To move machines around.

16 Q Why do you need a forklift? Explain what you do with
17 that.

18 A I need to lift machines because they stacked on top
19 of each other.

20 Q You say machines, referring to four wheelers?

21 A Yes.

22 Q Your keys were missing. Why do you think your keys
23 were missing?

24 A I met two gentlemen came by the body shop looking for
25 Rangers. I answered a couple of questions, gave one

1 of them my business card. I walked away, glanced
2 behind me to see what they were driving, it was a
3 truck with a South Carolina license plate. After
4 they left and I went back to the forklift, that's
5 when I realized that my keys was missing.

6 Q Was that unusual to you?

7 A For the key missing, yes.

8 Q Okay. What were you thinking at the time?

9 A I knew they was stolen because I searched the whole
10 place, I couldn't find them anywhere. I did leave
11 them in the forklift, that's what we do everyday.

12 Q What did you do?

13 A I called my wife in and went back to and changed all
14 the locks, got new keys made, took some precaution.

15 Q Okay. You saying you changed the locks, locked the
16 locks on the gates?

17 A Yes.

18 Q Where are most of your four wheelers stored up there?
19 Where do you keep them?

20 A In the fenced area outside.

21 Q Some in crates, some out of crates? How are they
22 packed?

23 A Yes. Some in crates and some out of crates.

24 Q Did you check on your place later that day? On
25 Saturday what time do you close?

1 A Close about 4, 4:30. I went out to dinner, came back
2 around 7:30, 8, drove around. I didn't see nothing
3 unusual, and I left.

4 Q Did you check on it Sunday?

5 A No.

6 Q What did you find when you got there Monday?

7 A I found -- my mechanic called me, told me there was
8 breaking in and found -- came in the morning after he
9 called me and found the fence broken, crates on the
10 ground, ATV was flipped over, and some utility
11 machines missing.

12 Q How many ATV's were you missing?

13 A After the inventory, was eight of them and two
14 utility trailers.

15 Q Okay. So eight total?

16 A Eight total, yes.

17 Q There were two -- excuse me. There were three
18 recovered from right here in Oconee County. How much
19 were the three of those worth? They were a
20 six-by-six Polaris. How much was that worth?

21 A That one, about eleven-three, 11,300.

22 Q Was it brand new?

23 A Dealer, brand-new machines.

24 Q Also had two others: A 2008 Polaris Ranger 70 that
25 was camouflage and a Polaris Ranger 70 that was

1 green. How much was each one of those worth?

2 A The camo was eleven thousand and green was ten
3 thousand five-hundred.

4 Q And did you get another one back from Iredell County
5 that had been recovered by that jurisdiction?

6 A I did get all of them back, yes. Beside one was
7 stolen, which was ATV, a used ATV.

8 Q Is that the one you got back from Iredell County,
9 that was recovered in Iredell County?

10 A Yes.

11 Q How much was that?

12 A That one was used and had a lot of accessories to it.
13 It was about 12,5.

14 Q So 12,500, it was sold for five thousand dollars.
15 Would you say that was a big discrepancy in what it
16 was worth?

17 A Yes.

18 Q Let me show you a few pictures here. And I believe
19 you also said you had some trailers missing?

20 A Yes, two of them.

21 Q What kind of trailers were these?

22 A Open utility trailers. One four-by-eight and one
23 six-by-ten.

24 Q Let me show you some pictures. On the back there's a
25 number with a letter, how they're labeled for the

1 court reporter purposes. I'm going to run through
2 them, I want you to take a look at them and refer to
3 them by letter and number so she could take that
4 down, please.

5 A Yes.

6 Q 1N, 1L, 1K, 1AA, 1DD, 1ZZ, 1CC, 1NN, 1JJ, 1DD --
7 excuse me, 1D, C, and 1B. If you could look through
8 those and refer to them by number. Explain what that
9 is and do you recognize them?

10 A 1N, it's a Polaris Ranger 2008 crew. 1L, it's a
11 Polaris Ranger camo, 2008. 1K is the dash, the front
12 of also 2008 Ranger camo. 1AA, it's a Crew Ranger,
13 double seat, 2008. 1DD, it's a ATV with double seat,
14 2008. 1ZZ, also it's an ATV 2008, double seat. 1CC
15 it's an ATV 2008 with double seat. 1NN is the Ranger
16 six-by-six, 2008, with the utility trailer behind it.
17 1JJ it's the four-by-eight utility trailer. 1D, it's
18 a Ranger 2008. 1C, it's a Ranger, camo, 2008. 1B,
19 also a Ranger camo, 2008.

20 Q Do you recognize the ATV's in those pictures?

21 A Yes, I do.

22 Q Whose vehicles are those?

23 A Belong to me, to the shop.

24 Q And, again, and I'm sorry for asking you to repeat,
25 the value of each one was, again, how much?

1 Approximately?

2 A On the Rangers between 11 to 12,000, on the ATV's
3 about 7,000.

4 Q And those trailers in those pictures that were
5 recovered, were those your utility trailers that were
6 stolen?

7 A Yes, sir.

8 Q Thank you, sir. All the questions I have. Would you
9 please answer anything Mr. Tinsley, the defendant,
10 has.

11 THE COURT: Mr. Tinsley, any questions?

12 CROSS EXAMINATION

13 BY MR. TINSLEY:

14 Q Sir, were you requested by the police back when this
15 happened, shown photographs of myself and
16 Mr. Justice, and were you unable to identify me as
17 being at your store?

18 A No, I don't remember it.

19 Q Have you ever seen me on your property ever?

20 A I run into a lot of people every day. I don't
21 remember that face, no.

22 Q Do you have any evidence that I was involved in
23 stealing these ATV's from your store, other than what
24 the police are saying? Do you have any personal
25 information or evidence?

1 A No, I don't.

2 Q What kind of vehicle do you own?

3 A I have a GMC 2003 truck.

4 Q A truck?

5 A Yes, sir.

6 Q Do you own a SUV?

7 A I do have an SUV also, yes.

8 Q What is it?

9 A It's a Cadillac.

10 Q What color is it?

11 A Burgundy.

12 Q Does it have a lot of chrome on it or big fancy
13 chrome wheels?

14 A No.

15 Q No. Do you own a white, closed trailer?

16 A Yeah. We have three of them in the shop.

17 Q You said in the reports, I believe, it says the
18 forklift was disabled, took the gas tank?

19 A I took the gas tanks off it. Yes.

20 Q Couldn't be used. Is that right?

21 A I just took the gas tanks off.

22 Q And you said the ATV's would have to have been moved
23 with the forklift because they're so heavy?

24 A The one in the crate, yes.

25 Q Are you aware that sometimes things sell for less

1 than what they're worth on eBay?

2 A Not at that price.

3 Q I have no further questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. WAGNER:

7 Q You say you have a lot of people coming through your
8 store? Do you remember everybody that comes through
9 your store? Can you identify them later?

10 A It's hard unless I really talk to them quite a while,
11 show them a machine, I'll remember their faces, but
12 just to stop by for a minute and walk away, no.

13 Q The two guys with South Carolina tags that were there
14 the day before your stuff got stolen, did you spend
15 much time with them? Is there any reason for you to
16 try to take a look at them, try to remember who they
17 were?

18 A I spent time with them, yes.

19 Q But you were unable to remember what they look like?
20 Or at least identify them?

21 A I remember a little bit.

22 Q Were you able to identify anybody?

23 A I did when they showed me the pictures. Yes.

24 Q Now, are you confused about that? Are you sure you
25 were able to identify anybody?

1 A Not 100 percent, no.

2 Q Thank you. That's all the questions I have.

3 THE COURT: You may step down. Any reason he can't
4 be excused?

5 MR. WAGNER: Not from the State.

6 MR. TINSLEY: Can I ask one more question?

7 THE COURT: No, sir. We're not doing recross. Any
8 reason he can't be excused?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Mr. Haddad, you're welcome to stay, you
11 may be excused. Thank you.

12 MR. WAGNER: Call Russ Conner.

13 RUSS CONNER, being first duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WAGNER:

17 Q Could you give us your name, spell your last name for
18 the record, please?

19 A Russ Conner, C-O-N-N-E-R.

20 Q And what are your job duties? Where do you work?

21 A I'm a detective with the Haywood County Sheriff's
22 Office.

23 Q Okay. Where is that near?

24 A It's near Asheville, North Carolina, off I40, at the
25 North Carolina-Tennessee line.

1 Q How long did it take you to get here this morning?

2 A Two hours.

3 Q Cut through the mountains, a little bit shorter
4 distance, probably not time-wise, but fairly close to
5 here in actual miles?

6 A Yeah. I think you can make it in an hour and a half
7 with a different route.

8 Q What are your job duties at the Haywood County
9 Sheriff's Office?

10 A Criminal investigations, narcotics investigations.

11 Q How long have you been in law enforcement?

12 A I've been in law enforcement going on 14 years.

13 Q Okay. Were you assigned at some point to investigate
14 the theft of Mr. Haddad's Polaris dealership?

15 A I was.

16 Q What did you find when you got there that day? What
17 day actually was it reported?

18 A January 14 was when the report was actually made and
19 we were called to the scene. And we got there and
20 spoke with Mr. Haddad. He told me that over the
21 weekend two white males, clean cut, in their 30's,
22 had come to the store in a 70's to 80's model,
23 light-colored truck with South Carolina plates. He
24 stated he talked to one of the men while the other
25 guy was milling around his forklift.

1 After the guys left, he went to his forklift, noticed
2 the keys missing. He said he changed out the locks
3 because he was figuring there might be a theft. And
4 Sunday one of his employees came through the business
5 at around 1:30 p.m. but he didn't get out of his
6 vehicle, he just drove through the parking lot,
7 didn't notice anything.

8 Then they came in that following Monday morning, the
9 14th, they noticed that the fence had been cut and
10 some locks had been cut and they were missing a
11 couple of utility trailers and some ATV's. They
12 originally thought they might have been missing
13 between 18 and 20 but after they did inventory, found
14 they were missing only, I think, nine.

15 Q Did you all have any leads until you got a call from
16 Iredell County?

17 A We did. We interviewed some neighbors and a bread
18 truck guy said he went by and saw a vehicle parked
19 out there, a dark-colored vehicle with a white closed
20 trailer. We had some folks call in and say that they
21 saw a vehicle in Tennessee driving with 20 something
22 ATV's on it. Another department, Waynesville police
23 department had an informant that pointed out a fellow
24 that we dealt before, Buddy York. I went to his
25 house, he gave consent to search. So we ruled out

1 all the leads come coming in.

2 Q So around roughly ten days later did you get called
3 by Iredell County?

4 A I got notified after a short period by one of our
5 dispatch that Iredell County had recovered one of the
6 forklifts.

7 Q One of your first positive leads?

8 A Yes.

9 Q Based on that, what did you do?

10 A Went to one of other detectives, went to Iredell
11 County, interviewed Mr. Jenkins and Mr. Crawford,
12 detective general since already called Detective
13 Smith, Sergeant Smith, already looking for the
14 location. After I got through talking to Mr.
15 Crawford, I called Sergeant Smith, told him we would
16 be on our way down.

17 Q Did you have anything else same weekend, missing,
18 stolen up there of potential value to somebody
19 stealing four wheelers?

20 A We did. Just up the road a couple of miles from
21 where the Polaris dealership is, we have Moose
22 Crossing, an antique shop, had I believe a 24-foot
23 closed trailer. It was black. And theirs got
24 missing, I believe, on Saturday or Sunday. I believe
25 they reported on Sunday, it got missing on Saturday

1 evening.

2 Q Was that trailer recovered?

3 A It was.

4 Q How much was that trailer worth?

5 A Ten thousand I believe.

6 Q Okay. And where was it recovered from?

7 A From the storage unit where Mr. Couch had rented,
8 storage facility to Mr. Tinsley.

9 Q Was anything inside of it?

10 A Two other Ranger ATV's inside.

11 Q Where were those Ranger ATV's from?

12 A From Carolina Powersports.

13 Q All that stuff right there was from your
14 jurisdiction?

15 A Correct.

16 Q Based on that, did you kind of work somewhat
17 hand-in-hand with Sergeant Smith from our sheriff's
18 office?

19 A I did.

20 Q Did you go to the campsite where the defendant was
21 living?

22 A I didn't go to the campsite that initial night. I
23 came down and had recovered the trailers and a couple
24 of the ATV's, and I came back, I want to say the next
25 day; and Sergeant Smith set up for an undercover to

1 make a phone call to Mr. Tinsley and inquire about
2 buying one of the ATV's that was still on eBay.
3 Mr. Tinsley told him, "I can't do it today. I'm
4 moving a backhoe."

5 So we tried again the next day.

6 Q Were you able to -- were you able to try to identify
7 this defendant or a codefendant to Mr. Haddad?

8 A I did show him lineups. I did. He was not able to
9 positively identify either of the suspects.

10 Q So he couldn't identify anybody as coming there?

11 A No. No.

12 Q Okay. Were any of the four wheelers recovered? I
13 guess six total, total six-by-six, was that from your
14 jurisdiction, the Polaris?

15 A All but the Kawasaki mule from our jurisdiction, that
16 was from Transylvannia County.

17 Q All from the same place, Mr. Haddad's store?

18 A Correct. With the exception of the 24-foot trailer,
19 that was from Moose Crossing antiques.

20 Q As a result of your investigation, did you have a
21 chance to come talk to the defendant?

22 A I did.

23 Q Your Honor, at this time we'll have a Jackson v.
24 Denno possible issue.

25 THE COURT: Okay. All right. Mr. Foreman, members

1 of the jury, I'm going to have to take up some issues out
2 of your presence, make a legal decision. The reason I do
3 that is I'm not permitted to comment on the facts and I
4 want to take it up out of your presence so I'll be free to
5 comment on the facts, making a decision whether it's
6 admissible or not admissible. If you leave your pads in
7 the chair, don't discuss the case. I'll get you back just
8 as soon as we finish.

9 (Whereupon, the following proceedings were had
10 outside the presence of the jury:)

11 THE COURT: Mr. Tinsley, you have any objections to
12 any statement?

13 THE DEFENDANT: Would be in regard to my statement
14 given to you?

15 THE COURT: I assume so, yes, sir. Do you have an
16 objection to it?

17 THE DEFENDANT: As long as there's nothing in there
18 about a prior bad act or something, I would have no
19 objection to it.

20 THE COURT: All right, what going to testify to?

21 MR. WAGNER: Mr. Tinsley didn't make any admissions,
22 just pointed the fingers at each other. He made some
23 other comments to Officer Conner about what went on. He's
24 not -- Officer Conner is not going to testify as to any
25 prior bad acts.

1 THE COURT: Going to testify about this particular
2 action; is that correct?

3 MR. WAGNER: Yes, sir. He took handwritten notes
4 about this particular---

5 THE COURT: You don't have an objection to that?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: All right.

8 MR. WAGNER: He also did a rights waiver we'd like to
9 introduce.

10 THE COURT: Fine. Didn't have objection, no sense
11 have any hearing.

12 MR. WAGNER: Yes, sir. Just want to make sure.

13 THE COURT: Not going into anything about prior bad
14 acts, are you?

15 MR. WAGNER: No, sir. I actually don't have the
16 interview in front of me.

17 THE COURT: Give him the interview, take a look at
18 it. You going to offer the written document itself?

19 MR. WAGNER: No, sir, just his handwritten notes
20 about what he told him.

21 THE COURT: While the jury is out, anything else we
22 need to cover out of the jury's presence coming up from
23 this witness or future witness?

24 MR. WAGNER: Not to my knowledge, Judge. I don't
25 know of anything to my knowledge.

1 THE COURT: All right. If it's in there don't
2 testify to it.

3 THE WITNESS: I don't see anything in there that
4 talks about his past.

5 THE COURT: That's fine.

6 (Whereupon, the following proceedings were had within
7 the presence of the jury:)

8 THE COURT: May proceed, Solicitor.

9 BY MR. WAGNER:

10 Q Officer Conner, did you go to the law enforcement
11 center talk to the defendant that day?

12 A I did.

13 Q Looks like it may be January 30th?

14 A Correct.

15 Q Let me hand you what's marked State's Exhibit 2 for
16 identification. Do you recognize that?

17 A Yes, sir, I do.

18 Q What is that?

19 A A Miranda, Fifth Amendment rights waiver form.

20 Q Did you take one of those for both of the defendants?
21 You talked to both of them that day?

22 A Yes, I did.

23 Q You read them their rights, both of them?

24 A I did.

25 Q They seem to understand their Miranda rights?

- 1 A They did.
- 2 Q They chose to speak to you?
- 3 A They did.
- 4 Q Did you promise them anything to get them to talk to
- 5 you?
- 6 A I did not.
- 7 Q When you talked to Mr. Tinsley, what did he tell you?
- 8 A In a nutshell, basically, that Mr. Justice had the
- 9 ATV's, that he sold three of the ATV's for Mr.
- 10 Justice and that Mr. Justice was getting them at a
- 11 government auction and he was just helping sell them.
- 12 Q What did Mr. Justice tell you?
- 13 A That Mr. Tinsley got them at a government auction and
- 14 he was just trying to help Mr. Tinsley sell them.
- 15 Q Essentially pointing the finger at each other?
- 16 A Yes, sir.
- 17 Q Did you ever ask Mr. Tinsley if he had ever been to
- 18 Waynesville, North Carolina?
- 19 A I did. I asked him when was the last time you were
- 20 around Waynesville. And he said, "Over a year ago."
- 21 Q Bottom line, both of them denied knowing anything
- 22 other than just helping the other one sell?
- 23 A Correct.
- 24 Q Gave that story?
- 25 A Yes, sir.

1 Q Anything else you can think of that's pertinent to
2 the court here today that might have missed you might
3 have worked on?

4 A Off the top of my head, I think we chronologically
5 went through everything.

6 Q I think I might have misspoke when I talked to you
7 earlier, when I said three four wheelers; but you got
8 four back, two from the campsite, two from another
9 location?

10 A We actually got them all back with the exception of
11 one.

12 Q But as far as---

13 A One was recovered in Iredell County, one of ours.
14 But the rest of ours would have been from the
15 campsite and the storage facility, and that's
16 including the ATV's and the utility trailers and the
17 trailer from Moose Crossing.

18 Q Okay.

19 A Everything except for one ATV which has still not
20 been recovered.

21 Q Thank you. Those are the only questions I have. If
22 you'll answer any questions --

23 THE COURT: Cross examination.

24 CROSS EXAMINATION

25

1 BY MR. TINSLEY:

2 Q Mr. Conner, you said it's approximately a two-hour
3 drive here?

4 A It takes me, the route I take, two hours.

5 Q So roughly about four hours round trip?

6 A Yeah, I would say.

7 Q Did any witnesses come forward and claim that they
8 saw a burgundy or maroon vehicle with a white trailer
9 at that location?

10 A At Carolina Power Sports?

11 Q Yes, sir.

12 A I believe that we had -- give me just a second. I'll
13 find it here. Power Sports and Carolina Power Sports
14 a Bill Cabe was interviewed and he said he was a
15 truck driver for Sara Lee. He makes the lake route,
16 went by at 2:20 a.m. Between 2:20 and 2:40 a.m.
17 Monday morning -- Sunday night, Monday morning,
18 observed a dark-colored truck with white, closed
19 trailer sitting in the parking lot, at Carolina Power
20 Sports, and stated the lights on the trailer were on.
21 He thought maybe the truck was maroon in color.

22 Q And were there reports about the 1800 you said
23 someone saw one while her with bunch of ATV's on it?

24 A Yeah. I called the guy and he said that he was
25 traveling back from Tennessee, coming down Highway 81

1 to Interstate 40 and observed a tractor trailer going
2 west on I40. It was a white, long-nose Peter Built
3 pulling a flatbed trailer with ATV's not in the
4 crate, probably 20 ATV's.

5 Q Bit unusual they're hauling these ATV's not in the
6 crate?

7 A The caller thought it was. To be honest with you,
8 I'm not going to presume to know how they transport
9 these things. I really don't know.

10 Q So the evidence indicates that someone came by, an
11 employee came by there sometime during the day on the
12 13th; is that correct?

13 A R. L. Franklin, who is an employee, said that he came
14 by around Sunday around 1:30, didn't get identity of
15 his vehicle. He drove through the parking lot and
16 drove on out.

17 Q But he didn't notice any trailers in the parking lot
18 missing any of that stuff?

19 A On that particular day he did not.

20 Q The following morning, the 14th, they discovered the
21 stuff?

22 A Discovered trailers missing, correct?

23 Q Right. Did the theory of moving so many ATV's in
24 such a short period of time, did that seem a little
25 strange to you?

1 A What we contemplated, as soon as I got to the scene
2 and started looking at the crime scene, some of the
3 crates had been disassembled, some of the empty
4 crates had been moved, and some of the trailers were
5 gone. And my initial impression was that they spent
6 Saturday and Sunday doing this theft. That was my
7 initial impression. The trailer was stolen from
8 Moose Crossing Saturday time. And we speculated
9 earlier on in the investigation, maybe that trailer
10 had been used and brought down to Carolina Power
11 Sports and been used to move them. As far as cutting
12 fence, it wouldn't take a long time. If you got some
13 bolt cutters, all you have to do is knock these ATV's
14 in neutral, push out to highway where tracks very
15 obvious. Out to the main highway where they were
16 loaded onto a truck. Wouldn't take a long time.
17 Disassembling the crates I think would have taken
18 some time.

19 Q According to the reports and the testimony we've
20 heard today, the ATV's were quite heavy, 1200 pounds
21 I believe?

22 A I believe I was told ATV in the crate is 1200 pounds.

23 Q The report says it would appear there were no marks
24 they were pushed or moved, would appear they would
25 have had to move with a forklift?

1 A Let me clarify that. There was a stack of empty
2 crates. And looking at that stack of crates, which
3 was to the right of the business, it didn't look like
4 it had been shifted or moved. However, inside the
5 fence there was one ATV that was damaged, a brand new
6 one that was cut out of the crate and disassembled,
7 damaged as if it had been pushed off, because it was
8 the top one on the top crate as though pushed off
9 bounced and rolled over. So it was damaged and it's
10 listed, I believe it was listed as stolen and
11 recovered, because initially I think they thought it
12 was stolen. We matched up the VIN number with the
13 actual crate it was out of. It should be listed on
14 my report as damaged.

15 Q Is there any evidence that a forklift was brought in
16 from the outside?

17 A Is there evidence of that? No. Would it have made
18 things easier if somebody brought a forklift? Yeah.
19 It would have made things go a lot faster. Didn't
20 see any forklift or tire tracks in the mud in the
21 direction where the ATV's were pushed out. So I
22 don't have any evidence to say unequivocally one was
23 brought there or used to move these ATV's.

24 Q In investigating it, did you not think it was a
25 little strange that the forklift that the owner had

1 was allegedly labeled?

2 A No. I didn't think it was strange at all when he
3 said the previous day, that the two people came by
4 acting suspiciously. And when they left he noticed
5 his keys were gone. I think that's just smart on the
6 part of the business owner trying to keep himself
7 from getting robbed.

8 Q Were there some shoe prints found there?

9 A We did find a couple of different shoe prints. Yes.

10 Q Did you end up doing a comparison test?

11 A I've not sent them to the lab to compare them. I
12 visually compared them. I took a foot casting, a
13 plaster casting, like, kind of like plaster,
14 paper-mache type thing, where you pour it into the
15 footprint, let it sit like half an hour, lift it up,
16 gives you the footprint. I visually inspected your
17 shoes and Mr. Justice's shoes when you were arrested
18 and your clothes were taken.

19 Q And in your opinion it was, it matched Mr. Justice's
20 shoes?

21 A My opinion one of the sets of prints did match Mr.
22 Justice's shoes.

23 Q Did you -- but didn't match mine, did they?

24 A No. The other set of prints, the footprints we found
25 there, best of my recollection, I don't recall them

1 matching the shoes you were wearing at the time you
2 were arrested:

3 Q At one point you said you tried to conduct a sting or
4 something and you tried to call me, get me to meet
5 you to buy an ATV or something?

6 A Actually an undercover officer did call you and
7 inquire about one of the ATV's on eBay. And you told
8 him you were moving a backhoe was the information I
9 got.

10 Q I put him off and then the following day, my
11 understanding---

12 A Then you wouldn't answer the phone.

13 Q Following day wouldn't answer the phone?

14 A Pretty much the story I got. Yeah.

15 Q Do you recall what that ATV, the ATV was for sale for
16 on eBay?

17 A I may have it in my file. I don't remember. I know
18 we went on eBay, there's a program called leads on
19 lines, which checks all pawnshops and also checks
20 eBay. I ran your name through leads on line, got a
21 hit that you were selling Polaris ATV's on eBay.

22 Q Did you find some hairs on one of the ATV's?

23 A Found two hairs. Yes.

24 Q Did you take photographs of those?

25 A Pretty sure we photographed them if they -- if I

1 didn't, I know we collected them as received.

2 Q They're mentioned in one of the police reports,
3 right?

4 A Many in my report, correct, that I seized them from
5 the scene.

6 Q And the same thing with the shoe prints mentioned in
7 your report?

8 A Correct.

9 Q Is the fact you took shoe prints mentioned your
10 report?

11 A Yes, it is.

12 Q Did you find a pocketknife?

13 A Yes, I did.

14 Q You took pictures of that?

15 A Pretty sure.

16 Q It's mentioned in your report?

17 A Correct.

18 Q Why do you take notes and mention all these items in
19 your report? What's the purpose for doing that?

20 A The purpose for that is so I can give a detailed
21 accurate accounting in court when I did it, where I
22 did it, how I did it, and why I did it.

23 Q That's the proper way?

24 A How I do things. Yes, sir.

25 Q Way you can establish exactly where it was found?

1 A Right.

2 Q You have a photograph of it saying that's where it
3 was found?

4 A Right.

5 Q Did you take back, when we were arrested, did you
6 take a statement from Mr. Justice as well?

7 A I did.

8 Q And in his statement you asked him if he was involved
9 in these thefts, didn't you?

10 A I don't have his statement in front of me, but
11 naturally I would ask him what he knew about these
12 thefts, too.

13 Q He said he wasn't involved?

14 A He said that you got them on auction. He was helping
15 you sell them.

16 Q He said he was never at the business?

17 A Correct. He said he was never in Waynesville. And,
18 "Yes."

19 Q And you questioned him. You confronted him about his
20 boot prints?

21 A I did.

22 Q He was stuck on that, wasn't he?

23 A Yeah.

24 Q Now, he claims he's the thief, basically my
25 understanding, your understanding?

1 A I haven't heard his testimony yet.

2 Q Have you been told by the detectives or the police
3 department or state here that's his intention?

4 MR. WAGNER: At this time I'm going to object.

5 THE COURT: Sustain the objection. Move on.

6 MR. TINSLEY: Okay. I'll move on.

7 THE WITNESS: Okay.

8 Q If he were to say -- he now says that he did it, that
9 would be different from what he told you before,
10 right?

11 A Yes, sir.

12 Q My statement, obviously I'm here today contending
13 that I'm innocent. So my statement to you hasn't
14 changed, has it?

15 A No.

16 Q No further questions, your Honor.

17 THE COURT: Redirect examination?

18 MR. WAGNER: Nothing further, your Honor.

19 THE COURT: Okay. Any objections to Detective Conner
20 being excused?

21 MR. TINSLEY: No, your Honor.

22 THE COURT: Welcome to stay, otherwise you may be
23 excused. Thank you very much.

24 THE WITNESS: Thank you, your Honor.

25 MR. WAGNER: Calling David Smith.

1 DAVID SMITH, being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WAGNER:

5 Q Give us your full name. Spell your last for the
6 record, please.

7 A David Smith, S-M-I-T-H.

8 Q What do you do for a living?

9 A Work for the Oconee County Sheriff's Office.

10 Q What are your job duties there?

11 A I work department of crimes, investigations.

12 Q How long you been in law enforcement?

13 A Twenty-one years.

14 Q Were you assigned this case back in January of this
15 year?

16 A Yes, sir.

17 Q What initially lead you to get involved?

18 A I received, on January 25th, a call from Iredell
19 County Sheriff's Office, spoke to Detective Jenkins
20 who told me that he had an individual there that had
21 bought two ATV's from an individual from -- well,
22 actually got one of the ATV's, actually bought it
23 from Oconee County, off Highway 11 area of Salem,
24 South Carolina. In speaking to him, he told me -- he
25 gave me the name of the individual who actually he

1 bought the ATV from, which was a Mr. James Tinsley.
2 He said it was a warehouse just below the BP station
3 when you cross the bridge in Oconee County. Just
4 below there there's a mini storage facility. Said
5 you can see the building when you go into the drive
6 where the warehouse is, you make a right and it's on
7 the back side of this particular warehouse. He said
8 he believed it was about the fourth from the end down
9 there.

10 He stated that he bought this ATV, like I said, from
11 a Mr. Tinsley, the second one, supposedly, he had Mr.
12 Tinsley and another individual he did not know, took
13 the four wheeler to him, met him somewhere up in
14 North Carolina area. With this information I told
15 him I'd try to see what I could come up with.

16 I drove up in that area with Corporal John McGuffin,
17 one of the officers with us. Drove up there, looked
18 around, found the storage facility he was talking
19 about just below the BP station on the right, just
20 like he said, paved driveway, go through the -- on
21 the back side and there's several doors there, or
22 bays I guess you would call them. Tried to see if
23 anybody was at home there. Nobody was at home.

24 There's a double wide that sits right there above it.
25 As you go into it, there's also a little lot to the

1 left where they got some boats. And there was a
2 closed trailer there.

3 I talked to -- so on my way out I got a phone number
4 off the sign and called it and talked to Mrs. Couch,
5 asked her if anybody was around or if they was going
6 to be around, I'd like to talk to them. Eventually I
7 went back and Mr. James Couch was there. I talked to
8 him.

9 He in turn told me that he did have a -- or I asked
10 him if he had an individual by the name of James
11 Tinsley renting a storage facility there. And he
12 told me, yes, that he had two bays down there.

13 In speaking to him, in the meantime I already talked
14 to Russ, detective from Haywood County, and he told
15 me that they had a big business break-in with a bunch
16 of Polaris four wheelers and a couple of trailers
17 stolen from up in that area. So I asked if
18 Mr. Couch, if he actually seen any there. And he
19 told me, yeah, there was a bunch of Polaris, they
20 looked new, they was in the storage facility that he
21 actually saw them. So what I done from there, after
22 getting that information, I was able to corroborate
23 what they was telling me from North Carolina, I
24 contacted Sergeant Arnold. Sergeant Arnold is one of
25 our investigators who works that end of the county,

1 and asked if he'd hang around that area until I get a
2 search warrant. So I contacted the judge, Judge
3 Derrick, and asked him or told him what I had,
4 explained the situation what I had. And he said,
5 yes, sir, sounds like got enough for a search
6 warrant. So, I went back and typed up a search
7 warrant in order to be able to go back and execute
8 it.

9 Once I was able to get that, I had to drive all the
10 way back from Salem here at the law enforcement
11 center, typed it up, printed it, met the judge, he
12 signed it. I went back myself and Sgt. Arnold and
13 Corporal McGuffin, went to the storage facility
14 first, the doors was locked, Mr. Couch tried to use
15 the key, they weren't working. So you could actually
16 look under, there's just a little bit under there,
17 you could look under there. We took a flashlight
18 looked, knew it was empty. Mr. Couch mentioned prior
19 he actually saw Mr. Tinsley and them put two in a
20 black closed trailer so we went to the closed
21 trailer. Like I say, it was on the search warrant.
22 Undid the lock, opened it, there was two Polaris four
23 wheelers, ATV's, however you want to call them. One
24 was a two seater, one was a single seater. Had
25 rails, one was camouflage, and one was green in

1 color. So climbed inside and still had the things on
2 the steering wheel, looked like brand new. So I
3 looked for the VIN number, found it, was able to run
4 both of them and they came back stolen out of Haywood
5 County. So from there Detective Russ Conner and them
6 coming to the scene, they came to the scene and we
7 showed them what we had. But they said they were
8 still missing some others. Didn't know exactly where
9 Mr. Tinsley and them were at. So because Mr.
10 Tinsley's name is the only one that we knew of
11 because his name was on the paperwork in North
12 Carolina, on the paperwork here in South Carolina
13 and, that's all we had at that time.

14 Do you want me proceed?

15 Q Yeah. What else happened?

16 A From there we took the trailer, seized it and the
17 four wheeler, brought them to the sheriff's impound
18 lot. Once we got them here, met with Detective
19 Conner, we tried to figure out what we were going to
20 do from there. But we knew based off the individual
21 in North Carolina that Mr. Tinsley had an eBay
22 account. So through that we was able to, on Monday,
23 I believe it was that following Monday, said "We'll
24 just make a phone call, see if we might be able to
25 buy one of them back, maybe set him up so to speak,

1 get one to see if it was going to be one of the
2 stolen four wheelers."

3 In the eBay account you can actually see the picture
4 and it cuts back to that from the storage facility.

5 So we had an individual out of Georgia we knew,
6 investigator from there, we had them make the phone
7 call. Said he couldn't make the meet, had to move a
8 backhoe, wasn't able to do it.

9 So we tried to do it on Tuesday. On Tuesday wasn't
10 able to get through on the cell phone. So
11 Mr. Conner, he already come back, he was on his way
12 back to North Carolina. He said, "Well, there's
13 nothing else I know we're going to be able to do
14 until they pop up somewhere."

15 So at that time I received a call from Mr. Couch and
16 that the Couches, that afternoon that they returned
17 back to the storage facility. And he told them that
18 he didn't know who got the trailer and that -- they
19 give me a description of the vehicle and direction
20 come, and I was at the sheriff's office, so I went to
21 my car, got my car, called for assistance, any units
22 in the area and proceeded to go north on Highway 11
23 to see if I could intercept them. Once I went up
24 Highway 11, based off the description what they give
25 me told me coming down toward West Union on Highway

1 11. I met them and I don't know if most of you are
2 familiar with the Jones's old service station up
3 there on the right, around the Tamassee School, up in
4 there, and I turned around on them. I don't think
5 they even knew I was behind them. But when I got up
6 to probably before you get to the fire department,
7 there's a little camp place up on the right that was
8 there, and they turned into it. I hasn't actuated my
9 lights or anything.

10 I turned in, there was a unit just down at Pickett, I
11 told them respond up towards me. There was three, so
12 when they come around, I stopped them, got Mr.
13 Tinsley out and I was able to identify who he was,
14 told him I had a warrant for his arrest. And I
15 actually had one of the officers put him in the car
16 and then I got Mr. Justice out. I was talking to
17 him. We run a check on him. He was one, so we
18 actually had him arrested, and then there was a third
19 guy in the vehicle, Mr. Boles. In talking to
20 Mr. Boles, he told me they were staying at a campsite
21 not far away from where they was at or where we were
22 stopped at, and that he would show us where it was
23 at. I asked him if he seen any ATV's or trailers
24 because Haywood County was missing ATV's and
25 trailers. He said there was some trailers out there

1 and ATV's. So he said he would show us where it was
2 at. So we went up to this location off of, up in the
3 Tamassee area at the foot of the mountain. And once
4 we arrived, there's like a little camping area, his
5 camper was on the end down there. And we pulled in.
6 Mr. Boles was staying with Mr. Tinsley and Justice
7 and he had some. His van there, little minivan, and
8 he said he was staying inside the camper as well.
9 There in plain view, there was an olive green
10 trailer, Carry-On trailer. There was a camper that
11 had a had Keystone on the back tire on the back of
12 the camper, it was a slide-out. There was a
13 six-by-six Polaris four wheeler with dump bed, it was
14 hooked to a trailer. I don't know what that thing
15 was in the back of it, some wooden device they had
16 built. And there was another little small trailer
17 there as well.
18 I went off and looked at the trailer in plain view.
19 On the tag, that actual tag came back stolen out of
20 Haywood County from this Polaris dealership. On the
21 six-by-six in plain view on the sticker, just under
22 the thing, there was -- you didn't have to move
23 nothing, you could see it -- ran it and it came back
24 stolen out of Haywood County, the Polaris same
25 Polaris place up there. So from there I told the

1 officers to hold off. I was going back to get a
2 search warrant and come back.

3 In turn went back to Walhalla, typed up another
4 search warrant to come back to the facility to check
5 on the items there. Once we was able to obtain a
6 search warrant and came back, we was looking and on
7 the camper, like I say, it was had Keystone on it.
8 It's VR1, up on the tongue you could see back to the
9 right of the little tag, looked like something had
10 been peeled off, off of the little tongue up there.
11 Up in the front of it was Jayco. It said Jayco
12 camper. I knew Jayco and Keystone is not the same
13 thing. So I knew something was probably awry,
14 probably didn't belong to it. We went ahead and
15 seized it. There was an olive green -- once we
16 opened that trailer, there was a Polaris ATV in it,
17 run the VIN number on it and it was reported stolen.
18 There was some tools and stuff in there actually
19 stolen as well from Gorges State Park. We found some
20 other stuff stolen out of White County, later found
21 out to be stolen out of White County, Georgia. The
22 olive green -- the gentleman said it was a Purity
23 trailer, it was stolen out of Lavonia, Georgia, came
24 up that was at a later date. Not all this was found
25 on that same day. The ones we knew was stolen that

1 day was the six-by-six, the Polaris four wheeler, and
2 the two trailers from North Carolina. We didn't find
3 out until later in our investigation that the camper
4 was stolen from Duncan because I contacted Darrell by
5 phone, trying to find out who was the owner. It was
6 missing and he came up and spoke to Sgt. Moss.
7 Sgt. Moss was the one he spoke to that day. I wasn't
8 there. And was able to identify it by the other
9 numbers inside the camper. The Carry-On trailer,
10 Bruce Carlyle from Lavonia Police Department brought
11 Mr. Sparks over, he identified the closed trailer.
12 So the camper was identified and we went ahead and
13 seized all that property and took it to our impound.
14 All the other property, once we give back the owners
15 that, we put everything boxed up for safekeeping.
16 His property and stuff is in our evidence locker for
17 safekeeping. That's why we kept it there, we didn't
18 throw it away. It's all locked up in our evidence
19 locker.

20 Q Everything has either been returned to the owners or
21 is in the process of being returned?

22 A Yes, sir. The only thing I have left to turn over is
23 the olive green in color or Purity Carry-On trailer
24 at this time has some property in it that we have got
25 to turn over.

1 Q Did you ever get a call from either defendant about
2 when you confiscated the trailer with the two ATV's?
3 Anybody ever call that in from the Highway 11 place
4 as being stolen?

5 A I'm sorry?

6 Q Did anybody ever report -- when you guys confiscated
7 the black closed trailer with the two ATV's from the
8 Highway 11, Mr. Couch's storage facility, did anybody
9 ever call that in as stolen?

10 A Yes, sir. Actually Russ was on the scene.

11 Q I mean, either of the defendants?

12 A No, sir. No, sir, the defendants didn't.

13 Q Did the defendants report stuff missing?

14 A No, sir.

15 Q Nobody reported that?

16 A No, sir.

17 Q Let me show you some pictures, Detective. Let me
18 hand you up, and I'll read them out, I'm going to ask
19 you to identify them: 1B, 1C, 1D, 1JJ, 1NN, 1CC,
20 1ZZ, 1DD, 1AA, 1K, 1L, 1N, 1P, 1O, 1T, 1EE, 1WW, 1FF,
21 1YY, 1OO, 1R, 1S, 1CCC, 1DDD, 1GGG, 1M, 1G, 1V, 1SS,
22 or 1FF. 1Q, 1II, 1I, and 1H. Can you flip through
23 those? And are those picture you guys took at the
24 scene? Do they fairly and accurately depict the
25 scene as it was and the equipment you recovered?

1 A Yes, sir, they do. You want me to go through each
2 individual one?

3 Q No, sir. It's a lot of them. I would ask those
4 exhibits I read out.

5 THE COURT: Any objections, Mr. Tinsley?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Admitted without objection.

8 (WHEREUPON, State's Exhibit No. 1B, 1C, 1D, 1G, 1H,
9 1I, 1J, 1K, 1L, 1M, 1N, 1O, 1P, 1Q, 1R, 1S, 1T, 1V
10 are admitted into evidence.)

11 (WHEREUPON, State's Exhibit No. 1AA, 1CC-JJ, 1NN-QQ,
12 1SS, 1XX, and 1ZZ are marked for identification.)

13 Q One of those pictures, double G or triple G, has the
14 VIN number on the camper?

15 A That's correct.

16 Q Is that the one that had been altered or obliterated?

17 A Yes, sir. Show you right quick. This is a picture
18 of the camper. If you notice, usually on the
19 left-hand side right up in the top where it comes in,
20 where the tongue, you hook up to your trailer, the
21 back part you can see where this had been removed.
22 They left a little piece on it. Back to the left, up
23 here, is where the Jayco sticker was at, back up more
24 closer to the tongue. If you all tow vehicles, you
25 know what I'm talking about. When you hook up to

1 your vehicle, back toward the tongue area had a
2 little Jayco, it was actually a little VIN -- well,
3 it looked like it was laminated and then stuck on
4 there with glue of some type.

5 Q Okay. Let me show you State's Exhibit 3, 4, 5, 6, 7,
6 8, 9, 10, 11, 12, and 13.

7 A Yes, sir. These are the bill of sales.

8 Q Do you recognize those?

9 A Yes, sir.

10 Q Where did you get those?

11 A They were out of the camper.

12 Q The camper where the defendant lived?

13 A Yes, sir.

14 Q What are they essentially? What are they? Explain
15 to the jury what they are.

16 A If you look at them, some of this -- most of the --
17 mostly the property that was recovered. Here is the
18 Jayco, the camper; the Carry-On trailer. Here is
19 another Carry-On trailer. You have tagalongs, it's
20 got VIN plates. All of them has got Mr. Tinsley's
21 name on them. It has no other information other than
22 date. It doesn't say who the seller is. It doesn't
23 say anything other than it's got Mr. Tinsley's name
24 on it.

25 Q And whose address?

1 A It's got Mr. Tinsley's address on, [REDACTED] Welcome Road,
2 Greenville, South Carolina.

3 Q So are they fully filled out or only partially?

4 A Partially, because it's got prices on them. Like
5 this Carry-On. You've got \$2,500. This Jayco I was
6 talking about. He's got \$9,800. It's a \$30,000
7 camper.

8 Q But there's no seller's name on there?

9 A No, sir.

10 Q And are those substantially the same condition as
11 they were when you seized them out of his camper?

12 A Yes, sir.

13 Q The trailer he was living in?

14 A Yes, sir.

15 MR. WAGNER: At this time, move those in evidence.

16 THE COURT: Any objection to State's Exhibit 3
17 through 13?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Three through 13 admitted without
20 objection.

21 (WHEREUPON, State's Exhibit No. 3-13 is admitted into
22 evidence.)

23 MR. WAGNER: Thank you. Only questions I have,
24 Sergeant Smith. If you would answer any questions the
25 defendant would have.

1 THE WITNESS: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. TINSLEY:

4 Q Detective, are you being sued by me in federal court?

5 A Yes, sir.

6 Q And have I alleged that you seized my personal
7 property outside the scope of warrant?

8 A You have.

9 Q Did you seize my Land Rover, Discovery?

10 A It's been towed to the sheriff's impound lot.

11 Q You have possession of it?

12 A It's there. Yes, sir.

13 Q You have a warrant that authorized you to take that?

14 A Couldn't leave it on the property there, so we towed
15 it to the sheriff's impound lot for safekeeping.

16 Yes, sir.

17 Q Have you released it?

18 A No, sir. Nobody has asked for it to be released.

19 Q What about my clothes, papers, and personal effects,
20 things of that nature? Have you seized those items?

21 A We had to take those out of the camper because the
22 camper was stolen. They're at the sheriff's lot up
23 there, packaged.

24 Q Do you have a warrant that authorized the taking of
25 those items?

1 A The property was stolen, so we had to put it in---

2 Q My clothes and underwear?

3 THE COURT: Don't interrupt him. Let him finish his
4 answer before you ask a question.

5 A Your clothing and all that is locked up. Yes, sir.
6 We had to put it somewhere.

7 Q But none of my personal items were stolen. My Land
8 Rover Discovery, wasn't stolen, underwear, none of
9 that stuff stolen, right?

10 A Not that I'm aware of.

11 Q What was found in Mr. Justice's truck?

12 A I'm sorry?

13 Q What was found inside of Mr. Justice's truck?

14 A There was, inside of his truck, there was a mask, a
15 bag with bolt cutters, I call them burglary tools.

16 Q Assortment of them?

17 A Yes, sir. Gloves.

18 Q That's a pretty important fact in a case, isn't it?

19 A Would be. Yes, sir.

20 Q Are you aware of Mr. Justice's vehicle movements in
21 the few days prior to it being discovered?

22 A No, sir.

23 Q You don't know where it was on the 25th, 26th, 27th?

24 A No, sir, I don't.

25 Q Did you take a close look at Mr. Justice's truck's

1 bumper?

2 A No, sir, I didn't.

3 Q Did you happen to question Clyde Boles at any time?

4 A One of the four investigators had spoken to
5 Mr. Boles, yes, sir. And, yes, sir, I had talked to
6 him as well. Yes, sir.

7 Q You did, too. Did you question whether or not he had
8 a conversation with Mr. Justice and Mr. Justice
9 stated he had purchased that camper?

10 MR. WAGNER: Objection, your Honor.

11 THE COURT: Hold on. What's your legal objection?

12 MR. WAGNER: Fixing to go into Mr. Bolze's statement.

13 THE COURT: Hearsay?

14 MR. WAGNER: Yes, sir.

15 THE COURT: Not going into some statement made out of
16 court. Hearsay.

17 Ladies and gentlemen, I use the word sustain, it
18 means I agree with the attorney it's not admissible under
19 our rules of evidence. And the objection is based on
20 hearsay, which is statement made outside of court. Please
21 proceed, Mr. Tinsley.

22 BY MR. TINSLEY:

23 Q Do other jurisdictions, such as Waynesville, send you
24 a copy of their police report to kind of get you up
25 to par on what information they had on their end?

1 A They send me a copy of the report so I can check the
2 VIN numbers that they had in that particular report
3 to what I had stolen. Yes, sir. That's what they
4 sent me.

5 Q And did you read in Mr. Conner's report where it
6 mentioned that he found the hairs, the pocketknife,
7 and the boot print, all that sort of stuff?

8 A Didn't know about the hairs, knife until just a
9 couple of days ago.

10 Q You did read about the shoe prints there, you noticed
11 that?

12 A He mentioned they had shoe wear that night that I
13 talked to him, which is on the 25th of January.

14 Q I questioned Mr. Conner about the process when you
15 find something like that, taking photographs of it,
16 being able to document it, that's the normal way you
17 do business as well?

18 A Usually try to get pictures and document. Yes, sir.

19 Q You claim alleged bill of sales you found in the
20 camper, you claim they were found inside the camper;
21 is that correct?

22 A That's correct.

23 Q Can you provide us with one document, just one, says
24 those documents was found in that camper?

25 A I'm sorry? What do you mean, one document?

1 Q Well, you're introducing it into evidence. Seems
2 like it would be an important piece of evidence.

3 A It was found by one of the officers. Yes, sir. And
4 they told me.

5 Q Is it mentioned anywhere? Did somebody say, look
6 what we found? We got him? Look at this important
7 piece of evidence we've got, does it mention anywhere
8 in a piece of paper?

9 A Bear with me just a moment, please. Yes, sir. The
10 search warrant on the 30th says bill of sale with
11 James Tinsley's name on it several different times.

12 Q Several different times?

13 A That's what it says. Yes, sir.

14 Q These bill of sales here, they're not several
15 different types, they're all the same, aren't they?

16 A I call several different types you got Jayco,
17 Carry-On, I call that types. Yes, sir.

18 Q You call that several different types?

19 A That's what I call it. Yes, sir.

20 Q Can you show us a photograph where those were found?

21 A No, sir. I don't see them in these, no, sir.

22 Q You don't. I want to show you something.

23 THE COURT: You may approach the witness.

24 Q Can you identify that for us, please?

25 A It's a Brady motion. Yes, sir.

1 Q Do you -- I know you're not a lawyer. Do you know
2 what a Brady motion is?

3 A Yes, I do.

4 Q Can you explain that briefly, what that is?

5 A You ask for certain things. I usually turn that over
6 to the solicitor's office, who in turn turns it over
7 to the lawyers.

8 Q Basically the evidence the police have against a
9 person, they're entitled to see it prior to trial?

10 A That's correct.

11 Q Can you tell the date on that document?

12 A Four-three.

13 Q That's April 3rd of this year?

14 A That's correct. Yes, sir.

15 Q Okay. I'd like to show you this document. The
16 document you have there, can you tell us whether or
17 not those alleged bill of sales are listed in that
18 document?

19 A No, sir.

20 THE COURT: You may approach the witness.

21 Q I want to show you this one as well, see if you can
22 identify it.

23 A It's another motion, Brady, asking for a copy of the
24 bill of sales on 7/7. Yes, sir.

25 Q So it is another motion provided to me this month,

1 correct?

2 A Sir?

3 Q It's another Brady motion provided to me this month?

4 A Yes, sir.

5 Q What's the date on it?

6 A 7/7/08.

7 Q Seven-seven, this month. It does contain those
8 alleged bill of sales, correct?

9 A Yes, sir.

10 Q Let me see if I got this straight. You're claiming
11 you found the alleged bill of sales six or seven
12 months ago. On April 3rd I was provided with
13 discovery, those bill of sales were not in it,
14 correct?

15 A Yes, sir.

16 Q Then I filed lawsuit against you?

17 A I don't know when you filed the lawsuit. I'm sorry.

18 Q A few weeks prior to trial up pops these alleged bill
19 of sales. Is that basically it?

20 A It was turned over to the solicitor's office. Yes,
21 sir.

22 Q These documents, alleged bills of sale, not recently
23 manufactured, can you tell us where they've been all
24 this time?

25 A Yes, sir. They been at the sheriff's office locked

1 up.

2 Q Why weren't they provided to me way back when?

3 A I gave them to the solicitor's office and then they
4 in turn gave them to you.

5 Q But they only gave them to me a few days ago. Where
6 they been all this time?

7 A I'm not sure what day they give them to you. I
8 turned them over to them this month because I had --
9 when I was going through your paperwork on all this
10 other motion stuff, trying to find property and
11 stuff.

12 Q No further questions, your Honor.

13 THE COURT: Any further questions?

14 MR. TINSLEY: No.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. WAGNER:

18 Q The first thing he handed you up there the discovery
19 motion?

20 THE COURT: Ladies and gentlemen of the jury, Rule
21 five and Brady motion, there's no requirement time frame
22 where has to be produced, as long as it's produced. Okay.
23 That's the law in this state. Please proceed.

24 Q You understand what the judge said, the search
25 warrant, you mentioned these things in the search

1 warrants?

2 A Yes, sir.

3 Q Were those search warrants given to him back when
4 they first---

5 A Yes, they were.

6 Q So he had notice that those things existed back when
7 the first thing happened through the search warrant
8 part?

9 A That's correct.

10 Q Did you and I talk when we met to go over this case
11 back a month and a half ago? Did I actually have a
12 copy of the actual bills of sale there?

13 A I gave them to you.

14 Q Yeah?

15 A Yes, sir.

16 Q And then on the second one it was turned over to him?

17 A It was turned over to him, yes, sir.

18 Q Is that unusual in the amount of paperwork we dealt
19 with on average case?

20 A Not with this particular case.

21 Q Thank you. All the questions I have.

22 THE COURT: You may step down. Thank you so very
23 much.

24 MR. WAGNER: I believe one final motion pending your
25 rulings on the defendant's other motion.

1 THE COURT: Let me see the attorneys. Mr. Day and
2 Mr. Tinsley.

3 All right. Ladies and gentlemen of the jury panel,
4 what I'm going to have to do, I'm going to have to hear
5 some motions, make some decisions on some legal matters
6 where I may have to comment on the facts again. So it's
7 ten minutes until four. I don't know how long it's going
8 to take. It may take ten minutes or 30 or 45. I
9 generally try to stop as close to five as I can. This is
10 probably a good stopping point for you rather than you
11 sitting in the jury room. I don't know how long this is
12 going to take. What we're going to do is stop today. Ask
13 you to leave the notepads in the chair. Don't discuss the
14 case with your wife, girlfriend, boyfriend, anyone else.
15 I want you to make decision on what you hear in the
16 courtroom, not what they tell you. They haven't heard
17 anything. You heard it all, they haven't. See you at
18 9:30 in the morning. Have a good evening.

19 (Whereupon, the following proceedings were had
20 outside the presence of the jury:)

21 THE COURT: I have under advisement the defendant's
22 motion to suppress certain evidence. Based upon the
23 testimony I've heard, I'm going to deny that motion. Any
24 other motions pending I haven't ruled on?

25 MR. WAGNER: Yes, sir. There was the defendant's

1 motion that the ATV vehicles were not considered vehicles
2 for purposes of 16.

3 THE COURT: All right. Based on code section
4 16-11-430, I disagree with that interpretation. And that
5 motion is also denied. Anything else?

6 MR. WAGNER: I don't think so, judge. I think that
7 covers it.

8 THE COURT: All right. Mr. Tinsley, if you would
9 please stand. Raise your right hand, please, sir.

10 JAMES TINSLEY, being first duly sworn,
11 testified as follows:

12 BY THE COURT:

13 Q What I'm going to do, Mr. Tinsley, you may already
14 know this, may have gone through it before. I'm
15 obligated to go through it with you, go through your
16 Fifth Amendment rights, even though you represent
17 yourself. You do not have to testify under oath as a
18 witness if you so choose not to. It's your decision
19 and only your decision to make. Do you understand?

20 A I do.

21 Q How far did you go in school, Mr. Tinsley?

22 A Tenth grade.

23 Q How far?

24 A Tenth.

25 Q Did you ever get a GED?

- 1 A No.
- 2 Q What type of work have you done since you dropped out
3 of school?
- 4 A I been a machinist my entire life, CNC Programming.
- 5 Q A machinist?
- 6 A Yeah.
- 7 Q What companies have you worked for?
- 8 A Bearing company, Industrial Pine Products, a few
9 machine shops.
- 10 Q Are you married?
- 11 A No.
- 12 Q Have you ever been married?
- 13 A No.
- 14 Q Do you have any children?
- 15 A No.
- 16 Q Have you ever been treated for alcohol abuse?
- 17 A No.
- 18 Q Ever been treated for mental illness?
- 19 A No.
- 20 Q You ever been treated for drug abuse?
- 21 A No.
- 22 Q Have you taken any medication, drugs, and alcohol in
23 the last 24 hours?
- 24 A No.
- 25 Q You taking any prescription medication?

1 A No.

2 Q You under the influence of any alcohol, medication,
3 or drugs today?

4 A No.

5 Q You aware of any physical, emotional, or nervous
6 problem that might keep you from understanding what
7 you're doing?

8 A No.

9 Q Have you ever been examined by a doctor to determine
10 your mental competence to stand trial?

11 A I believe so.

12 Q When was this? Involving the case years ago?

13 A Yes. It's been 15, 16, 17 years ago.

14 Q What was the results of the examination?

15 A I was competent.

16 Q You haven't been examined in relationship to this
17 case?

18 A No.

19 Q Do you feel like you're competent?

20 A Yes, I do.

21 Q I presume -- did you handle your own PCR or
22 court-appointed lawyer?

23 A I handled it myself.

24 Q While you were incarcerated, what, six, seven years,
25 did you use the law library?

1 A Absolutely.

2 Q You used the law library any information in this
3 case?

4 A I had my father get stuff from the law library and
5 mail it in to me at the jail. They don't have
6 anything.

7 Q They don't have anything?

8 A Right.

9 Q I believe your PCR was granted and your conviction
10 set aside; is that correct?

11 A That's correct.

12 Q You did that all yourself?

13 A Yes.

14 Q Did you have anybody assisting you?

15 A No.

16 Q Do you understand that if you are convicted of these
17 crimes that the court can order the sentences to be
18 served consecutive or concurrently?

19 A Yes.

20 Q Do you understand what I mean when I use the words
21 consecutive and concurrent?

22 A I do.

23 Q Consecutive means you can serve one, you serve
24 concurrently, means you serve it together.

25 A I understand.

1 Q Do you understand under the Fifth Amendment no one
2 can make you testify against yourself?

3 A I understand.

4 Q This is a right and a privilege which the law extends
5 to you. Do you understand?

6 A Yes, I do.

7 Q It's a personal privilege only you can waive. You
8 have the right to testify, you have the right not to
9 testify. Do you understand?

10 A I do.

11 Q If you choose not to testify, I would instruct the
12 jury that the jury is not to use that against you in
13 any manner whatsoever. Do you understand?

14 A I understand.

15 Q I want you to understand if you do testify, then you
16 waive your Fifth Amendment rights. It's not like you
17 see on television where you are sitting on the
18 witness stand, somebody takes the Fifth Amendment to
19 one question and answers the next question. You
20 either take the Fifth Amendment and not testify or
21 you take the witness stand and testify and answer all
22 the questions. Do you understand?

23 You can't cherry pick the questions on the Fifth
24 Amendment. Do you understand?

25 A I understand.

1 Q Do you understand you'll be subject to cross
2 examination on any relevant issue admissible under
3 rules of evidence?

4 A I do.

5 Q Do you understand your decision to testify or not
6 testify must be freely, voluntarily, knowingly, and
7 intelligently made by you?

8 A I do.

9 Q Anybody forced you, intimidated you, forced you to
10 testify or not testify?

11 A No, they haven't.

12 Q All right. Mr. Day is not representing you, but he
13 has been sitting with you. So you would have someone
14 to ask questions who is an attorney. You like to
15 discuss your right to testify under the Fifth
16 Amendment right or right not to testify before I ask
17 you your decision?

18 A Yes, I would.

19 Q I will give you some time talk to him about it. What
20 I would also like to know, if you have any questions
21 you want to ask the Court, I'll be happy to try to
22 answer. Why don't you talk to Mr. Day about your
23 Fifth Amendment rights, your right to testify or not
24 to testify. Do you understand?

25 A Yeah.

1 Q How much time do you need to talk with Mr. Day?

2 THE DEFENDANT: Five minutes.

3 THE COURT: All right. We'll take about a
4 five-minute break, give you an opportunity to talk with
5 Mr. Day. Okay? Thank you very much.

6 (recess)

7 Q Mr. Tinsley, have you had an opportunity to discuss
8 the right to testify with Mr. Day?

9 A I have, your Honor.

10 Q You have any questions you want to ask the Court?

11 A Just want to clarify that if I did testify, my record
12 wouldn't come in, no prior bad act will come in? My
13 understanding that's correct?

14 Q I can't tell you no bad acts will come in. The
15 solicitor informed the Court your prior record
16 doesn't qualify under rules of evidence. Yes, I
17 would say that would not come in. Whether he has
18 other bad acts I'm not aware of would have to be
19 addressed; but as far as the bad acts in relation to
20 your crime, yes, that will not come in. Okay. If
21 that answers your question.

22 A Sort of.

23 Q How does it --

24 A I know you don't know the facts, what a prior bad act
25 I might be talking about. I'm just concerned they

1 might bring up something that's not clear and
2 convincing.

3 Q You'll have to make your objection, I'll have to rule
4 on it at the time. I don't know what they're going
5 to offer. Okay? Do you want to testify?

6 A If it's okay with the Court, I understand what my---

7 Q It's not my decision. I understand what, it's your
8 decision.

9 A I understand what's my rights are. I'd like to
10 postpone making that decision until the State rests.

11 Q Fine. I don't have any problem you making that
12 decision after the State rests at that time. I just
13 want to explain it to you now, while we had a break
14 and had the time to do it. You don't even have to
15 make your decision now. If you want to make it later
16 on, that's fine; but at some point in time I need to
17 know what your decision is going to be. If you have
18 any questions in the meantime about it, I'll be glad
19 to try to answer them.

20 A Okay.

21 THE COURT: Anything else before we break for the
22 day?

23 (Whereupon, the proceedings are adjourned for the
24 evening recess.)

25

* * *

July 31, 2008

1
2 (Whereupon, Court reconvened with all parties
3 present, when the following proceedings were had
4 outside the presence of the jury:)

5 THE COURT: Anything from the State before we bring
6 the jury?

7 MR. WAGNER: No, sir.

8 THE COURT: Anything from the defendant before we
9 bring the jury?

10 MR. TINSLEY: Yes, sir, your Honor. I would like for
11 you to maybe have a look at rule 583. Yesterday I was
12 arguing --

13 THE COURT: Look at what now?

14 MR. TINSLEY: Five-eighty-three.

15 THE COURT: Rules of Court, Rules of Evidence, or
16 what?

17 MR. TINSLEY: Criminal Rules of Evidence. And I was
18 trying to argue that I wasn't provided that timely.

19 THE COURT: Give me a chance to find the rule, then
20 I'll listen to you. Time for disclosure?

21 MR. TINSLEY: Yes, Your Honor.

22 THE COURT: All right. Glad to hear you.

23 MR. TINSLEY: Yesterday I was trying to argue these
24 alleged documents were not provided to me timely.
25 Mr. Smith testified that they had those documents from day

1 one. And when we requested discovery, they allegedly had
2 them at that time and didn't provide them to me within 30
3 days. I would ask the Court maybe, if you agree with my
4 interpretation of it, maybe reinstructing the jury on
5 that.

6 THE COURT: Okay. I'll be happy to do that.

7 MR. TINSLEY: One other thing. I'd like you to maybe
8 ask the jury if they've read or heard anything about the
9 trial.

10 THE COURT: Anything else?

11 MR. TINSLEY: That's it, Your Honor.

12 THE COURT: Has there been anything in the paper
13 about the trial?

14 MR. WAGNER: I haven't read the paper, Judge. I
15 don't know.

16 THE COURT: Anybody, Mr. Day, you read the paper?

17 MR. DAY: Yes, sir. There was a story about it,
18 yesterday, in the Seneca paper.

19 THE COURT: How about today?

20 MR. DAY: I haven't seen today's yet.

21 THE COURT: All right. Anything else before we bring
22 the jury?

23 MR. WAGNER: No, sir.

24 THE COURT: All right. Bring us the jury.

25 (Whereupon, the following proceedings were had within

1 the presence of the jury:)

2 THE COURT: Mr. Foreman, ladies and gentlemen of the
3 jury, yesterday I was in error when I told you there was
4 no time limit on the State to produce its stuff. Under
5 rule 583, the prosecution shall respond to defendant's
6 request for disclosure no later than 30 days, after
7 request is made or within such other time as may be
8 ordered by the Court. Yesterday when I told you there was
9 no time limit, I was in error.

10 Call your next witness.

11 MR. WAGNER: Call Scott Arnold.

12 THE COURT: One other thing I want to ask you, has
13 anybody read anything in the paper, heard anything in the
14 paper, read any articles about this case? Anybody read
15 anything at all? If you have, raise your right hand.

16 (No response elicited.)

17 Let the record reflect no one has raised their right
18 hand.

19 Call your next witness.

20 SCOTT ARNOLD, being first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WAGNER:

24 Q Would you give us your name, spell your last name for
25 the record? Tell us what you do.

1 A Scott Arnold, A-R-N-O-L-D. I'm a property crime
2 investigator for Oconee County Sheriff's Office.

3 Q How long you been working for the sheriff's office?

4 A Approximately 11 years.

5 Q As part of your property crime investigation, you
6 investigate crimes such as these?

7 A Yes, I do.

8 Q Were you involved in the service of a search warrant
9 on the stolen trailer the defendant was living in
10 back on about the 29th of January this year?

11 A Yes, I was.

12 Q As a result of that, did you take some pictures?

13 A Yes, I did.

14 Q Let me show you what's been marked State's Exhibit
15 1AB. Do you recognize that?

16 A Yes, I do.

17 Q What is that a picture of?

18 A This is a picture of inside the camper that was at
19 the property at the gold camp.

20 Q And did you find anything that was in one of those
21 cabinets in that picture?

22 A Yes, I did. Upon searching inside this camper, I
23 located several bill of sales in this top part here
24 above this kitchen table. Located several bill of
25 sales in this cabinet area.

1 Q Let me show you what's been marked State's Exhibit 3
2 through 13. Do you recognize those?

3 A Yes, I do.

4 Q What are those?

5 A These are the bill of sales that were in the cabinet
6 area in that camper.

7 Q Are they in the same condition they were in when you
8 got them?

9 A Yes.

10 MR. WAGNER: Your Honor, I think I put them in
11 evidence yesterday. In case I didn't --

12 THE COURT: Already in evidence? 3 through 13
13 admitted into evidence without objection.

14 (WHEREUPON, State's Exhibit Nos. 3-13 are admitted
15 into evidence.)

16 BY MR. WAGNER:

17 Q All the property, to your knowledge, all the four
18 wheelers, the trailers, everything that was stolen
19 and recovered and the defendant was charged with, was
20 that all recovered, his possession in Oconee County?

21 A Yes, it was.

22 MR. WAGNER: Thank you. That's the only questions I
23 have.

24 THE COURT: Any cross-examination?

25 MR. TINSLEY: No, Your Honor.

1 THE COURT: All right. Sergeant Arnold, you may step
2 down.

3 MR. WAGNER: Your Honor, also I'd like to move just
4 that one picture. Also like to move in that one picture?

5 THE COURT: Any objection to that one picture?

6 MR. TINSLEY: No, Your Honor.

7 THE COURT: Mr. Tinsley?

8 MR. TINSLEY: No, Your Honor.

9 THE COURT: All right. 1AB admitted without
10 objection.

11 (WHEREUPON, state's Exhibit No. 1AB is marked for
12 identification and received in evidence.)

13 Call your next witness.

14 MR. WAGNER: Call Hugh Justice.

15 HOGAN HUGH JUSTICE, being first duly
16 sworn, testified as follows:

17 BY MR. WAGNER:

18 Q Mr. Justice, can you give us your full name and spell
19 your last name for the record.

20 A Hogan Hugh Justice, III, J-U-S-T-I-C-E.

21 Q Mr. Justice, where are you from originally?

22 A Marion, North Carolina.

23 Q Where have you been living in the last few years?

24 A Marion. And I have a home in Greer, South Carolina,
25 also.

1 Q What kind of business do you do?

2 A Wastewater management, septic installation.

3 Q Did you get involved with the defendant, James
4 Tinsley, back around the end of December, first of
5 January this year, last year, end of this year?

6 A Yes, sir, I did.

7 Q Do you remember about when that was?

8 A Approximately the 10th of December, somewhere around
9 there.

10 Q How did that come about?

11 A Well, there was a gold mine up in Marion, North
12 Carolina, in Vein Mountain. Mr. Tinsley is a member
13 of it, came up there, gave me a call. I met him out
14 there. We've known each other for years.

15 Q You a gold miner yourself?

16 A No, sir, I'm not.

17 Q You ever been involved in gold mining and stuff?

18 THE COURT: Let me interrupt you just a second.

19 Mr. Foreman, all those exhibits will be in the jury
20 room with you. You'll see them in the jury room. Listen
21 to the testimony, you can't be looking at exhibits and
22 listening to testimony at the same time. You'll have
23 everything that's been admitted in evidence in the jury
24 room.

25

1 BY MR. WAGNER:

2 THE WITNESS: No, I haven't.

3 THE COURT: That was in response to the question.

4 Please proceed.

5 Q Have you known the defendant for a while?

6 A Yes, sir.

7 Q Would you say you all were friends?

8 A Yes, sir.

9 Q How did he come about calling you at your business
10 back around December 10 of last year?

11 A He has my mobile phone and called me, called me at my
12 residence.

13 Q What did you all discuss?

14 A Just that he was going to come up and, you know, what
15 was I doing. He was going to be at the gold mine
16 there in Vein Mountain. He called me when he got in
17 town. I met him at the McDonald's in Marion and we
18 went out there where he was out there with a
19 gentleman, some gentleman named Clyde, some expert
20 about geology -- knew something about soil concerning
21 gold.

22 Q You say the defendant, Mr. Tinsley, was a gold miner,
23 but you're not?

24 A I'm not a member. No, sir.

25 Q What did you decide to do? What happened?

1 A Jimmy had lost his home in a bankruptcy and was
2 virtually -- he didn't have a place to stay. He was
3 living in his van and he needed a place to stay and
4 he kind of pressed me to go with him to get a mobile
5 home that he could stay in. He had a place picked
6 out he could stay at a gold mine here in Oconee
7 County. The same organization has one here, also.

8 Q Okay. And so what did you do next? What happened
9 after that?

10 A Well, sometime after that we went and we found a
11 camper in Duncan, South Carolina, and stole the
12 camper and brought it to the LDMA Gold Mine in Oconee
13 County that same evening, same night.

14 Q Prior to that, prior to taking the camper there, did
15 you know this Terry Tobin guy that testified? You
16 weren't here.

17 A No.

18 Q Did you all move into this camper together?

19 A No, I was there on occasion. Sometimes I stayed
20 overnight, sporadically.

21 Q Okay. What else did you all do?

22 A After we -- after we got the camper, we took other
23 things, too. During that period of time between the
24 10th and the end of January. We took some trailers
25 from Lavonia, Georgia. We took some ATV's from

1 Waynesville, North Carolina, took an ATV and a -- and
2 some trailers and some tools from a park off of, I
3 think if my memory serves me correctly, 181, going up
4 towards 64 into North Carolina, like going up towards
5 Bad Creek, up through there.

6 Q What would you do with the stuff?

7 A It was all brought back to the gold mine area
8 initially, and then eventually during that same
9 period of time there was a mini warehouse leased,
10 some of it was taken there, and some was taken to the
11 gold mine.

12 Q Was that the warehouse belonging to the Couches?

13 A I came to learn that's their name. Yes, sir.

14 Q What kind of stuff did you all take to the Couches'
15 place there?

16 A Mostly it was ATV's and trailers and stuff. Some
17 flatbed trailers, I think, there was some hard-sided
18 ones, hold-down backs, one barn-door trailer, some
19 ATV's -- numerous, I think in excess of ten of them.

20 Q Okay. They essentially new in the wrapper so to
21 speak? Still have stickers on?

22 A Some were used, the majority of them were new.

23 Q Those ones came from North Carolina?

24 A Yes. I think there was one or maybe two of them that
25 were not used come from there.

1 Q All this stuff that you all had was stolen?

2 A Yes.

3 Q And the defendant, obviously, was well aware it was
4 stolen; is that correct?

5 A Yes, sir, it is.

6 Q Whose idea was it to deal in the stolen property?

7 A It was really a mutual idea. I'd say both of us were
8 involved in it as equally as the other one was.

9 Q Whose idea was it to sell the stuff on eBay?

10 A Well, that's kind of -- people kind of know that's a
11 way to sell stuff, eBay. It's an avenue to market --
12 I don't know which one of the two of us came up with
13 the idea. Just, you know, Jimmy has more experience.
14 I've never sold anything on eBay, just aware of it.
15 Jimmy has sold in the past on it, so he kind of took
16 the lead there.

17 Q Is Jimmy the one that actually rented the storage
18 units where you all were keeping some of the stuff?

19 A Yes. And I was with him when he leased it.

20 Q How would you all doctor the VIN numbers on these
21 trailers? How did that happen?

22 A We just would remove the identifying numbers from the
23 equipment, and then we would replace it with a
24 laminated number that was generated on Excel, the
25 program Excel.

1 Q A computer-generated thing?

2 A Right.

3 Q Did you just make up a number that looked real?

4 A Yeah, basically.

5 Q How did you put, generate a number on the camper that
6 he was living in?

7 A We would just basically take one already on it and
8 kind of emulate that, duplicate one that looks close
9 to it using Excel and all the graphs and everything
10 so it looked like the other ones.

11 Q Were you able to sell a good bit of the property that
12 was stolen?

13 A Yes, sir.

14 Q How much money generally -- did it not cross you-all's
15 minds, might not be a good idea to sell 11, \$12,000
16 on eBay?

17 A Auction situation, so highest bidder. My
18 understanding Jimmy pulled most of the stuff before
19 it went to final auction, short sold it even before
20 it finalized in the sale.

21 Q What does short sell it mean?

22 A Sell short, before it goes to final bid. You can
23 just pull it and say it's sold.

24 Q Like a "buy-it-now" kind of thing?

25 A Yeah. I think that's the term they use on eBay.

1 There's a buy-it-now price; but I don't know -- I
2 don't know whether or not those were ever -- there
3 was ever a buy-it-now price or anything. I just know
4 bidding was continuing after he made a deal with that
5 one gentleman in North Carolina Todd or Tim,
6 something like that.

7 Q Okay. Now, around this time did you have a lot of
8 money yourself?

9 A I don't know if you'd say a lot of money. I have
10 enough money to function and pay my bills and live.

11 Q Were you still digging septic lines, putting in
12 systems?

13 A Yes, sir.

14 Q Was that the backhoe you had at the campsite you all
15 were using?

16 A Yes, sir.

17 Q How did that backhoe come about being there?

18 A I took the backhoe several years ago in Maggie Valley
19 from a nursery there.

20 Q Had you been using it in your business?

21 A Yes, sir.

22 Q Was the defendant -- was he aware where you had
23 gotten it? You all discuss that?

24 A No, I never told him where I got it. As a matter of
25 fact, he asked me -- I told him it was legitimately

1 owned. He had no firsthand knowledge of that. I
2 didn't feel like it was necessary to make him privy
3 to that.

4 Q Was the VIN scratched off that?

5 A I think the plate was removed.

6 Q Being that you were in the business of removing VIN
7 numbers and stuff like that put him on notice that
8 you weren't on the up and up? You told him?

9 A I don't know. That would be conjecture on that. I
10 don't know what Jimmy would presume on that.

11 Q Had Jimmy brought back home to you, you noted the VIN
12 plate was gone, would you know something was up with
13 it?

14 A I probably would.

15 Q So it's reasonable he would have picked up on that
16 also, would you agree?

17 A Jimmy doesn't have the experience with backhoes I do.
18 I don't know he'd even know where to find them at.

19 Q Now, when you got arrested by the police department,
20 Detective Smith, did you cooperate with them
21 initially as far as helping them try to recover,
22 where some of the other four wheelers, you didn't
23 have anymore?

24 A Yes, I did.

25 Q To your knowledge were some of those actually

1 recovered?

2 A Yes, I was told there was some recovered. Yes, sir.

3 Q And that was due to your help?

4 A Yes, sir.

5 Q Okay. Did you initially give -- I'm sure you'll hear
6 about this from the defendant in a minute. You
7 initially give them a fairly lengthy statement, quite
8 different from what you just told us here?

9 A Yes, sir.

10 Q What exactly did you tell them at first? Why did you
11 tell them -- and why are you telling what you're
12 saying is the truth to us now?

13 A Well, when we were initially arrested, I didn't know,
14 you know, you have hope that you know you won't get
15 in trouble and, you know, this is very serious stuff.
16 It, you know, potential for being in prison a very
17 long time; and I just, you know, when you're under
18 that kind of pressure, keep -- you'll do anything to
19 keep the heat off you. Basically what I did, I told
20 them, I told them -- I tried to cooperate completely
21 without incriminating myself in the situation.

22 Q Do you remember approximately, I'm not asking if you
23 remember exactly, what you told -- what did you tell
24 them the first go-around?

25 A Basically I was engaged by Mr. Tinsley to market the

1 product; that I knew a lot about marketing. To
2 assist him; that he was in the sporting-good type
3 business, and that he needed somebody to assist him
4 in marketing the stuff, something basic. Generally
5 that was it.

6 Q Okay. But you just never admitted any guilt or
7 knowledge, knowing the stuff was stolen or that you
8 stole it?

9 A That's correct. That was six months ago, too. I
10 might add.

11 Q You been incarcerated constantly since that time?

12 A Yes, sir.

13 Q Who was your attorney in this case?

14 A Mr. Gruber Sires.

15 Q Okay. Have you ever spoken to me before last night?

16 A No, sir.

17 Q Okay. Is what you're telling us here today, is that
18 the truth, the whole truth?

19 A It is, sir.

20 Q All right. Do you have anything else you want to
21 tell us?

22 A No, sir.

23 Q Are you sorry for what you did?

24 A Yes, I am.

25 Q What did you do with the money from all the stuff you

1 were able to sell on eBay? Did you have any other
2 ways to sell stuff?

3 A We sold stuff through Iwanna, the Iwanna paper. And
4 also we looked at some local flea markets and sold
5 stuff, Pickens County, Greenville.

6 Q And what happened to the money? Did you get a share
7 of it?

8 A Yes, sir, I did.

9 Q Did you get an equal share?

10 A Yeah, basically. We would take whatever expenses
11 were involved and take that out of it and then
12 basically split what was left.

13 Q Were either one of you all on drugs at the time?

14 A No, sir. I don't do drugs. And to my knowledge
15 neither does Mr. Tinsley.

16 Q Then why, why were you all in the business of dealing
17 in this stolen property?

18 A Well, Jimmy called me and called me and called me and
19 called me, called me, called me, and called me, you
20 know. He is my friend and he was living up there in
21 that gold mine in Marion, in a van, you know; and
22 having to heat his van with a gas stove. I guess I
23 just got tied up in it. Once you're in it, one thing
24 turns to another, to another, until it's kind of like
25 a snowball effect. I don't know. There's not a good

1 rational reason. Not -- I can't rationalize it.
2 Just like you can't rationalize murder, you just
3 can't rationalize it, you know.

4 MR. WAGNER: That's the only thing I have. Answer
5 anything Mr. Tinsley may have.

6 CROSS-EXAMINATION

7 BY MR. TINSLEY:

8 Q Mr. Justice, did you enter a guilty plea on Monday?

9 A Yes, sir, I did.

10 Q That was a negotiated plea?

11 A Yes, it was.

12 Q And as part of that plea, you were required to come
13 here and implicate me in this crime?

14 A I was required to tell the truth, asked me to, yes.

15 Q To testify exactly the way you testified in front of
16 the judge on Monday?

17 A That's correct.

18 Q And that negotiated plea is for you to receive
19 probation, right?

20 A That's right.

21 Q And since you --

22 THE COURT: Let me correct something. Okay. That
23 was not a negotiated plea. That was a recommendation by
24 the State.

25 THE WITNESS: That's right. I apologize, your Honor.

1 THE COURT: That was a recommendation by the State.
2 The Court can accept it or reject that recommendation.
3 This gentleman has not been sentenced. The Court
4 postponed sentencing. It was a recommendation, not a
5 negotiated plea. I want the jury to understand that.
6 There's a difference legally between a negotiated plea and
7 recommendation. A recommendation is what the State makes
8 to the Court. The Court can accept or reject it. A
9 negotiated plea is a contract between the parties when the
10 Court's involved in the negotiations and agrees to that
11 negotiated plea prior to the plea. This was a
12 recommendation. This gentleman has not been sentenced. I
13 postponed sentencing, the Court did. So I want to clarify
14 that, Mr. Tinsley. So don't mislead the jury.

15 MR. TINSLEY: Sorry, your Honor. I was reading in
16 the transcript, and in there they referenced it as a
17 negotiated plea.

18 THE COURT: Look at the sentence sheet and look at
19 the transcript, it's very clearly a recommendation.

20 MR. TINSLEY: I understand, your Honor.

21 A I apologize, I've not been sentenced.

22 Q All right. I'd like to show you something, Mr.

23 Justice. Mr. Justice, can you identify these, tell
24 me whether or not you wrote those?

25 A Yes. That looks like my handwriting.

1 Q And who did you write those to?

2 A To your father, I believe.

3 MR. TINSLEY: Your Honor, I'd like to have these
4 marked and taken into evidence, please.

5 THE COURT: Do you have any objection?

6 MR. WAGNER: If it's just the envelopes, as far as
7 his saying he wrote the envelopes. I haven't seen any
8 letters.

9 THE COURT: I don't know what it is. I haven't seen
10 it.

11 MR. WAGNER: It's envelopes.

12 THE COURT: How about hand it -- let me see what
13 you're talking about. You're offering for the envelopes
14 themselves to be admitted or all the letters inside?

15 MR. TINSLEY: Right. He can identify them, too, if
16 he wants.

17 THE COURT: Have you read them?

18 MR. WAGNER: I have not read them. I have no idea
19 what they say.

20 THE COURT: Give them to the State, let him read
21 them, see if they have any objection to them. If you're
22 offering the envelopes and the letters.

23 MR. TINSLEY: Mr. Justice, you can look at the
24 letters, too, inside, and make sure that those are your
25 letters.

1 THE COURT: Do you have any objection to the letters?
2 Let me see if he can identify them first.

3 THE WITNESS: Do you want me to read the letter
4 entirely?

5 THE COURT: I want you to read them to yourself.
6 He's asking you if you can identify them.

7 THE WITNESS: This looks like my writing. I'm sure I
8 wrote this, your Honor.

9 THE COURT: Which one? Give it to the court
10 reporter.

11 (WHEREUPON, Defendant's Exhibit No. 1 is marked for
12 identification.)

13 (WHEREUPON, Defendant's Exhibit No. 2 is marked for
14 identification.)

15 THE COURT: And also wrote this letter. Just three
16 letters?

17 MR. TINSLEY: Yes.

18 (WHEREUPON, Defendant's Exhibit No. 3 is marked for
19 identification.)

20 THE COURT: All right. If you'll hand them back to
21 the defendant.

22 MR. TINSLEY: He doesn't need them right now.

23 Q You gave a statement to the police upon your arrest,
24 didn't you?

25 A Yes.

- 1 Q That statement, you denied under oath you had any
2 involvement whatsoever?
- 3 A I think afterwards it was sworn to. Yes.
- 4 Q Yet, today you're testifying for the State and
5 claiming that you were the thief and that I was a
6 co-thief as well, right?
- 7 A That's correct.
- 8 Q Did I ever get inside your backhoe or look closely at
9 it?
- 10 A Not that I know of.
- 11 Q In fact, never even touched it?
- 12 A Not that I know of.
- 13 Q In fact probably the closest I got to it was maybe
14 ten feet?
- 15 A I would say that would be correct.
- 16 Q I would have no way of knowing whether it was stolen
17 unless you told me?
- 18 A I think that's a fair supposition.
- 19 Q And you did not tell me?
- 20 A I told you it was not.
- 21 Q Did you tell Clyde Boles and Terry Tobin at the gold
22 mine that you had a backhoe business and you would
23 bring it down to the gold mine?
- 24 A Yes, I did.
- 25 Q Did you tell both of them you bought this camper,

1 paid \$30,000?

2 A Yes, I did.

3 Q And did you tell Clyde Boles and Mr. and Mrs. Couch
4 at the storage facility that you bought these ATV's
5 at a government auction?

6 A I told them that we acquired this stuff, that we
7 acquired at auction. I didn't go into any
8 specificity as to which one.

9 Q Did you also tell them I was going to sell them for
10 you on eBay?

11 A I think I referred to that was a marketing tool we
12 used, yes.

13 Q These trailers from Lavonia -- let me see if I
14 understand. Are you saying they were brought into
15 the state in Anderson County and then brought up here
16 to Oconee County?

17 A They were brought from Lavonia up 85 into Oconee
18 County, whatever way that would have been, up through
19 85.

20 Q The camper was received in Spartanburg and brought
21 down Highway 11 into Oconee County?

22 A Right.

23 Q And the backhoe brought from North Carolina into this
24 state near 26 -- 25, in Greenville County, and
25 brought up Highway 11?

1 A It was brought down, up through Bat Cave out of Lake
2 Lure, then come through Hendersonville, down Highway
3 25, down Highway 11, and then from 11 to here.

4 Q And the ATV's, they were brought down 25, 26, and
5 into Greenville County, and up Highway 11 into Oconee
6 County?

7 A Yes.

8 Q All these charges you pled guilty to in this county,
9 you were facing 50 years on these charges, right?

10 A That was my calculation.

11 Q And you're also facing charges in North Carolina,
12 Georgia, and Spartanburg, and other jurisdictions?

13 A North Carolina, Spartanburg and Georgia. Correct.

14 Q And on these other charges from these other states
15 you're facing an additional 100 years or so, right?

16 A I don't know the exact amount.

17 Q It's a lot of time?

18 A Yes, sir.

19 Q The evidence was stacked heavily against you, wasn't
20 it?

21 A I looked at the evidence, seemed the gravamen of the
22 evidence was against me. Yes.

23 Q The -- your bootprints were found at the crime scene?

24 A That's my understanding.

25 Q Your truck had all these burglary tools in it?

1 A That's my understanding.

2 Q You aware I was suing the detectives in federal court
3 for violating my rights?

4 A That's my understanding.

5 Q You also know I filed summary judgment against them,
6 correct?

7 A Yes.

8 Q You know I'm beating the brakes off them in federal
9 Court, don't you?

10 MR. WAGNER: Objection, your Honor.

11 THE COURT: I'll sustain the objection. Disregard
12 that last statement.

13 Q Because of the lawsuit, the police want me bad, don't
14 they?

15 A That would be supposition.

16 Q Have you not talked to them? Have they not said
17 anything to you about it?

18 A No, they haven't.

19 MR. WAGNER: Your Honor, objection again.

20 THE COURT: I'll sustain the objection. Ladies and
21 gentlemen of the jury. This lawsuit in federal court
22 doesn't have anything to do with this particular case
23 except the possibility of bias on the part of the police
24 officers. That's the only relevancy involved, whether
25 he's going to win or lose is irrelevant. Go ahead.

1 MR. WAGNER: I'm going to object to this at this
2 point in time.

3 THE COURT: Can I see it?

4 MR. WAGNER: Yes, sir.

5 MR. TINSLEY: Your Honor, the reason I'm offering
6 it --

7 THE COURT: Just be quiet for a minute. I don't want
8 to know why you're offering it. I want to look at it
9 first. Okay?

10 Who -- is this your writing?

11 MR. TINSLEY: It's Mr. Justice's, your Honor.

12 THE COURT: Let's get it identified first. I have no
13 idea whose writing it is. I have no earthly idea. See if
14 it is his writing and let me take a look at it.

15 BY MR. TINSLEY:

16 Q Mr. Justice, did you write this letter?

17 A Yes.

18 THE COURT: Let me see it, please, sir. What's your
19 legal objection to the letters, Solicitor?

20 MR. WAGNER: Relevance number one, your Honor.
21 Number two, it was never provided or anything with
22 discovery. If he's going to try to put it in, should have
23 given it to us in advance.

24 MR. TINSLEY: Your Honor, he --

25 THE COURT: Hold on a second, just let me read it,

1 then I'll be better able to respond, address the issues.

2 Okay? I've got to read it first.

3 Ladies and gentlemen of the jury, I'm going to have
4 to possibly comment on some facts before I make a decision
5 whether this is admissible or not. Let me explain to you,
6 we have rules of evidence to go by. These rules of
7 evidence were brought over from England, they have evolved
8 over time, and they're designed to bring you the most
9 trustworthy testimony can possibly bring into the
10 courtroom. There's certain exceptions, as well as hearsay
11 and other exceptions. As I told you yesterday, I'm not
12 permitted to comment on the facts during the trial. In
13 this particular trial, read this information, I'll
14 probably have to be commenting on the facts. I'd ask you
15 to go to the jury room. I'll get you back as soon as I
16 make a decision. Don't discuss the case among yourselves.
17 Leave your pads in your chairs.

18 (Whereupon, the following proceedings were had
19 outside the presence of the jury:)

20 (WHEREUPON, Defendant's Exhibit No. 4 is marked for
21 identification only.)

22 Solicitor referring to number four for identification
23 only, the Court having read it. Primarily, it's just a
24 letter from the witness, Mr. Justice, to the defendant,
25 Mr. Tinsley, about what all his legal analysis, what he

1 should do at trial, how to conduct the trial.

2 What's your objection?

3 MR. WAGNER: Your Honor --

4 THE COURT: It doesn't really -- there's no factual
5 information, it's just telling him what to do and how to
6 conduct a trial.

7 MR. WAGNER: Still, I object on relevancy, but I
8 understand. So I'll withdraw my objection if it will
9 speed things up.

10 THE COURT: I'm not trying to speed things up. If
11 you have an objection, fine. I want to hear it. I just
12 want you to put on record what the objection is.

13 MR. WAGNER: Objection is relevancy. And, plus, he
14 didn't provide it in discovery.

15 THE COURT: Why do you think it's relevant to this
16 case today?

17 MR. TINSLEY: The reason it wasn't provided, I didn't
18 know Mr. Justice was going to tell a lie until just now.
19 I needed to impeach him.

20 THE COURT: There's no factual basis, it's just
21 telling you how to do a trial, how you should present a
22 defense is all it is.

23 MR. TINSLEY: I asked him if he knew whether or not
24 the police were out to get me. He said, "No." In that
25 letter he says that he does.

1 THE COURT: I don't think that was the question on
2 whether the police were out to get you. I think the
3 question was -- I'd have to get it read back, I'm not sure
4 that was the question. That's the only basis of the
5 relevancy, is you think the -- where he says surprised
6 they want your ass bad. I wonder why something,
7 something, something.

8 THE WITNESS: That's a general observation your
9 Honor.

10 THE COURT: That's the only reason you think it
11 relevant, Mr. Tinsley?

12 MR. TINSLEY: At this time, but I think going to tell
13 other lies as well.

14 THE COURT: I'm going to sustain the objection. I
15 see no relevancy to this piece of evidence at all coming
16 into evidence. It's just him telling you how the two of
17 you all should protect yourself and try the case and what
18 you should do against the police officers. That's all it
19 is. Doesn't have anything to do with this case.

20 All right. You ready to proceed? Ready to proceed?

21 MR. TINSLEY: Yes, your Honor.

22 THE COURT: Anything else you going to show while the
23 jury is out that we can deal with?

24 MR. TINSLEY: I don't know. I guess it depends on
25 how he testifies.

1 THE COURT: What else do you have that you haven't
2 shown to the State you plan on using?

3 MR. TINSLEY: Nothing, really, unless I need it to
4 impeach him.

5 THE COURT: Well, give it to the State right now so
6 they can look at it so we don't have to sit and wait on
7 him to read it.

8 MR. TINSLEY: The only thing I can think of, your
9 Honor, would be that letter.

10 THE COURT: What about these other letters?

11 MR. WAGNER: They were introduced only if he denied
12 that was his handwriting to use as comparison.

13 THE COURT: So you're not going to be introducing
14 those letters?

15 MR. TINSLEY: These three letters?

16 THE COURT: Right.

17 MR. TINSLEY: Not since he's admitted, no.

18 THE COURT: All right. Do you have anything else
19 that you're going to be offering into evidence we can deal
20 with while the jury is out? That's the only thing I'm
21 trying to do, so I don't have to send them back out.

22 MR. TINSLEY: As far as I know, no. I'm expecting
23 him to possibly tell other lies about things in there. I
24 may question him about that.

25 THE COURT: If you're planning on that, I'm going to

1 take a short recess and I'm going to let Mr. Day sort of
2 talk with you about how you do an impeachment. Because
3 I'm not sure you know how to do an impeachment. Mr. Day,
4 we're going to take a recess and you explain to him how
5 impeachment is supposed to be done.

6 MR. DAY: Yes, sir.

7 THE COURT: We'll take a 10- or 15-minute recess,
8 tell the jury to take their break at this time.

9 (Recess.)

10 All right. Anything from the State before we bring
11 the jury?

12 MR. WAGNER: No, Your Honor.

13 THE COURT: Anything from the defendant?

14 MR. TINSLEY: Nothing.

15 THE COURT: Bring us the jury. Cross-examination?

16 CROSS-EXAMINATION

17 BY MR. TINSLEY:

18 Q All right, Mr. Justice, does the State want me bad?

19 THE COURT: Pardon?

20 Q Talking to Mr. Justice.

21 MR. WAGNER: Objection to that question, your Honor.

22 THE COURT: Overruled. Go ahead, answer the
23 question.

24 THE WITNESS: Do you want me to answer?

25 THE COURT: Yes, sir.

1 A I think they're mad about you filing a lawsuit
2 against them. I believe they're mad at you, very
3 mad. Yes.

4 Q Based on the advice of your attorney and your
5 understanding, is it your understanding you're
6 supposed to get probation for this testimony?

7 A I don't think it's a quid pro quo, if that's what you
8 mean. I'm not sentenced. I don't think -- it's not
9 a foregone conclusion. I was just told to be honest
10 and that would be taken into consideration.

11 Q All right. So basically you're saying the statements
12 you gave originally, when you first were arrested,
13 are a lie, right?

14 A That's six months ago. I'm sure there's some truth
15 in there; but I did not accept responsibility in
16 those statements.

17 Q And those statements were sworn to, right?

18 A That's right.

19 Q So basically you're admitting that you lied?

20 A Right.

21 Q And today you're lying to try to save your own skin,
22 aren't you?

23 A No, I'm not.

24 Q Did you ever say if you took the stand against me,
25 the truth would send me home, free?

1 A Yes. I made that statement.

2 Q And that the transcript would be used against you in
3 North Carolina, and Georgia, stupid?

4 A Yeah, basically. Yes.

5 Q And, "Let me win this and use this and your Fourth
6 Amendment stuff to wipe your ass on. Did you write
7 that to me in this letter?"

8 A Yes. Off those arguments you made about the Fourth
9 Amendment were all wrong.

10 Q So if you were to testify against me and the truth is
11 supposed to send me home free, I don't see what part
12 of your testimony today is supposed to send me home
13 free.

14 A Do you want me to explain that?

15 Q It's a question. I don't understand it.

16 A Well, it's my understanding they charged you with
17 receiving goods. It's my understanding South
18 Carolina law, a person who commits larceny may not be
19 found guilty of receiving. That's the reason I made
20 that statement. When I get up here and testify you
21 committed larceny, which is the truth, it exculpates
22 you for receiving. That was my argument. I made
23 that pretty clear, I think.

24 Q So this is the great plan and scam that you have?

25 A It's not a scam it's the law.

1 Q Well, you tricked the State into letting you plead
2 guilty to larceny, didn't you?

3 A The State was aware of everything. Everything was on
4 the table. There was no scam or anything.

5 Q You're also charged in North Carolina and Georgia due
6 to these same thefts?

7 A I don't know of any charges in North Carolina. I do
8 know there are warrants pending in Lavonia, in
9 Franklin County. I know that firsthand. The last
10 information I had, there are no warrants in North
11 Carolina. There's pending warrants in Hendersonville
12 unassociated with this.

13 Q And it's due to theft charges?

14 A That's my understanding. I understand that there
15 were, there was a charge of stealing and they were
16 dismissed at preliminary and they've gone back and
17 gotten it true billed.

18 Q That's not what I'm referring to. I'm referring to
19 the trailers and the ATV's, those states are charging
20 you with the theft of those?

21 A I have no idea. I don't know. They may be, I don't
22 know. I don't know that for firsthand knowledge. I
23 don't know of a detainer. If there is one, I don't
24 know about it. There may be, I don't know.

25 Q So by getting the State to let you plead guilty to

1 larceny, you're getting a slap on the wrist. If you
2 get probation in this county for these charges and if
3 there's other charges for the theft of this same
4 exact property in other states, they're barred by
5 double jeopardy, aren't they?

6 A Potentially, yes.

7 Q So by getting up here and implicating me, you're
8 beating 150 years in prison?

9 A No. There's still burglary charges that are
10 potential.

11 Q Not if they're dropped as part of your deal?

12 A We talking about North Carolina?

13 Q A minute ago you said you didn't have a charge in
14 North Carolina.

15 A Well, you were speaking in the hypothetical. If I
16 did, they would be dismissed pursuant to double
17 jeopardy. If you're speaking in the hypothetical, I
18 could theoretically be charged with burglary up
19 there, not larceny but burglary. I could be charged
20 with larceny and there may be a double jeopardy bar
21 to that. I mean it's conjecture.

22 Q Did you lie to this judge when you testified at your
23 guilty plea?

24 A No, sir.

25 Q Did the judge ask you several times about your

1 record?

2 A Yes, the judge did.

3 Q And did you tell him, "Oh, it's no big deal, one or
4 two check things from my business back in 1992." Is
5 that what you told him?

6 A No.

7 Q That's not what you told him?

8 A No. I was almost -- some stuff way back, 15 some
9 years ago. And there was some stuff left over from
10 the business when I shut it down here, and basically
11 that was the gravamen of it. I will stipulate to
12 whatever the record is. I honestly, quite frankly,
13 don't care to remember any of my past stuff. You
14 know, I've honestly had a concerted effort to forget
15 it.

16 Q Would you agree it's 19 pages long?

17 A I don't know. I've never seen it.

18 Q Did the solicitor's office provide you with a copy of
19 your record during discovery?

20 A Yeah, through my attorney, I suppose. I haven't seen
21 it. I've seen yours, but I haven't seen mine.

22 Q You lied to the judge about the backhoe, too, didn't
23 you? Originally at the guilty plea you told the
24 judge I helped you steal the backhoe?

25 A No, I don't recall saying that.

1 Q You didn't say that?

2 A No, I don't recall saying anything about the backhoe.

3 Q But you did?

4 A I may have said something about the backhoe. I
5 adamantly stated from the very onset of this that you
6 had nothing to do with the backhoe, had no knowledge
7 of the backhoe.

8 Q And that's what you signed a few hours after your
9 guilty plea, you signed statements to that effect,
10 that I didn't have anything to do with it?

11 A Right.

12 MR. TINSLEY: I have no further questions, your
13 Honor.

14 THE COURT: Thank you, sir. Cross-examination?

15 REDIRECT EXAMINATION

16 BY MR. WAGNER:

17 Q You mentioned a number of times in your testimony we
18 did this or we did that. When you say we, when
19 you're referring to we, you referring to yourself and
20 Mr. Tinsley?

21 A Yes, I was.

22 Q You all did all this stuff together. "We" means the
23 two of you?

24 A Yes, sir.

25 Q And you -- the stuff that you got charged in other

1 states, you got some other things out of -- all this
2 arising out of these four wheelers and charges all
3 the other states' charges?

4 A Yes, sir.

5 Q Potentially you still have to face those
6 jurisdictions, to face what you have waiting on you
7 there?

8 A Yes, I do.

9 Q And anything you have agreed to testify today, that
10 have anything to do with any of these other states --

11 A It has to do -- that's where the stuff came from.

12 Q -- as far as any deals you have with any of these
13 other states?

14 A No.

15 Q Do you have to go face charges for these other
16 states? Were those deals at all? That's not part of
17 your deal here that you testified to tell the truth?

18 A No. And I don't have a deal here. I have to go on
19 record Monday as to what I did. I was told I would
20 be sentenced sometime later this week.

21 Q You have to pay restitution to any victims as part of
22 your recommendation here to testify and tell the
23 truth?

24 A They discussed in excess of ten thousand dollars, I
25 think.

1 Q And if you don't pay that restitution, do you face
2 potential jail time in any way on the charges here?

3 A If what was discussed, it would be ten years.

4 Q And did you help the defendant at all in filing his
5 lawsuit as far as legal advice?

6 A No. He asked me -- he asked me an abstract question
7 one time. I've never discussed anything concerning
8 that lawsuit. Or he asked me some questions about
9 exhaustion and some other stuff, and I've really not
10 commented concerning that; the only stuff that we've
11 communicated on, the abstract, the potential of
12 having to go to trial on these charges.

13 Q But he filed it well after he was arrested and
14 charged on these charges?

15 A I can't remember the first time I heard about it; but
16 I was told about it, and then I was told that the
17 marshals wouldn't serve it for 90 days. And then I
18 found out later it was served. And my opinion as to
19 the anger didn't come from anybody with Ocone
20 County. It came from me being aware that people get
21 angry about being sued, you know. Because no one
22 told -- actually be very quiet about it, just the way
23 we been separated, things like that. Various
24 abstract things lead me to believe that you guys are
25 not real happy about it or, you know, the people that

1 are involved.

2 MR. WAGNER: Thank you. That's the only thing I
3 have.

4 THE COURT: Okay. You may step down, Mr. Justice.
5 Thank you very much.

6 MR. WAGNER: I need to double-check, make sure
7 everything's in evidence I thought was. And there's a
8 group of pictures that aren't.

9 THE COURT: Pardon?

10 MR. WAGNER: There were a few, essentially
11 duplicates.

12 THE COURT: Some that are not in evidence that you
13 haven't offered in evidence?

14 MR. WAGNER: There were a few, like I say, were
15 duplicates, just pulled them out.

16 THE COURT: Look at them and see. Make sure you
17 offered everything you want to offer. I guess what I'm
18 trying to say, take your time.

19 Three through 13, 14, 15, I've got two, too. It may
20 be double.

21 MR. WAGNER: I'm satisfied the stack there on the
22 left is everything we put into evidence. I think it's all
23 there, what I expected to be there. With that --

24 THE COURT: Anything else you're going to offer?

25 MR. WAGNER: No, sir. We rest.

1 THE COURT: Do you have any further witnesses?

2 MR. WAGNER: No, sir.

3 THE COURT: Let me see the attorneys up here a
4 second. Mr. Tinsley, come on up.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury but outside the hearing of the
7 jury.)

8 All right. Ladies and gentlemen of the jury, I guess
9 I need to get you some roller skates. After the State has
10 rested I have to hear certain motions. There again, may
11 be commenting on the facts. I have to rule on those
12 motions. I'll ask you to go to the jury room. As soon as
13 we have ruled on those motions, I'll get you back. The
14 defense will start putting up witnesses. If you'll go to
15 the jury room, leave your pads in the chair. I'll get you
16 back in a few moments.

17 Any motions from the State?

18 MR. WAGNER: No, sir.

19 THE COURT: Any motions from the defendant?

20 MR. TINSLEY: Yes, sir, your Honor. Mr. Justice
21 testified that he was the thief in this process, stealing
22 this stuff, all the different areas, I was a co-thief
23 there, helped him do it. It's my belief the State
24 proffered an alleged or prima facie case of larceny
25 against me. The law is clear that one who commits a

1 larceny cannot be found guilty of criminally receiving or
2 possessing the property that was stolen. The receiving
3 and possession of stolen property is not a lesser-included
4 offense or vice versa of larceny. The State could have
5 and should have charged me with larceny. The fact of
6 theft of property occurred in another state does not
7 preclude the prosecution in this state. It's well settled
8 in South Carolina that one who steals property in another
9 state and brings it into this state is subject to
10 prosecution for larceny here.

11 Mr. Justice pled guilty to larceny in this state to
12 the theft of property from another state. In this case
13 material variance between the charge and the proof
14 entitles the defendant to a directed verdict.

15 THE COURT: Okay. Thank you very much. Glad to hear
16 you. Have you read the State versus McNeil case and State
17 versus Hamilton case?

18 MR. WAGNER: No, sir. The two cases I had that were
19 on point were State versus Rutledge and State versus Tim.

20 THE COURT: I'll hand you State versus McNeil and
21 Hamilton. Let me see the two you've got. I'll give you
22 an opportunity to read those. His argument is based on
23 Hamilton and McNeil.

24 Glad to hear you, Solicitor.

25 MR. WAGNER: I notice the State versus Hamilton from

1 1934. The State versus McNeil is a 1994 case but deals
2 apparently with a case heard prior to '93. The law has
3 changed, your Honor, on the receiving stolen part. It
4 used to be, back -- if you look on the Rutledge case I
5 handed up, used to be back then the State versus
6 Rutledge --

7 THE COURT: I assume the language of the statute has
8 changed, where they added the possession; is that correct
9 or not correct?

10 MR. WAGNER: Exactly, your Honor.

11 THE COURT: My understanding from having my law
12 clerk's research on the issue of the statute, added
13 possession to it.

14 MR. WAGNER: Yes, sir.

15 THE COURT: But there's no cases that issue has
16 arisen that I can find.

17 MR. WAGNER: I could not find any either. Hasn't
18 arisen, but the law changed from what it was when the
19 cases were made.

20 THE COURT: I won't say the law changed, the statute
21 made doesn't mean the law -- Supreme Court not going to
22 follow Hamilton and McNeil as well as the cases you handed
23 up. The cases you handed up fall in line with Hamilton
24 and McNeil. One says conspiracy, therefor wasn't the
25 principal. And the second one, on the Tindall case, says

1 that he was not involved as principal in the theft because
2 he didn't catch and transport it. In this case this man
3 was principal. He was involved in the theft and he was
4 involved in the transportation from North Carolina back to
5 South Carolina with the property. So there's no question
6 he was principal. I don't think the two cases you handed
7 up change McNeil and Hamilton.

8 Now, let me hear you on the possession issue.

9 MR. WAGNER: Your Honor, as far as the possession
10 issue, the actual indictment for possession, that law is
11 totally different. He's charged with two different laws.
12 One is a receiving charge, four counts of that. One is
13 the possession, which is not covered in any of these
14 cases. It's a totally different statute.

15 THE COURT: Yes, it is. The '94 case you hold in
16 your hand is strictly about stolen vehicle. In other
17 words, it cites 16-21-80. That is the possession of the
18 stolen vehicle. It wasn't receiving. Possession of
19 stolen vehicle, specifically, 16-21-80, the case I handed
20 up to you '94 case.

21 MR. WAGNER: Yes, sir. I think the argument would be
22 the same, your Honor. The possession was not.

23 THE COURT: I agree with you, the case itself arose
24 out of a lesser-included offense. And they reverse,
25 saying lesser-included of what he pled to; therefore, was

1 not indictment -- the Court didn't have jurisdiction,
2 reason it was reversed. But went on with some dicta,
3 addressed the issue about code section 16-21-80, analyzing
4 McNeil and Hamilton.

5 MR. WAGNER: Yes, sir, Hamilton and McNeil. They
6 also cite the Tindall case. My argument is just that the
7 law has changed now. Possession, it didn't used to be --
8 the cases have been if you steal something and are charged
9 with possession, all the cases generally deal with
10 somebody stealing something, being caught with it in the
11 same jurisdiction and the larceny being able to be proved.

12 In this case, you've got -- the only evidence that
13 ever puts this defendant in North Carolina is the
14 testimony of his codefendant, who's already admitted on
15 the stand that he's changed his story several times.
16 There's no physical evidence linking this defendant in
17 North Carolina to ever being there. He denies being
18 there.

19 His statement came in on the record yesterday along
20 with the rights waiver. He didn't dispute it. Said I
21 haven't been to Waynesville, North Carolina, those places
22 in the last year. He denies being there. If that's the
23 case, they probably don't have a larceny case in North
24 Carolina. There's no physical evidence to link him there.
25 Their only hope would be that they can get the codefendant

1 and the people will believe him. I don't think it's a set
2 in stone thing here he's guilty of the larceny because he
3 denies being there. Denies having anything to do with it.

4 What we have here, a defendant caught in our
5 jurisdiction with nothing but a codefendant who has lied,
6 linking him in North Carolina. That's it. He's caught
7 with all the stuff here and he wants to use a codefendant,
8 saying that he was with him to use these cases to slide
9 out from facing the charges here.

10 And the statute that he's charged with, there's two
11 statutes, one is 16-13-180: That it's unlawful for any
12 person to buy, receive, or possess. Possession didn't
13 used to be there when these cases all came about. And
14 it's not been ruled on since then. Nothing has been ruled
15 on since the possession became a part of the statute.

16 The possession, I believe, was put in by legislature
17 to simplify things, because it used to be awfully hard to
18 prove whether somebody received it, took possession in a
19 certain place, or bought it. It used to be, buy or
20 receive. Most of the cases all say buy or receive. Now
21 you have possession. The statute simply says he has to be
22 proven to be in possession of stolen property, knowing
23 it's stolen, or having reason to believe it's stolen. And
24 the vehicle charge, just add the language of the vehicle,
25 essentially the elements are the same.

1 I believe the State's proved each and every element
2 of these charges. None of the evidence he's relying on
3 from Mr. Justice, nobody knew anything about it until
4 Monday when he changed his story. I think the jury could
5 infer, eventually, that maybe he committed larceny; but
6 there's no physical evidence he was ever there. Never
7 found there, never seen there. The witness from the four
8 wheeler dealership could not place him there, said he
9 never seen him before, cross examined him.

10 So there's no evidence at all except the codefendant,
11 who's lied, to say he was there. But we do have him in
12 possession multiple times of these pieces of property. I
13 point out the law has changed since these older cases were
14 ruled on. And I think we've met the burden to establish,
15 you know, to defeat his motion for judgment.

16 THE COURT: Thank you very much.

17 Any reply, Mr. Tinsley?

18 MR. TINSLEY: Yes, sir. I am charged with larceny in
19 North Carolina. For one I believe the State
20 misunderstands the law, how it works. The whole theory
21 behind it is that the possession or the possession of a
22 vehicle is not a lesser-included offense of larceny.
23 That's how it works.

24 THE COURT: That is if you plead to that, and the
25 case charged with larceny pled down to lesser included.

1 No new indictment presented, no waiver of presentment to
2 the grand jury. Therefore, the Court didn't have
3 jurisdiction. That was the issue. Do you understand?

4 MR. TINSLEY: I understand that.

5 THE COURT: That issue is not involved in this case.

6 MR. TINSLEY: As far as Mr. Justice is concerned, he
7 was the State's witness. He said I was there. He said I
8 was the principal thief in the matter. And they have to
9 live with what he testified to. It was their witness.

10 THE COURT: Okay. All right. Thank you very much.

11 Looking at the cases that we have addressed, the
12 Court's of the opinion that public policy dictates that a
13 defendant cannot be convicted of both larceny and
14 receiving stolen goods. However, the State should be able
15 to elect whether could try the defendant for larceny or
16 receiving stolen goods or possession of stolen goods. He
17 cannot be convicted of both.

18 In this case the defendant has not been indicted of
19 larceny or the receiving stolen goods and possessing
20 stolen goods; therefore, there's no way he can be
21 convicted of both. The statute itself refers to
22 possession and the Court's of the opinion if you steal it,
23 you can still possess the stolen property. However, the
24 Court agrees with Hamilton and McNeil, if you stole it,
25 you cannot receive it, cannot be charged with receiving.

1 Therefore, I'm going to deny the motion. But the Court
2 does agree he cannot be convicted of -- in this particular
3 case that's not the process, not how this case is set up.
4 Your motion is denied.

5 Is the defendant ready to proceed with witnesses?

6 MR. TINSLEY: I have another motion, your Honor.

7 THE COURT: Okay.

8 MR. TINSLEY: I would also move that Mr. Justice
9 testified these stolen property came in to the State in
10 Greenville County and other counties other than Oconee. I
11 don't believe the possession and receiving following from
12 one county to the other, and I believe I'm entitled to be
13 tried in the venue, the county where the --

14 THE COURT: The property is located in Oconee County.
15 He said that was the route he took, not that it stayed in
16 Greenville, ultimately wound up in Oconee County. That
17 motion is denied.

18 MR. TINSLEY: Okay. And I would also ask that the
19 charges be consolidated. Again, all the evidence shows
20 all this property was possessed at the same time. All the
21 indictments say that. They were all on the property at
22 the same time according to Mr. Justice. And I would ask
23 that the possession of multiple items, that it constitutes
24 a single offense.

25 THE COURT: Let me back up just a second. On

1 indictment number, I forgot to do this, sorry. Indictment
2 number 885, that's the indictment for receiving stolen
3 goods concerning the backhoe. I will grant your motion
4 for directed verdict as to that indictment based upon --
5 there's been no testimony whatsoever to tie this man to
6 the backhoe.

7 MR. WAGNER: I agree to the backhoe, but there's also
8 a Carry-On cargo trailer.

9 THE COURT: Pardon?

10 MR. WAGNER: On that -- at the same time indictment a
11 Carry-On Cargo trailer, that one is -- the one, the guy
12 from Lavonia, Georgia came up, testified worth \$9,000.

13 THE COURT: I will withdraw it, but I will strike as
14 to backhoe.

15 MR. WAGNER: I bring all that as to --

16 THE COURT: Won't be any further testimony about the
17 backhoe.

18 MR. TINSLEY: Not the backhoe, your Honor. The
19 witness testified that that trailer was worth \$400, less
20 than \$5,000. That's what all the evidence in the record
21 said.

22 MR. WAGNER: Sergeant Smith says -- he did say 4,800.
23 I thought he said 90 something. If so, it should be under
24 the five years statute instead of the ten.

25 THE COURT: Very well. What are you asking the Court

1 to do, to modify the indictment?

2 MR. WAGNER: It would be a lesser included.

3 THE COURT: All that goes to is the sentencing, less
4 than five. The Court will agree that it's less than five,
5 therefore, it's penalty of five years rather than ten
6 years. That doesn't affect the substance of the
7 indictment and the crime, just the sentence.

8 MR. WAGNER: Yes.

9 THE COURT: All right. Any other motions?

10 MR. TINSLEY: Not at this time, your Honor.

11 THE COURT: Mr. Tinsley, who is your first witness?

12 MR. TINSLEY: Doug Tinsley, your Honor.

13 THE COURT: Mr. Tinsley, as far as whether you're
14 going to testify or not, we went into that issue
15 yesterday. Do you have any questions of the Court as to
16 that issue? And I'm not asking you to tell me yes or no.
17 Just asking, do you have any questions as to that issue?

18 MR. TINSLEY: Just like to clarify about the prior
19 convictions and prior bad acts.

20 THE COURT: Already told you several times, that's
21 not going to happen.

22 MR. TINSLEY: Okay. That's all.

23 THE COURT: Whether you're going to testify or not
24 you'll have to make your decision after we finish with the
25 witness. Do you understand?

1 MR. TINSLEY: Yeah.

2 THE COURT: Anything else before we bring the jury?

3 MR. WAGNER: No, sir.

4 THE COURT: Bring us the jury please, sir.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:50 a.m, when the following
7 proceedings were had:)

8 Mr. Tinsley, call your first witness, please, sir.

9 MR. TINSLEY: Your Honor, defense calls James Douglas
10 Tinsley, Sr.

11 THE COURT: Come around, be sworn, please, sir.

12 JAMES D. TINSLEY, SR., being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. TINSLEY:

16 Q Mr. Tinsley, you related to me in some fashion?

17 A Yes.

18 Q Can you explain for the Court?

19 A I'm your father.

20 Q Did you used to have some type of radio show or
21 something? What is it you did?

22 A Yes. About 12 or 13 years ago I did. It was a short
23 waive broadcast on Friday nights, a satellite
24 broadcast on Saturday night. And the name of the
25 show was America on Air.

1 Q Did it deal with a lot of constitutional issues,
2 those types of things?

3 A Those types of things were discussed. Yes.

4 Q You write some kind of booklet?

5 A I wrote a small booklet dealing with things like
6 that. It talked about our laws and some ways how
7 they changed through the years since the founding of
8 our country. It talked a little bit about our
9 monetary system and different things like that. And
10 it was written from my perspective, based upon
11 documents, research that I had done from government
12 arbitrating. Yes, sir.

13 Q Did you also make a video of some sort?

14 A I did. And that dealt with sort of the evolution of
15 the law in England.

16 Q What was the name of the video?

17 A Called "American Patriot in the King's Court."

18 Q Would you say our family has pretty strong
19 convictions about the constitution and human rights?

20 A I would say, yes, we do. Those things are valuable
21 to us.

22 Q Would you expect this jury to believe your testimony?

23 A Yes, I do.

24 Q Can you explain why you expect a jury, who has no
25 idea who you are, never met you before, why they

1 should believe your testimony?

2 A Well, I guess I would say, first, that what I just
3 did over there, when I put my hand on the bible and
4 swore, that's an awesome moment to me. Because I
5 understand, your Honor, the power this Court has and
6 its ability to punish me for telling a lie. And I
7 certainly do not want to do anything to invoke this
8 Court's wrath. But I am also totally aware that
9 someday I'm going to have to stand before that great
10 and terrible judge. And in my way of believing, for
11 me to come in here, put my hand on that bible and
12 swear to tell the truth and then tell a lie, is just
13 bargaining away my soul, and I will not do that.

14 Q How long have you known me?

15 A Thirty-eight years, since the day of your birth.

16 Q Can you tell us what profession I've done most of my
17 life?

18 A You're a machinist.

19 Q Did I used to live in Inman?

20 A Yes, you did.

21 Q Did you ever come to my home there?

22 A I have on several occasions, yeah.

23 Q Did I have a machine shop in my garage?

24 A You did.

25 Q Did I own a lot of nice property, motorcycles, and

1 milling machines, and bass boat?

2 A Yeah. You had a lot of nice things.

3 Q Did I have a good job?

4 A You did, a very good job.

5 Q Was my home broken into on several occasions?

6 A One that I know of.

7 Q David Johnson did that?

8 A That's correct.

9 Q And he's serving time in prison for that?

10 A That's my understanding. Yes.

11 Q And I wasn't very happy about that, was I?

12 A No.

13 Q When I moved from my home, did I sell off a lot of my
14 property, my motorcycles and stuff?

15 A Yes, you did.

16 Q Mr. Justice commented and testified I was living in
17 my van. Is that true?

18 A No. For about I guess 13 months prior to your arrest
19 in January, you had been living with your
20 grandmother.

21 Q I did go gold mining and stay in my van?

22 A That's my understanding. Yeah.

23 Q But I did have a place to stay?

24 A You did.

25 Q And, in fact, I purchased that van for the sole

1 purpose of going gold mining?

2 A That was what you told me at the time you purchased
3 it. That's correct.

4 Q I took all the seats out where I could put a bed in
5 there, have a place to camp rather than a tent?

6 A You did.

7 Q Did you go on one occasion with me to collect ten
8 thousand dollars cash for some machines I had sold?

9 A Actually, I drove you there. I guess technically you
10 went with me; but, yes, I did.

11 Q Am I being held down here at the jail?

12 A Yes.

13 Q Have you been getting copies of case law and stuff
14 for me so that -- and mailing it to me?

15 A I have.

16 Q You sent that to me so I could kind of learn the law
17 and defend myself?

18 A That's correct.

19 Q During these three years, have you ever been my
20 attorney-in-fact?

21 A Yes. For a number of years I have.

22 Q And have you signed my name for me and reviewed my
23 documents?

24 A I have.

25 Q During my lifetime have I left notes on the fridge

1 and on the counter for you?

2 A Yes.

3 Q How many letters have I written to you during my
4 life?

5 A I don't know. I couldn't even estimate that. I
6 think you have probably written me 40 or 50 times in
7 the last six months.

8 Q And the letters that I sent you in the last six
9 months, they were in my handwriting?

10 A Yes.

11 Q Had my signatures on them?

12 A Yes.

13 Q Give me just one second. All right. Mr. Tinsley,
14 I'd like to show you something. These are marked as
15 State's exhibit 3 through 13. Have you seen these
16 before?

17 A I have seen three of them before. The others I have
18 never seen.

19 Q And how did you see them? Did I mail them to you?

20 A You mailed them to me.

21 Q Looking at them now and the others you haven't seen
22 before, can you give an opinion whether or not you
23 think that's my handwriting? My signature?

24 A On these three that I have seen before, I couldn't
25 even tell, had it not been for the fact that James D.

1 Tinsley was printed underneath it. On those three, I
2 would not have even known that that's what that
3 signature was supposed to be. And I have also signed
4 my name, James D. Tinsley, thousands of times in my
5 life. I would not even recognize that as being James
6 D. Tinsley. Quite confused me. It looked like there
7 was a bunch of letters missing. These others I had
8 are more legible, I could make out, after looking at
9 it for a little bit, that that's probably what that's
10 supposed to be. Having not seen any of these things
11 signed, I certainly cannot say that you didn't sign
12 them. What I can say, honestly, is that I have
13 doubts as to whether or not that is your signature
14 after having seen yours so many times. But to be
15 completely honest to all sides, that's as much as I
16 can say.

17 Q What about the handwriting?

18 A I thought we were talking about the signature.

19 Q We were. I'm asking about the handwriting now. Can
20 you tell whether that's mine?

21 A The printing?

22 Q Yeah.

23 A I'm sorry, I misunderstood. I see some similarity in
24 it. But I also see what appears to me to be some
25 differences, so I can't make the determination one

1 way or another.

2 Q A short time after my arrest did I send you a
3 document I referred to as my official statement or
4 affidavit when we talked on the phone?

5 A Yes, you did. You sent me, I forget how many pages
6 it was. It was a handwritten document. I forget
7 whether you called it your affidavit or your
8 statement. But I remember that.

9 Q Do you have it with you?

10 A I do. I have the original.

11 Q Did I ask you to investigate some of the things that
12 were in that statement?

13 A I don't specifically remember. I've had so many
14 requests to do things, I don't remember specifically
15 what the contents of that particular thing was. I
16 know there were several paragraphs in that that you
17 had asked me to somehow relay to a private
18 investigator, and there was a particular individual
19 you wanted the private investigator to contact and
20 interview and ask about statements that you had made
21 in those paragraphs as to whether or not that person
22 would agree or disagree with those statements.

23 Q Why didn't you just do it yourself? Why did you have
24 an investigator?

25 A Well, I didn't feel like it would be proper because I

1 did not know whether this person was a witness for
2 the State or not. And I didn't think it would be
3 proper for me to even run the risk of doing anything
4 that looked inappropriate. So I decided, and using
5 some of your money that you had, that you authorized
6 to hire someone to do that.

7 Q Can you tell us from the things that you did if you
8 were able to learn anything?

9 A I received a report back from the private
10 investigator, a sheet where the paragraphs, with the
11 information that you wanted the individual questioned
12 about, and to give an answer whether they agreed or
13 disagreed; and it had the handwritten notices of the
14 investigator on it with the answers, agree or
15 disagree, and any comment that the person had,
16 handwritten onto it by the private investigator.

17 Q Did you go to the highway department?

18 A I did.

19 Q What was you trying to get there?

20 A You had -- I don't remember whether you called me or
21 whether you wrote me and you told me that you had
22 been on a particular date in the highway department
23 and in Pickens, South Carolina, trying to get a title
24 or a vehicle that you recently purchased, get that
25 paperwork done; and that you had also been to the tax

1 office in Greenville County, South Carolina, to pay
2 the taxes on that vehicle so that you could get your
3 tag and registration; and that you no longer had
4 access to those records. Apparently, they were taken
5 at the time of your arrest you no longer had them and
6 you wanted me to see if I could contact those two
7 places and get any information showing what
8 transactions has been done in those two locations and
9 what day.

10 Q Were you able to get those documents?

11 A I did. I went to the Greenville County tax office
12 and asked if I could have a copy of documents for
13 that particular transaction. They provided that, no
14 problem. I called the Department of Motor Vehicles,
15 asked them, and they said that wouldn't be retained
16 at the office where any transaction would have been
17 done, it would have been forwarded to Columbia. So
18 they told me I could go by my local DMV and pick up a
19 form. So I went to the local DMV and I was referred
20 to a supervisor, told her what it was you were
21 requesting. She gave me some forms, told me fill out
22 those forms. I believe supposed to put a check or
23 money order for \$6 in it, send it off to Columbia
24 with the form filled out and any particular
25 information that you wanted that might not be evident

1 to the person that got the letter as to exactly what
2 you wanted. I filled that out. I sent it to them.
3 And in just a few days that information came back by
4 mail.

5 Q And what was the purpose for this? What was it going
6 to establish?

7 A Your whereabouts on January 28, 2008.

8 Q And what was supposed to have happened on that day?

9 A According to what you told me, you were supposed to
10 have been or were alleged to have been involved in
11 helping another fellow move a backhoe.

12 Q I have no further questions, your Honor.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. WAGNER:

16 Q Mr. Tinsley, were you with your son when he and Hugh
17 Justice were hanging out most of the entire month of
18 January?

19 A No, sir, I was not.

20 Q Did you ever go up to the gold mine campsite where
21 they were?

22 A I was there either the last couple of days of
23 November or the first few days of December. I went
24 there with my son. He was a new member and he told
25 me that he wanted me to go up there and see the

1 place. It was a beautiful place. And he's saying,
2 "Oh, there's deer and turkeys in the woods, you can
3 gold mine. You need to go with me. It's a beautiful
4 place."

5 I took him up there. We spent the day wandering
6 around up down the hill and around the creek. But I
7 did not see Mr. Justice.

8 Q That was in December, right?

9 A Best I can remember. I can't swear to this, but I
10 believe it was like the first Monday of December. I
11 think was about the fourth or fifth.

12 Q You talking about December of '07?

13 A Yes, sir.

14 Q So you were never up there during January?

15 A No, sir, I was not.

16 Q As far as the handwriting on there, you see some
17 similarity and some dissimilarities?

18 A I do.

19 Q Okay. Thank you. All the questions I have.

20 THE COURT: You may step down. Thank you very much.

21 (Witness steps down from the stand.)

22 Call your next witness.

23 MR. TINSLEY: Your Honor, may we approach the bench?

24 THE COURT: Yes, sir. Solicitor.

25 Mr. Tinsley, do you want to call your next witness?

1 I understand that's going to be you, correct?

2 MR. TINSLEY: Yes, sir, your Honor.

3 J. DOUGLAS TINSLEY, JR., being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. TINSLEY:

7 Q I've never done this before, I don't know I think,
8 I'm just supposed to testify in a narrative because
9 I'm representing myself. I'm not an attorney to ask
10 me questions, so it's kind of a little awkward, I
11 guess.
12 There's so many facts and dates and times and stuff
13 that I have my statement that my dad testified to
14 that I'll refer to and some notes and stuff I'll use
15 to try to keep up with all the dates so we can get it
16 as accurate as possible.
17 I'd also like to say that had the police came at me
18 in a different way, what you're going to hear today,
19 I would have told them then. But the first time I
20 saw them, they had a gun in my face, they was
21 threatening me and pissed me off because they took
22 all my property. So I said, "The heck with them."
23 As soon as I got to the jail and got settled down, I
24 sat down and I tried to go backwards from that date,
25 tried to get the facts together the best I could,

1 everything that I could remember. There's a lot of
2 important dates, such as the 25th of January, which
3 was Hugh Justice's birthday. So I knew what happened
4 on that day. And I knew on the 23rd was the day that
5 Clyde Boles had came up from Florida. So I knew that
6 day. Getting a few of those major dates down, I was
7 able to go in and fill in between them what had
8 happened.

9 When I was a teenager, I lived in Alaska and I worked
10 in one of the, I guess you could probably say the
11 biggest gold mine in Alaska. I fell in love with it.
12 I didn't get to stay there long. But I always missed
13 it and wanted to do it some more. I been
14 contemplating the last couple of years maybe to get
15 back into gold mining. And my dad and I had been
16 going to North Carolina to little gold mines up
17 there.

18 And I learned about the LDMA, Lost Dutchman's Mining
19 Association. It's a club that you can join. It cost
20 \$3,700. They have properties all over the country.
21 And you can go to those properties and camp out and
22 gold mine. Anything you find is yours to keep. So,
23 I joined. I thought it would be nice.

24 I was really wanting to go to Alaska, but there was
25 one here in Oconee and one in North Carolina. The

1 one here in Oconee I could actually drive to, every
2 day, you know. I didn't have to camp there because
3 it wasn't that far away. And I thought it was nice
4 to have a place you could go gold mine, have fun,
5 that was that close, that local. So it was worth the
6 money to me to join.

7 But it's boring. Gold mining is not -- I have my
8 dog, Radar, but he don't talk to me much. And so I
9 kind of was looking for a friend, you know, that
10 would be interested in doing it with me. I got on
11 the Internet and -- a gold mining site -- I found a
12 friend Clyde Boles, I told you about earlier. He
13 lived in Florida. He was retired. And me and him
14 got to know each other a little bit. And I invited
15 him up after Thanksgiving to go gold mining with me.
16 And we decided we'd go to North Carolina gold mine,
17 that's where I had been going.

18 And I had purchased a van, took all the seats out of
19 it and stuff and put a bed in it. It was cold and so
20 it was easier to heat than a tent would be. I was
21 kind of staying in that, you know, when I was gold
22 mining. And we went up there to gold mine when he
23 came up. And Mr. Justice lived not far from there.
24 And so one day we were in town and I called him and
25 he came down to McDonald's and met us and ate a

1 sandwich with us or whatever. And we told him what
2 we were doing there, we were gold mining. So he
3 wanted to come back to the gold mine, see what we
4 were doing.

5 And he kind of got interested in the conversation
6 what we were doing. And he claimed that he had been
7 putting in a septic tank and there was something he
8 had never seen before, there was a layer of quartz;
9 we told him gold normally forms in quartz and there's
10 normally a lot of black sand around gold, because
11 it's heavy and settles, just like gold does. So he
12 mentioned that he had seen this layer of dirt with
13 quartz and black sand in it at this job site he was
14 working at, putting in septic tank.

15 He invited us the following day to go there and look
16 at this dirt. He wanted Clyde to look at it, see if
17 it was gold bearing. We went and looked. He had a
18 backhoe there that he claimed was his. And it was
19 just regular old quartz and black sand, it wasn't
20 anything important.

21 And we got talking, and Hugh said that he kind of
22 wanted to join us, get involved in gold mining, it
23 sounded like fun. We were planning a trip to Alaska.
24 Like I say, Clyde and I were just staying in the van
25 so he said he would purchase a camper we could stay

1 in to use in Oconee because Clyde was going home for
2 Christmas, he was going to come back in January; but
3 we were all going to go and stay and gold mine until
4 it thawed out in summertime, and so we could go to
5 Alaska. Can't go gold mining in Alaska in winter.
6 So Clyde left, and best I can recall it was about
7 December 18th that Hugh called me and he said that he
8 had purchased a camper and he wanted directions of
9 how to get to Oconee camp. I gave him directions and
10 the following day I went down there, he was there
11 with a camper and I helped him set it up, and you
12 know, level it out. We put logs or something,
13 whatever you want to call it down there, put the Jack
14 stands on there to stabilize it, really what it's
15 called I think stabilizing bars or something.
16 And I did -- Terry Tobin, he testified that I left a
17 note and claimed that the camper was mine. I did
18 leave a note. I don't remember if I exactly said
19 that it was mine or whatever; but I did leave a note
20 that might have led him to believe that. The reason
21 for that, I was a member and Clyde wasn't -- I mean,
22 Hugh wasn't. And I thought if Hugh left a note and
23 Terry saw it, Terry would recognize that he's not a
24 member and complain about it. I kind of left a note
25 at least let him know it was mine or at least with

1 somebody that was with me. So that's what the note
2 was about.

3 Prior to this I was only gold mining like four days a
4 week. And then I would tinker around at flea
5 markets, stuff like that. The other three, go to
6 Pickens flea market on Wednesday and Greenville on
7 Friday or Saturday and Sunday. And I would sell four
8 wheelers and bicycles, things like that, anything I
9 could find in Iwannas or at other flea markets that I
10 could get a good deal on, get there before somebody
11 else saw it.

12 And I had a Honda four wheeler. And it was old, you
13 know, it wasn't very nice and it wasn't worth a whole
14 lot. And so I went, I believe, I want to say it was
15 December 26, I think it was the day after Christmas,
16 and so I went to the Pickens flea market and I had
17 that and a couple of other things. I had some gold
18 that I sell there. There's some people that buy gold
19 that run around, most of the time they're looking for
20 used jewelry. I think they're mostly jewelers, stuff
21 like that, looking for the gold. I sometimes take
22 pieces of gold and sell it at the flea market as
23 well.

24 And Hugh went with me to the flea market. We weren't
25 there very long. And I sold an ATV, for \$800 I

1 believe it was. It wasn't a lot. So he was
2 surprised. So he asked me, you know, could I sell
3 nicer ones for him. I said it probably wasn't a good
4 idea to try to sell anything nice at a flea market.
5 Most people don't have a lot of money go to flea
6 market, probably hard to sell anything more than a
7 thousand dollars.
8 I said, "If you have something nice, probably better
9 off to sell it on eBay." He said he didn't know
10 anything about eBay. I told him I used to have an
11 eBay business, I sold bicycles on eBay. So he told
12 me he thought he could get some at an auction,
13 something.
14 I said, "If you get them, I'll help you set up an
15 eBay account or something. And I want to say it was
16 about January 1st Hugh came to the campsite. And he
17 had a Kawasaki Mule. It's not like these Rangers.
18 It's got a bed on it, stuff like that. But a
19 different company makes them. He had a closed
20 trailer and he brought it to the campsite. And he
21 claimed he bought it. We was going to take it to
22 Alaska with us, and all that kind of good stuff. And
23 we'd used the closed trailer kind of a shop, you
24 know, to kind of keep stuff in, things like that.
25 So on January 4th I contacted Clyde, sent him an

1 email. And he was supposed to come up on the sixth;
2 sent an email, sent pictures of the camper and what I
3 referred to as the shop, which was the closed
4 trailer. And I told him he didn't have to buy a
5 tent, because he was planning on buying a tent.
6 And I said, you know, "We got this camper, Hugh got
7 the camper for us to stay in. We have a place to
8 stay. You don't need that." And I told him about
9 the shop, because he had built a shaker table that
10 you get your gold concentrate and you put it on a
11 table, shakes it, kind of traps the little fine
12 particles. He had built that himself while he was
13 gone and he needed a place to put it up. He built a
14 table said, you know, you're going to have to clamp
15 it to something because it vibrates, moves so much.
16 I said, "we have, you know, this kind of shop kind of
17 thing, build a table in there, bolt it to the wall
18 and it will be fine."
19 And I had been trying to -- Clyde wasn't going to be
20 able to come up on the sixth like he had planned. I
21 forget what the reason was. I believe he spent most
22 of his money buying all the parts to build these
23 pieces of equipment and he was a little slack on the
24 money or something and I think that's what it was, so
25 he didn't get to come up on the sixth. I had been

1 trying to get Hugh to bring down the backhoe, like he
2 promised, because I didn't want Clyde to get here and
3 the backhoe not to be here. We were planning on
4 digging a pit 50 feet by 50 feet. And that's a lot
5 of dirt. And I figured it would take a while to dig
6 a hole. So I was trying to get Hugh to get the
7 backhoe, get it here, dig the holes before Clyde got
8 here. I didn't want Clyde to come -- he was only
9 going to be able to stay two or three weeks -- and I
10 didn't want him to get here and then have to stand
11 around twiddling his thumbs while we dig a hole. I
12 was trying to get that done before he got here.
13 On the fifth of January I believe it was, I kind of
14 begged, browbeat Hugh to go get the backhoe for the
15 reasons I just said. And I rode with Hugh to North
16 Carolina in his truck, dropped him off at his
17 mother's house. And he said his brother would take
18 him to the backhoe, he would bring it down later that
19 day or the following morning.
20 I returned to the campsite. And on the sixth, the
21 next day, Hugh returned with no backhoe. He was
22 driving his Mercedes. He has a white Mercedes. I
23 asked him, you know, "Where is the backhoe?"
24 He said he had run into some problems, said he didn't
25 get around to it because he went to Atlanta to an

1 auction. He claimed he bought a number of ATV's.
2 This was on the sixth. And so he said that he needed
3 a place to put them so we could put them on eBay. I
4 rode with him to find a storage place. He wanted to
5 find a storage place.
6 That's when we went to the Couches' place on Highway
7 11. And we were there for a couple of hours, really.
8 Hugh was talking and Miss Couch was talking to me. I
9 sat in the truck most of the time. Hugh talked to
10 Mr. Couch, asking all kind of questions, trying to
11 barter with them. I think they wanted a little more
12 than what he was wanting to pay because he was
13 wanting two of them. At any rate, I forget the exact
14 price, \$450, something like that, for three or four
15 months. I'm not sure. I don't remember.
16 But, anyway, I was sitting in the passenger side of
17 the truck and Miss Couch was standing outside with
18 the paperwork and she handed it to me because Hugh
19 was talking to her husband, was busy I guess. I
20 filled it out, put my name on it. I didn't see no
21 reason not to. And so but Hugh paid for the storage
22 facility and we left. And I think Hugh left in his
23 truck after the sixth if I'm not mistaken, left in
24 his truck and stayed gone until the 18th.
25 And when he came back on the 18th or 19th, I can't

1 remember, might have been the 17th, roughly in that
2 time frame, he had a big black trailer and he had
3 several ATV's. And he wanted to trade out the mules
4 that he had before for one of these Polaris's, said
5 he liked the Polaris better. And he wanted to keep
6 two of these Polaris's to take to Alaska, and that
7 the Mule he would sell it off instead for the
8 Polaris.

9 So he had a little wire trailer and put the Mule on
10 it and took it to the storage facility and that was
11 the first one that we sold.

12 I believe -- I want to say, I want to say it was the
13 19th -- Terry, the caretaker, came there and saw the
14 black trailer. And Hugh said, he told him that it
15 belonged to his son and he bought the camper all that
16 kind of good stuff. And the 19th Hugh and I went to
17 the storage facility and took pictures of some of the
18 ATV's and was logging them into the computer and
19 stuff so I could write the ad for it.

20 And the wire trailer that he had moved the Mule with
21 the day or two days before was still at the campsite
22 and we had a bunch of stuff in there, vehicles and
23 all kind of junk. So I asked him to take it to the
24 storage facility and just stick it in front of the
25 storage facility so it wouldn't take up space. He

1 didn't.

2 So on the 20th I was going to my dad's house and I go
3 to my grandmother's. I go visit them, you know,
4 every two or three days. I can't say stay away from
5 them very long. On the 20th I decided since I was
6 driving in that directions anyway, I'd pull the
7 little trailer over there myself and drop it off. As
8 I was going there, about to turn in, someone passed
9 me in left lane, hit me. So that's the reason I know
10 for a fact it was the 20th, when that occurred. I
11 had a car accident.

12 We put the Mule on eBay he agreed he would give me
13 \$50 for each ATV that I listed for him that sold; and
14 that if I took the time to list one and it didn't
15 sell, he'd give me ten dollars for it, it for my time
16 for doing, because it don't take a real long time to
17 list one.

18 And he said he'd pay for all the eBay fees, the
19 listing fees and all that kind of good stuff.

20 And I believe it was maybe the next couple of days,
21 the 22nd I think, Mr. Crawford -- he lived in North
22 Carolina, Statesville I believe, as a matter of fact,
23 if I remember correctly. He wanted to buy the Mule
24 for five thousand dollars.

25 And I think the State was -- I want to mention

1 something here. I think the State was trying to say
2 that that should be suspicious or something. But if
3 Mr. Haddad is right, if it was a \$12,000 ATV being
4 sold for five thousand dollars that's a little
5 suspicious. But the Mule was a couple of years old.
6 It wasn't new. And they don't hold their value very
7 long because people are rough with them.
8 So when I went to list it, I looked on there to see
9 what other similar ATV's were selling for. Most of
10 them selling between 25 and \$3500. I thought
11 actually Hugh got a little more for it than what it
12 was worth, what my opinion was, based upon what other
13 stuff was selling and bringing on there. On the
14 23rd -- well, Mr. Crawford, like I say, he came and
15 bought the Mule when Hugh was there and sold it. And
16 he left. And I was trying to get him to buy the
17 Polaris instead of the Mule. And the reason for that
18 was that the Mule was already listed on eBay and the
19 Polaris wasn't. And by taking it off of eBay early,
20 we was going to lose like \$50, you know, the fee or
21 whatever, listing fee. So I was trying to get him to
22 buy the other one so I wouldn't lose the fee and have
23 to put up the other one and pay the \$50 again,
24 whatever the fee was, \$45 or whatever. Anyways, he
25 had wanted the Mule, that's the one he bought.

1 The next day, the 23rd, Clyde returned. He came
2 back. And Hugh was there, you know, and Clyde was
3 all excited.

4 Hugh told him about him buying the camper and he went
5 to this government auction and bought these ATV's and
6 they having me help him list them on eBay. And Clyde
7 was all excited about gold mining. The backhoe
8 wasn't there yet, so he put pressure on Hugh to, you
9 know, get the backhoe, start digging, you know,
10 because he spent a lot of money, gas and stuff to be
11 here. He was only going to be here for a few weeks,
12 and he was wanted to go gold mining, you know. He
13 had been at home building these projects for the last
14 months, thinking about it. And so he was excited
15 wanting to do it.

16 And I told him during the time when Hugh was away
17 from the sixth to the 18th, I had done a lot of gold
18 mining, finding about an ounce of gold a day. So
19 that's roughly about a thousand dollars a day worth
20 of gold. And I was doing it with a shovel, and a
21 little machine. So I knew that we were going to find
22 a lot of gold with the backhoe.

23 So I told Clyde he was going to do good. "You're
24 going to like it."

25 He was excited. He was trying to browbeat Hugh to

1 get the backhoe. And Hugh told him -- this was the
2 23rd I believe -- Hugh said he was going home on the
3 25th for his birthday said he wanted to go spend time
4 with his family. And he said when he returned, the
5 28th, which is the following Monday, he would bring
6 the backhoe back.

7 So I had planned or we had planned -- Hugh had told
8 me about an auction in Greer where you buy vehicles.
9 And I had this van. And I was kind of trying to get
10 ready to go to Alaska, I has been thinking a while
11 about buying something four-wheel drive to take to
12 Alaska. So Hugh had told me about this auction.
13 Well, I had bought stuff at Spartanburg auction
14 before because I used to live in Inman. But I was
15 unaware of this auction house in Greer, because I had
16 never been there. Hugh had. And he had been to the
17 Spartanburg one. He said the one in Greer was a lot
18 better, you know, a lot nicer vehicles.

19 So he was going to go with me and show me where it
20 was. I was going to try to get a vehicle, and Clyde
21 had a minivan. So I told him, you know, you need to
22 sell that, trade it in or something. It's not any
23 good to take to Alaska. So I told him, he said he
24 thought he could sell it, get a few thousand dollars
25 for it. So I told him he could go to the auction

1 with us and if there was something nice, you know,
2 and it was a good deal, I would buy it for him and he
3 could just repay me back when he sold his vehicle.
4 He actually never got to go to the auction with us.
5 On the 24th that was the day that we were supposed to
6 go to the auction, I believe. Yeah, the 24th.
7 Roughly, I'm wanting to say around eleven in the
8 morning, around noon, this Mr. Crawford, the
9 gentleman that bought the Mule, after he bought the
10 Mule, I put the Polaris back on eBay; but he saw the
11 Polaris when he was there before because the one I
12 was trying to get him to buy, apparently he went
13 home, told his brother or son, someone about it,
14 decided go in halves on it. He wanted it too, so he
15 wanted to come down and get it.
16 I asked him, you know, "When can you be here from
17 Statesville?"
18 And he said it would be that evening. And I said,
19 "Look, we kind of got a plan to go to this car
20 auction to buy a car. I'm not going to be here at
21 the time you get here."
22 So, I told Hugh. And Hugh said, "Well, maybe I could
23 drive and meet him halfway." He thought about it for
24 a minute. And he said, "Well, that's a problem
25 because by the time I drive there and meet him to

1 deliver it and turn around and drive back to pick you
2 up, we won't be able to drive all the way back to
3 Greer in time to get there by 5:00 for the auction."
4 So in the end I agreed to go along with him, and we
5 would go deliver the thing, leave from there and go
6 to the auction straight from there.

7 So we did. I don't know what else it was or none of
8 that stuff, what exit it was; but it was somewhere
9 other side of Ashville on 40 is all I know. We went
10 there and met him. And I want to say it was 2 or
11 2:30 in the afternoon or something like that.

12 And, let's see, Crawford, I don't know why, I don't
13 remember exactly the words he used, but he said
14 something like, you know, "You all didn't throw a
15 brick through a window to get this? Something like
16 that.

17 Hugh said, "No, it came from government auction."
18 That's what I believed. So I assured Mr. Crawford
19 that was the case, you know, that's what I believed.
20 So we paid him -- or he paid Hugh and we got in the
21 car and headed off. We was kind of hurrying, you
22 know. We headed back to Greer.

23 And on the ride I started thinking about what
24 Mr. Crawford said. And so I asked Hugh, I said, "Is
25 these things stolen?"

1 And he said -- I'm trying to figure the exact words
2 that he said. And in my affidavit it's probably a
3 little more accurate because it was written six or
4 seven months ago; but basically he said, and I'm not
5 saying I agree this is true, I'm just saying this is
6 what he told me -- after, you know, hearing the
7 testimony from Mr. Haddad, I don't really believe
8 this is true. I think he was lying to me, because he
9 seen -- Mr. Haddad seemed like a reliable, nice guy.
10 I don't think he'd do anything funny.

11 But Hugh said he knowed this guy that owned this ATV
12 store. And it was wintertime, the guy wanted Hugh to
13 sell them for him. That he was going to try to
14 declare them stolen or something, collect insurance
15 on them.

16 I told Hugh right then, I said, "Look, I don't want
17 nothing else to do with this." I said, "Even though
18 you rented, paid for the storage buildings, I want
19 the remaining ATV's out of there because it was in my
20 name. And I told him, I said, "You need to try to
21 get the stuff, buy it back and give it back to the
22 guy; but you're going to end up in trouble. This
23 ain't no good idea."

24 And I said, I told him, I said, "I'm not going to
25 list anything else on eBay for you. The first chance

1 I get, I'm going to take the ATV's that listed on
2 eBay, I'm going to take it off." I said, "I'm not
3 going to answer the phone. I'm not going to talk to
4 anybody else anymore about this. If they call me,
5 I'm going to put them off and not going to meet with
6 them."

7 I was kind of mad and I sat there thinking about it a
8 minute. I asked him, "How did you get all this stuff
9 down here?"

10 And he said that the owner had gotten a black trailer
11 somewhere, he didn't say where, just said he had got
12 it and that Hugh had pulled it with his truck and
13 that he had pulled two ATV's and two little trailers
14 inside of it. And he said that the owner had a SUV
15 with a white enclosed trailer; and that he had
16 carried two SUV's; and he said that they had an 18
17 wheeler and that they loaded up a bunch of ATV's on
18 that, and that that's how they moved them.

19 I just told him, you know, "This don't sound right.
20 You're going to get in trouble for it insurance
21 companies take this kind of stuff seriously. You
22 need to try to reverse what you've done."

23 And he said, no, no, he's going to get away with it.
24 Said he set it up to make it look like it was a
25 theft. He said he cut a hole in the fence and he

1 pushed a couple out through the grass, left tire
2 marks and stuff. He said actually the ATV's, most of
3 them, were taken out through the front gate. And
4 that they were heavy, and they had and a little
5 forklift, would pick them up and load them on the 18
6 wheeler.

7 And he said that they unloaded them or worked from a
8 bolt place or fastener store or something that was
9 nearby; and he said the owner had taken or disabled
10 the forklift to make it look like it couldn't be
11 used, you know, make it look like the owner couldn't
12 have been involved in it.

13 And so basically, you know, I just told him I didn't
14 want to be involved in it no more and asked him to
15 get the stuff out.

16 And we went onto the auction. When I was there I
17 bought the Ford Explorer for me and there was a Land
18 Rover Discovery for \$2,500, real nice. I don't think
19 anybody ever smoked in it. It was owned by somebody,
20 I don't think had kids. It didn't look like anybody
21 ever sat in the back seat. So, I thought it would be
22 a good vehicle for Clyde. It was cheap, so I got it
23 for him.

24 And we went back to camp the following day, was the
25 25th, and Hugh left for his birthday. And that day I

1 believe me and Clyde -- when Hugh left -- me and
2 Clyde went to, I believe we went to -- we tried to go
3 back to the, when I bought -- when I bought the two
4 vehicles, they handed me the title to the Explorer or
5 the Expedition right then and there. But there was a
6 problem, a delay in the one for the Land Rover. So I
7 had the title for it.

8 Me and Clyde rode to Greenville that day, after Hugh
9 left, and went to the tax office and went to the
10 highway department got the tag and stuff straightened
11 out in it. I drove up to try to pick up the tag, the
12 title for the Land Rover and it wasn't ready yet. So
13 they said I could come back on Monday. So, we did
14 that and tinkered around.

15 We had dropped the Land Rover off because we went in
16 Hugh's truck. We bought two vehicles, so we had
17 three vehicles at the auction then. So we drove the
18 two that we just bought to my dad's house, dropped
19 off the Land Rover there, and got in the Expedition,
20 rode back there and got Hugh's truck, rode back to
21 the camp. And so when we went to Greenville the next
22 day, Clyde and I -- I had Clyde drive the Land Rover
23 back. And the rest of the weekend pretty much Clyde
24 and I built a hopper box that we was trying to build
25 that you would take a bucket full of dirt with a

1 backhoe and drop it, it would wash it, and it would
2 all wash through the system.

3 I don't really remember us doing a whole lot else
4 over the weekends, except working on that. We
5 probably tinkered around and stuff. And Hugh came in
6 Monday. No, Hugh called me Monday. I had gotten up
7 early and I went to Greer to try to pick up the
8 title, which I did, from an auction house, then I
9 went to the tax office. And then I went to the DMV,
10 paid taxes, was going to try to get a tag.

11 And when I was in the DMV on Saluda Dam Road, in
12 Greenville, Hugh called me on a cell phone he said
13 stay where your cell reception is because there's not
14 a very good cell reception a lot of times at the gold
15 mine.

16 I said, "I'm in Greenville, going to be here about
17 all day." Because I was planning on going to, when I
18 was finished there, planning on going to my dad's and
19 hanging out with them for the rest of the day. So I
20 told him I would be in town. And he told me he
21 needed me to stay where they could get in touch with
22 me because he was driving the backhoe down and he
23 didn't think he had enough diesel fuel to get there.
24 I might have to meet him somewhere to help him get
25 some gas.

1 So that's what he said that -- I might have got that
2 mixed up. That's on the way to Greer that's what he
3 called and told me. Then I went to the tax office
4 and went to the DMV. And when I was in the DMV he
5 called me and told me he was out of gas or fuel. I
6 hadn't been to the window yet to see the little girl.
7 I was sitting there with the little tag, so I went
8 ahead and left without finishing my business.
9 And I was on the way. He said he had ran out of gas
10 on Highway 11, right past where Highway 8 comes in.
11 There's a little store, a gas station there. He
12 said, but they didn't have diesel fuel.
13 So I left Saluda Dam Road and cut over towards 183 I
14 guess, Fire Creek Road, and then ran over to 8 around
15 Dacusville; and then head up there to 11 and he was
16 there and I picked him up.
17 Well, on the way somebody called him they was asking
18 about the ATV. I hadn't gotten around to getting it
19 off eBay yet. And I believe, and I told him that,
20 you know, I couldn't talk to him. I was trying to
21 get rid of him. I said, "I can't talk to you. I'm
22 trying to help a friend move a backhoe."
23 And I believe that's the phone call Detective Conner
24 was talking about, where he called. That's the
25 conversation, the phone call that he was talking

1 about.

2 So I got to where Hugh was and picked him up. And I
3 told him about the phone call. And he tried to get
4 me to call him back. Said, "Call me back," you know,
5 "Call me back."

6 I said, "Look, I done told you I'm not getting
7 involved in it no more. As soon as we go to town,
8 where I've got Internet access, I'm going take the
9 thing off. I'm not going to talk to anybody else
10 about it." He begged me to call him back and I
11 wouldn't do it.

12 So I got fuel for Hugh and dropped him back off and I
13 left there and went to the Pickens DMV. I figured I
14 was closer to Pickens since I was there, than to
15 drive back to the DMV in Greenville. So I just went
16 in there, got the tag straightened out and
17 everything, got in the vehicle and headed back to
18 Highway 11 to come back to Salem. And I passed Hugh
19 in the backhoe on Highway 11.

20 And when I got to camp, Clyde was there. I told him,
21 "Here comes Hugh. He's got a backhoe, so we'll get
22 to do some digging now."

23 So he was all excited about that. And -- let's see,
24 that would have been, I want to say 5 or 6:00. It
25 was a little bit before dark.

1 Hugh showed up. And there was a beaver dam thing
2 there that Terry had been complaining about beavers
3 building it; and it was kind of flooding out the
4 property. So Hugh took that down, but didn't do any
5 digging. He might have kind of scraped the road a
6 little bit to straighten that up a little.
7 And I think we left to go eat in town or, maybe we
8 didn't. No, Hugh wanted to go back to -- Hugh wanted
9 to go back to North Carolina to pick up his truck,
10 wherever he had left it, to get to where he picked up
11 the backhoe. And I was trying to finish this hopper
12 box. I wasn't finished so I told Clyde that he could
13 take the vehicle, ride with Hugh to North Carolina,
14 pick up his vehicle.
15 And so I stayed there at the camp and worked on the
16 hopper box. And they came in roughly midnight or
17 something and they had Hugh's vehicle. And I was
18 already in bed, actually, when they came in.
19 The next morning would have been the 29th. And we
20 got up, I still had a couple of little things to do
21 on the hopper box. Hugh started digging the pit.
22 And Terry testified he was there, and I was talking
23 to him about looking for a gold mining dredge that
24 floats on pontoons and you use it in streams. I
25 didn't have one and I wanted one to take to Alaska.

1 They're about \$4,500 for a new one.

2 So I asked him if he had, you know, if he'd keep an
3 eye out for any of the people that he might get on
4 the Internet with that's into gold mining that might
5 have one for sale.

6 And he said, "I've got one sitting up there right
7 now." He took me to it, showed it to me. It wasn't
8 his belonged to somebody else that had left it there.
9 They were trying to sell it for \$1,300 something
10 like. I thought that was a pretty good deal. So I
11 told him I would probably buy it. And we were all
12 kind of piddling around there, watching Hugh dig the
13 hole.

14 And Terry was trying to explain to Clyde and to Hugh
15 that, you know, they dug down to the bedrock, and
16 when they got down there it was rock, but it was
17 almost like petrified, you know, it was like almost
18 crumble in your hands. It was so old, it was
19 ancient, almost rotted. He was explaining that was
20 actually rock and that's where you dig to, what he
21 was I think explaining to Hugh. And so we kind of
22 walked back and forth between there, you know,
23 playing with the project.

24 And one other thing I think I skipped. One day, I
25 don't remember when it was, I think it was -- I think

1 it was the day that Hugh left for his birthday which
2 would have been the Friday before that 25th. You
3 know, I told Hugh to get the ATV's out of the storage
4 building because it was in my name, and he hadn't.
5 And so when -- as I was driving by there on Highway
6 11, I stopped and I took them out and put them in his
7 trailer that he had there. And that's when Mr. Couch
8 says that he saw me driving them in there. That's
9 what he was talking about. That I believe would have
10 been the 25th.
11 So the 29th we were finishing up there and we decided
12 we'd stop for lunch. And Hugh wanted to, we had
13 Hugh's vehicle, we had the two vehicles that I just
14 bought, we had my other vehicle, my van, we had
15 Clyde's vehicle that was there and Hugh's Mercedes.
16 You know, it was crowded. So Hugh said that he
17 wanted to take his Mercedes to the storage facility
18 and drop it off. And so I grabbed the computer and
19 put it in the car.
20 Normal when I go to town, that's where I get on the
21 Internet, they have the wireless at Chik-Fil-A so
22 that's where I normally go when I go to Seneca.
23 And so I threw the laptop in the car. I was going to
24 remove the ATV before the listing ended. So we drove
25 to the storage facility. And Hugh put in his

1 Mercedes -- he put it in the storage building. And
2 he got in the car with us, he noticed that the
3 trailer was missing. So we rode up there.
4 Mr. Couch was outside, working on the car, had the
5 hood raised up or something. And Hugh got out,
6 talked to him, and asked him about it, said, you
7 know, where is his trailer and stuff. He came back,
8 told me, you know, that Mr. Couch said that, you
9 know, he thought we took it.
10 Hugh started accusing me of taking it. And I said,
11 "Look, I didn't take it from you." I said, if
12 anybody took it, you would, because I'm not going to
13 help you put the stuff on eBay anymore. And so you
14 might have took it, not to want to pay me the money
15 you owe me for listing the stuff.
16 And he said, "Well, that's the reason you got the
17 phone cut off, because you done stole them from me,
18 you're trying to sell them to somebody else and you
19 don't want to answer the phone."
20 I said, "Look, that's not true. I been with Clyde
21 all weekend since you been gone for your birthday. I
22 haven't been anywhere hardly that he hadn't gone and
23 I haven't messed with it."
24 I said, "You know why I had the phone cut off." And
25 I left at that because Clyde was in the vehicle. I

1 didn't want him to know what stuff he had got into.
2 But he knew what I was talking about, he knew that i
3 had the phone cut off because I told him that I
4 wasn't going to talk to anybody else after I found
5 out where they came from.

6 Anyway we were headed to town and I don't know the
7 little store, the little kitchen right there at Troy
8 Valley Road. Detective Smith pulled us over and got
9 me out of the car; and, you know, came running up
10 stuck a gun in my face. Got me out of the car, took
11 my keys, had to cut the vehicle off and all that kind
12 of stuff. And said I was under arrest, hauled me
13 back to jail. And I wasn't really exactly sure what
14 was going on.

15 They put Hugh in another vehicle and we got to jail
16 and they, you know, started threatening me all this
17 kind of stuff. I found out they were down there
18 searching, seizing all my property and I got mad.
19 And they said they was going to charge me with all
20 kind of stuff. And so I said, you know, I better
21 just keep my mouth shut, because anything I say they
22 might try to charge me with, you know, not going to
23 the police when I found out what was going on.
24 But I didn't go to the police because I didn't think
25 a crime had actually happened yet. I thought that he

1 had been given the things and he was supposed to sell
2 them, then they were going to report it stolen. So
3 the insurance scam wasn't actually, the crime
4 wouldn't happen until they reported it stolen. So,
5 even though I didn't think a crime had happened, I
6 didn't want to be involved in it. That's the reason
7 I didn't tell the police -- I probably wouldn't tell
8 them anyway, because I didn't want him to get in
9 trouble.

10 But I was kind of scared that they might try to
11 charge me with something like that so I just didn't
12 say nothing. I just told them I didn't have anything
13 to do with it. I said, "If anything is stolen, Hugh
14 stole it, I don't have anything to do with that. I
15 don't know anything about anything being stolen."
16 And I left it at that.

17 That's what I've said all this time. I haven't ever
18 changed my story.

19 I'd also like to add that Detective Smith said that
20 he had seized or took my vehicle and stuff because he
21 couldn't leave it there on the property. That's not
22 true. It was parked on private property it had been
23 on private property. There was no reason for him to
24 take it. That's why I got mad. And he testified
25 that the reason that he took it was -- or the reason

1 he still had it was because nobody asked for it back.
2 That's not true.
3 I sent a letter to him and to Sheriff Singleton
4 asking them to return my property, you know. It
5 wasn't stolen and it wasn't evidence of a crime. And
6 they haven't returned it to this day. And so that's
7 the reason I filed a lawsuit, to try to get my
8 property back. And I filed a summary judgment in
9 federal court. And so that's when Hugh told me, you
10 know, that they were after me because of the lawsuit.
11 These bill of sales, alleged bill of sales or
12 whatever, that is not my handwriting. Those are not
13 my signature. And I've never seen them before except
14 when they provided them to me.
15 I think they're a little suspicious because they
16 claim that they found them at the time, but when they
17 provided me with discovery in April 3rd of this year,
18 they weren't there. And then I sued them and then I
19 filed summary judgment just a month ago and just, you
20 know, within a week or so, here up they pop, you
21 know. So, I think that, you know, there's some funny
22 business going on about that. I think they did that
23 to try to make it look like that I knew they were
24 stolen, stuff was stolen or something. And I didn't.
25 Basically I don't know a whole lot more.

1 You know, like I say, that's what Hugh told me, not
2 necessarily what I believe today. Even at the time
3 that I was arrested, I would have still believed
4 that. But the police showed me some photographs of
5 the contents of Mr. Justice's vehicle full of what he
6 called burglary tools and ski masks and bolt cutters
7 or something. So, there's a part of me that thinks
8 there might be some truth to that simply because I
9 find it difficult to believe that, if I understand
10 what happened correctly, I find it hard to believe
11 that, you know, you could move that many ATV's two at
12 a time or four at a time or however, that distance,
13 that quickly.

14 Because it's my understanding one day they were
15 there, witness drove through the parking lot and was
16 nothing gone, the next day they're gone. And
17 Detective Conner said it's a four-hour drive round
18 trip. You know, however, many ATV's, my calculations
19 it would be like 15 or 30 hours just of constant
20 driving if you were just moving two or four at a
21 time. So it's my opinion, the way I'm looking at it,
22 part of me thinks that's a major operation to move
23 that kind of stuff. I do believe that a forklift
24 would have probably had to have been involved or
25 probably an 18 wheeler. I don't see how it could be

1 done just one or two little trailers or something.
2 Just don't make any sense to me.
3 But at the same time I kind of want to believe
4 Mr. Haddad, you know, seemed like a believable person
5 to me. So I don't think -- I don't know what to
6 think, whether he was involved or not. I don't know.
7 All I know, that's what I was told and that's what I
8 believed at the time. And really, I don't know
9 anything else I can think of.
10 Mr. Justice did tell me that, Mr. Justice did tell me
11 that the police had approached him, or that they had
12 approached each other or something and they were out
13 to get me because of the lawsuit; and that they
14 weren't -- they were mad because I was challenging
15 them. Because I think the words that he used was
16 that they think they're, the people that they
17 normally come in contact, with I guess for the most
18 part, can't read or write and, you know, I guess they
19 thought I was the same way.
20 They said "Oh, he's a country boy, he ain't going to
21 know no better. We'll take his property. And when I
22 stood up to them, I think it embarrassed them a
23 little bit, and they're mad about it.
24 I had said, "No, you can't take people's property,
25 keep people's property if it's not evidence in a

1 crime or stolen. If it's, you know, no, you're not
2 above the law." If you think you are, I'll have a
3 federal judge tell you that you're not. I think they
4 didn't like it too well.

5 So I think Mr. Justice realized that. I think he
6 realized he was in a lot of trouble. And I think he
7 knew about the lawsuit and he knew that they were
8 kind of desperate to get rid of it, that there's a
9 legal -- he knows a lot about the law, more than I do
10 really. I know mostly about constitutional stuff. I
11 tried to learn a little bit. Like my dad said, he
12 sent me some case law and stuff in the mail for me to
13 figure out to how to try to defend myself. I mostly
14 know about constitutional stuff, federal court, civil
15 stuff, not criminal.

16 Mr. Justice knew if they could get me convicted in
17 state court, there's a case called Heck versus
18 Humphrey says that they have to dismiss the case in
19 federal court because if the Court declared that they
20 violated my constitutional rights, that it would
21 overturn the State conviction.

22 And so, it would be improper for them to do that, the
23 Federal Court, so they would have to dismiss it. If
24 the state court ever overturns the conviction for
25 some reason, then you could bring the lawsuit back.

1 But that's pretty rare. Mr. Justice knew that. He
2 knew that they could get the federal case dismissed
3 if they could get me convicted.

4 MR. WAGNER: Objection, your Honor. I don't mean to
5 interrupt the defendant on his statement. I think this
6 stuff about the --

7 THE COURT: I'll sustain the objection. Disregard
8 all the stuff about the federal cases. And he knows a
9 little bit about what he's talking about, not completely.
10 Doesn't have anything to do with this case. As I told you
11 earlier, the suit in federal court goes to just bias. It
12 doesn't have anything to do with this case, doesn't have
13 anything to do with merits of this case. The merits of
14 this case in federal court don't have anything to do with
15 the merits of this case. Please proceed.

16 THE WITNESS: It's true. It goes to bias. And
17 that's what I'm saying, you know, that he had a way out if
18 he could get me convicted and get a light sentence. And I
19 believe that's what's happened here. I believe that he
20 figured that friend or not, you know, his butt or mine.
21 And, you know, 150 years is lot of time. He's 48 years
22 old.

23 So I really don't have anything else to say, you
24 know, that I can think of. That's what I believe has
25 happened here. And I can tell you I did not know this

1 stuff was stolen. If I did, I wouldn't have been around
2 it.

3 THE COURT: Do you want to start your cross, very
4 briefly?

5 MR. WAGNER: I'd be glad to start it.

6 THE COURT: Just a few questions.

7 MR. WAGNER: Are you done, Mr. Tinsley?

8 THE WITNESS: Except for the questions you have.

9 CROSS-EXAMINATION

10 BY MR. WAGNER:

11 Q Mr. Tinsley, you started off by saying you had a
12 pistol thrown in your face when you were arrested.
13 You understand, don't you, that Detective Smith is
14 out there by himself on the side of the road, he's
15 got felony stops to make, people that have been
16 dealing in stolen four wheelers and stuff, for his
17 own protection out there on the road by himself, he
18 needs to pull his gun or have it readily accessible,
19 do you not?

20 A I have no problem. I can understand that position;
21 but at the same time, you know, the way I see it he
22 could have had some backup before he pulled me over
23 or something or could have left a note with the
24 people at the storage facility or something saying,
25 "If he comes by, tell him to give me a call."

1 I would have called him. They can say, "Mr. Tinsley,
2 we're not saying you stole this stuff, we notice you
3 selling on eBay, think it's stolen, kind of be
4 interested where you got it from." Had he approached
5 me that way, I would have told him.

6 Q Would have tipped you off to get rid of whatever else
7 you had?

8 A That's true. I see that point. I see that point.

9 Q He had no other choice but to handle it the way he
10 did?

11 A I think he could have probably not used so much
12 violence, but that's not, you know, that's not the
13 main thing. That's just one of the things. I
14 thought it was, you know, a little overkill.

15 THE COURT: All right. We'll stop there. You
16 started your cross-examination we'll finish
17 cross-examination after lunch.

18 MR. WAGNER: Yes, sir.

19 THE COURT: Mr. Foreman, ladies and gentlemen of the
20 jury, leave your notepads in the chair. Don't discuss the
21 case with anybody. It's 1:05 see you back here at 2:30.
22 Come straight back to the jury room.

23 All right. We'll adjourn until 2:30.

24 (Whereupon, the proceedings are adjourned for the
25 luncheon recess.)

AFTERNOON SESSION

(The proceedings resumed after the luncheon recess,
when the following proceedings were had:)

THE COURT: Is the State ready?

MR. WAGNER: Yes, sir.

THE COURT: Mr. Tinsley, come get on the witness
stand please.

(WHEREUPON, the jury came into open court at
approximately 2:32 p.m., when the following
proceedings were had:)

JAMES DOUGLAS TINSLEY, JR., having
been previously duly sworn, further testified as follows:

CROSS-EXAMINATION

BY MR. WAGNER:

Q Mr. Tinsley, you say you were making a thousand
dollars a day panning for gold?

A Sometimes, yeah. Roughly.

Q So, you're making a thousand dollars a day, but
you're still messing around with putting stuff on
eBay for \$10 if it didn't sell?

A I was doing that as a favor for Hugh.

Q You were hanging out with Hugh, you needed to live in
the trailer, that you say Hugh stole, you knew
nothing about it, you had to live in the trailer
making a thousand dollars a day?

1 A I didn't start making that much until we got there at
2 the gold mine camp. From when he was gone from six
3 to the 18th, I think, it was those days in there I
4 was finding that gold. It's not like I had been
5 finding that much for the last two years or nothing.

6 Q Sounds like you kind of came into the mother lode
7 there, making that kind of gold. A thousand dollars
8 a day, right?

9 A I found a good bit of gold, yeah.

10 Q Okay. And you said I think on the 24th that you
11 finely found out, I guess, about the scam that Mr.
12 Justice was running?

13 A You mean when he told me when we went to see
14 Crawford?

15 Q Yeah. When you found out he was running this ATV
16 scam, so you say?

17 A Yeah.

18 Q That was on the 24th?

19 A Yes, I believe that's correct.

20 Q Okay. And you weren't arrested until the 29th?

21 A Correct.

22 Q So five days you knew he was dealing in stolen stuff,
23 per your testimony, you knew these things were
24 stolen; but you did nothing about it?

25 A I didn't know they were stolen. I thought they were

1 going to plan to claim they were stolen.

2 Q You knew he was running a scam, yet, did nothing
3 about it?

4 A I told him he needed to try to get this money back
5 and give them back and get out of it.

6 Q And you still had this 6 by 6 ATV sitting there at
7 your campsite right next to the trailer where you
8 were living that you told Terry Tobin was yours?

9 A No. The camper you mean?

10 Q Yeah, the camper.

11 A Those two Hugh said that I didn't have to worry about
12 those because he wasn't going to claim them. He
13 wasn't going to claim those as being stolen, that was
14 what he was to get in exchange or part of exchange
15 for selling them.

16 Q So that would make it stolen property, too, would it
17 not?

18 A No. It was my understanding he wasn't going to
19 report those two stolen.

20 Q So because he wasn't going to report it, that doesn't
21 count as stolen?

22 A Excuse me?

23 Q Because he wasn't going to report it, that doesn't
24 count as stolen? Somebody is out the money for that
25 thing, you all just can't walk off with it?

1 A Not that Hugh wasn't going -- the person that owned
2 it -- my understanding, the person that owned it,
3 Mr. Haddad, he wasn't going to report it stolen. He
4 was going to give that as a gift to Hugh for his part
5 in helping him sell it.

6 Q I see. You think he got pissed off because the
7 sheriff's office arrested you like they did?

8 A A little bit. But mostly it was the way they treated
9 me and the taking of my property. I thought that was
10 wrong and unconstitutional.

11 Q You say you know a lot about constitutional law,
12 Fourth Amendment, search and seizure; is that right?

13 A A little bit.

14 Q You would I guess admit that did they everything by
15 the book? They got search warrants, they searched,
16 they had probable cause, magistrates issued search
17 warrants, they executed the search, the return. They
18 filled out all the paperwork properly and they found
19 exactly what they thought they were going to find,
20 all this stolen property in your possession?

21 A I don't agree any of the things you said was right.
22 I don't agree they got the warrant properly. I don't
23 agree the warrant particularly described the items to
24 be searched and seized. I believe the warrant, you
25 know, of course I don't care about the storage

1 facility thing; but just for example, Mr. Couch
2 testified that they showed up there, searched the
3 trailer, it was still daylight, right about dark when
4 they left.

5 THE COURT: Mr. Tinsley, answer the question don't go
6 off in left field. Okay? The question was about the
7 search warrant objection.

8 MR. TINSLEY: I don't agree that was right. No.

9 THE COURT: You can give a brief explanation as to
10 why, but let's don't go off way out in left field. Do you
11 understand?

12 MR. TINSLEY: Right.

13 THE COURT: All right. Thank you, sir.

14 BY MR. WAGNER:

15 Q All right. So when you got arrested that day, Greg
16 Reed from the sheriff's office went down to talk to
17 you, it wasn't David Smith because he was working
18 other search warrants and things. Do you remember
19 Greg Reed talking to you?

20 A I remember somebody talking to me. I'm not exactly
21 sure who it was.

22 Q You remember telling Greg you knew the law, you
23 weren't stupid, they didn't have anything on you?

24 A I told him something similar to that. He was trying
25 to browbeat me, tell me that I had to tell him or he

1 was going to, you know, convict me; and that I was in
2 possession of all this stuff.

3 And I said, "Look I wasn't in possession of anything.
4 I didn't know anything was stolen."

5 And he said, "Well, you have constructive
6 possession."

7 And I said, "Look I know the law, constructive
8 possession means you have to have dominion and
9 control and I didn't have dominion and control over
10 it."

11 Q You're riding around on the ATV. The ATV's are in a
12 storage unit rented by you in your name. Per the
13 Couches, you rented it, you signed off on it. And
14 that's not in your control?

15 A No, because they were Mr. Justice's. Just because he
16 let me use something, my mere presence around it
17 doesn't mean I have the power and intent to control
18 its distribution or use.

19 Q Somebody has a pound of cocaine, hands it to you, say
20 here, this is mine, let you hold it awhile. You walk
21 around with it, do you not have dominion and control?

22 A Yeah. I would think you would.

23 Q Okay. So the four wheelers being locked up in your
24 Highway 11 storage unit with your locks on them in
25 your name, that's not dominion and control?

1 A It could be argued that.

2 Q Do you remember when -- at the time you didn't know
3 the sheriff's office seized the big black trailer
4 that was stolen from Waynesville along with the
5 trailers left there at the scene, inside there. You
6 didn't know it was missing; but when you did find out
7 when you pulled up, you remember Mr. Couch saying you
8 were the one who got out and asked him about it? Not
9 Mr. Justice, as you testified.

10 A I did because Mr. Justice called me and said, "What's
11 the deal with the trailer?" He was accusing me of
12 stealing it. So I went up and asked him, and then
13 went down and got Mr. Justice because he was putting
14 his Mercedes in there, told him what Couch told me.
15 I drove him back up there, and Couch got out and
16 asked him. I think Couch told him that, you know,
17 said, "I just want to ask you one thing, do you know
18 what happened to this trailer?" I believe was his
19 testimony or something similar to that.

20 Q Do you remember telling Mr. Couch that you wanted to
21 know where it was because you had \$30,000 worth of
22 stuff in there?

23 A I don't remember exactly what I said; but I said
24 that, you know, "It's missing and I think that there
25 was some property in there because I put them in

1 there."

2 Q And you had the property in there is what you told
3 him?

4 A Excuse me?

5 Q You told him you had the property in there, it was
6 yours, the \$30,000 worth of property?

7 A I don't remember that I said it was mine; but I don't
8 remember exactly.

9 Q And that was on 25th, 26th, something like that?

10 A No, it was the 29th.

11 Q Excuse me, the 29th.

12 A Yeah.

13 Q Again, four or five days after, per your own
14 testimony is that you're aware of this so-called scam
15 that Justice is on?

16 A Uh-huh.

17 Q Took you three weeks with him, according to you, to
18 figure that out? He finally told you. You know the
19 scam is on; but four or five days later you're still
20 complaining to Mr. Couch about your stuff missing.
21 And the stuff is not yours, it's stolen from
22 Mr. Haddad up in Waynesville.

23 A I was complaining basically for Hugh because he was,
24 you know, accusing me of it. And I just had a brief
25 two or three words with him. Hugh is the one that

1 went back up there and talked to him.

2 Q When you were doing these things, you did most of the
3 talking, didn't you?

4 A Doing what things?

5 Q Selling the four wheelers, like when you talked with
6 Mr. Crawford?

7 A A little of both. Both of us did some talking. I'm
8 a pretty quiet person. I don't really talk that
9 much. But if somebody asks me a question, you know,
10 I'll answer it.

11 Q Would you be surprised to know Mr. Crawford described
12 you as being the one that did most of the talking.
13 He said the one that did most of the talking was
14 Travis, and looked like Drew Carey. Would that
15 surprise you?

16 A No.

17 Q And I would submit, you do look a little like Drew
18 Carey, don't you?

19 A I have no idea. I hope not.

20 Q And you told him you all were dealing in surplus, not
21 Hugh Justice?

22 A No, Hugh is the one told him that.

23 Q In your presence?

24 A Yeah. Well, it wasn't surplus. What he said, he
25 bought this stuff at a government auction. I know

1 that Couch said surplus, but the word he used was
2 government auction.

3 Q Terry Tobin said government surplus too, didn't he?

4 A I don't recall.

5 Q You admit your name is on everything, all the
6 paperwork?

7 A What paperwork? For the storage facility?

8 Q Storage facility, bills of sale.

9 A Might be my name, but it's not my signature,
10 handwriting on the bill of sales; but I would agree
11 about the storage facility.

12 Q But now your father couldn't say it wasn't your
13 signature on there.

14 A You'd have to ask him about that.

15 Q He's already said that.

16 A And actually I think what he said was it wasn't, or
17 his opinion the signature wasn't mine, the
18 handwriting he wasn't sure.

19 Q And the trailer, the Jayco VR-1 camper that you were
20 living in, you identified to Mr. Tobin as yours.
21 That also has a bill of sale filled out here with
22 what appears to be your signature, which you say is
23 not. Your address, everything on it for \$9,800 for a
24 \$30,000 trailer?

25 A That's what's it says.

1 Q Okay. And that was found per Scott Arnold from the
2 sheriff's office in your camper, the stolen camper
3 you were living in, in your little cubbyhole up
4 there?

5 A That's what he says. I disagree with that.

6 Q You never seen that paperwork before?

7 A Not until I got it in discovery.

8 Q You have no idea how it got in your camper?

9 A I don't believe it was in there. The references he
10 made to bill of sales as being various types, I don't
11 believe that constitutes various types. What he may
12 have found was there was a few bills of sale that
13 were written on notebook paper and one might be wrote
14 on a receipt from where I bought gasoline or
15 something when I'm at a flea market sometimes I buy
16 something; sometimes I get a bill sale scratched out
17 on whatever we can get our hands on at the time. I
18 had a few of those in a drawer. And I believe that
19 reference to various types of bill of sales, I think
20 that's what's they're referring to. Those documents
21 were not provided to me within 30 days after
22 discovery as required by the law. If he had them at
23 the time that they searched the camper, like he says,
24 then why didn't I get them in a timely fashion? Why
25 they just magically pop up three weeks before we go

1 to trial?

2 Q They gave you the search warrant where they were
3 mentioned?

4 A Excuse me?

5 Q They gave you the search warrant where they were
6 mentioned way beforehand?

7 A Didn't mention those. It mentioned various types of
8 bill of sales, it didn't state versions or titles,
9 bill of sales, or whatever.

10 Q Let me get your theory straight. What you are
11 testifying to and what you're saying, you think
12 you're kind of an innocent victim in this whole
13 thing? You had no idea all these four wheelers with
14 the tags still on didn't come from a government
15 auction, and your good friend from a long time ago,
16 you've known for years, you all were hanging out with
17 almost on a daily basis per the Couches and other
18 people that saw you all together, had no idea that he
19 was getting you drug into all this; and you just had
20 no idea this was going to happen?

21 A Not until Mr. Crawford made that comment and made me
22 think about it.

23 Q It's just really bad luck, your name is on every
24 single thing that's in writing. And it's not Justice
25 on anything. Is that bad luck, too?

1 A No. I believe that's by design. I believe that's
2 because there's some bias and you're trying to set me
3 up because of my lawsuit.

4 Q I tricked you into it?

5 A Not tricked, fabricated.

6 Q And these things here, which you've never seen
7 before, were concocted by the sheriff's office all
8 because between January 29 when you were arrested and
9 today, a month or two, whenever you filed your
10 lawsuit, they concocted it just to strengthen their
11 case and set you up?

12 A I believe so.

13 Q You're the victim here?

14 A One. There are probably several.

15 MR. WAGNER: Thank you. I don't have anything
16 further.

17 THE COURT: Anything you want to say briefly in
18 reply?

19 MR. TINSLEY: No, Your Honor.

20 THE COURT: Okay. You may step down. Mr. Tinsley,
21 do you have anyone else you would like to call?

22 MR. TINSLEY: I do not, your Honor.

23 THE COURT: Does the State have any reply testimony?

24 MR. WAGNER: No, sir.

25 THE COURT: Okay. Ladies and gentlemen of the jury,

1 I have to hear some motions at the end of the case, like I
2 heard at the end of the State's case. I'm going to ask
3 you to go to the jury room briefly. I'll get you back
4 very shortly. The only thing left will be closing
5 arguments and the charge on the law. Leave your notepads
6 in the chair. Don't discuss the case among yourselves.

7 (Whereupon, the following proceedings are had outside
8 the presence of the jury:)

9 THE COURT: Mr. Tinsley, you have any motions? I
10 believe you had a motion for directed verdict based upon
11 the receiving versus larceny. I assume you renew that
12 motion; is that correct?

13 MR. TINSLEY: I do, your Honor.

14 THE COURT: That motion is denied. As far as the
15 motion on the consolidation on multiple items, you still
16 have that motion?

17 MR. TINSLEY: I do, your Honor.

18 THE COURT: Solicitor?

19 MR. WAGNER: Yes, sir.

20 THE COURT: Have you looked at the code section
21 16-13-180?

22 MR. WAGNER: I will.

23 THE COURT: Pull it out, look at the bottom of it.
24 Basically referring to three indictments.

25 Mr. Tinsley, you need to listen for a minute.

1 MR. TINSLEY: I'm sorry, your Honor.

2 THE COURT: Because I'm going to ask you to respond
3 here shortly. Okay? 16-13-180, the last sentence, I'll
4 read it: "The purpose of this section, receipt for
5 multiple items in a single transaction or event
6 constitutes a single offense."

7 My question to you, indictment 882, 883, 884, allege
8 on January 22 he received these Kawasaki, green in color,
9 Keystone trailer and the Polaris four wheeler, two
10 Superior trailers and tools, Kenwood radio, and I believe
11 that's it. Based on the indictment, I can't tell you
12 about the testimony because it was all sort of blended
13 together. Why shouldn't Mr. Tinsley's motion to
14 consolidate these three indictments into one charge be
15 granted based upon the language I just read to you in
16 16-13-180?

17 I'm just basing what I'm saying on the indictment. I
18 assume this is all the stuff came from the theft in
19 Spartanburg, which would be one transaction, one event.

20 MR. WAGNER: Honestly, I don't disagree with you. I
21 think the statute is poorly written, because they added
22 the possession --

23 THE COURT: I understand. I went along with that
24 argument. I think the section about the receipt would
25 apply to the entire code section, whether it's possession

1 or receiving.

2 MR. WAGNER: Should have worded it different.

3 THE COURT: Not arguing that, we're stuck with how
4 it's worded. I'll be glad to hear your argument how you
5 want to present to the Court.

6 MR. WAGNER: I don't have any argument against that.
7 I agree with your reading it that way. The word
8 possession ought to apply with the receipt I think the
9 word possession should have been in there, too, with
10 receipt. I think it's just worded poorly in the statute.

11 THE COURT: Going to grant the motion to consolidate
12 indictment 882, 883, and 844 into one indictment, which
13 that leaves only three indictments. Do you understand,
14 Mr. Tinsley?

15 MR. TINSLEY: Yes, sir.

16 THE COURT: I granted a portion of your motion. The
17 other two indictments allege different days, no way they
18 could have come from the same transaction. Do you have
19 any further motions?

20 MR. TINSLEY: No, Your Honor.

21 THE COURT: Ready for closing arguments or do you
22 need a few minutes to get your thoughts together?

23 MR. WAGNER: Ready, Judge.

24 THE COURT: You going to make opening, open and
25 close?

1 MR. WAGNER: Yes, sir, open and close.

2 THE COURT: Pardon?

3 MR. WAGNER: I'll open and close.

4 MR. TINSLEY: Your Honor, I would like to maybe
5 address the charges.

6 THE COURT: What charges?

7 MR. TINSLEY: I'd like the jury to be charged.

8 THE COURT: Do you have any request to charge from
9 the State?

10 MR. WAGNER: No, sir, just your usual.

11 THE COURT: Why don't you hand it to Rick over there.
12 He'll hand it up so I can see what you're talking about.

13 (Defendant complies.)

14 All right. Mr. Tinsley, as far as mere presence and
15 abandonment, talking about guilt, stolen knowledge
16 character, I'm not going to charge that. Glad to hear you
17 on involuntary and superficial possession. I'm not sure
18 what you're asking me on that. I don't understand what
19 you're asking me.

20 MR. TINSLEY: I'm not really worried about that one,
21 your Honor. It was the others because of my testimony
22 that I abandoned any involvement in it. And the mere
23 presence the law is that the possession of stolen property
24 you cannot be convicted based on mere presence alone.

25 THE COURT: I understand that. But that's not a jury

1 question. That's a legal question I have already made at
2 the directed verdict stage. That's not a jury question.
3 So I'm not going to charge on that. That's the reason I'm
4 not going to charge. That's a legal question the Court
5 made. That's not going to be submitted to the jury, that
6 issue.

7 You're not even charged with stealing so there's no
8 way I can charge that. Do you follow me? There's no
9 charge of stealing this property.

10 MR. TINSLEY: No. The mere presence has to do with
11 possession.

12 THE COURT: I understand.

13 MR. TINSLEY: Not the theft.

14 THE COURT: I understand.

15 MR. TINSLEY: Okay.

16 THE COURT: What do you want -- all you have here is
17 mere presence. What you asking me for, mere presence?

18 MR. TINSLEY: That the jury be instructed that
19 evidence that a defendant is merely present around stolen
20 property is insufficient to convict a person of
21 possession.

22 THE COURT: I think my charge on receiving stolen
23 goods, possession of stolen vehicle will cover what you're
24 saying. I don't address mere presence. The last
25 paragraph says, the State may prove the defendant knew or

1 had reason to believe that the property was stolen by
2 showing the defendant knew facts would make a reasonable
3 person believe the property was stolen.

4 I'll read the whole charge if you want me to. The
5 defendant is charged with receiving stolen goods. The
6 State must prove beyond a reasonable doubt the defendant
7 received, possessed, goods or chattels, or other property
8 the defendant knew or had reason to believe the property
9 was stolen. Whether the defendant knew or had reason to
10 believe the property was stolen may be shown by direct or
11 circumstantial evidence. State may prove that the
12 defendant knew or had reason to believe the property was
13 stolen by showing the defendant knew facts that would make
14 a reasonable person believe that the property was stolen.

15 So the possession, whether you want to call it
16 constructive or whatever, mere presence is I think
17 encompassed in that. What do you want me to say about
18 mere presence? And as far as the abandonment, I heard no
19 testimony that would indicate any abandonment. As to a
20 defense, the first thing you have to do is admit you had
21 knowledge. You deny knowledge. Okay. So I don't think
22 abandonment is appropriate.

23 MR. TINSLEY: Okay, your Honor.

24 THE COURT: So I'm not going to charge abandonment.
25 I'll listen to you on mere presence. What do you actually

1 want?

2 MR. TINSLEY: Just what I said. To clarify for the
3 jury that my mere presence around the property in and of
4 itself would be insufficient to convict on.

5 THE COURT: Solicitor, do you have any thoughts on
6 the mere presence?

7 MR. WAGNER: Your Honor --

8 THE COURT: Comes in under constructive possession in
9 drug charges.

10 MR. WAGNER: I think your charge will cover it in my
11 opinion.

12 THE COURT: Do you want a mere presence charge?

13 MR. WAGNER: I'd leave that up to you. I think your
14 charge covers it. I think what he's asking for I think
15 may be misconstrued by the jury.

16 THE COURT: I mean, this is more -- this is not
17 really a constructive possession case. The question for
18 the jury to determine is whether he had knowledge it was
19 stolen. Doesn't have anything to do with possession
20 because he's not, you know, possession of -- whether he
21 knew they were stolen and had possession.

22 MR. WAGNER: Yes, sir. I agree.

23 THE COURT: Okay. All right. Anything else?

24 Do you need to confer with your attorney?

25 MR. TINSLEY: Your Honor, I'd like a little

1 clarification. You said that you didn't think this was a
2 constructive possession case. I wasn't found in
3 possession of anything, you know, on my person or
4 anything.

5 THE COURT: I understand. I agree. That's why I
6 don't think it's constructive possession. Constructive
7 possession doesn't have anything to do with it.

8 MR. TINSLEY: It is constructive possession. Actual
9 possession doesn't have anything to do with. Am I wrong?

10 THE COURT: I don't know -- I haven't really thought
11 about it until you just now mentioned it. What do you
12 want, as far as constructive and actual?

13 MR. TINSLEY: That I was not in actual possession of
14 it.

15 THE COURT: Well, you had some of the stolen items
16 when they stopped you in the truck. I don't remember what
17 those items were. Weren't they in the pickup or being
18 towed in the trailer behind you?

19 MR. TINSLEY: No, Your Honor. I was not found in
20 possession of anything. When I was arrested I had no
21 stolen property on me, around me, in the vehicle.

22 THE COURT: I know on your person, but it was in the
23 truck you were riding in.

24 MR. TINSLEY: No, sir, your Honor.

25 THE COURT: Nothing was being towed? Did I hear the

1 testimony wrong, when he was actually arrested?

2 MR. WAGNER: The stolen property came out of the
3 black stolen trailer with the two ATV's at the place on
4 Highway 11 where the Couches ran. The rest of the stuff
5 was all at his campsite.

6 THE COURT: Okay. It was all at his campsite?

7 MR. WAGNER: Yes, sir.

8 THE COURT: He wasn't in physical possession when you
9 arrested him? Didn't have any of the stolen property?

10 MR. WAGNER: No, sir.

11 THE COURT: I misunderstood that issue.

12 MR. TINSLEY: If it's complicated, would it be all
13 right that I be allowed to argue constructive possession
14 and mere presence to the jury and just your other charge
15 cover the rest of it?

16 THE COURT: I'll let you argue whatever you think is
17 appropriate. If he objects, I'll make a decision whether
18 it's appropriate or not.

19 MR. TINSLEY: Fair enough.

20 THE COURT: If he doesn't object, you can have at it.
21 I'm not going to put you on a short leash. Okay.

22 Now let's talk about time. How much time do you
23 need, Solicitor? I'm not going to sit up here and listen
24 to this thing for two hours.

25 MR. WAGNER: Ten minutes.

1 THE COURT: Well, total or opening?

2 MR. WAGNER: Maybe three minutes opening, and seven
3 minutes --

4 THE COURT: How much time do you need?

5 MR. TINSLEY: No more than probably 10 or 15 minutes.

6 THE COURT: I'll give you up to 20 minutes. I'll
7 give the State up to 20 minutes. You all both think
8 that's adequate time?

9 MR. TINSLEY: I believe so.

10 THE COURT: I'm not going to sit here and listen to
11 you all ramble for an hour. Do you understand? I don't
12 think the jury wants to. All right, twenty minutes. Let
13 me say this to you. When you hear that, (tapping on desk)
14 you've got five minutes.

15 MR. TINSLEY: Okay. I have one other thing.

16 THE COURT: Yes, sir.

17 MR. TINSLEY: And I apologize; but I would like for
18 you to look at the case of State versus Jones and see, you
19 know, if you have the same feeling about it that I do.

20 THE COURT: Do you have the cite?

21 MR. TINSLEY: I do. It is 536.

22 THE COURT: Hang on, 536 --

23 MR. TINSLEY: SE 2d, 396.

24 THE COURT: Okay. What feelings do you have about
25 it?

1 MR. TINSLEY: Well, I understand your argument that
2 you made earlier about, your position earlier, that the
3 State had the choice, the charge.

4 THE COURT: I did take the position they have the
5 alternate -- I don't think they can convict you of both;
6 they have the alternative, can charge you of larceny or
7 receiving, especially in a situation where it's all out of
8 state.

9 MR. TINSLEY: Right. This case is a 2000 case and it
10 deals with; and it says that a material variance between
11 the charge and the proof entitles the defendant to
12 directed verdict. The proof was that I was a thief, the
13 charge is that I'm in possession. And this case pretty
14 much is on point about that.

15 THE COURT: I think the only reason the testimony
16 about you as a principal in the theft of the property was
17 to show you had knowledge. Didn't have anything to do
18 with charge, or the theft. That was just to show that you
19 had knowledge the property was stolen. It wasn't to the
20 knowledge factor under the elements of receiving stolen
21 goods. That doesn't have anything to do with the Jones
22 case. Apparently is about -- I don't know what it was
23 about -- she'll pull it up, I'll read it in a minute.
24 What do you want me to do about the Jones case? What is
25 your argument?

1 MR. TINSLEY: I want you to look at it, see if it had
2 any effect.

3 THE COURT: Helps your case.

4 MR. TINSLEY: Yes, sir.

5 THE COURT: I'll look at it, see if it helps your
6 case.

7 MR. TINSLEY: Thank you.

8 THE COURT: All right. Anything else? Need some
9 time to get your thoughts together? Five minutes.

10 MR. TINSLEY: I'm ready now.

11 THE COURT: Five minutes.

12 MR. TINSLEY: Thank you, your Honor.

13 (Whereupon, other matters are heard before the Court,
14 after which the following proceedings were had within
15 the presence of the jury.)

16 THE COURT: Solicitor?

17 MR. WAGNER: Thank you, Judge.

18 Ladies and gentlemen of the jury, we're at the final
19 stage of the trial, called closing arguments. I'm here to
20 talk to you first going to just tell you the law again,
21 what the State has to prove, what we seek to prove. The
22 defendant's going to give his closing arguments on the
23 facts and his version of it. Then I'll be back to address
24 you at the end. I'll try to keep everything brief. I
25 realize everybody is tired.

1 Basically we're here for essentially one case.
2 They're very similar charges. You have essentially two
3 crimes to be aware the defendant is charged with. The
4 first is receiving stolen goods, and it reads, 16-13-180:
5 It's unlawful for a person to buy, receive, or possess
6 stolen goods, chattels, or other property if the person
7 knows or has reason to believe that the goods, chattels,
8 or property is stolen.

9 A person is guilty of this offense whether or not
10 anyone is convicted of the theft of the property. A
11 person who violates this provision -- and it goes down to
12 give the different levels as far as how much property
13 you're talking about, whether it's under a thousand
14 dollars, more than a thousand, and less than five thousand
15 and over five thousand. That's the three levels.

16 He's also charged with one count of a stolen vehicle,
17 which is a very similar charge. It says a person not
18 entitled to the possession of a vehicle and receives,
19 possesses, conceals, sells, or disposes of it, knowing it
20 to be stolen or converted under circumstances constituting
21 a crime is guilty and the same levels apply. Less than a
22 thousand, more than a thousand, less than five thousand,
23 and more than five thousand is basically all it says.

24 Basically, what we're talking, if you find the
25 defendant had possession of this stolen property, these

1 ATV's, these trailers, and knew or had reason to know that
2 they were stolen, then that's -- he's guilty. I don't
3 think there's any -- I think the evidence is undisputed as
4 far as the value of the things. I think the value of the
5 things stolen were pretty much all worth five thousand
6 dollars. The one trailer was worth less than five
7 thousand, so you have one count there that's less than
8 five thousand if you find he had it and he knew it was
9 stolen.

10 Again, my name is David Wagner. I'm the prosecutor
11 on the case. I appreciate your attention, you being here
12 listening. I know it's been a long sit, and hopefully,
13 we'll wrap this up shortly. Thanks.

14 THE COURT: Mr. Tinsley?

15 CLOSING STATEMENT

16 MR. TINSLEY:

17 First, I'd like to thank everyone for being here.
18 It's an important job you have. I think I speak for
19 everybody, appreciate it. The system wouldn't work
20 without you. Actually I don't really have a whole lot to
21 say, I guess, nothing planned. My brain is fried, trying
22 to keep up with all the facts. I'm nervous, upset, I
23 didn't even get any sleep last night. I can't think of
24 what I said five minutes ago. So, I'm probably going to
25 have to refer to some notes for most of this closing,

1 because I was just unable to gather my thoughts.

2 As I told you at the beginning of the trial that the
3 deck was stacked against me. And I don't know, with the
4 limited resources I had, whether or not I'd been able to
5 bring out enough of the truth to give you an idea what's
6 really going on or not. All I know is I did the best that
7 I could with what I had to work with.

8 The way I see it, there's two sides. There's the
9 State, and there's Mr. Justice on the one side. Mr.
10 Justice is in trouble. He's got these boot prints at the
11 crime scene, these burglary tools in his vehicle. He's
12 facing all this time in North Carolina, South Carolina,
13 Georgia, 150 years. He's got to do something. He's
14 desperate. On the other hand, pitches a deal to the
15 State, who is also desperate to help the police get out of
16 this lawsuit, they have bias towards me about that. He's
17 willing to implicate me to help them. But that's only the
18 beginning of it, really.

19 His little scam may also prevent him from getting
20 convicted in other jurisdictions where he has charges and
21 basically Mr. Justice thinks he's above the law and trying
22 to scam everybody. I think that's a consequence really of
23 trying to deal with somebody, a known liar. The State
24 called him a liar themselves. He's a thief, and he
25 admitted to that. And he's a career criminal. And I

1 think they just did it and worked with him to protect the
2 vested interest of the police.

3 As to the other evidence, I would like to say that I
4 am no thief. My house has been broken into twice, and I
5 know how I felt. I felt violated. And I would never put
6 somebody else in that position. I may not be a rocket
7 scientist, I may not be able to go to college and be a
8 lawyer. I don't want to after going through this. But
9 I'm smart enough to be able to make a living without
10 having to resort to this kind of stuff.

11 So what's the law say? First, I'd like to put Mr.
12 Justice's testimony to the side for a minute. Let's just
13 assume for a minute he is lying, you know, to get this
14 deal with the State. If you don't believe that he's
15 lying, and you think he's telling the truth, then you
16 know, I'm dead in the water anyway.

17 Let's just put that to the side for a moment and talk
18 about the rest of the evidence. Without his testimony
19 there's not one single piece of evidence that says that I
20 knew this stuff was stolen. The State claims that I must
21 have known that the ATV's were stolen because they were
22 sold for five thousand dollars. That's bull. I explained
23 that. It would be true if they were new and very
24 expensive. But they were used. And that was a reasonable
25 amount of money for them in the condition that they were

1 in.

2 The alleged bill of sales, they claim that shows that
3 I had knowledge the stuff was stolen. Those aren't in my
4 handwriting. That's not my bill of sale, they were not in
5 my camper. If they were, I'd have had them in the initial
6 discovery. They came out of that camper, they would have
7 had them in August of this year; and I wouldn't have got
8 them three weeks ago. Somebody has made that up, planted
9 it to make me look sinister, to make me look like I knew
10 what was going on. Because they knew Mr. Justice was
11 going to lie. They know he's a liar, they caught him
12 themselves.

13 So, as to the law the judge is going to charge you on
14 the law; but I'd like to tell you how I think the facts
15 apply to the law. The State must prove that I had
16 possession of the property and that I knew that it was
17 stolen. As to the possession, what's called constructive
18 possession, that means you have dominion and control.

19 MR. WAGNER: Objection, Judge.

20 THE COURT: What's your objection?

21 MR. WAGNER: He's going into constructive possession.
22 I object for the record.

23 THE COURT: I'll sustain the objection. Constructive
24 possession doesn't have anything to do with the case.

25 MR. TINSLEY: I thought --

1 THE COURT: It doesn't have anything to do with the
2 case because you weren't present when the items were
3 seized.

4 MR. TINSLEY: That's what constructive possession
5 was, I thought.

6 THE COURT: You weren't present, it doesn't have
7 anything to do --

8 MR. TINSLEY: You just lost me.

9 THE COURT: Move on to the next item.

10 MR. TINSLEY: Okay. I don't believe that I had any
11 power over this property. It's true, I was asked to take
12 photographs of some stuff, put on eBay. I didn't have the
13 power, control, decide how much it sold for without
14 Mr. Justice's approval. I may have been allowed to stay
15 in a camper, I didn't have power, control to hook up to
16 it, take it to somewhere else, California, or do whatever
17 I wanted to with it. I was just merely present, around
18 the property. And the law says that mere presence is
19 insufficient to convict someone of possession.

20 But even if it could be argued -- and they will argue
21 that, well, I rented the storage building in my name;
22 well, it was true, it was in my name; but it was, you
23 know, just something that happened. Mr. Justice was the
24 one that was actually renting the place. I just happened
25 to be there. And in the circumstances, she was standing

1 out the window, you know, I filled it out. If I knew
2 something was stolen, I wouldn't put my name on it. I
3 wouldn't have invited Mr. Crawford if I thought I was
4 selling stolen property, wouldn't have invited him to the
5 doorsteps of the storage facility.

6 I wouldn't have gave him the receipt, put my name,
7 number, and address on it. So if he ever figured out it
8 was stolen, he'd know exactly where to come to. I
9 wouldn't do that.

10 And on top of that, when I did think something
11 strange about the stuff, I moved it out of the storage
12 building, because I didn't want nothing else to do with
13 it. It was put in this trailer Mr. Justice had. I didn't
14 rent the spot for no trailer. I rented the storage
15 building, so I didn't want it anywhere around me anymore.
16 But even if it could be argued that I had possession, I
17 believe the knowledge of them should protect me from a
18 wrongful conviction.

19 There's some cases, such as drug cases, where it can
20 be assumed that a person has the knowledge of the drugs
21 illegal or the unlawful character. And the theory behind
22 that is if you have drugs in your possession and you can
23 see them, that most people know what drugs are by looking
24 at them. Most people know they're unlawful to have. So
25 if you have it in your possession and can see it, you

1 automatically know that it's unlawful.

2 The same doesn't apply to stolen property. A person
3 in possession of a stolen ATV can't tell it's stolen just
4 by looking at it. A stolen ATV looks exactly like a
5 lawfully purchased ATV. Specifically in this case, had
6 the original factory key, had paperwork with them, there
7 was no damage to the ignition system or anything that
8 would make me think it was stolen. If you look at the
9 photographs, you can't look at the photographs and tell it
10 was stolen. Look at the camper, you can't tell it was
11 stolen. Look at the pictures of the backhoe, you can't
12 tell it was stolen just by looking at it.

13 The State will likely argue all these minute reasons
14 why you should convict me or why you should assume that I
15 had knowledge; but the law says that if you only have a
16 mere suspicion that I'm guilty, or if you have to
17 speculate whether or not I'm guilty, that is insufficient
18 as a matter of law, to convict me.

19 Mr. Justice is a known liar, known thief, he's told I
20 don't know how many different versions of this story. His
21 testimony alone should raise serious doubts in your mind
22 as to my guilt. And it should make you question whether
23 or not the State has actually carried its burden of proof.

24 The knowledge element is personal to me, not what
25 this detective would have thought had he the same thought

1 in the same situation. It's what I thought in the same
2 situation. Just for the record, so we all know, all the
3 other people around who came in contact with Mr. Justice
4 and all this stuff, all them testified they didn't know it
5 was stolen. Mr. and Mrs. Couch said they had no idea it
6 was stolen. Terry testified he had no idea it was stolen.
7 Mr. Boles is not here. He didn't testify. Nobody
8 testified he ever reported that he thought this stuff was
9 stolen.

10 And I was no different. I had no idea it was stolen.
11 No one got on the stand and said I got a crystal ball, I
12 can tell you what Jimmy was thinking. That's bull. I
13 took the stand. I told you under oath that I didn't know
14 it was stolen. That's the only credible evidence as to
15 whether or not I had knowledge. And it's undisputed
16 except for this liar's testimony. And he's trying to get
17 himself out of trouble.

18 I've done all I can do under the circumstances. I've
19 done what I could with what I had to operate with. And I
20 don't know if I've done enough to get the truth out before
21 you or not.

22 You're faced with a task that's going to affect me
23 for the rest of my life. I'm asking you, begging you.

24 MR. WAGNER: Objection, your Honor.

25 THE COURT: I'll sustain the objection. Don't put it

1 on a personal basis. Argue the facts.

2 MR. WAGNER: Okay. If you believe in my innocence or
3 you believe the State failed to carry its burden of proof,
4 if you believe there's just something not right about this
5 case, you haven't heard everything, you don't know the
6 full story. If you believe that I'm innocent, I'm asking
7 you to go into that jury room, deliberating room, and
8 stand up for me.

9 Even if everybody else thinks I'm guilty, if you
10 think I'm not, if there's a doubt in your mind that I'm
11 not, stand up for me. Because it only takes one of you to
12 protect me from a wrongful conviction. To convict me must
13 be unanimous.

14 I'm asking you to protect me because I cannot go into
15 that room. I cannot defend myself. I'm asking you to
16 stand up for me when I'm unable to protect myself. I am
17 innocent. And I hope that all of you come to the same
18 decision. Thank you.

19 THE COURT: Thank you, Mr. Tinsley.

20 Solicitor?

21 CLOSING STATEMENT

22 BY MR. WAGNER:

23 The defendant is not innocent and he's not the victim
24 here. The only scam -- he talked about a scam in opening
25 statements -- the only scam perpetrated is what he's done

1 to try to slide out of what he did back in January,
2 December of last year. And getting this stolen property
3 and selling it.

4 And let's look at the evidence, how we do know what
5 he had and what he got. We know the Polaris dealership
6 was broken in around the 14th or 13th. All those eight,
7 nine, ten, ATV's and the two trailers were stolen. Two or
8 three days later they show up with the two of them, the
9 defendant and his codefendant, and they start selling
10 them. Sold one to Todd Crawford. Take another one later,
11 sell it to him, sell it for a lot cheaper than it should
12 have been, 12,000 versus 5,000.

13 I suggest that's what tipped him off. When he told
14 his buddies that, they said, "Man, that thing's hot."
15 They tell him they're buying it at government auction.

16 Anybody can look at the pictures and if some of you
17 haven't had a chance to look at all of them, you will be
18 able to when you get in the jury room. There's a number
19 of the ATV's that still had the price tags on them. Still
20 had the tags on them, actually with the prices written on
21 there. We're talking about brand-new, off-the-rack, with
22 tags ATV's, that kind of stuff, is not sold at government
23 auction or government surplus, whichever version they
24 told.

25 I know Mr. Justice has his issues, and he was

1 arrested along with him. As a matter of fact, they didn't
2 know who Mr. Justice was until they arrested him. The
3 person they were looking for was Mr. Tinsley. He was
4 doing all the legwork, doing all the selling. It was his
5 name they had. They were looking for Mr. Tinsley, and
6 whoever the other guy was that they knew was his
7 accomplice.

8 When he got busted, he told you he gave a statement.
9 It wasn't exactly what he said in court today. Today I
10 think he cleared the air, told the truth, what they had
11 done, how they -- what they did, how they did it. He's
12 got to face sentencing for that later. The State has a
13 recommendation of a probationary sentence, to pay back the
14 victims; and he has to go on and face other charges in
15 other counties.

16 Has no deal. The deal was to tell the truth. I
17 think that's what he did here today. Sometimes you have
18 to make deals with people to find the truth. We would not
19 have found the truth from Mr. Tinsley.

20 What other witnesses were here that we know that
21 could shed some light on the thing? We know Terry Tobin
22 saw the 6 by 6 four wheeler sometime around the middle of
23 the month, just a few days after the theft. It appeared
24 that quick with the two of them there, they were using it
25 to haul their machine stuff around. It was still hooked

1 up when the sheriff's officers raided the campsite.

2 He knew Tinsley before he knew Mr. Justice. He
3 hardly knew Mr. Justice. Mr. Tinsley left him the note
4 saying, this is my trailer. The camper was stolen. The
5 camper was 30-something, a 30-something-thousand-dollar
6 camper. But Mr. Tinsley got the fake bill of sale made
7 out for \$9,800 to cover himself with the fake VIN number
8 that, as Mr. Justice told you, they were putting the VIN
9 numbers on there to try to cover up -- scratch off the
10 thing. I think they thought they were getting rid of the
11 evidence.

12 They might have had the trailers not been unique
13 enough to be able to be identified. The Carry-On trailer
14 from Lavonia was so unique, the guy knew that it had been
15 stolen, before -- without the serial number even on there.
16 Of course, didn't recognize the serial number, but they
17 know their stuff. He knew that's what it was.

18 Mr. Tinsley also admitted to Mr. Tobin it was his
19 camper, not anybody else's. Said it was his camper. When
20 he went, had contact with the Couches, Mr. Couch only saw
21 Mr. Tinsley out riding the four wheelers around. He only
22 saw Mr. Justice the first time and the last time. The
23 last time being when they got arrested.

24 Mrs. Couch saw two of them in there several times
25 together. What that shows is that they were acting in

1 concert. They were equally in it together, just like Mr.
2 Justice said. Mr. Justice took responsibility for what he
3 did. He admitted what they done. He says they stole the
4 stuff. And if the fact that they stole the stuff doesn't
5 show he knew it was stolen, I don't know what would.

6 Even -- be that as it may, let's say he never was in
7 North Carolina or Georgia, which is what he contends. He
8 still knew the stuff was stolen by all these other things.
9 And the statute on the receiving stolen goods section
10 says, knew or had reason to know. Now, when Mr. Tinsley
11 testified earlier today, he said back on the 24th, I mean,
12 if you take him at his word, which I submit to you was not
13 true, if you take him at his word, he knew on the 24th
14 this Justice guy was supposed to be running a scam; but,
15 yet, for five days he went along with it until he got
16 busted. When he got busted, he copped an attitude with
17 the police and showed out.

18 Mr. Justice, on the other hand, at least helped them
19 get some of the four wheelers back. He lied about his
20 involvement in it. Said he didn't want to go to jail. I
21 understand why he lied. It's not right. At least he
22 cleared the air, told the truth here today. At least he
23 tried to get the stuff recovered. And through his help
24 they were able to do so.

25 Mr. Haddad, you know, the ATV man, two guys came up,

1 essentially matching the description of the two of them,
2 fairly clean-cut, white guys in their 30's, asking a lot
3 of questions. He was suspicious. Burglary, theft
4 happened the next night, probably over the course of two
5 nights. And South Carolina tags on the thing. He can't
6 identify who they were, he didn't pay good enough
7 attention, wasn't able to; but it matches and goes along
8 with what the codefendant said.

9 Russ Conner testified, in his opinion, the footprint
10 looked like Justice's. That, again, would lead some
11 credence to what he said. And I think you can give
12 Justice's statements some more credence, too, because he's
13 admitting to the crimes, not trying to cover them up.
14 Like I say, no deal in these other counties, other states
15 where he's going. You know, he'll tell the truth there,
16 too.

17 David Smith pretty much broke the case. He did a
18 good job. He got the tip. He did the legwork. Went and
19 found out where this defendant and codefendant had all the
20 ATV's, essentially stashed there for a while. Still found
21 the ATV or the trailer there stolen out of Waynesville,
22 that had the two ATV's in it that were like brand new.
23 The same one that Mr. Couch first one asked him about, it
24 was Mr. Tinsley. Where is my trailer and my property? He
25 got legal search warrants, he applied for them. The

1 magistrate issued them, had probable cause, did a legal
2 search by the book. Everything was done legal.
3 Everything was done properly.

4 The guy from the camper told you that it was a unique
5 unit, very expensive unit. The VIN number had been
6 scratched off, fake one put on there with the same type of
7 things that was on these, which was immediately evident to
8 him.

9 So the defendant wants everybody to believe that he's
10 living in that camper, making a thousand dollars -- or at
11 times a thousand dollars a day, mining for gold here in
12 Oconee County, and selling the stuff on eBay. And having
13 enough stuff to go to car auctions and buy -- auctions
14 with his buddy who just came up from Florida. He's
15 throwing money around quite liberally. I submit to you
16 the money he was getting was coming from the stolen four
17 wheelers and trailers being sold. Can't live in a camper
18 like that, through the goodness of supposed good friend
19 that he now says did all this to set him up, which I
20 submit to you it just doesn't hold water.

21 The defendant also implied that, you know, he's
22 representing himself. And I think implied some sympathy
23 for him as far as that goes. He had a lawyer from the
24 public defender's office. Public defender's office, any
25 county you go to, I will submit to you as good,

1 experienced, and good a trial attorney as you'll find.
2 Because he knows more about it, knows constitutional
3 rights. If he wants to represent himself, he has that
4 right, which he has chosen to do. But he was the one that
5 made that call.

6 The bottom line is, you have lots of tools here to
7 understand what was going on. These defendants were
8 acting in concert. They both ended up, to the hilt,
9 together. All the paperwork leads back to Mr. Tinsley.
10 Because Mr. Tinsley, I submit to you, was the lead man.
11 He was the one taking the initiative. Mr. Justice, he
12 said, "I'm equally as guilty as Mr. Tinsley. We both did
13 it. We're both guilty." And they both need to be held
14 accountable.

15 So I would ask you to go back and take a look at
16 these exhibits. I submit to you the sheriff's office did
17 not cook up a bunch of bill of sales. Scott Arnold didn't
18 pull them out, make them up, because of some crazy
19 lawsuits. The defendant filed well after the fact, I
20 would submit to you, of his arrest.

21 Take a look at the pictures. Look at the conditions
22 of the four wheelers. And I think you'll understand the
23 fact that that kind of stuff doesn't come from government
24 auctions. It was way too much stuff, way too much stuff.
25 All in his control. And he did. It was either in the

1 trailer that he was pulling the four wheelers up into that
2 Mr. Couch saw the two of them. Or it was at the campsite
3 he was living at -- there's pictures of the campsite.
4 You'll be able to tell from those, too.

5 But the bottom line is, he's guilty of possession of
6 the stolen property. It was worth more than five thousand
7 dollars on the counts that are there. He knew it was
8 stolen. The evidence shows that. At the very least he
9 had reason to know. Even if you give him the benefit of
10 the doubt, some of the stuff he had reason to know it was
11 stolen; and I think any reasonable person under the
12 circumstances would know. He's a smart man. He knew.

13 You've got to be unanimous, you know, finding him
14 guilty. The standard is beyond a reasonable doubt.
15 That's not beyond any doubt. But it's beyond a doubt
16 where a reasonable person would hesitate to act. It's not
17 reasonable in this case to assume that he didn't know what
18 was going on and he wasn't participating in it. I ask you
19 to find him guilty on all counts. Thank you.

20 THE COURT: Mr. Foreman, members of the jury, the
21 state of South Carolina charges the defendant, James
22 Douglas Tinsley, with two counts of receiving stolen goods
23 and one count of possession of a stolen vehicle. I will
24 give you a copy of these instructions in written form.
25 During your deliberations you may refer to the

1 instructions to guide your decision-making. You must
2 consider the instructions as a whole and not follow some
3 and ignore others. Mr. Foreman, after you have reached a
4 verdict, made a decision, please return the charge back to
5 the Court.

6 Now, to these indictments the defendant has entered a
7 plea of not guilty, which places upon the State the burden
8 of proving the defendant guilty. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove himself innocent. I charge you it is a
11 vital and important rule of law of evidence that the
12 defendant in a criminal trial, no matter how great or
13 serious may be the offense with which he is charged, must
14 always be presumed innocent until his guilt has been
15 proven beyond a reasonable doubt.

16 This presumption of innocence remains with the
17 defendant at all times, from the moment of his appearance
18 in this Court, throughout the trial, until you, the jury,
19 have upon the testimony and evidence presented reached a
20 verdict of guilty beyond a reasonable doubt. For it's the
21 solemn duty of the jury, if not clearly convinced of his
22 guilt beyond a reasonable doubt, to acquit the defendant.
23 So the burden of proof is upon the State to establish by
24 evidence to your satisfaction the guilt beyond a
25 reasonable doubt of the defendant.

1 Now, what is reasonable doubt? A reasonable doubt is
2 the kind of doubt which would cause the person to hesitate
3 to act. If you have such a doubt to the guilt of the
4 defendant, he would be entitled to a verdict of not
5 guilty. A reasonable doubt may arise from the evidence in
6 the case or absence or lack of evidence in the case. You,
7 alone, must make a determination whether or not reasonable
8 doubt exists as to the guilt of the defendant.

9 The term reasonable doubt should be given its
10 everyday, plain, and ordinary meaning. Proof beyond a
11 reasonable doubt is proof which leaves you firmly
12 convinced of the defendant's guilt. There are very few
13 things in this world that we know with absolute certainty.
14 In criminal cases the law does not require proof that
15 overcomes every possible doubt. If, based on your
16 consideration of the evidence you are firmly convinced of
17 the defendant's guilt of the crimes charged, you must find
18 him guilty. On the other hand, if you are not firmly
19 convinced of the defendant's guilt, you must give him the
20 benefit of the doubt and find him not guilty.

21 The evidence from which you are to decide the facts
22 consists of sworn testimony of witnesses, both on direct
23 and cross-examination, regardless of who called the
24 witness, the exhibits that have been entered into evidence
25 and received into evidence, any facts to which the lawyers

1 have agreed as stipulated.

2 Certain things are not evidence, you may not consider
3 them in deciding what the facts are. I will list them for
4 you. Arguments and statements by lawyers are not
5 evidence. The lawyers are not witnesses. What they may
6 have said in their opening statements, closing arguments,
7 and at other times as indicated to help you to interpret
8 the evidence. However, it is not evidence. If the facts
9 as you remember them differ from the way the lawyers have
10 stated them, your memory controls.

11 Questions and objections by lawyers are not evidence.
12 Attorneys have a duty to their client to object when they
13 believe a question is improper under the rules of
14 evidence. You should not be influenced by the objection
15 or the Court's ruling on the objection. Testimony that
16 has been excluded as stricken, you are instructed to
17 disregard it's not evidence. You must not consider
18 anything you may have seen on television, read in the
19 paper, or heard from others when the Court was not in
20 session. It is not evidence. You're to decide the case
21 solely on the evidence received in the trial.

22 Out under our constitution and Code of Laws, only
23 you, the jury, may make findings of facts in this case.
24 I'm not permitted to indicate to you how I may feel about
25 the testimony and evidence which has been admitted.

1 Throughout this trial it has been my intention to be fair
2 and impartial toward each of the parties involved.

3 To determine the facts, you will have to evaluate the
4 credibility, which means the believability, of each
5 witness. Some of the things you may consider as you
6 decide whether or not to believe a witness's testimony
7 about a particular matter include, what was the manner and
8 appearance of the witness who testified? Was he or she
9 straightforward or hesitant in answering? Was the
10 testimony of the witness consistent or inconsistent? How
11 did the witness come to know the facts he or she testified
12 to? Was the person present during the incident or did he
13 happen on the scene afterwards? Is there some reason a
14 witness would want to give testimony which would help or
15 hurt one side or the other? In other words, was a witness
16 biased or prejudiced? Was the testimony of a witness
17 strengthened or weakened by other testimony and evidence?

18 You can believe as much or as little of each
19 witness's testimony as you think proper. You may believe
20 the testimony of a single witness against that of many
21 witnesses or just the opposite. Of course, you do not
22 determine the truth by merely counting number of witnesses
23 presented by each side. Throughout this process you have
24 but one objective, to seek the truth, regardless of its
25 source.

1 There are two types of evidence presented during a
2 trial, direct evidence and circumstantial evidence.
3 Direct evidence is the testimony of a person who asserts
4 or claims to have actual knowledge of a fact, such as an
5 eyewitness. Circumstantial evidence is the proof of a
6 chain of facts and circumstances indicating the existence
7 of a fact.

8 The law makes absolutely no distinction between the
9 weight or the value to be given direct or circumstantial
10 evidence, nor is a greater degree of certainty required of
11 circumstantial evidence than of direct evidence. You
12 should weigh all the evidence in the case on a contested
13 factual issue. You have some direct and some
14 circumstantial evidence. To determine the facts in this
15 case, you will have to evaluate the credibility, which
16 means the believability of each witness.

17 The same constitution and laws which designate and
18 make you the finders of the facts, as I have just
19 explained, also make me the sole instructor of the law.
20 You should accept statements of the law as I give them to
21 you. The attorneys are not the instructors of the law.
22 Please base your decision-making on what the law is, not
23 what you think the law should be.

24 In this case the defendant was proceeding pro se.
25 His sworn testimony was taken and it's evidence for you to

1 consider. Otherwise, he was acting at an attorney.
2 Anything I say in my charge about attorneys should also
3 apply to the pro se when performing his duties as an
4 attorney.

5 Receiving stolen goods. The defendant is charged
6 with receiving stolen goods. The State must prove beyond
7 a reasonable doubt that the defendant bought, received, or
8 possessed goods, chattels, or some other property; and
9 that the defendant knew or had reason to believe that the
10 property was stolen. Whether the defendant knew or had
11 reason to believe the property was stolen may be shown by
12 direct or circumstantial evidence. The State may prove
13 that the defendant knew or had reason to believe that the
14 property was stolen by showing that the defendant knew
15 facts which would make a reasonable person believe that
16 the property was stolen.

17 Possession of stolen vehicle. The defendant is
18 charged with possession of a stolen vehicle. The State
19 must prove beyond a reasonable doubt that a defendant
20 bought and received or possessed a vehicle and the
21 defendant knew or had reason to believe that the vehicle
22 was stolen. Whether the defendant knew or had reason to
23 believe it was stolen may be shown from direct or
24 circumstantial evidence. The State may prove the
25 defendant knew or had reason to believe the vehicle was

1 stolen by showing the defendant knew facts that would make
2 a reasonable person believe that the vehicle was stolen.

3 Now, you've been selected as fair and impartial
4 jurors, sworn to impartiality, to try and determine the
5 facts in the case. If you comply with your oath to do so,
6 no one will have the right to criticize your verdict. You
7 will have fully discharged your duty as jurors. You are
8 to decide the case according to the testimony you heard
9 from the sworn witnesses along with other evidence
10 introduced.

11 I charge you, as jurors, must decide the issues of
12 this proceeding without bias, without prejudice to either
13 party. You should not allow yourselves to be governed by
14 sympathy, by passion, by prejudice, by public opinion, or
15 any other arbitrary factor. Both the State and the
16 defendant have the right to expect that each of you will
17 carefully and impartially consider all the evidence in the
18 case and that you will follow the law as I explained it to
19 you.

20 Nothing I may have said or done during the course of
21 this trial has been in any way indicated to express or
22 suggest a view of the case, my opinion as to the facts,
23 the weight of the evidence, the credibility of the
24 witnesses. If any of my actions or words seem to so
25 indicate, disregard such and form your own opinion as to

1 these matters.

2 Mr. Foreman, members of the jury, there is one
3 possible verdict on the crime of receiving stolen goods,
4 guilty or not guilty. One possible verdict for the crime
5 receiving -- possession of stolen property, guilty or not
6 guilty.

7 Ladies and gentlemen of the jury, the verdict has to
8 be unanimous, all 12 of you have to agree. It's a
9 collective reasoning process on your part. I would ask
10 you to listen to each other's opinion. Pay attention to
11 each other's opinions. And share those opinions.

12 I have three verdict forms, Mr. Foreman, prepared.
13 There's three charges. The first charge is indictment
14 number 881, possession of stolen vehicle. Has it listed
15 up here, 2008 Polaris Ranger, 70 camo color; 2008 Polaris
16 Ranger, 70, green in color; Horton hauler trailer, black
17 in color. It says, we, the jury, find the defendant,
18 James Douglas Tinsley, guilty of possession of a stolen
19 vehicle. Number two, we, the jury, find the defendant,
20 James Douglas Tinsley, not guilty of possession of a
21 stolen vehicle. There's a place for you to date it, today
22 is July 31st. There's a place for the foreperson to sign.
23 That's the indictment on the possession of stolen vehicle.
24 As to the receiving stolen goods, there's two verdict
25 forms. Indictment number 882, receiving stolen goods,

1 Polaris four wheeler, Polaris six-by-six Sportsman, four
2 wheeler; two Superior trailers, same thing: "We, the
3 jury, find the defendant, James Douglas Tinsley, guilty of
4 receiving stolen goods."

5 "We, the jury, find the defendant James Douglas
6 Tinsley, not guilty." There's a place for the foreperson
7 to sign and date it.

8 And then three indictments have been combined by the
9 Court, indictment 883, 884, and 885. It lists all of the
10 personal property in that indictment: 2006, Kawasaki,
11 green. 2008 Keystone VR-1 camper, tools, radio. Carry-On
12 cargo trailer.

13 Same thing, ladies and gentlemen, "We, the jury, find
14 the defendant, James Douglas Tinsley, guilty of receiving
15 stolen goods. "We, the jury, find the defendant, James
16 Douglas Tinsley, not guilty of receiving stolen goods."

17 Mr. Foreman, ladies and gentlemen of the jury, you
18 can find the defendant not guilty of all three
19 indictments, or guilty of all three, or guilty of one and
20 not guilty of the other two, or whatever you feel and find
21 the facts to be in the case. Just because you find him
22 guilty on one indictment doesn't mean you have to find him
23 guilty on the other two indictments or vice versa. If you
24 find him not guilty on one, you don't have to find him not
25 guilty on the other. Come up with any combination. Each

1 one of the indictments stands on its own two feet, so to
2 speak.

3 Now, Mr. Foreman, I'm going to ask you to go to the
4 jury room. I have to take my charge up with the attorney
5 and Mr. Tinsley, the State and Mr. Tinsley. I may bring
6 you back and add something to the charge or take something
7 away in case I forgot something or there's something else
8 I need to bring to your attention.

9 Please do not start your deliberations until the
10 bailiff brings all the exhibits to the jury room with the
11 verdict forms and charge book, and at that time you can
12 begin your deliberations.

13 Mr. Foreman, if you'll follow the bailiff to the jury
14 room, please.

15 Yes, sir. Write your question down. If you have a
16 question, write it down, give it to the bailiff, and you
17 can submit it to me. You all go back to the jury room.
18 Mr. Foreman, if the jury has a question, write it down.

19 Two alternates, just keep your seats.

20 PROSPECTIVE JUROR: Can I take my notes?

21 THE COURT: Yes, sir. Take your notes with you. Any
22 exceptions to the charge from the State?

23 MR. WAGNER: No, Judge.

24 (Whereupon, the jury retires from the courtroom at
25 4:00 p.m.)

1 THE COURT: Any exceptions to the charge from the
2 defendant?

3 MR. TINSLEY: Just one second, your Honor. No, your
4 Honor.

5 THE COURT: Thank you very much. Mr. Day, Mr.
6 Tinsley, Solicitor, come up. Make sure all the exhibits
7 are present. Put on the record the exhibits are present.
8 And I'll get the bailiff to have them begin their
9 deliberations.

10 (Parties review exhibits.)

11 Are all the exhibits present?

12 MR. WAGNER: Yes, sir.

13 THE COURT: You give them this, too.

14 (WHEREUPON, the jury deliberates from 4:05 to 5:48
15 p.m., after which the following proceedings were
16 had:)

17 THE COURT: Mr. Foreman, in reference to the question
18 about the defense exhibits, I didn't have room to write
19 what I'm going to tell you. Those exhibits were marked
20 for identification only. They're with the clerk. They
21 are not -- two exhibits were not offered into evidence.
22 One exhibit I ruled is not admissible under the rules of
23 evidence, didn't comply with the rules of evidence. So
24 they have not been admitted into evidence. So you're not
25 going to see them because they're not in evidence.

1 They're at the court reporter's desk. Do you have
2 any further questions about the exhibits? Nobody is
3 trying to hide them from you. They were not admitted into
4 evidence, therefore, the jury doesn't see them. Two of
5 them were not even offered. They were presented and
6 marked for identification. After they are marked for
7 identification, then the attorneys have to ask for them to
8 be moved into evidence. The Court then rules whether
9 they're admissible or not. Two were not offered. One I
10 ruled was not admissible. Does that answer your question
11 about the exhibits?

12 (Jurors respond affirmatively.)

13 You're not going to see them because they haven't
14 been admitted. Nobody is hiding anything from you nobody
15 kept anything from you other than the fact they haven't
16 been admitted. Two weren't offered. One I ruled is not
17 admissible because it didn't comply with the rules of
18 evidence.

19 You may go back to the jury room and continue your
20 deliberations. I just couldn't put all that on paper.
21 Thank you very much.

22 (WHEREUPON, the jury retires at 5:50 p.m. to continue
23 its deliberations.)

24 All right. We'll stand at ease waiting on a jury
25 verdict. Do you want to mark these questions Court's

1 Exhibit Number 1, please, ma'am.

2 THE COURT REPORTER: Next will be three, I believe.

3 (WHEREUPON, Court's Exhibit No. 3 is marked for
4 identification.)

5 THE COURT: I understand you have reached a verdict;
6 is that correct?

7 THE FOREMAN: That's correct.

8 THE COURT: Hand the verdict forms to the bailiff,
9 please, sir.

10 (Foreman complies.)

11 Publish the verdict form please.

12 THE CLERK: Case 2007-GS-37-881, the State of South
13 Carolina versus James Douglas Tinsley. We the jury find
14 the defendant, James Douglas Tinsley, guilty of possession
15 of a stolen vehicle. In case number 2008-GS-37-883, 884,
16 885, the State of South Carolina versus James Douglas
17 Tinsley. We, the jury, find the defendant, James Douglas
18 Tinsley, guilty of receiving stolen goods.

19 In case number 2008-GS-37-882, the State of South
20 Carolina versus James Douglas Tinsley. We, the jury, find
21 the defendant, James Douglas Tinsley, guilty of receiving
22 stolen goods.

23 Ladies and gentlemen of the jury, if this was your
24 verdict and still remains your verdict, please indicate so
25 by raising your right hand. Let the record reflect that

1 all members of the jury raised their right hand.

2 THE COURT: Anything from the State concerning the
3 jury?

4 MR. WAGNER: No, sir.

5 THE COURT: Anything from the defendant concerning
6 the jury?

7 MR. TINSLEY: No, sir, your Honor.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, because of the late hour, it's 6:30, you're welcome
10 to stay if you want to. The only thing left would be
11 sentencing. You're welcome to stay. But since it's 6:30
12 in the evening, it's been a long day. You are free to go
13 if you want to go. I'll leave that up to you
14 individually. If you want to stay, some of you want to
15 go, that's fine. You don't have to do it as a group.

16 Thank you for your service.

17 (Jury excused from further service.)

18 One sentencing sheet for indictment 882, 883, and
19 884, those were consolidated into one. I understand it's
20 over five, that would be ten years on that. I need a
21 sentencing sheet 881, over five, that would be ten; and
22 sentencing sheet for 885, excuse me, five years because
23 that's less than five. 881 was over five, and that's ten;
24 is that correct?

25 MR. WAGNER: 881, over five.

1 THE COURT: 882, 883 and 884 are combined into one.
2 So would be one sentence sheet for those. That's ten
3 years.

4 MR. WAGNER: Yes, sir.

5 THE COURT: And the 881 is one receiving over five.
6 That's ten.

7 MR. WAGNER: Yes, sir.

8 THE COURT: And then the 885 is the one where the
9 backhoe was not made a part of it. That left the trailer,
10 which was less than five. So the sentence on that is five
11 years. Do you concur in that Mr. Tinsley?

12 MR. TINSLEY: Yes, your Honor.

13 THE COURT: Mr. Tinsley, Mr. Day, do you concur in
14 what the court just said about the various indictments?
15 Solicitor, do you concur in that?

16 MR. WAGNER: Yes, sir.

17 THE COURT: Okay.

18 MR. TINSLEY: Your Honor, I'd like to make a motion.

19 THE COURT: Hang on just a second. Let me get the
20 sentence sheets. Let me get these, then I'll hear your
21 motion. I'll give you an opportunity to make motions.
22 Okay.

23 (Pause.)

24 All right. Mr. Tinsley, while we're waiting on them
25 to finish the sentencing sheets, filling them out, I'll be

1 glad to hear your motions. Let me say this to you, Mr.
2 Tinsley. You're entitled to ten days if the Court wants
3 to give it to you. I can hear the motions tonight or I
4 can give you ten days to file them in writing. It's your
5 choice. I'll give you that option.

6 MR. TINSLEY: I'll make it now, your Honor.

7 THE COURT: I'll be glad to hear you on the motion.

8 MR. TINSLEY: Your Honor, I'd move to set aside the
9 verdict; the facts do not match the verdict of the jury.
10 The State has no proof of possession. They proved
11 larceny. Mr. Justice's testimony does not establish
12 knowledge for purposes of possession. Any thief would
13 have knowledge whereunder what circumstances he stole the
14 items, his testimony establishes larceny. And those facts
15 do not match the verdict of the jury. State versus Jones
16 those variances between the proof and charge, or in this
17 case the verdict, should entitle me to have it set aside.

18 THE COURT: That motion is denied. As I said
19 earlier, the facts of the larceny itself and the fact that
20 you were a principal in that, based upon the codefendant's
21 testimony, was merely going towards knowledge, not the
22 crime of larceny or the charge of the crime of larceny.
23 Therefore, that motion is denied.

24 Any other motions? Do you want to confer with Mr.
25 Day to make sure there's no more motions you need to make?

1 (Mr. Tinsley and Mr. Day confer.)

2 MR. TINSLEY: Your Honor, is it possible that I can
3 have ten days for any further motions?

4 THE COURT: I told you I would give you the ten days
5 when we started the conversation. Do you want it?

6 MR. TINSLEY: Okay.

7 THE COURT: Do you want the ten days?

8 MR. TINSLEY: Yes, Your Honor.

9 THE COURT: Mr. Day, I'm going to ask you to confer
10 with him during the ten-day process to see if he has any
11 questions about the motions.

12 MR. DAY: Yes, sir.

13 THE COURT: Thank you very much.

14 Solicitor, you got the sentencing sheets?

15 MR. WAGNER: Yes, sir.

16 THE COURT: All right. Mr. Tinsley, do you want to
17 come around?

18 (The defendant and attorneys step forward.)

19 I'll be glad to hear you. Anything you want to tell
20 me on sentencing? I'll be glad to hear from your father,
21 anyone else you would like for me to hear from.

22 MR. TINSLEY: Okay. Obviously, your Honor, I've
23 maintained my innocence. The jury has spoken, and it's
24 out of our control. But I would ask that any potential
25 sentence be ran concurrent under 17-25-50, as the charges

1 have the same element for -- were possessed on dates
2 closely connected in point of time.

3 I would also ask the Court to consider some form of
4 community supervision and restitution and including any
5 time that I may have served in jail while awaiting trial.
6 And other than that, I would throw myself on the mercy of
7 the Court, your Honor.

8 THE COURT: How long have you been in jail?

9 MR. TINSLEY: Since January 29 of this year.

10 THE COURT: This year? All right. She'll figure up
11 the number of days. Anything else you would like to tell
12 me about yourself? I'm not going to argue with you about
13 your innocence or guilt. The jury made that
14 determination. I'm here for sentencing. I need to know
15 something about you, ask your father the same question,
16 hear something about your son.

17 MR. TINSLEY: Not really. I'd rather just let my
18 father tell you.

19 THE COURT: All right. Mr. Tinsley, I'd like to hear
20 something about your son. Okay? Primarily his
21 background, history, any difficulties he's had previously
22 with the law. I'd like to hear from you about your son.

23 MR. TINSLEY, SR.: Well, your Honor he has had a
24 troubled life. And the tragedy of it is that he is so
25 talented, so gifted. He's probably as good a machinist as

1 there is in this country and I don't know of anything that
2 he can't make or build or design or think out.

3 THE COURT: What age did he start getting in trouble
4 with the law? Do you remember? As a child? Was it
5 teenager?

6 MR. TINSLEY, SR.: It was in his later teens.

7 THE COURT: Has it been constant run-in with the law
8 off and on over the years?

9 MR. TINSLEY, SR.: No, sir, your Honor. He got in
10 some trouble when he was in his early 20's. And he spent
11 time in prison, as you know. And a large number of those
12 were overturned on PCR. And he was released. And he was
13 released on the first of May, 2002. He came right out,
14 came home, and got a job. He worked at that. Got a
15 better job, got a better job. But within three years he
16 went from renting to -- well, he actually started out
17 living with his grandmother, we all live there on the same
18 property. And then he rented him a place. Then within
19 about three years he had a great job up at INA in
20 Spartanburg, doing machine work that other people didn't
21 seem to be able to do.

22 He -- one thing that I saw that he did that -- and
23 let me say that my Dad was a machinist, I'm not. My dad
24 had a reputation if nobody could build it, my dad could
25 build it. So I know a little bit about what I'm seeing,

1 although I can't do it myself. At one point in time I had
2 the opportunity to see this device that he built that was
3 some kind of special-order thing. And it was unbelievably
4 complex. And what it does, apparently, is it -- as our
5 money is printed, this thing goes along and measures the
6 thickness of the ink on the paper. And I was astounded.

7 But he has had emotional problems. His mother and
8 I --

9 THE COURT: Bipolar, what's been diagnosed? Manic
10 depressive or --

11 MR. TINSLEY, SR.: Your Honor, he was diagnosed when
12 he was young. I think about 13 or 14.

13 THE COURT: What was the diagnosis?

14 MR. TINSLEY, SR.: Let me say, Judge, his mother and
15 I divorced when he was about seven years old. He lived in
16 Tennessee with her until -- she moved to Tennessee and he
17 lived there until he was about 14 or 15 years. It was
18 while he was there that he was under psychiatric care.
19 And, according to the discussions I had with his mother
20 and the doctor, the doctor's opinion was that he was
21 bipolar and that he also had this attachment disorder. He
22 was not able to form a long-lasting relationship. He's 38
23 years old. He's never been married, doesn't have any
24 children. So he has had trouble in his life.

25 THE COURT: Was he placed on any medication for the

1 bipolar?

2 MR. TINSLEY, SR.: To best of my knowledge he's never
3 been on medication. When he got older enough to where we
4 couldn't make him see a doctor, he didn't want to see one
5 anymore. What I have seen throughout the years, what I'm
6 told by the doctors, and what I've been able to research
7 on my own about the signs of these illnesses is wild mood
8 swings. One minute it's euphoria, high hopes, dreams,
9 aspirations. And shortly thereafter he's in the dumps,
10 you know. And he goes along, he does real good, works
11 hard, and then something happens and he goes into a spiral
12 and we don't know how to stop it.

13 THE COURT: Does he self-medicate with cocaine or
14 some other drugs? You seen any evidence of
15 self-medication?

16 MR. TINSLEY, SR.: Your Honor, to best of my
17 knowledge he has never used any drugs of any kind. And
18 the most I could say as far as alcohol is I know that he's
19 drunk some beer but he has no alcohol or drug-related
20 history.

21 THE COURT: My impression of him is very limited,
22 just from this trial this week, is that he is extremely
23 intelligent, has a lot of talent; but he has gone the way
24 of being a con artist. I think he's a super con.
25 Apparently he's maintained living off and on by stealing,

1 conning people. I may be wrong, but that's my impression
2 based upon his criminal history and otherwise.

3 So my concern is, should I put him in jail a
4 considerable period of time to get him off the streets and
5 protect the public. That doesn't have anything to do with
6 him personally as far as rehabilitating him, assisting
7 him, or helping him. My real concern is should I get him
8 off the streets, protect the public? Because what I view
9 as his con artist activities.

10 I'll be glad to hear you on that subject. Because I
11 think you probably know that better than anyone, one way
12 or another. I know he denies these facts. I'm not going
13 to get into that.

14 MR. TINSLEY, SR.: As far as sentencing, you mean,
15 Judge?

16 THE COURT: Yes, sir.

17 MR. TINSLEY, SR.: Your Honor, I would just
18 respectfully request this Court consider sentencing James
19 to the same terms of sentence that it sentenced his
20 codefendant, Mr. Justice.

21 THE COURT: I'm not going to do that. Okay.

22 MR. TINSLEY, SR.: Your Honor, then I would ask that
23 you be as lenient as you can.

24 THE COURT: Well, do you think he's a con artist?

25 MR. TINSLEY, SR.: I think he has done that. Yes,

1 sir. I won't lie to you. And all I would say to you is
2 that when I see that, it's in one of these spirals. It's
3 not when he's what I think of as being his normal self.
4 His normal self is a great guy.

5 THE COURT: I see on a daily basis drugs, and
6 bipolar. If they stay on their medication, they're
7 generally pretty productive citizens. When they get off
8 of them is when they get in trouble, stealing, arson. It
9 seems like arson seems to be a favorite crime of bipolars,
10 and other crime activities. When they spiral, and then
11 they get into drugs, self-medicate, spiral even worse,
12 unfortunately. When they're on medication, they're good
13 citizens.

14 MR. TINSLEY, SR.: May I say one other thing? I
15 think I have his mother's permission to say this. We
16 don't know for a long time -- I'm not going to criticize
17 someone that's not here. But I'd say we didn't know what
18 was wrong with his mother.

19 THE COURT: She was probably bipolar?

20 MR. TINSLEY: At this time, according to my
21 conversations with his mother recently. She, his half
22 sister, and his half brother are all on medication. And I
23 can tell you from living with her all those years ago, it
24 is the most unbelievable change to have a conversation
25 with my former wife now. She's a totally different

1 person. She's a delightful person. But it's the
2 medication. And I regret very much that we didn't know
3 that sooner.

4 THE COURT: Unfortunately, there would have been
5 nothing you can do because you can't make them take
6 medication. Until medical science gets to the point
7 inject in body, it's time released, do it every 30 days or
8 every 60 days or whatever, you can't make them take it.
9 And that's the sad part about it. Unless you watch them
10 put it in their mouth and swallow it everyday, it's just a
11 vicious circle.

12 MR. TINSLEY, SR.: My last request is that you be as
13 lenient as your conscience will allow you to be. Give him
14 a chance for a life.

15 THE COURT: I wish there was some way I could force
16 him to take his medication. But I can't.

17 MR. TINSLEY, SR.: He's never had medication. He
18 never had it.

19 THE COURT: I'm sure you can control it. Depends on
20 how severe it is psychologically. But it's a tough road.

21 MR. TINSLEY, SR.: Yes, sir.

22 THE COURT: Anything you want to add, Mr. Tinsley?
23 I'll be glad to hear anything you want to tell me.

24 THE DEFENDANT: Your Honor, I don't think I'm a
25 horrible person that's a threat to society. You know, I

1 do sometimes -- I wasn't -- I don't know what's wrong with
2 me. I don't know that it's bipolar. It may be. I don't
3 consider myself to be a person that gets depressed but I
4 may be wrong. I don't feel I'm ever manic. I just seem
5 to always feel about the same way. Sometimes I don't know
6 if it's boredom or what. I hang around the wrong people.
7 And when I'm away from those people, you know, like he --

8 THE COURT: Justice is one you probably don't have
9 any business hanging around.

10 THE DEFENDANT: I understand that, your Honor. And
11 like he said, I went from, in three years, from nothing to
12 bought a brand new house, two motorcycles, and a \$40,000
13 car and \$40,000 truck. And it was all paid for except for
14 the two vehicles. And a nice new house, all the furniture
15 and everything was paid for but my house and two vehicles.
16 And I don't know what happened.

17 And I -- well, I had a girlfriend that I lived with
18 for seven years and -- five years. And she had two
19 children. And I did fine. And then when we broke up. I
20 was bored, working all the time, working third shift,
21 coming home to a house that was empty. I guess I needed a
22 friend or somebody to hang out with and I started hanging
23 out with Hugh.

24 I don't know what else to say, your Honor.

25 THE COURT: Okay. Thank you very much. Anything

1 else?

2 THE DEFENDANT: Just that, you know, I wasn't having
3 a problem with taking medication. If somebody thought
4 that would help me -- no one has ever told me personally
5 that I need medication.

6 THE COURT: I don't know whether it would or not.
7 Just going by history of people I see in front of me.

8 THE DEFENDANT: Right. I was just saying if someone
9 thought that that would help, I would be more than willing
10 to try it. Nobody ever offered -- I never tried. I don't
11 know if it would help me or not.

12 THE COURT: Anything from the State?

13 MR. WAGNER: His rap sheet is lengthy. I know some
14 of them, a number of them were overturned on PCR.

15 THE COURT: Long history of criminal activities. I
16 know that.

17 MR. WAGNER: Twelve aliases. I think your assessment
18 of the defendant is spot on.

19 THE COURT: How many social security numbers?

20 MR. WAGNER: He's got more than one. It's hard to
21 tell. But the PCR overturned some of his convictions,
22 some of the forgeries, other frauds and stuff. He was
23 going under alias of Virgil St. John. He's used -- he's a
24 con artist I think is what he is.

25 THE COURT: Okay. Like I said, I agree with that

1 assessment. But the question is why? You know, there's
2 nothing I can do as to why he's a con artist.

3 MR. WAGNER: Yes, sir.

4 THE COURT: Okay. Mr. Tinsley, indictment number --
5 this is 882, 883, 884, which have been combined into one
6 of your motions because of the statute, sentenced to the
7 state Department of Corrections for a period of ten years,
8 suspended upon service of seven years. Probation for five
9 years. Condition of probation, pay restitution in the
10 amount of \$2800 to Darrell Slusser. Go to restitution
11 center after you get out of jail for six months.
12 Transport directly from the Department of Corrections to
13 the restitution center. If that restitution is paid, I'll
14 PTUP the probation. Do you understand?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. Indictment number 881,
17 sentenced to the state Department of Corrections for ten
18 years, suspended upon service of seven years probation,
19 for five years. Give you credit for 184 days and pay
20 restitution in the amount of \$6,227.50 to Mr. Haddad up in
21 Waynesville, North Carolina. Restitution center. That's
22 PTUP, as far as restitution, when it's paid either by you
23 or Mr. Justice. I'm saying it's joint and several, which
24 means if he doesn't pay it, you're going to have to pay
25 it. I did order him to pay it. Those indictments

1 consecutive means you have to serve one before you serve
2 the second. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Indictment number 885, that's
5 the receiving stolen goods less than \$5,000. Sentenced to
6 the state Department of Corrections for a period of five
7 years, suspended to probation for five years. And
8 condition of probation is to pay restitution in the amount
9 of 2,789.5 Carry-On trailer in Lavonia. Restitution
10 center for six months. Transport directly to the
11 Department of Corrections from the restitution center.

12 And on all these probation is tolled while you're in
13 jail. You'll be on probation when you get out for
14 purposes of paying the restitution. Do you understand?

15 THE DEFENDANT: Yes.

16 THE COURT: If it gets paid before, as I said, all
17 are PTUP. Do you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you have any questions about it?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Thank you very much. I wish you luck.

22 * * * * * END OF REQUESTED TRANSCRIPT OF RECORD * * * * *

23

24

25

1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5)
6)
7)8 COUNTY OF OCONEE)
9
10
11

12 I, Donna M. Brady, Official Court Reporter for the
13 Tenth Judicial Circuit of the state of South Carolina, do
14 hereby certify that the foregoing is a true, accurate and
15 complete Transcript of Record of the proceedings had and
16 evidence introduced in the trial of the captioned case,
17 relative to appeal, in the Court of General Sessions for
18 Oconee County, South Carolina, on the 29-31st days of
19 July, 2008.

20 I do further certify that I am neither of kin,
21 counsel nor interest to any party hereto.
22

23 January 25, 2009
24
25

26 Donna M. Brady
27 Donna M. Brady
28 Circuit Court Reporter
29

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 County of OCONEE)
)
JAMES D. TINSLEY, II)
 Full name and prison number (if any) of Applicant)
 # 171943)
 v.)
)
 State of South Carolina)
)
)
)
)
)

2013 CP 37.00272
 APPLICATION FOR

POST-CONVICTION RELIEF

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 APR -4 A 9:38

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LIVESAY CORRECTIONAL INSTITUTION
P.O. BOX 580, UNA, SOUTH CAROLINA 29378
2. Name and location of Court which imposed sentence OCONEE COUNTY
COURT OF GENERAL SESSIONS
3. Name(s) of co-defendant(s) (if any) HOGAN HUGH JUSTICE, III
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2008-GS-⁻³⁷⁻~~39~~-881 (Possession of a Stolen Vehicle)
 (b) 2008-GS-⁻³⁷⁻~~39~~-882-885 (Receiving Stolen Goods)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) (881) 10 yr-suspended to 7yr with PTUP (July 31, 2008)
- (b) (882-884) 10yr-suspended to 7yrs w/PTUP (consecutive)
- (c) (885) 5 yrs (concurrent)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction was affirmed
- ii. Petition for rehearing was denied
- iii. _____
- (c) the date of each such result:
- i. May 30, 2012
- ii. September 19, 2012
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attached _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no _____
- (d) any other petitions, motions or applications in this or any other Court? no _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Petition for Writ of Certiorari _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Supreme Court _____
- ii. _____
- iii. _____
- iv. _____

GROUND S FOR RELIEF

- I. APPLICANTS FIFTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL WERE DENIED WHEN THE TRIAL JUDGE REFUSED TO CHARGE THE JURY WITH ALL THE ELEMENTS OF THE OFFENSE, WHICH WERE SUPPORTED BY THE EVIDENCE INTRODUCED AT TRIAL AND THIS RELIEVED THE STATE OF PART OF ITS BURDEN OF PROOF.

At trial, the State introduced some Bill of Sales for some of the stolen items which listed Applicant as a buyer and thus "receiver" of the stolen goods. The State then called Hogan Hugh Justice, III, to the stand, who testified that he was a co-defendant of Applicant and that they actually stole all of the goods and vehicles subject to the prosecutions themselves. This testimony proved Applicant was involved in the caption and asportation of the stolen goods, was an actual thief and not the required "receiver".

The Applicant moved for directed verdict because the States evidence had proven that Applicant was a principal in the thefts and therefore could not be convicted of receiving stolen goods and related offenses. State v. Tindall, 50 S.E.2d 188 (1948)(receiving stolen goods requires that the goods be stolen by someone else as the thief cannot receive from himself); State v. McNeil, 445 S.E. 2d 461, 462 (1994)(possession of a stolen vehicle requires that the vehicle be stolen by someone else as the thief cannot receive from himself; otherwise, the possessor is the taker not a receiver).

The Judge denied the motion because he believed that a thief could be convicted of possessing goods he stole himself. The Applicant recognized that some of the States evidence - such as the Bill of Sales - might suggest that Applicant was a "receiver" and other evidence - such as Mr. Justices' testimony - might suggest

that Applicant were the "thief".

Applicant provided the court with a written list of proposed jury charges. One of the charges requested that the judge instruct the jury that if they determine that Applicant were the thief, that they must find Applicant not guilty of the indicted offenses. The Judge refused to so charge the jury because he had already held at the directed verdict stage that a defendant could be convicted of possessing goods he stole himself and because he believed that the charge would constitute a charge of larceny for which Applicant had not been indicted.

On review of the denial of directed verdict of acquittal, the South Carolina Court of Appeals did not agree that the trial judge was correct in finding that a possessor of goods he stole himself could be convicted, but nevertheless upheld the conviction on a different premise. The Court found that there was some evidence in the record that Applicant was a "receiver", (i.e., the Bill of Sales), and some evidence that Applicant was the "thief", which created a disputed fact requiring the jury to make that determination.

The Applicant contends that the judges failure to properly charge the jury, relieved the State of its burden of proof as to one of the elements of the offense, because it allowed the jury to assume that it could lawfully convict Applicant of the indicted offenses even if the jury found that Applicant were a co-thief who stole the goods himself.

II. APPLICANTS FIFTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS TO A JURY TRIAL WERE DENIED HIM.

Based upon the facts contained in ground "I" above, Applicant contends that he was denied a jury trial because the judges rulings constituted a finding of guilt by the trial judge rather than by a jury and the wrong entity judged the Applicant guilty.

Moreover, the jury was not given the opportunity to determine guilt upon the correct law and elements for which the State carries the burden of proof. When a verdict is rendered on less than all the elements it amounts to no jury trial at all and a misdescription of the elements vitiates all the jury's findings.

III. APPLICANT WAS DENIED HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL, BY WAY OF AFTER DISCOVERED EVIDENCE, THAT THE STATE USED FALSE TESTIMONY TO OBTAIN THE CONVICTION.

The Applicant contended at trial that he had no idea that the goods were stolen but that he had been approached by Hogan Hugh Justice, III, to sell ATV's for him through Applicants eBay site. Applicant suggested that he had filed a Federal lawsuit against several of the States witnesses because they had seized and retained his lawfully owned cash and gold and that the State was prosecuting Applicant in retaliation for his legal activities.

As a result of the States inducement, Mr. Justice agreed to testify for the State and implicate Applicant in the theft of all the property. At the time, Applicant suspected that Justice was lying in exchange for probation but had no evidence to prove it.

During the trial, but outside the presence of the jury, the State admitted several times that Justice was lying when he testified that Applicant was involved in the thefts. In front of the jury however, the State maintained that Justice was telling the truth and never corrected the perjured testimony in front of the

jury.

Since trial, Mr. Justice has admitted to others that the State asked him to lie and to implicate Applicant in exchange for a reduced sentence.

Secondly, the State used the testimony of Detective Scott Arnold who testified that he searched the camper and found several alleged Bill of Sales which indicated that Applicant purchased the stolen goods and was thus a "receiver".

Applicant maintained that Arnold was a defendant in his Federal lawsuit and that Arnold fabricated the Bill of Sales himself in an attempt to implicate Applicant in the crimes in hopes that if he could get Applicant convicted, the Federal suit might be dismissed under Heck v. Humphrey, 512 U.S. 477 (1994) (A federal § 1983 action must be dismissed if a favorable decision would invalidate the state court conviction).

At the time, Applicant did not have any proof that Arnold was lying when he said he found the alleged Bill of Sales in the camper where Applicant was staying. Following Applicants conviction however, Arnold testified in the Federal lawsuit that he never took any photos of the campsite and never searched or entered the camper.

Because the conviction was obtained by the use of these two perjured testimonies - which were the only evidence establishing the elements of the crimes or linking Applicant to them - it undermines confidence in the outcome of the trial.

- IV. APPLICANT WAS DENIED HIS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO DEFEND AGAINST THE STATES ACCUSATIONS WHEN THE COURT REFUSED TO PROVIDE FUNDS FOR AN EXPERT FOLLOWING THE STATES SURPRISE EVIDENCE.

During the trial the State introduced a number of alleged Bill of Sales that claimed to contain Applicants handwriting and signature. The State used these Bill of Sales to suggest that Applicant had "guilty knowledge" that the items were stolen. It was also argued on appeal, that the Bill of Sales suggest that Applicant was a "receiver", not the "thief", as Mr. Justice testified and therefore there was sufficient evidence of receiving stolen goods to submit the case to the jury.

Applicant maintained that it was not his handwriting or signature and filed a pre-trial motion for a continuance and a request for funds to hire an expert to testify that it was not Applicants handwriting or signature. The motions were not addressed until the day of trial.

On the day of trial, the judge denied the motions because he mistakenly believed the motions were not timely. Applicant was provided with the initial discovery on April 3, 2008 but it did not contain the Bill of Sales as required by S.C.R.Crim.P 5(A)(3). On July 7, 2008, less than a month before trial, the State provided the alleged Bill of Sales in a supplementary discovery disclosure.

Upon seeing the alleged Bill of Sales and recognizing what the State was attempting, Applicant immediately filed his motions for a continuance and for funds for an expert. The denial of which deprived Applicant of the opportunity to call witnesses in his own defense.

- V. APPLICANT WAS CONVICTED IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO THE CONSTITUTION BY WAY OF THE DOUBLE JEOPARDY CLAUSE, LEGISLATURES INTENT AND SOUTH CAROLINA CASE AUTHORITY AND CONSTITUTION, WHEN THE TRIAL JUDGE FAILED TO MERGE MULTIPLE CHARGES OF RECEIVING STOLEN GOODS AND POSSESSION OF A STOLEN VEHICLE INTO A SINGLE OFFENSE AND WHERE THE COURT GAVE CONSECUTIVE SENTENCES ON CRIMES STEMMING FROM THE SAME EVENT.

The Applicant was charged with four (4) counts of receiving stolen goods and one (1) count of possessing a stolen vehicle, which referred to the same ATV's, trailers and events.

Applicant sought to have all the charges consolidated or merged into a single offense. See: S.C.Code, §16-13-180(3) ("For purposes of this Section, the receipt of multiple items in a single transaction or event constitutes a single offense"). The evidence at trial established that all of the goods were possessed at the same time, even though they were stored at two different locations and discovered by police on two different days. Some of the goods were kept in a storage facility and some were kept at the gold mining campsite five miles away. Police discovered the goods at the storage facility first. They then obtained an arrest warrant for Applicant, arrested Applicant a couple of days later and went to the gold mining campsite where they discovered the other stolen items.

The judge refused to merge the charges and this constituted double jeopardy. What day police discover the goods is not a factor to be considered by the court. The factor to be considered is whether the goods were received or possessed at the same time. Here, Applicant was in "actual" possession of the goods at the campsite (when Applicant was at the campsite) and at the same time he would have had "constructive" possession of the goods at the storage facility. When Applicant visited the storage facility, he would have been in "actual" possession of the goods at the storage facility and at the same time he would have had "constructive" possession of the goods at the campsite.

Moreover, the judge violated the double jeopardy clause when he gave Applicant consecutive sentences for unlawful "receipt" and unlawful "possession" of the same goods and vehicles.

VI. APPLICANT WAS DENIED HIS FOURTH, FIFTH AND FOURTEENTH AMENDMENT RIGHTS WHEN THE COURT FAILED TO CONDUCT AN IN CAMARA SUPPRESSION HEARING THEREBY DENYING APPLICANT A FULL, FAIR AND ADEQUATE OPPORTUNITY TO ADDRESS HIS FOURTH AMENDMENT CLAIMS.

Prior to trial, the Applicant filed a motion for a suppression hearing to limit the introduction of evidence that was unlawfully searched and seized in violation of the Fourth Amendment. The judge refused to conduct an in camara suppression hearing and wanted Applicant to argue those points during the trial.

As a result, the State was allowed to introduce the testimony of police officers who denied that they violated any clearly established right, but the Applicant was not allowed to introduce his own testimony or evidence to support his suppression motion. This denied Applicant a full, fair and adequate opportunity to address his Fourth Amendment claims.

VII. APPLICANTS FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO A FAIR TRIAL WERE VIOLATED WHEN THE TRIAL JUDGE REFUSED TO CHARGE THE JURY WITH "ABANDONMENT" AND "MERE PRESENCE".

Applicant testified that Mr. Justice brought the stolen goods to the storage facility and campsite and had asked Applicant to help him sell some ATV's that Justice allegedly obtained through a Government IRS seizure auction.

Applicant testified that he eventually became suspicious about how the ATV's were acquired and confronted Justice about them. Applicant testified that Justice did admit that the ATV's were acquired

under suspicious circumstances, but that Justice did not admit that they were actually stolen.

At that time, Applicant abandoned any involvement with the ATV's, by removing them from the storage facility, and by refusing to answer the phone or attempting to sell them on eBay.

At the close of the evidence, Applicant provided a written request for jury charges and asked the court to charge the jury with "abandonment" and "mere presence". The judge refused to do so and this deprived the jury of hearing instructions that adequately reflected the facts and theories presented by the defendant.

VIII. APPLICANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL WHERE HE DID NOT KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL.

Prior to trial, Applicant filed a motion to represent himself with the assistance of stand-by counsel. Applicant was incarcerated in jail and did not have access to a law library or other alternative means of conducting legal research. Applicant sought stand-by counsel to conduct legal research into possible defenses and to relay the findings to Applicant. While Applicant may have been potentially capable of constructing a substantive defense, he recognized he lacked the resources to do so and took definitive steps to negate this impediment.

A hearing was held before Judge Maddox wherein the Judge asked Applicant if he wanted to represent himself and if he understood the dangers of self-representation. The discussion amounted to nothing more than pro forma answers to pro forma questions. Judge Maddox never informed Applicant that he could be forced to stand trial without the assistance of counsel, if he chose to represent

himself.

On April 29, 2008, Judge Maddox filed an order allowing Applicant to represent himself but declined to appoint stand-by counsel under the misguided belief that it would constitute "hybrid representation". The Applicant filed a subsequent motion for appointment of stand-by counsel maintaining that it was for purposes other than "hybrid representation". The motion was never heard prior to trial.

On the day of trial the judge denied the request for stand-by counsel but appointed Mr. Day of the public defenders' office to "set-by" Applicant during the trial. This assistance was too little and came too late to be of any assistance to Applicant in conducting pre-trial legal research into possible defenses.

In this case, while the record reflects that Applicant knew he had a right to counsel - and even knew he had a right to stand-by counsel, even if he represented himself - the record does not establish that Applicant was adequately warned that he could be forced to stand trial without the assistance of stand-by counsel.

The record clearly indicates that the Applicant chose to proceed pro se only if he were provided with stand-by counsel to assist him in preparing for trial. Applicants subsequent motions and repeated requests for stand-by counsel should have placed the trial court on notice that Applicants waiver was not knowingly, intelligently, or voluntarily given.

IX. APPLICANT WAS DENIED HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW, WHEN HE WAS NOT PROVIDED WITH ACCESS TO A LEGAL ASSISTANT OR OTHER FORMS OF CONDUCTING LEGAL RESEARCH IN ORDER TO PREPARE FOR TRIAL.

Prior to trial Applicant was being held in the local county jail. Applicant did not have access to a law library or other methods of conducting legal research into possible defenses. Applicant filed motions and a writ of mandamus requesting that he be released on the partial bond he had already made, so that he could access his local law library on his own. The court ignored Applicants requests and refused to provide stand-by counsel or any other forms of access to legal resources so that Applicant could prepare for trial.

The denial of all forms of legal resources deprived Applicant of a fair opportunity to defend himself against the States accusations.

X. APPLICANT WAS GIVEN A DISPARATE SENTENCE IN VIOLATION OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENT AND THE EQUAL PROTECTION OF THE LAWS, IN RETALIATION FOR APPLICANTS LEGAL ACTIVITIES WHEN APPLICANTS CO-DEFENDANT WAS SENTENCED TO TIME SERVED AND APPLICANT WAS GIVEN A 20 YEAR CONSECUTIVE SENTENCE FOR THE SAME INVOLVEMENT.

Both Applicant and his co-defendant were charged with one count of possessing a stolen vehicle and four counts of receiving stolen goods. Applicant had filed a Federal civil suit against the County and police officers for unlawfully seizing and retaining his lawfully owned property, cash and gold.

Mr. Justice contended that both he and Applicant acted together to steal the goods in question. The Applicant contended that the State was prosecuting him in retaliation for bringing the Federal lawsuit, and that Mr. Justice was implicating Applicant to lessen his own culpability.

Mr. Justice was given six months time served even though he had a lengthy criminal record. Applicant was given a 20 year consecutive sentence even though he had no felony criminal record. The Applicant contends these lengthy consecutive sentences violate equal protection of the law, constitute disparate sentences in light of the sentences given to Mr. Justice and constitutes a vindictive sentence in retaliation for Applicants exercising of his right to a jury trial and for his seeking redress of grievances for the return of his illegally seized and retained personal property.

XI. APPLICANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO RAISE ALL MERITORIOUS ISSUES THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL.

The Applicant represented himself at trial and attempted to represent himself on direct appeal. The court of appeals ruled that a criminal defendant has no right to represent himself on appeal and returned Applicants "Pro se Brief on Appeal" without filing it.

The Applicant was appointed Celia Robinson, Susan Hackett, and Tristan Shaffer as appellate counsel. Applicant sent several letters to each of them asking that they brief the additional issues that Applicant attempted to brief himself.

On direct appeal, counsel only raised one single issue contending that the trial judge erred by failing to grant the directed verdict motion where the evidence proved that the defendant was involved in the caption and asportation of all the stolen goods.

The applicant contends that the failure to raise any other meritorious issues, including issues contained herein, constitutes a denial of effective assistance of counsel. Bozeman v. State, ___S.C.___, 414 S.E.2d 144 (1992)(hearing direct appeal issue at PCR stage because of appellate counsels ineffectiveness).

(c) the disposition thereof:

i. Pending

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) These grounds have not previously been presented to any
 court because either: (1) constitutional issues must be
 (b) raised in a PCR; or (2) appellate counsel was ineffective
 (c) in failing to raise the issue on appeal. Bozeman v. State,
414 S.E.2d 144 (1992) (hearing direct appeal issue because of
appellate counsels ineffectiveness)

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
 (b) your trial, if any? No
 (c) your sentencing? No
 (d) your appeal, if any, from the judgment of conviction or the imposition of
 sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or
 applications with respect to this conviction, which you filed?

No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. Cecilia Robinson, Susan Hackett and Tristan Shaffer
of the Appellate Defense Office
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Filing of Direct Appeal Brief
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacate and reverse conviction and sentence and remand
for a new trial or at the very least, order that all charges
should have been merged into a single count and grant new

20. sentence
 Are you now under sentence from any other court that you have not challenged?

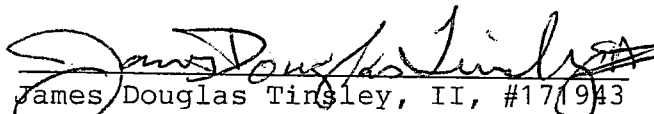
Yes

STATE OF SOUTH CAROLINA)

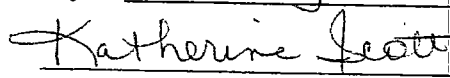
County of Spartanburg)

2013 - CP - 37.00272
 VERIFICATION

I, James Douglas Tinsley, II, # 171943, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


 James Douglas Tinsley, II, #171943

SWORN to and subscribed before me this 28th
 day of February, 2013.


 _____ (L.S.)
 Notary Public

My Commission Expires: 9/25/2022

FILED O'CONNOR, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2013 APR - 4 A 9:38

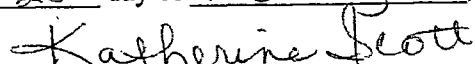
2013-CP-37-00272
**APPLICATION TO PROCEED WITHOUT PAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, James Douglas Tinsley, II, #171943, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


 James Douglas Tinsley, II, #171943
Applicant

SWORN or affirmed to and subscribed before me this
28th day of February, 2013.


 Katherine Scott
 Notary Public

My Commission Expires: 9/25/2022

FILED O'CONNOR, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2013 APR -4 A 9:38

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

James Tinsley,
S.C.D.C. No. 171943)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

Case No. 2013-CP-37-272

RETURN AND MOTION TO DISMISS
WITHOUT PREJUDICEFILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 JUL 25 AM 11 25

In response to the post-conviction relief application filed April 4, 2013, the Respondent would show this Court:

I.

Applicant is presently incarcerated in the South Carolina Dept. of Corrections pursuant to order from the Oconee County Clerk of Court. Applicant was indicted by the Oconee County Grand Jury at the May 2008 term for possession of a stolen vehicle, more than \$5,000 (2008-GS-37-881) and receiving stolen goods, more than \$5,000 (2008-GS-37-882, 885). Applicant proceeded *pro se*. The State called it case to trial. On July 31, 2008, the Honorable J.C. Nicholson sentenced Applicant to five years imprisonment suspended upon the service of five years' probation for possession of a stolen vehicle, and ten years imprisonment suspended upon seven years active serve and five years probation for the receiving of stolen goods convictions. The sentences were to be served consecutively.

Applicant subsequently filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion (S.C.



Ct. App. 2012-UP-32, filed May 30, 2012). Applicant filed a Petition for Rehearing. The South Carolina Court of Appeals denied the Petition on September 19, 2012. Applicant subsequently filed a Petition for a Writ of Certiorari with the South Carolina Supreme Court on October 2, 2012. The Petition is currently pending before the Court.

II.

Respondent contends that this matter is currently on appeal before the South Carolina Supreme Court. Under Rule 227, SCACR, and S.C. Code Ann. ' 17-27-20(b) (1985), Respondent submits that at the present time, PCR is not available to the Applicant because the direct appeal is pending in the appellate courts. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, Respondent submits that this Application for PCR must be summarily dismissed without prejudice until such time as the direct appeal is resolved.

III.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

WHEREFORE, Respondent moves to dismiss the application without prejudice because of Applicant's pending appeal which is directly connected to her conviction and sentence.

Respectfully submitted,

ALAN WISON
Attorney General

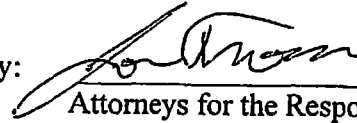
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for the Respondents

for Walt Whitmire

July 23, 2013

STATE OF SOUTH CAROLINA
COUNTY OF Oconee
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN CIVIL CASE

411

CASE NO. 2013-CP-37-00272

James Tinsley #171943

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
N/A	N/A	\$N/A
N/A	N/A	\$N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

S/ALEXANDER S. MACAULAY

Circuit Court Judge

2063

Judge Code

09/13/2013

Date

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Page 2

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE)

Case No. 2013-CP-37-272

James Tinsley,
S.C.D.C. No. 171943,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

CONDITIONAL ORDER OF DISMISSAL2013 SEP 30 11 3 39
BEVERLY H. WHITFIELD
CLERK OF COURT
OCONEE COUNTY, SC

This matter comes before the Court by way of a post-conviction relief application filed April 4, 2013. The Respondent made its return requesting the application be summarily dismissed without prejudice.

PROCEDURAL HISTORY

Applicant is presently incarcerated in the South Carolina Dept. of Corrections pursuant to order from the Oconee County Clerk of Court. Applicant was indicted by the Oconee County Grand Jury at the May 2008 term for possession of a stolen vehicle, more than \$5,000 (2008-GS-37-881) and receiving stolen goods, more than \$5,000 (2008-GS-37-882, 885). Applicant proceeded *pro se*. The State called it case to trial. On July 31, 2008, the Honorable J.C. Nicholson sentenced Applicant to five years imprisonment suspended upon the service of five years' probation for possession of a stolen vehicle, and ten years imprisonment suspended upon seven years active serve and five years probation for the receiving of stolen goods convictions. The sentences were to be served consecutively.

Applicant subsequently filed a timely notice of appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence in an unpublished opinion (S.C. Ct. App. 2012-UP-32, filed May 30, 2012). Applicant filed a Petition for Rehearing. The South Carolina Court of Appeals denied the Petition on September 19, 2012. Applicant subsequently filed a Petition for a Writ of Certiorari with the South Carolina Supreme Court on October 2, 2012. The Petition is currently pending before the Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I.

This Court finds that this application has been filed prematurely. This matter is currently on appeal before the South Carolina Supreme Court. Under Rule 227, SCACR, and S.C. Code Ann. ' 17-27-20(b) (1985). This Court finds that at the present time, PCR is not available to the Applicant because the direct appeal is pending in the appellate courts. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Therefore, this Court finds that this application for post-conviction relief is summarily dismissed without prejudice until such time as the direct appeal is resolved.

CONCLUSION

Based upon its review of the pleadings in this matter, this Court expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for Oconee County, South Carolina, and also by filing a copy of his reasons with the Office of the Attorney General, Attn: Walt Whitmire, Post Office Box

11549, Columbia, South Carolina, 29211.

AND IT IS SO ORDERED this 13 day of September, 2013.



ALEXANDER S. MACAULAY
Chief Administrative Judge
Tenth Judicial Circuit

Walhalla, South Carolina.

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 SEP 30 PM 3 39

FILED OCONEE, SC
BEVERLY H. WHITFIELD

CLERK OF COURT
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2013 OCT 11 AM 9 12

COUNTY OF OCONEE)

CASE NO: 2013 - CP - 37 - 272

JAMES Tinsley, #171943,)

Applicant,)

- VS -)

STATE OF South Carolina,)

Respondent.)

APPLICANTS PRO SE OBJECTION
TO THE Conditional order
OF DISMISSAL

COMES NOW, Applicant James Tinsley with his
Prose objection to the Conditional order of
Dismissal. Previously, the Respondent sought
to have this action summarily dismissed as
being premature.

THE Applicant Filed his Memorandum in opposition
to the Respondents Request and set forth the
Factual and legal Reasons why Applicant is entitled
to file a "protective petition" while awaiting a
decision on his WRIT OF CERTIORARI. The Applicant
also sought to have this action stayed or held in
abeyance pending certiorari Review.

It appears that Chief Administrative Judge
MACAULAY Failed to Review Applicants Prior

objections or to ponder the United States Supreme Court caselaw which suggests that writ of certiorari do not toll statute of limitations for seeking collateral attack of convictions. Lawrence v. Florida, 549 U.S. 327, 331-345 (2007).

From the caselaw, it appears that defendants not only have a right but also a duty to file "protective petitions" and then ask that they be stayed, Id. at 344-45 (Quoting Rhines v. Weber, 544 U.S. 269, 278-79 (2005) (a prisoner seeking state post-conviction relief may file a protective petition and ask the court to stay and abey the proceedings)).

This is what Applicant has done in this case in order to protect himself from future statute of limitation issues should he need to proceed to a Federal Habeas Corpus. While state courts toll the time for filing a PCR while a defendant is on certiorari review, the Federal courts do not and could consider this time against any future Habeas Corpus claims. SEE: Harris v. Hutchinson, 209 F.3d 13 (4th Cir., 2000); Smith v. McGinnis, 208 F.3d 13 (2d Cir., 2000) (Federal statute of limitations does not establish a right to file within one-year after completion of

state collateral Review. Time prior to filing state collateral Petition is also calculated against Petitioner).

Simply put, APPLICANT believes that he should be allowed to file this "protective Petition" and have the COURT stay or abey the proceedings pending the certiorari Review.

This seems the prudent thing to do in this case. Particularly since nothing in the law prevents it. The law prevents the COURT FROM conducting a hearing or ruling on the MERITS OF a CASE while direct appeal is still pending, but it does prevent a defendant from filing a "protective petition" and having the COURT stay the proceedings.

Therefore, Applicant requests that this COURT reconsider its previous order to dismiss the action as premature and instead hold the case in abeyance pending the certiorari Review.

Respectfully submitted,

October 2, 2013

James D. Tinsley
James D. Tinsley, # 111943
Livesay C.I., N4-SA
P.O. Box 580

CERTIFICATE OF SERVICE

I, James Douglas Tinsley, SR., hereby certify that I did cause the foregoing objection to be served upon opposing counsel this 7th day of October, 2013, by placing a true and correct copy in the U.S. Mail, with proper postage affixed thereto, and addressed as follows:

OFFICE OF ATTORNEY General

c/o WALT WHITMIRE

Assistant ATTORNEY General

P.O. Box 11549

Columbia, S.C. 29211

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 OCT 11 AM 9:12

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF OconeeJAMES Tinsley, #171943

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-37-737
 APPLICATION FOR
 POST-CONVICTION RELIEF

FILED OCONEE, SC
 BEVERLY H. WRIGHT
 CLERK OF COURT
 A 8:52

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry C.I. 430 Oaklawn Road, Pelzer, SC. 29669.
2. Name and location of Court which imposed sentence Oconee County General Sessions
3. Name(s) of co-defendant(s) (if any) Hogan Hugh Justice, III
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-37-881 (Possession of stolen vehicle)
 - (b) 2008-GS-37-882-885 (Receiving stolen Goods)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence: July 31, 2008
 - (a) (881) 10 yr-suspended to 7yr with PTUP
 - (b) (882-884) 10 yr-suspended to 7yr with PTUP (consecutive)

Revised 3/2003

- (c) (§85) 5 yrs (concurrent)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina COURT OF Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed rehearing denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 30, 2012 and September 19, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ATTACHED(b) (c)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE ATTACHED(b) (c)

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? yes(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO(d) any other petitions, motions or applications in this or any other Court?

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. PETITION FOR WRIT OF CERTIORARI

ii. Post-Conviction Relief Action: CASE was allegedly dismissed as being premature because I was still on appeal before Supreme COURT at the time. I objected contending that I should be allowed to file a protective application against any statute of limitation
 iii. claims that could be raised in the future. No Ruling has been made.
 iv. the name and location of the Court in which each was filed:

i. South Carolina Supreme COURTii. Oconee County COURT OF COMMON Pleasiii. iv.

(c) the disposition thereof:

i. DENIED

ii. UNKNOWN; allegedly dismissed without prejudice BUT I objected and NO Response to my motion has ever been filed. CASE may still be Active
 iii. BUT I am Filing this Protective action in case prior action is Considered dismissed because my 1 year deadline is Approaching. Both Actions are identical so COURT can dismiss either action OR consolidate both under one CASE# 3

Revised 3/2003

GROUND S FOR RELIEF

- I. APPLICANTS FIFTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL WERE DENIED WHEN THE TRIAL JUDGE REFUSED TO CHARGE THE JURY WITH ALL THE ELEMENTS OF THE OFFENSE, WHICH WERE SUPPORTED BY THE EVIDENCE INTRODUCED AT TRIAL AND THIS RELIEVED THE STATE OF PART OF ITS BURDEN OF PROOF.

At trial, the State introduced some Bill of Sales for some of the stolen items which listed Applicant as a buyer and thus "receiver" of the stolen goods. The State then called Hogan Hugh Justice, III, to the stand, who testified that he was a co-defendant of Applicant and that they actually stole all of the goods and vehicles subject to the prosecutions themselves. This testimony proved Applicant was involved in the caption and asportation of the stolen goods, was an actual thief and not the required "receiver".

The Applicant moved for directed verdict because the States evidence had proven that Applicant was a principal in the thefts and therefore could not be convicted of receiving stolen goods and related offenses. State v. Tindall, 50 S.E.2d 188 (1948)(receiving stolen goods requires that the goods be stolen by someone else as the thief cannot receive from himself); State v. McNeil, 445 S.E. 2d 461, 462 (1994)(possession of a stolen vehicle requires that the vehicle be stolen by someone else as the thief cannot receive from himself; otherwise, the possessor is the taker not a receiver).

The Judge denied the motion because he believed that a thief could be convicted of possessing goods he stole himself. The Applicant recognized that some of the States evidence - such as the Bill of Sales - might suggest that Applicant was a "receiver" and other evidence - such as Mr. Justices' testimony - might suggest

that Applicant were the "thief".

Applicant provided the court with a written list of proposed jury charges. One of the charges requested that the judge instruct the jury that if they determine that Applicant were the thief, that they must find Applicant not guilty of the indicted offenses. The Judge refused to so charge the jury because he had already held at the directed verdict stage that a defendant could be convicted of possessing goods he stole himself and because he believed that the charge would constitute a charge of larceny for which Applicant had not been indicted.

On review of the denial of directed verdict of acquittal, the South Carolina Court of Appeals did not agree that the trial judge was correct in finding that a possessor of goods he stole himself could be convicted, but nevertheless upheld the conviction on a different premise. The Court found that there was some evidence in the record that Applicant was a "receiver", (i.e., the Bill of Sales), and some evidence that Applicant was the "thief", which created a disputed fact requiring the jury to make that determination.

The Applicant contends that the judges failure to properly charge the jury, relieved the State of its burden of proof as to one of the elements of the offense, because it allowed the jury to assume that it could lawfully convict Applicant of the indicted offenses even if the jury found that Applicant were a co-thief who stole the goods himself.

II. APPLICANTS FIFTH AND FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS TO A JURY TRIAL WERE DENIED HIM.

Based upon the facts contained in ground "I" above, Applicant contends that he was denied a jury trial because the judges rulings constituted a finding of guilt by the trial judge rather than by a jury and the wrong entity judged the Applicant guilty.

Moreover, the jury was not given the opportunity to determine guilt upon the correct law and elements for which the State carries the burden of proof. When a verdict is rendered on less than all the elements it amounts to no jury trial at all and a misdescription of the elements vitiates all the jury's findings.

III. APPLICANT WAS DENIED HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL, BY WAY OF AFTER DISCOVERED EVIDENCE, THAT THE STATE USED FALSE TESTIMONY TO OBTAIN THE CONVICTION.

The Applicant contended at trial that he had no idea that the goods were stolen but that he had been approached by Hogan Hugh Justice, III, to sell ATV's for him through Applicants eBay site. Applicant suggested that he had filed a Federal lawsuit against several of the States witnesses because they had seized and retained his lawfully owned cash and gold and that the State was prosecuting Applicant in retaliation for his legal activities.

As a result of the States inducement, Mr. Justice agreed to testify for the State and implicate Applicant in the theft of all the property. At the time, Applicant suspected that Justice was lying in exchange for probation but had no evidence to prove it.

During the trial, but outside the presence of the jury, the State admitted several times that Justice was lying when he testified that Applicant was involved in the thefts. In front of the jury however, the State maintained that Justice was telling the truth and never corrected the perjured testimony in front of the

jury.

Since trial, Mr. Justice has admitted to others that the State asked him to lie and to implicate Applicant in exchange for a reduced sentence.

Secondly, the State used the testimony of Detective Scott Arnold who testified that he searched the camper and found several alleged Bill of Sales which indicated that Applicant purchased the stolen goods and was thus a "receiver".

Applicant maintained that Arnold was a defendant in his Federal lawsuit and that Arnold fabricated the Bill of Sales himself in an attempt to implicate Applicant in the crimes in hopes that if he could get Applicant convicted, the Federal suit might be dismissed under Heck v. Humphrey, 512 U.S. 477 (1994) (A federal § 1983 action must be dismissed if a favorable decision would invalidate the state court conviction).

At the time, Applicant did not have any proof that Arnold was lying when he said he found the alleged Bill of Sales in the camper where Applicant was staying. Following Applicants conviction however, Arnold testified in the Federal lawsuit that he never took any photos of the campsite and never searched or entered the camper.

Because the conviction was obtained by the use of these two perjured testimonies - which were the only evidence establishing the elements of the crimes or linking Applicant to them - it undermines confidence in the outcome of the trial.

IV. APPLICANT WAS DENIED HIS FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO DEFEND AGAINST THE STATES ACCUSATIONS WHEN THE COURT REFUSED TO PROVIDE FUNDS FOR AN EXPERT FOLLOWING THE STATES SURPRISE EVIDENCE.

During the trial the State introduced a number of alleged Bill of Sales that claimed to contain Applicants handwriting and signature. The State used these Bill of Sales to suggest that Applicant had "guilty knowledge" that the items were stolen. It was also argued on appeal, that the Bill of Sales suggest that Applicant was a "receiver", not the "thief", as Mr. Justice testified and therefore there was sufficient evidence of receiving stolen goods to submit the case to the jury.

Applicant maintained that it was not his handwriting or signature and filed a pre-trial motion for a continuance and a request for funds to hire an expert to testify that it was not Applicants handwriting or signature. The motions were not addressed until the day of trial.

On the day of trial, the judge denied the motions because he mistakenly believed the motions were not timely. Applicant was provided with the initial discovery on April 3, 2008 but it did not contain the Bill of Sales as required by S.C.R.Crim.P 5(A)(3). On July 7, 2008, less than a month before trial, the State provided the alleged Bill of Sales in a supplementary discovery disclosure.

Upon seeing the alleged Bill of Sales and recognizing what the State was attempting, Applicant immediately filed his motions for a continuance and for funds for an expert. The denial of which deprived Applicant of the opportunity to call witnesses in his own defense.

- V. APPLICANT WAS CONVICTED IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO THE CONSTITUTION BY WAY OF THE DOUBLE JEOPARDY CLAUSE, LEGISLATURES INTENT AND SOUTH CAROLINA CASE AUTHORITY AND CONSTITUTION, WHEN THE TRIAL JUDGE FAILED TO MERGE MULTIPLE CHARGES OF RECEIVING STOLEN GOODS AND POSSESSION OF A STOLEN VEHICLE INTO A SINGLE OFFENSE AND WHERE THE COURT GAVE CONSECUTIVE SENTENCES ON CRIMES STEMMING FROM THE SAME EVENT.

The Applicant was caharged with four (4) counts of receiving stolen goods and one (1) count of possessing a stolen vehicle, which referred to the same ATV's, trailers and events.

Applicant sought to have all the charges consolidated or merged into a single offense. See: S.C.Code, §16-13-180(3) ("For purposes of this Section, the receipt of multiple items in a single transaction or event constitutes a single offense"). The evidence at trial established that all of the goods were possessed at the same time, even though they were stored at two different locations and discovered by police on two different days. Some of the goods were kept in a storage facility and some were kept at the gold mining campsite five miles away. Police discovered the goods at the storage facility first. They then obtained an arrest warrant for Applicant, arrested Applicant a couple of days later and went to the gold mining campsite where they discovered the other stolen items.

The judge refused to merge the charges and this constituted double jeopardy. What day police discover the goods is not a factor to be considered by the court. The factor to be considered is whether the goods were received or possessed at the same time. Here, Applicant was in "actual" possession of the goods at the campsite (when Applicant was at the campsite) and at the same time he would have had "constructive" possession of the goods at the storage facility. When Applicant visited the storage facility, he would have been in "actual" possession of the goods at the storage facility and at the same time he would have had "constructive" possession of the goods at the campsite.

Moreover, the judge violated the double jeopardy clause when he gave Applicant consecutive sentences for unlawful "receipt" and unlawful "possession" of the same goods and vehicles.

VI. APPLICANT WAS DENIED HIS FOURTH, FIFTH AND FOURTEENTH AMENDMENT RIGHTS WHEN THE COURT FAILED TO CONDUCT AN IN CAMARA SUPPRESSION HEARING THEREBY DENYING APPLICANT A FULL, FAIR AND ADEQUATE OPPORTUNITY TO ADDRESS HIS FOURTH AMENDMENT CLAIMS.

Prior to trial, the Applicant filed a motion for a suppression hearing to limit the introduction of evidence that was unlawfully searched and seized in violation of the Fourth Amendment. The judge refused to conduct an in camara suppression hearing and wanted Applicant to argue those points during the trial.

As a result, the State was allowed to introduce the testimony of police officers who denied that they violated any clearly established right, but the Applicant was not allowed to introduce his own testimony or evidence to support his suppression motion. This denied Applicant a full, fair and adequate opportunity to address his Fourth Amendment claims.

VII. APPLICANTS FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO A FAIR TRIAL WERE VIOLATED WHEN THE TRIAL JUDGE REFUSED TO CHARGE THE JURY WITH "ABANDONMENT" AND "MERE PRESENCE".

Applicant testified that Mr. Justice brought the stolen goods to the storage facility and campsite and had asked Applicant to help him sell some ATV's that Justice allegedly obtained through a Government IRS seizure auction.

Applicant testified that he eventually became suspicious about how the ATV's were acquired and confronted Justice about them. Applicant testified that Justice did admit that the ATV's were acquired

under suspicious circumstances, but that Justice did not admit that they were actually stolen.

At that time, Applicant abandoned any involvement with the ATV's, by removing them from the storage facility, and by refusing to answer the phone or attempting to sell them on eBay.

At the close of the evidence, Applicant provided a written request for jury charges and asked the court to charge the jury with "abandonment" and "mere presence". The judge refused to do so and this deprived the jury of hearing instructions that adequately reflected the facts and theories presented by the defendant.

VIII. APPLICANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL WHERE HE DID NOT KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL.

Prior to trial, Applicant filed a motion to represent himself with the assistance of stand-by counsel. Applicant was incarcerated in jail and did not have access to a law library or other alternative means of conducting legal research. Applicant sought stand-by counsel to conduct legal research into possible defenses and to relay the findings to Applicant. While Applicant may have been potentially capable of constructing a substantive defense, he recognized he lacked the resources to do so and took definitive steps to negate this impediment.

A hearing was held before Judge Maddox wherein the Judge asked Applicant if he wanted to represent himself and if he understood the dangers of self-representation. The discussion amounted to nothing more than pro forma answers to pro forma questions. Judge Maddox never informed Applicant that he could be forced to stand trial without the assistance of counsel, if he chose to represent

himself.

On April 29, 2008, Judge Maddox filed an order allowing Applicant to represent himself but declined to appoint stand-by counsel under the misguided belief that it would constitute "hybrid representation". The Applicant filed a subsequent motion for appointment of stand-by counsel maintaining that it was for purposes other than "hybrid representation". The motion was never heard prior to trial.

On the day of trial the judge denied the request for stand-by counsel but appointed Mr. Day of the public defenders office to "set-by" Applicant during the trial. This assistance was too little and came too late to be of any assistance to Applicant in conducting pre-trial legal research into possible defenses.

In this case, while the record reflects that Applicant knew he had a right to counsel - and even knew he had a right to stand-by counsel, even if he represented himself - the record does not establish that Applicant was adequately warned that he could be forced to stand trial without the assistance of stand-by counsel.

The record clearly indicates that the Applicant chose to proceed pro se only if he were provided with stand-by counsel to assist him in preparing for trial. Applicants subsequent motions and repeated requests for stand-by counsel should have placed the trial court on notice that Applicants waiver was not knowingly, intelligently, or voluntarily given.

IX. APPLICANT WAS DENIED HIS FIFTH AND FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW, WHEN HE WAS NOT PROVIDED WITH ACCESS TO A LEGAL ASSISTANT OR OTHER FORMS OF CONDUCTING LEGAL RESEARCH IN ORDER TO PREPARE FOR TRIAL.

Prior to trial Applicant was being held in the local county jail. Applicant did not have access to a law library or other methods of conducting legal research into possible defenses. Applicant filed motions and a writ of mandamus requesting that he be released on the partial bond he had already made, so that he could access his local law library on his own. The court ignored Applicants requests and refused to provide stand-by counsel or any other forms of access to legal resources so that Applicant could prepare for trial.

The denial of all forms of legal resources deprived Applicant of a fair opportunity to defend himself against the States accusations.

X. APPLICANT WAS GIVEN A DISPARATE SENTENCE IN VIOLATION OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENT AND THE EQUAL PROTECTION OF THE LAWS, IN RETALIATION FOR APPLICANTS LEGAL ACTIVITIES WHEN APPLICANTS CO-DEFENDANT WAS SENTENCED TO TIME SERVED AND APPLICANT WAS GIVEN A 20 YEAR CONSECUTIVE SENTENCE FOR THE SAME INVOLVEMENT.

Both Applicant and his co-defendant were charged with one count of possessing a stolen vehicle and four counts of receiving stolen goods. Applicant had filed a Federal civil suit against the County and police officers for unlawfully seizing and retaining his lawfully owned property, cash and gold.

Mr. Justice contended that both he and Applicant acted together to steal the goods in question. The Applicant contended that the State was prosecuting him in retaliation for bringing the Federal lawsuit, and that Mr. Justice was implicating Applicant to lessen his own culpability.

Mr. Justice was given six months time served even though he had a lengthy criminal record. Applicant was given a 20 year consecutive sentence even though he had no felony criminal record. The Applicant contends these lengthy consecutive sentences violate equal protection of the law, constitute disparate sentences in light of the sentences given to Mr. Justice and constitutes a vindictive sentence in retaliation for Applicants exercising of his right to a jury trial and for his seeking redress of grievances for the return of his illegally seized and retained personal property.

XI. APPLICANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO RAISE ALL MERITORIOUS ISSUES THAT COULD HAVE BEEN RAISED ON DIRECT APPEAL.

The Applicant represented himself at trial and attempted to represent himself on direct appeal. The court of appeals ruled that a criminal defendant has no right to represent himself on appeal and returned Applicants "Pro se Brief on Appeal" without filing it.

The Applicant was appointed Celia Robinson, Susan Hackett, and Tristan Shaffer as appellate counsel. Applicant sent several letters to each of them asking that they brief the additional issues that Applicant attempted to brief himself.

On direct appeal, counsel only raised one single issue contending that the trial judge erred by failing to grant the directed verdict motion where the evidence proved that the defendant was involved in the caption and asportation of all the stolen goods.

The applicant contends that the failure to raise any other meritorious issues, including issues contained herein, constitutes a denial of effective assistance of counsel. Bozeman v. State, ___ S.C. ___, 414 S.E.2d 144 (1992)(hearing direct appeal issue at PCR stage because of appellate counsels ineffectiveness).

- iv. _____
- (d) the date of each such disposition:
- i. February 6, 2014
- ii. September 30, 2013
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- Identical issues were raised in above PCR that allegedly was dismissed without prejudice.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. All
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. Prior PCR
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented: Other than the prior PCR raising these identical issues, these grounds have not previously been presented to any court because either (1) constitutional issues must be raised in a PCR; or (2) appellate counsel was ineffective in failing to raise the issues on appeal. Bozeman v. State, 414 S.E.2d 144 (1992) (hearing direct appeal issue because of appellate counsel's ineffectiveness)
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? NO
- (c) your sentencing? NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. Cecilia Robinson, Susan Hackett and Tristan
 - ii. Shaffer of Appellate Defense Office.
 - iii.
- (b) the proceedings at which each such attorney represented you:
 - i. Filing Direct Appeal
 - ii.
 - iii.

19. State clearly the relief you seek in filing this application: Vacate and Reverse conviction and sentence and Remand for New Trial, or at the very least, order that all charges should have been merged into a single count and grant new sentence.

20. Are you now under sentence from any other court that you have not challenged?

yes

STATE OF SOUTH CAROLINA)

- VERIFICATION

County of Greenville)

I, JAMES Tinsky, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Douglas Tinsky, II

JAMES Douglas Tinsky, II, #171943

Perry Correctional Institution
Q2B104
430 Oaklawn Road
Pelzer, SC 29669

SWORN to and subscribed before me this 12th
day of November, 2014.

Nancy C. Merchant (L.S.)
Notary Public

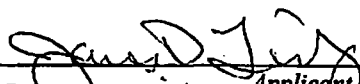
My Commission Expires: 1-23-2023

FILED
CORRECTIONAL INSTITUTE
BEVERLY H. WHITEFIELD
CLERK OF COURT
2014 NOV 16 A 8:52

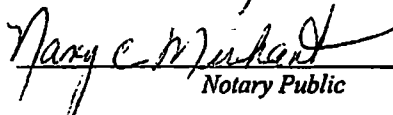
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

James Tinsley
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


JAMES Tinsley, II, #171943
Applicant

SWORN or affirmed to and subscribed before me this
12th day of November, 2014.


Notary Public

My Commission Expires: 1-23-2021

FILED JOHNSON, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2014 OCT 16 A 8:52

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
James Tinsley,	)	C.A. No. 2013-CP-37-0737
S.C.D.C. No. 171943,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(requesting appointment of counsel
State of South Carolina,	)	pursuant to Rule 71.1(d), SCRCP)
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed December 16, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the Department of Corrections pursuant to orders from the Oconee County Clerk of Court. Tinsley was indicted by the Oconee Grand Jury for Receiving, Possessing, Concealing, Selling, or Disposing of a Stolen Vehicle over \$5,000 pursuant to S.C. Code §16-21-80(30) (2008-GS39-881), and four counts of Receiving Stolen Goods over \$5,000 (2008-GS-39-882 through 885). Tinsley was tried before a jury, representing himself *pro se*, and found guilty as charged. After consolidating indictments 882 through 884, Judge Nicholson sentenced Tinsley to ten years imprisonment suspended on service of seven years and five years probation for both the consolidated indictment and the stolen vehicle indictment. Judge Nicholson sentenced Tinsley to five years imprisonment suspended to five years probation on the remaining indictment. Judge Nicholson made restitution to various victims a condition of probation.

A timely notice of appeal was filed and perfected by Tristan Shaffer, Esq., of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. James Douglas Tinsley, (2012-UP-321, filed May 30 2012). A pro se petition for writ of certiorari was filed at the South Carolina Supreme Court on October 2, 2012. While the writ was pending, Applicant filed his first and premature PCR Application (C.A. No. 2013-CP-37-0272) on April 4, 2013.¹ The South Carolina Supreme Court denied cert on February 6, 2014. The Remittitur was issued on February 18, 2014.

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject conviction, S.C.D.C. records, and Applicant's trial transcript, and Applicant's appellate records. Respondent reserves the right to amend any subsequent relevant records upon its receipt.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicants fifth and fourteenth amendment constitutional rights to due process of law and a fair trial were denied when the trial judge refused to charge the jury with all the elements of the offense, which were supported by the evidence introduced at trial and this relieved the State of part of its burden of proof;
2. "Applicants fifth and fourteenth amendment constitutional rights to a jury trial were denied to him."
3. Applicant was denied his fifth and fourteenth amendment rights to due process of law and a fair trial, by way after discovered evidence, that the state used false testimony to obtain the conviction."

¹ The State filed its responsive pleadings and requested the Application be dismissed without prejudice. A conditional order was issued on the matter. Because the case is still pending at the present time where Applicant is statutorily entitled to file a PCR action, the State has filed a separate motion requesting the two applications be merged.

4. "Applicant was denied his fifth, sixth and fourteenth amendment rights to defend against the States accusations when the court refused to provide funds for an expert following the States surprise evidence."
5. "Applicant was convicted in violation of the fifth and fourteenth amendment rights to the constitution by way of the double jeopardy clause, legislatures intent and South Carolina case authority and constitution, when the trial judge failed to merge multiple charges of receiving stolen goods and possession of a stolen vehicle into a single offense and where the court gave consecutive sentences on crimes stemming from the same event."
6. "Applicant was denied his fourth, fifth and fourteenth amendment rights when the court failed to conduct an in camera suppression hearing thereby denying application a full, fair and adequate opportunity to address his fourth amendment claims."
7. "Applicants fifth and fourteenth amendment rights to a fair trial were violated when the trial judge refused to charge the jury with "abandonment" and "mere presence." "
8. "Applicant was denied his sixth amendment right to counsel where he did not knowingly, intelligently or voluntarily waive his right to counsel."
9. "Applicant was denied his fifth and fourteenth amendment rights to due process of law and equal protection of the law, when he was not provided with access to a legal assistant or other forms of conducting legal research in order to prepare for trial."
10. "Applicant was given a disparate sentence in violation of the fifth, eighth and fourteenth amendment and the equal protection of the laws, in retaliation for applications legal activities when applicants co-defendant was sentenced to time served and applicant was given a 20 year consecutive sentence for the same involvement."
11. "Applicant was denied his sixth amendment right to effective assistance of counsel when counsel failed to raise all meritorious issues that could have been raised on direct appeal."

III.

The State contends that allegation 11 that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions

of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The States requests allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 be summarily dismissed with prejudice. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. *Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.*

[Emphasis supplied.] S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. Sufficiency of evidence may not be challenged through collateral review. Further, the allegations set forth by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-

conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). All of Applicant's allegations raised in this application could have and should have been raised at trial or on direct appeal. His failure to raise such allegations at those appropriate times has waived these allegations as grounds for relief through PCR. Therefore, this Court must summarily dismiss this application as Applicant has failed to set forth any grounds entitling him to relief through a post-conviction relief action.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code ' 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing. Respondent intends to move to dismiss Applicant's action absent timely and sufficient amended pleadings.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

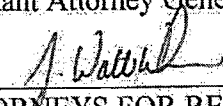
WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 13th, 2015

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

James D. Tinsley,
S.C.D.C. No. 171943

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUITS

C.A. No. 2013-CP-37-272

C.A. No. 2014-CP-37-737

MOTION FOR MERGERFILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 MAR 16 A 11:31

The Applicant in the above-captioned matter has filed two applications for post-conviction relief, one of which was filed April 4, 2013 (2013-CP-12-272) and another filed December 16, 2014 (2014-CP-12-0429). Respondent moved to dismiss Applicant's 2013 Application without prejudice because the South Carolina Supreme Court held exclusive jurisdiction over his 2010 Oconee County convictions. A conditional order of dismissal was entered on September 30, 2013. Because this matter is still pending and Applicant has subsequently and now properly filed a timely 2014 PCR Application after the Supreme Court issued its Remittitur, the Respondent hereby moves to have the two proceedings merged and have the application for PCR filed April 4, 2013 (2014-CP-37-272) be considered an amendment to the timely filed application for PCR filed December 16, 2014 (2014-CP-37-737). See S.C. Code Ann. § 17-27-90 (2003); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981).

The Respondent therefore moves to merge these two cases, with docket number 2014-CP-37-737 being the surviving case.



Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Columbia, South Carolina

Nov 13th, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

JAMES D. TINSLEY, #171943)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2013-CP-37-0737

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James D. Tinsley, #171943
 Allendale Correctional Institution
 1057 Revolutionary Trail
 Fairfax, South Carolina 29827

DATED this 13th day of March, 2015.



Sara B. Moore, Legal Assistant
 For Respondent

FILED OCOFEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 MAR 30 P 3:38

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF OCOFEE)

JAMES TINSLEY,

) CASE NO: 2014-CP-37-737

#171943, Applicant,

)

- vs -

)

APPLICANTS REPLY BRIEF

STATE OF SOUTH CAROLINA,

)

IN OPPOSITION TO THE STATES RETURN

Respondent,

)

AND REQUEST TO PROCEED PRO

SE,

The state has filed a Return and are attempting to force an attorney on applicant at this late date.

The state suggests that a hearing will be scheduled for the next term of PCR but Applicant has not had time to meet with or communicate with any so-called appointed counsel. Under those conditions Applicant would rather represent himself.

Secondly, the state suggests that Applicant must make any amendments prior to the hearing. Applicant contends the civil Rules of Procedure apply to PCR's and that Applicant may amend his issues at any time, even during or after the hearing in order to comply with the evidence, SEE: S.C.R. Civ. P. 15(b); and Arnold v. State, 420 S.E.2d 834, 842 (citing

(1)

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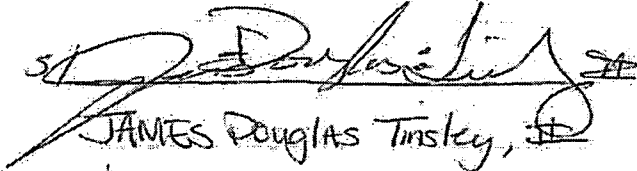
Baxley v. Rosenblum, 400 S.E.2d 502 (1991)).

Finally, the state fails to realize that many of the issues raised — that appear to be direct appeal issues — have been raised in support of his ineffective assistance of appellate counsel claim. The state apparently fails to realize that the applicant MUST support this claim by "proof," Bell v. State, 467 S.E.2d 926 (1996). In order to prove his claim applicant must raise the issues counsel should have raised on direct appeal in order to show that the result of the appeal would have been different.

Therefore, Applicant requests to proceed pro se or with stand-by counsel and to be provided funds for an expert handwriting analysis, in support of his PCR claims.

Respectfully submitted,

March 17, 2015


JAMES DOUGLAS TINSLEY, #
#171943

Allendale C.I. F2B6

P.O. Box 1151

Fairfax, S.C. 29827

Certificate of Service

I, James Douglas Tinsley, SR., hereby certify that I did cause the foregoing Reply and Request to Proceed Pro se to be served upon counsel of record this 30 day of March, 2015, by placing a true and correct copy in the U.S. Mail, with proper postage affixed thereto, and addressed as follows:

Walt Whitmire
OFFICE OF Attorney General
P.O. Box 11549
Columbia, S.C. 29211

S. James Douglas Tinsley Sr.
James Douglas Tinsley, SR.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

James Tinsley, # 171943,
Applicant,

vs.

South Carolina State,
Respondent.) In The Court of Common Pleas
)
)

CASE NO: 2014-CP-37-737

) APPLICANTS SECOND SUPPLEMENTAL ISSUE FOR
) POST-CONVICTION REVIEW
)
)FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2015 JUN 11 AM 11 48

COMES NOW, James Tinsley, the above named Applicant, with his Second Supplemental Issue for
PCR. Applicant would show this Honorable Court the following:

ISSUE

XIII. APPLICANTS FEDERAL CONSTITUTIONAL FOURTEENTH AMENDMENT RIGHTS WERE VIOLATED WHEN THE STATE FAILED TO PROVIDE DISCLOSURE OF THE ARRAINGEMENT WITH HUGH JUSTICE TO TESTIFY AGAINST APPLICANT IN EXCHANGE FOR LENIENCY AND PROBATION IN HIS OWN CASE, AND BY THE PROSECUTORS FAILURE TO CORRECT THE RECORD WHEN MR. JUSTICE LIED ON THE STAND CONCERNING THAT ARRAINGEMENT.

During the guilty plea hearing of Hogan Hugh Justice, III, held immediately prior to the start of Applicants jury trial, the plea judge initially failed to realize that a deal had been entered between Mr. Justice and the State in exchange for Mr. Justice's testimony against Applicant in his jury trial. The plea judge initially attempted to suggest that Mr. Justice was pleading to an "open plea" whereby he would face ten (10) years on each offense.

COURT: "HAVE YOU EXPLAINED TO HIM THE MAXIMUM TIME HE COULD RECEIVE?" (App. pg. 408, lines 14-15).

Mr. Justice's attorney intercepted the conversation and informed the plea judge that Mr. Justice's case involved a negotiated plea.

MR. SIRES: "YES SIR, THIS IS A NEGOTIATED PLEA. IT'S BEEN ENTERED INTO. HE'S AWARE OF THE NEGOTIATIONS. HE'S IN AGREEMENT WITH THE NEGOTIATIONS". (App. pg. 408, lines 16-18).

The plea transcript clarifies that Mr. Justice was promised things of value as part of the negotiations.

COURT: "HAVE ANY PROMISES BEEN MADE TO YOU OTHER THAN THE RECOMMENDATION, NEGOTIATIONS CONDUCTED BETWEEN THE STATE AND YOUR ATTORNEY?" (App. pg. 409, lines 22-24).

Copies to:

Atty (P) Tinsley (D)DSS other

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The arraignments and things of value offered to Mr. Justice in exchange for his testimony was that he would receive probation, other charges would be dismissed against him and charges in other States would not be prosecuted by those jurisdictions.

MR. SIRES: "TELL US WHAT THE NEGOTIATED SENTENCE WAS?"

MR. WAGNER: "WE'RE GOING TO RECOMMEND--HE'S BEEN INCARCERATED CLOSE TO SIX MONTHS HERE IN JAIL. WE'VE DISCUSSED THIS WITH OTHER JURISDICTIONS IN NORTH CAROLINA AS FAR AS OUR PLEA AGREEMENT WITH THEM....IF HE DOES TELL THE TRUTH HERE IN COURT, WE WOULD RECOMMEND ESSENTIALLY A SENTENCE WITH PROBATION SUSPENDED WITH TIME SERVED, AND RESTITUTION..."

COURT: "SO, YOU'RE RECOMMENDING PROBATION?"

MR. WAGNER: "ESSENTIALLY YES, SIR..." (App. pg. 416, line 13 - pg. 417, line 4).

This deal to probation was not given to Mr. Justice because by admitting guilt and pleading guilty, he had demonstrated a likelihood that he will transgress no more and will respond well to rehabilitation efforts. Instead, it was given only in exchange for Mr. Justice's testimony against Applicant.

MR. WAGNER: "NO, SIR. I JUST WOULD LIKE TO PUT ON THE RECORD ESSENTIALLY WHAT OUR OFFER IS HERE TODAY. WOULD BE FOR THIS DEFENDANT, AS LONG AS HE GETS ON THE STAND ON WEDNESDAY OR THURSDAY,...HE WILL GET ON THE STAND AND TELL THE TRUTH ABOUT WHAT HIS INVOLVEMENT WAS IN THIS CRIME". (App. pg. 414, lines 12-19).

Mr. Justice's deal to probation was so much connected to his testimony against Applicant that the plea judge refused to sentence Mr. Justice until after he testified against Applicant.

COURT: "...I SUGGESTED EARLIER TO NOT SENTENCE HIM UNTIL AFTER HIS TESTIMONY WEDNESDAY." (App. pg. 417, lines 16-17).

COURT: "I HAVE NO PROBLEM GOING ALONG WITH IT AS LONG AS HE GETS UP AND TELLS THE JURY THE SAME THING HE TOLD ME THIS MORNING. I HAVE NO PROBLEM WITH IT. I HAVE NO PROBLEM WITH IT AT ALL. I HAVE NO PROBLEM WITH PTUP. I HAVE NO PROBLEM WITH THE RECOMMENDATION. I DO HAVE A PROBLEM WITH DOING THIS BEFORE HE TESTIFIES." (App. pgs. 417, lines 23 - pg. 418, line 3).

When Mr. Justice testified during Applicants trial, Applicant suspected that Mr. Justice must have been offered some deal for leniency in exchange for his testimony and that that promise influenced Mr. Justice to take the stand and give false testimony to help himself. Applicant attempted to get Mr. Justice to admit to an arraignment while on the stand, but the court interrupted and mislead the jury into believing that no deal existed.

COURT: "LET ME CORRECT SOMETHING OKAY. THAT WAS NOT A NEGOTIATED PLEA. THAT WAS A RECOMMENDATION BY THE STATE." (App. pg. 234, lines 22-24).

COURT: "THAT WAS A RECOMMENDATION BY THE STATE. THE COURT CAN ACCEPT IT OR REJECT THAT RECOMMENDATION. THIS GENTLEMAN HAS NOT BEEN SENTENCED. THE COURT POSTPONED SENTENCING IT WAS A RECOMMENDATION NOT A NEGOTIATED PLEA. I WANT THE JURY TO UNDERSTAND THAT. THERE'S A DIFFERENCE LEGALLY BETWEEN A NEGOTIATED PLEA AND RECOMMENDATION. A RECOMMENDATION IS WHAT THE STATE MAKE TO THE COURT. THE COURT CAN ACCEPT OR REJECT IT. A NEGOTIATED PLEA IS A CONTRACT BETWEEN THE PARTIES WHEN THE COURT'S INVOLVED IN THE NEGOTIATIONS AND AGREES TO THAT NEGOTIATED PLEA PRIOR TO THE PLEA. THIS WAS A RECOMMENDATION. THIS GENTLEMAN HAS NOT BEEN SENTENCED. I POSTPONED SENTENCING, THE COURT DID. SO I WANT TO CLARIFY THAT, MR. TINSLEY, SO DON'T MISLEAD THE JURY." (App. pg. 235, lines 1-14).

These statements by the trial judge were lies and it was the judge who was misleading the jury. The court does not have to be involved in negotiations to constitute a negotiated plea. In fact, courts are not supposed to get involved in plea deals. That is something that is completely left up to the Solicitors Office. Even if a judge were required to agree to the deal, in this case the judge had already agreed and stated that he had no problems with the deal. (App. pg. 417, lines 23 - pg. 418, line 3). Mr. Justice took his cue from the judge and denied that any promises, deals or arraignments had been made in exchange for his testimony.

APPLICANT: Q. "BASED ON THE ADVICE OF YOUR ATTORNEY AND YOUR UNDERSTANDING, IS IT YOUR UNDERSTANDING YOU'RE SUPPOSED TO GET PROBATION FOR THIS TESTIMONY?"

MR. JUSTICE: A. "I DON'T THINK IT'S A QUID PRO QUO, IF THAT'S WHAT YOU MEAN. I'M NOT SENTENCED. I DON'T THINK -- IT'S NOT A FOREGONE CONCLUSION. I WAS JUST TOLD TO BE HONEST AND THAT WOULD BE TAKEN INTO CONSIDERATION." (App. pg. 248, lines 4-10).

This testimony was a lie. Mr. Justice had already pleaded guilty before Applicants trial began: even though sentencing had been postponed in order to pressure Mr. Justice into going forward with testimony against Applicant. There was a deal for probation and other things of value that Mr. Justice was promised in exchange for his testimony.

Had the prosecution disclosed evidence of this deal through discovery, Applicant could have used it to impeach Mr. Justice and to demonstrate Mr. Justice's possible motivation to testify and lack of credibility of his testimony. Applicant contends that the jury verdict might have been different had it known the full extent of Mr. Justice's motivation to testify against Applicant.

Moreover, the prosecution and trial judge allowed Mr. Justice's false testimony that there was no deal, to go uncorrected, when in fact he had been promised probation. By not correcting

this false testimony, the prosecution and trial judge allowed a false impression to be created at trial when the truth would have directly impugned the veracity of its key witness. See: United States v. Sutton, 542 F.2d 1239, 1243 (4th Cir. 1976); Cambell v. Reed, 594 F.2d 4, 8 (4th Cir. 1979).

The fact that the State claimed they only wanted Mr. Justice to testify to the truth should not be the focus of this review. Promising something of value to secure truthful testimony is as much prohibited as buying perjured testimony. Shuttlesworth v. Housing Opportunities Made Equal, 873 F. Supp. 1069, 1078 (S.D. Ohio 1994).

The promise of intangible benefits imports as great a threat to a witness's truthfulness as a cash payment. See: United States v. Cervantes-Pacheco, 826 F.2d 310, 315 (5th Cir. 1987)("It is difficult to imagine a greater motivation to lie than the inducement of a reduced sentence..."), cert. denied, 484 U.S. 1026, 108 S.Ct. 749, 98 L.Ed.2d 762 (1988); United States v. Meinster, 619 F.2d 1041, 1045 (4th Cir. 1980)("We think it obvious that promises of immunity or leniency premised on cooperation in a particular case may provide a strong inducement to falsify in that case").

In cases where there is only a recommendation rather than a negotiated plea, the danger is even greater. If a deal is set in stone, the witness may feel less pressure to please the prosecution and may say as little as possible since he already knows the outcome. But, if there is only a recommendation, or if the witness is simply told to testify and his cooperation will be taken into account, the witness has an even greater interest in lying in favor of the prosecution to ensure leniency in his own case. See: Boone v. Paderick, 541 F.2d 447, 451 (4th Cir. 1976)(lack of knowledge of the exact terms of a plea agreement only increases the significance, for purposes of assessing credibility, of his expectation of favorable treatment. A tentative promise of leniency might be interpreted by a witness as contingent upon the nature of his testimony); Washington v. Texas, 388 U.S. 14, 22-23 (1967)("Common sense would suggest that [an accused accomplice] often has a greater interest in lying in favor of the prosecution rather than against it, especially if he is still awaiting his own trial or sentencing. To think that criminals will lie to save their fellows but not to obtain favors from the prosecution for themselves is indeed to clothe the criminal class

with more nobility than one might expect to find in the public at large); See also: Yvette A. Beeman, Note, Accomplice Testimony Under Contingent Plea Agreements, 72 Cornell L. Rev. 800, 802 (1987) ("Accomplice plea agreements tend to produce unreliable testimony because they create an incentive for the accomplice to shift blame to the defendant or other co-conspirators. Further, an accomplice may wish to please the prosecutor to ensure lenient prosecution in his own case").

As a result of the elevated risk that a co-defendant will be motivated to lie for the prosecution to lessen his own punishment, the United States Supreme Court has consistently maintained that the defendant must be provided evidence of any agreements made with co-defendants for their testimony through Brady disclosures. Giglio v. United States, 405 U.S. 150, 153-54 (1972) (Government must disclose a promise of leniency made to a key witness in return for his testimony); United States v. Bagley, 473 U.S. 667 (1985) (failure to disclose compensation agreement given to witness constituted Brady violation); Napue v. Illinois, 360 U.S. 264, 268-70 and FN 3 (1959).

The danger of an unjust result is so strong that Congress has made it illegal for prosecutors to offer a witness anything of value, including a reduced sentence, in exchange for the witness's testimony against his co-defendant. United States v. Singleton, 144 F.3d 1343 (10th Cir. 1998). The government may still make deals with accomplices for their assistance other than testimony, and it may still put accomplices on the stand; it simply may not attach any promises, offer or gift to their testimony. Id. For instance, the State could have prosecuted Mr. Justice first and sentenced him. Then the State could have compelled him to testify in Applicant's trial by way of a subpoena and used his guilty plea transcript to impeach Mr. Justice should he attempt to change his testimony.

Nevertheless, it is well settled that deliberate deception of a court and jurors by the presentation of known false evidence cannot be reconciled with the rudimentary demands of justice. Pyle v. Kansas, 317 U.S. 213 (1942); Mooney v. Holohan, 294 U.S. 103 (1935); Riddle v. Ozmint, 631 S.E.2d 70, 75 (2006).

"The same result occurs when the State, although not soliciting false evidence, allows it to go uncorrected when it appears". Napue, supra, at 269. The principal that the State may not knowingly use false evidence applies where such evidence goes only to the credibility of a witness,

since "the jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence". Id.

In Napue, as in this case, an accomplice testified that he had received no promise in return for his testimony against the defendant. The prosecutor had, in fact, promised him favorable consideration, but he did nothing to correct the witnesses false testimony. The Supreme Court held that failure of the prosecutor to correct the testimony of the witness which he knew to be false denied the defendant due process of law in violation of the Fourteenth Amendment. The fact that the jury was appraised that a public defender had promised "to do what he could" for the witness was not deemed sufficient to turn what was otherwise a tainted trial into a fair one. Id. 360 U.S. at 268 n. 3, 270.

In Giglio, an unindicted co-conspirator testified that he had not been promised leniency in exchange for his testimony. Although the United States Attorney who presented the case to the grand jury had promised the witness that he would not be prosecuted if he testified before the grand jury and at trial, the assistant who tried the case was not aware of the promise. The court held that the prosecution's failure to present all material evidence to the jury constituted a denial of due process which required a new trial.

In the case sub-judice, evidence of any understanding or agreement for leniency was relevant to Mr. Justice's credibility, and the jury was entitled to know of it. The trial judge's statements and Mr. Justice's denials that any promises had been given, left the jury to believe that Mr. Justice was testifying because of his moral obligation and because Mr. Justice believed it was the right thing to do, instead of because he had been promised probation and the dismissal of other charges. This deprived Applicant of due process of law and a fair trial.

Likewise, the prosecutors failure to disclose evidence of Mr. Justice's plea deal in exchange for his testimony against Applicant, deprived Applicant of due process and a fair trial by preventing him from utilizing it to impeach Mr. Justice when he testified he was getting no leniency in exchange for his testimony.

It was a flat out lie and an unfair manipulation of the jury, when the trial judge and Mr.

Justice stated in front of the jury that no deal existed to probation or implied that Mr. Justice could be sentenced otherwise. There is no right to a plea bargain, State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1994), but once a negotiated plea is entered, even if it is an oral agreement, Custodio v. State, 373 S.C. 4, 644 S.E.2d 36 (2007), the government must uphold its end of the bargain. Clark v. State, 321 S.C. 377, 468 S.E.2d 653 (1996).

The record of Mr. Justices' plea clearly establishes that the bargain was for probation in exchange for Mr. Justices testimony. The conditions of the agreement were put into the record. Mr. Justice clearly heard them. Understood them and had bargained for them. The court is not required to accept plea agreement reached by State and defendant, Brooks v. State, 325 S.C. 269, 481 S.E.2d 712 (1997), but here, the plea judge stated that he had no problem with accepting the deal. Once the court accepts plea agreement, it is bound to honor its promise. Clark, supra.

Therefore, contrary to the judge's statements and Mr. Justice's testimony, there was a deal for probation in exchange for Mr. Justice's testimony. The fact that Mr. Justice had not yet been sentenced is irrelevant. As long as Justice testified the State was bound to uphold its end of the bargain. Assuming arguendo, that the plea judge later declined to sentence Justice to probation, Mr. Justice would have been entitled to withdraw his plea because he upheld his end of the bargain. See: United States v. Feurtado, 191 F.3d 420 (C.A. 4 S.C. 1999)(If court accepts plea agreement it is required to embody sentence provided for in agreement. If it rejects agreement, the court must give the defendant the opportunity to withdraw the plea), cert. denied, 120 S.Ct. 1840 (2000); Clark, supra, (guilty plea that is based on plea bargain that is not fulfilled or is unfulfillable cannot stand).

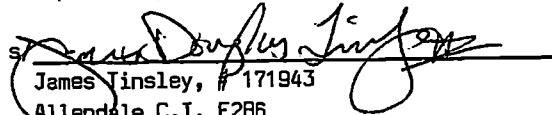
Here, it is clear that not only was Mr. Justice lying, but that the judge lied to the jury also, and was not acting as an impartial trial judge, but was conspiring to help the State cover-up Mr. Justice's motivation for testifying and what might have been viewed by the jury as a lack of credibility. Viewing the record as a whole, it must be concluded that the jury's verdict might have been different had it known the full extent of Justice's motivation to testify against Applicant. As was observed in United States v. Sutton, 542 F.2d 1239, 1243 (4th Cir. 1976),

"here the prosecution [and trial judge] allowed a false impression to be created at trial when the truth would have directly impugned the veracity of its key witness". See also: Campbell v. Reed, 594 F.2d 4, 8 (4th Cir. 1979).

Wherefore, Premises considered, Applicant prays that this Honorable Court reverse this conviction because a defendants right to be appraised of the governments deals for leniency with its witnesses and to inquire about it on cross-examination, must be vigorously protected. The denial of which deprived Applicant of his Fourteenth Amendment Rights to Due Process of Law under the United States Constitution.

June 3, 2015

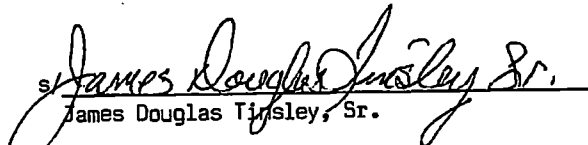
Respectfully submitted,


 James Tinsley, # 171943
 Allendale C.I. F286
 P.O. Box 1151
 Fairfax, S.C. 29827

CERTIFICATE OF SERVICE

I, James Douglas Tinsley, Sr., hereby certify that I did cause the foregoing Second Supplemental Issue for PCR to be served upon counsel of record this 10th day of June, 2015, by placing a true and correct copy in the U.S. Mail, with proper postage affixed thereto, and addressed as follows:

WALT WHITMIRE
 Assistant Attorney General
 P.O. Box 11549
 Columbia, S.C. 29211


 James Douglas Tinsley, Sr.

FILED O'CONNOR, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2015 JUN 11 AM 11 48

ENTER


FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA) In the Court of 2015 JUN 26 PM 1:41 PLEAS
)

COUNTY OF OCONEE)

CASE NO: 2014-CP-37-737

JAMES Tinsley, #171943,)

Applicant,)

vs,)

APPLICANTS SUPPLEMENTAL

MOTION FOR SUMMARY

South Carolina state,)

Respondent.)

JUDGEMENT

Comes Now, James Tinsley, the above Applicant, with his Supplemental motion for Summary Judgment. Applicant would show this Honorable Court the following.

Applicant has previously Filed a motion for Summary Judgment in his Favor. Applicant pointed out therein, that a PCR is a civil proceeding and the civil Rules of Procedure apply. Arnold v. State, 420 S.E.2d 834, 842 (1992). Applicant also suggested that this case was unique in that the facts and legal arguments can be addressed by reviewing the trial transcripts, court documents and other court records whose credibility cannot reasonably be questioned.

Applicant contends that this principal even extends to his ineffective assistance of Appellate Counsel claim because "the Failure to Raise issues on appeal," is a ground that can usually "be resolved on an examination of the Record alone," Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986).

Following the Filing of Applicants motion For Summary Judgment, Applicant submitted a "Supplemental issue For PCR". Applicant contended that his Federal Constitutional Rights to due process of law and a Fair trial were denied him when the state Failed to provide Applicant with information that the state had entered an agreement For leniency in the Form of probation in exchange For a co-defendants testimony against Applicant.

That the state Failed to correct the witnesses perjury when he denied that such an agreement existed and that even the trial judge lied to the jury and lead them to believe that no deal existed and therefore no credibility concerns applied to the states Key witness.

Applicant contend that had he known of the agreement, he could have used that information to impeach the witnesses test-

mony and to object to the COURT'S False information designed to mislead the jury. Applicant contends that these tactics on the part of the trial Judge, solicitor and the co-defendant allowed a False impression to be created at trial when the truth would have directly impugned the veracity of its Key witness, see: United States v. Sutton, 542 F.2d 1239, 1243 (4th Cir. 1976); Cambell v. Reed, 594 F.2d 4, 8 (4th Cir. 1979).

Applicant contends that the state is required to disclose promises or agreements for leniency made to key witnesses in return for their testimony, Giglio v. United States, 405 U.S. 150, 153-54 (1972); Napue v. Illinois, 360 U.S. 264, 268-70 and FN 3 (1959). Even if a prosecutor does not solicit the false testimony he has a duty to correct it when it occurs, Napue, supra, because any deliberate deception of a court or a jury by the presentation of known false evidence cannot be reconciled with the rudimentary demands of justice, Pyle v. Kansas, 317 U.S. 213 (1942); Riddle v. Ozmint, 631 S.E.2d 70, 75 (2006).

Here, it is well recognized that promises for leniency provides a strong inducement to lie. United States v. Meinstee, 619 F.2d 1041, 1045

(4th Cir. 1980); Boone v. Paderick, 541 F.2d 447, 451 (4th Cir. 1976). Because of the threat to truthfulness, a jury is entitled to know of any agreements that might raise credibility concerns. In connection, had the evidence been disclosed, there is a reasonable probability that the result would have been different, United States v. Bagley, 473 U.S. 667, 682 (1985). Particularly, since Mr. Justice's testimony was the only evidence introduced to establish the "knowledge" element of the offense, without the testimony, the evidence would have only suggested that I was "merely present" around the stolen goods and had no "knowledge" of the items stolen character. Had the jury known of the agreement they may have found Mr. Justice's testimony was not credible because they could have believed he was motivated to lie by the inducement of a reduced sentence. That Mr. Justice wished to please the prosecutor and Judge to ensure lenient prosecution in his own case.

As pointed out in Applicant's "Supplemental Issue for PCR", the court transcripts themselves establish that an agreement for probation did exist and that the Judge and witness lied to

to the jury to keep hidden information that might show a credibility issue. The prosecutor failed to correct the record and this constitutes a deliberate deception of the jury that cannot be reconciled with the rudimentary demands of Justice.

Because a hearing could not aid the court in ruling on this issue, Applicant suggests that this issue is ripe for summary judgment.

WHEREFORE, premises considered, Applicant prays that this Honorable Court grant summary judgment in Applicant's favor, as a matter of law, on this additional supplemented issue.

Respectfully submitted,

June 15, 2015

James Douglas Tinsley, SR.
James Tinsley, #171943
Allendale C.I. F2B6
P.O. Box 1151
Fairfax, S.C. 29827

CERTIFICATE OF SERVICE

I, James Douglas Tinsley, SR., hereby certify that I did cause the foregoing motion for supplemental summary judgment to be served upon opposing counsel of record

this 24TH day OF JUNE, 2015, by placing a true and CORRECT copy in the U.S. mail, with proper postage affixed thereto, and addressed as follows;

OFFICE OF ATTORNEY GENERAL
% WALT WHITMIRE
Assistant ATTORNEY General
P.O. Box 11549
Columbia, S.C. 29211

S/ James Douglas Tinsley Sr.
JAMES DOUGLAS Tinsley, SR.

ATTACHMENTS:

AFFIDAVIT OF JAMES Tinsley
IN SUPPORT OF Summary Judgment

466

June 15, 2015

BEVERLY H. WHITFIELD
CLERK OF COURT
P.O. BOX 678
WALHALLA, S.C. 29691

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2015 JUN 26 PM 1:41

JAMES Tinsley, #171943
Allendale C.I. F286
P.O. Box 1151
Fairfax, S.C. 29827

RE: Tinsley v. STATE: 2014-CP-37-737

MS. WHITFIELD:

PLEASE Find enclosed my Supplemental Motion For Summary Judgment and Certificate of Service. PLEASE TAKE NOTICE that I am proceeding pro se in this PCR action; that I have not been appointed counsel; that the civil Rules of Procedure apply to PCRs, Arnold v. State, 420 S.E.2d 834, 842 (1992) and that I am entitled to amend my issues up to, during and even after an evidentiary hearing in order to conform to the evidence.

I have previously filed a motion For Summary Judgment, but this issue was not included. This dispositive motion has not been addressed by the COURT at this time and THEREFORE I am now supplementing the Summary Judgment motion to include this additional issue that was overlooked.

Thanking You Before Hand,



ATTACHMENTS:

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA JAN 26 PM 4:41 THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

CASE NO: 2014-CP-37-737

JAMES Tinsley, #171943,

Applicant,

vs.

SOUTH CAROLINA STATE,

Respondent,

AFFIDAVIT OF JAMES

TINSLEY IN SUPPORT

OF APPLICANTS Supplemental

MOTION FOR SUMMARY

Judgment

COMES NOW, James Tinsley, AFFIANT, being competent to testify and after first swearing to tell the truth under the penalties of perjury, states that as your AFFIANT, he has first hand knowledge of the facts contained herein and that these facts are truly states so help me God.

1. Your AFFIANT STATES THAT HE IS THE ABOVE Applicant and Represented himself Pro se in his criminal trial that began on July 28, 2008.

2. Your AFFIANT STATES That he was never provided with any discovery concerning any promises or agreements made between the state and AFFIANTS co-defendant Hogan Hugh Justice, III.

3. YOUR AFFIANT STATES that just prior to the START OF his CRIMINAL trial, the state brought MR. Justice into the courtroom and allowed him to plead guilty to probation in exchange for his testimony against AFFIANT in his trial.
4. YOUR AFFIANT was not present in the courtroom for MR. Justice's guilty plea hearing, but AFFIANT'S FATHER, Doug Tinsley, was present in anticipation of the START OF AFFIANT'S TRIAL and witnessed the plea.
5. YOUR AFFIANT STATES that during a break in AFFIANT'S trial, AFFIANT'S FATHER passed him a note that stated that MR. Justice had just plead guilty to probation in exchange for his testimony implicating AFFIANT in the CRIMES.
6. During cross-examination of MR. Justice, AFFIANT Attempted to get MR. Justice to admit that he was promised leniency in exchange for his testimony against AFFIANT. AFFIANT was attempting to demonstrate that MR. Justice might be motivated to lie in AFFIANT'S trial in order to receive a MORE lenient sentence in his own Prosecution.
7. The trial Judge interrupted the cross-examination and accused AFFIANT OF MISLEADING the jury. The Judge stated that there was no negotiated plea and that Justice could be sentenced to more than Probation because he had not been sentenced YET.

8. TAKING this CUE FROM the TRIAL Judge, MR. Justice DENIED under oath that any deals existed to probation in exchange FOR his testimony.
9. The solicitor never stepped in and CORRECTED this False impression that was created by the Judges statements and Justices testimony.
10. AFFIANT was left to assume his Father must have been mistaken about What he heard, AFFIANT had NO evidence to dispute what the Judge and MR. Justice told the Jury.
11. Following AFFIANTS CONVICTION, and in preparation FOR his post-Conviction Relief action, AFFIANT was able to obtain a copy OF MR. Justices guilty plea transcript.
12. AFFIANT was SHOCKED to Find that the transcript clearly indicates MR. Justice was pleading to a "negotiated plea" to have a number OF indictments dismissed; be allowed to plead to larceny which would prevent larceny charges from being prosecuted in other jurisdictions, and to Receive a probation sentence in exchange FOR his testimony in AFFIANTS TRIAL.
13. AFFIANT STATES that this evidence is Relevant to MR. Justices credibility because he could have been motivated to lie in exchange FOR leniency and believed that such leniency was dependant upon the nature OR usefulness OF his testimony against AFFIANT. The Jury should have been allowed to consider such evidence.

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14. AFFIANT IS willing to testify in open COURT to the FACTS contained in this AFFIDAVIT.
15. FURTHER AFFIANT SAYETH NOT.

SWORN TO UNDER THE PENALTIES OF PERJURY.

June 15, 2015

~~5X James Douglas Tinsley, II~~
JAMES Douglas Tinsley, II
Allendale C. I. F206 #171943
P.O. Box 1151
Fairfax, S.C. 29827

FILED OCONEE, SC
BEVERLY H WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas	
	)		
COUNTY OF OCONEE	)	Case No: 2014-CP-37-737	2015 SEP 22 AM 10:20
JAMES TINSLEY, # 171943,	)		
Applicant,	)		
	)		
vs.	)	APPLICANT'S FIRST AMENDED APPLICATION FOR	
	)	POST-CONVICTION RELIEF	
SOUTH CAROLINA STATE,	)		
Respondent,	)		
	)		

COMES NOW, the above Applicant, with his First Amended Application for Post-Conviction Relief. The Respondents Return seems to misunderstand the issues raised by Applicant. For this reason, Applicant is submitting this amended application in order to help clarify the issues. Applicant submits the following issues for review:

ISSUES

I. INEFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL FOR FAILING TO RAISE THE FOLLOWING ISSUES:

- (a) That the trial judge erred in failing to charge the jury on the distinctions between larceny and receiving stolen goods, and that if the jury found that Applicant were the thief who stole the goods, the jury must find him not guilty of the indicted offense.

Applicant was charged with receiving stolen goods which requires proof that the goods were received "from someone else who stole them". During the trial the State presented the testimony of Hugh Justice, which indicated that Applicant stole the goods himself. The State also introduced some bill of sales which they claimed had Applicants name on them. Applicant conceded that the bill of sales could infer that Applicant was a receiver. Because of this disputed fact, Applicant requested in writing that the judge charge the jury that if they find Applicant was the thief who stole the goods himself, they must find Applicant not guilty of the indicted offense. The judge refused to give the charge.

On appeal, the appellate defense attorney only raised the issue that the judge erred in failing to grant directed verdict of acquittal. Applicant complained to counsel that that issue was very weak, because the appellate court would likely find that there was a dispute as to whether he was the thief or a receiver and that question should have been submitted to the jury. Applicant maintained

that the correct issue is that the trial judge never submitted that question to the jury because he refused to instruct them that a dispute existed, that they must first make that determination and if they find that Applicant was the thief, they must find him not guilty of the indicted offense.

By failing to give the requested charge, the jury was left to assume that there are no distinctions between larceny and receiving stolen goods, and that they are authorized to convict Applicant even if he were the thief who stole the goods himself. This failure to charge all of the elements allowed Applicant to be convicted on an improper basis. It was ineffective assistance of counsel on appeal not to raise this issue because Applicant adequately warned counsel that the issue raised was weak and that this was the stronger issue and no legitimate professional decision can justify neglecting to raise this issue.

- (b) That the trial judge erred in refusing to charge jury with "mere presence" and "abandonment".

During the trial, Justice testified for the State that he and Applicant went together and stole all of the goods subject to the prosecutions. Applicant testified that he did not steal the goods and had no knowledge of their stolen character. Applicant testified that Justice had approached him and asked him to help sell some ATV's on his eBay website which he claimed to have purchased at a Government IRS seizure auction in Atlanta. Applicant admitted that he eventually became suspicious of the property and abandoned any further involvement with trying to sell it.

Clearly there was a dispute in the evidence and the judge should have charged the jury with "mere presence" and "abandonment" because they were supported by the evidence in the record. It was ineffective not to raise this issue on appeal.

- (c) That the trial judge erred in failing to grant a continuance or otherwise provide funds for an expert handwriting analysis to dispute the State's surprise evidence.

At trial the State introduced a number of alleged bill of sale that they claimed had Applicants name and handwriting on them. The State suggested that Applicant created the bill of sales in an attempt to claim lawful ownership and therefore they prove Applicant had guilty knowledge the goods were stolen.

Applicant maintained that it was not his handwriting and that police had fabricated the documents themselves in an attempt to overcome Applicants federal lawsuit against them. Moreover, Applicant contended that the bill of sales were a surprise that had only recently been provided to the Applicant and he immediately asked for funds for an expert who could testify that it was not Applicants handwriting. Applicant believes such evidence would have made his arguments not seem so weak and that there was a real possibility that police had fabricated them themselves. The judge denied the motions because he believed they were untimely, but Applicant could not have filed his motions any sooner. It was the bill of sales that had been provided in discovery in an untimely manner and which caused Applicant to file his motions at such a late date. Applicant believes this deprived him of a fair trial and deprived the jury from considering all evidence concerning the bill of sales. Counsel was ineffective for failing to raise this issue on appeal.

- (d) That the trial judge erred in failing to merge all of the indictments into a single offense which violated State Statute and the multiple convictions and consecutive sentences constitute a double jeopardy violation.

Applicant was charged with four counts of receiving stolen goods and one count of possessing a stolen vehicle which referred to the same ATV's, trailers and events. Applicant moved that all of the indictments be merged into a single offense because the possession of multiple stolen items at one time only constitutes a single offense. The evidence suggests that Applicant possessed all of the goods at the same time. That he had constructive possession of goods found at the campsite and at the same time had constructive possession of goods recovered from a storage facility nearby. Not only was Applicant convicted separately for each of these offenses, but he also received consecutive sentences with a total amount of time that amounted to more than the maximum he could have received on a single offense in violation of double jeopardy. Applicant believes he was denied effective assistance of counsel on appeal for failing to raise this issue because it would have resulted in Applicants immediate release as he has already served more time in prison than he could have been given lawfully.

- (e) That the trial judge erred in refusing to conduct an in camera suppression hearing or in failing to allow Applicant an opportunity to present his own evidence in support of his motion.

Prior to trial Applicant filed a motion to suppress evidence that was unlawfully searched and seized. The trial judge refused to conduct an in camera suppression hearing and instead wanted Applicant to make his arguments during the trial. This allowed the State's witnesses the opportunity to deny that they had violated any rights, but it did not give Applicant the opportunity to introduce his own evidence that demonstrated that police had entered a fenced and posted against trespassing property in order to gain the information later used to obtain a warrant. Since the police were not standing in a place with which they had a lawful right to be, the evidence could not have been in plain view, because it could not have been seen from a public vantage point. The judge's decision deprived Applicant of a full, fair and adequate opportunity to address his claims. It was ineffective assistance of counsel on appeal not to raise this issue.

- (f) That Applicant was denied his Sixth Amendment Right to Counsel because he did not knowingly, intelligently or voluntarily waive his right to counsel.

Prior to trial Applicant sought to represent himself with the assistance of counsel. Applicant was being held in the County jail without access to a law library or other forms of access to research resources. A hearing was held but Applicant was never specifically warned that he could be forced to stand trial without "any" stand-by counsel or other forms of legal research. Applicant relied upon the South Carolina Supreme Court decisions which have held that a defendant representing himself is still entitled to stand-by counsel.

Applicants understanding was that the appointed attorney did not wish to act as stand-by counsel and he requested to be relieved. Applicant assumed that some other attorney would be appointed to act as stand-by counsel. When that did not happen, Applicant continued to complain up to and on the day of trial. Applicant would not have requested to represent himself with stand-by counsel had he known that he could be forced to proceed without access to any legal research aid. Applicants repeated requests and motions on the day of trial should have placed the court on notice that Applicant had not knowingly and intelligently waived his rights to counsel. Appellate counsel did not even review the hearing transcripts to determine whether this issue had merit. When the case was handed to a new attorney, he simply adopted the previous attorney's issue without conducting

his own independent evaluation of the issue. This is insufficient to qualify as a professional decision by counsel.

II. APPLICANT WAS DENIED HIS SIXTH AMENDMENT RIGHT TO COUNSEL BECAUSE HE DID NOT KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL.

If for any reason this court believes that appellate counsel was not ineffective for raising the issue outlined in section I(f) above, or finds that the issue was not proper for appellate review, Applicant believes the same facts would entitle him to PCR relief as a straight up constitutional violation. Nearly all constitutional issues are available in a PCR. The U.S. Supreme Court has noted that some issues just are not appropriate for direct review. DeMarco v. United States, 415 U.S. 449-50 (1974). This theory is based on a belief that some issues require the taking of additional information/testimony that is not found in the trial record. For this same reason, ineffective assistance of counsel must be raised in a PCR. State v. Korahrens, 350 S. E.2d 180 (1986), because the claim may involve advice of counsel that was given off the record.

With that in mind, one of the issues here is Applicants understanding of what was going to happen when he sought to represent himself with stand-by counsel. This requires the taking of additional testimony from Applicant that does not appear on any transcript. Thus, it is likely that this issue is proper as an independent PCR issue.

III. APPLICANT WAS DENIED HIS FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW BY NOT BEING PROVIDED WITH THE RESOURCES NECESSARY TO CONDUCT PRE-TRIAL LEGAL RESEARCH.

In addition to the claims set forth in sections I(f) and II above, Applicant maintains that those same facts establish that he was denied his due process rights under the Fourteenth Amendment. The Applicant maintains that the court was required to provide him with access to resources necessary for the preparation of his defense. Milton v. Morris, 767 F.2d 1443, 1445-47 (1985). That stand-by counsel would have been an acceptable method of conducting the research, Love v. Summit County, 776 F.2d 908, 912-13 (10th Cir. 1985), cert. den. 479 U.S. 814 (1986), but the court deprived Applicant of that and any other method in violation of his due process rights.

IV. APPLICANT WAS DENIED DUE PROCESS OF LAW BY BEING GIVEN A HARSHER SENTENCE, WHERE JUDGE ACTED WITH PREJUDICE, A CORRUPT MOTIVE AND VINDICTIVELY TO PUNISH THE APPLICANT FOR EXERCISING HIS LEGAL RIGHTS.

Both Applicant and his co-defendant were charged with the same offenses. Applicants co-defendant had a long criminal record but was given probation. Applicant had no criminal record but was given lengthy consecutive sentences. When Applicant was arrested along with his co-defendant, police seized a number of Applicants lawfully owned property. Applicant asked that the property be returned to him but was refused. Applicant was left with no other choice than to file a federal civil action seeking the properties return.

This angered the police and solicitors office. They hatched a plan based on a misbelief that if they could get Applicant convicted of this State offense, it would require the federal court to dismiss the civil suit under Heck v. Humphreys. They went to Applicants co-defendant and offered him a deal to probation if he would testify against Applicant and implicate him. Applicant requested a jury trial and sought to represent himself with the assistance of stand-by counsel. The record does not support any justification for giving Applicant a harsher sentence. Clearly, Applicant was given the harsher sentence in retaliation for his exercising his rights to a jury trial, to represent himself and to seek the return of his property. This does not constitute an acceptable discretionary sentence within statutory limits, but rather constitutes a vindictive sentence in retaliation for Applicants legal activities.

V. THE COURT LACKED SUBJECT MATTER JURISDICTION TO CONVICT APPLICANT BECAUSE A VALID TRUE BILL INDICTMENT WAS NOT RETURNED BY A GRAND JURY DURING A TERM OF GENERAL SESSIONS COURT.

Applicant was convicted of indictments 2008-GS-37-881 through 885. The face of the indictments allege that they were returned during a term of General Sessions Court on May 27, 2008. The records from this court and the South Carolina Court Administration establishes that no Court of General Sessions was active on May 27, 2008. Someone has committed a fraud by publishing these indictments containing this false information.

South Carolina Code, § 14-9-210 requires that grand juries convene during a term of General Sessions Court. That did not happen in this case. This Statute is jurisdictional in nature and the failure to comply with it, deprived the court of subject matter jurisdiction. Applicant could not have discovered these void indictments or that the court lacked subject matter jurisdiction sooner,

because this information was kept hidden from Applicant by the fraud committed by the Solicitors Office. If any procedural default occurred, it must be imputed to the State who, through its own deceit, prevented the preservation of this issue at trial.

VI. APPLICANT WAS DENIED HIS FOURTEENTH AMENDMENT RIGHTS TO DUE PROCESS OF LAW WHEN THE STATE WITHHELD INFORMATION CONCERNING DEALS FOR LENIENCY, THINGS OF VALUE AND OTHER BENEFITS GIVEN TO HUGH JUSTICE IN EXCHANGE FOR HIS TESTIMONY AGAINST APPLICANT, AND BY THE SOLICITORS FAILURE TO CORRECT THE FALSE TESTIMONY AND FALSE IMPRESSIONS WHEN THEY OCCURRED.

At trial Applicant suspected that his co-defendant must have been offered some type of a deal to testify against Applicant. When Applicant attempted to get Mr. Justice to admit that such an agreement existed, the trial judge, Justice and the prosecutor all stated to the jury that there was no deal to probation, and implied that Justice was not receiving any benefit from his testimony and would even have to go on to face other prosecutions in other Counties. This was false and the prosecutor knew it.

Justice had entered an agreement whereby the State would drop five indictments, give him probation and allow him to plead to larceny instead of receiving, even though the goods were stolen in other Counties. This prevented Justice from being prosecuted in those other Counties under double jeopardy. This created a false impression in the minds of the jury concerning Justices' truthfulness and credibility. It left them to believe that Justice was causing himself further punishment by assisting the State and that he must be doing it because it was the right thing to do. In fact, Justice was doing it because it was reducing his punishment in all Counties to probation. When the prosecutor told the jury that Justice would still have to face prosecution in other Counties, he knew that was a lie. The dropping of charges, receiving probation and preventing other Counties from prosecuting someone is a strong motivation to lie. The jury should have known about these deals and things of benefit Justice was receiving in exchange for his testimony.

VII. EVIDENCE THAT HAS NEVER BEEN HEARD AND REQUIRES REVERSAL OF THE CONVICTION IN THE INTEREST OF JUSTICE, ESTABLISHES THAT THE STATE RELIED UPON FALSE TESTIMONY AND FABRICATED EVIDENCE TO OBTAIN THE CONVICTION.

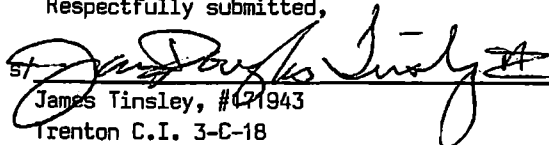
In the event that this court believes that the prosecutor could not have known about the false testimony in time to correct the record at trial, Applicant believes this matter contains evidence

that has never been heard and requires the reversal of the conviction in the interest of Justice. S.C. Code, § 17-27-20(a)(4). Applicant contends that due to his incarceration and the lack of any pre trial stand-by counsel to assist him in possibly discovering this evidence, it was unknown to him.

In addition, Detective Scott Arnold testified at trial that he took pictures of the campsite on the day of its discovery and found several bill of sales inside a camper. Following the trial in Mr. Arnolds deposition in the federal suit, he testified that he never took any pictures and did not conduct any search of the camper. Therefore, he could not have found the bill of sales as he previously had testified. This supported Applicants contention at trial that the police had fabricated those bill of sales themselves in an attempt to overcome Applicants federal law suit. Those fabricated bill of sales were very damaging to Applicant at trial because they demonstrated an element of the crime. (i.e. that Applicant had knowledge the goods were stolen). The prosecutor should have known that Arnold's trial testimony was false but even if he did not, the conviction must be reversed because the use of false evidence to gain a conviction cannot be reconciled with the rudimentary demands of justice.

August 30, 2015

Respectfully submitted,

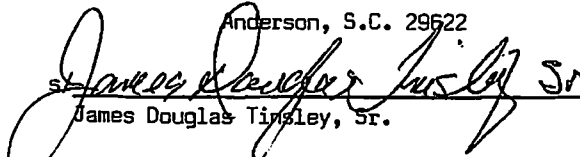

James Tinsley, #471943
Trenton C.I. 3-C-18
84 Greenhouse Road
Trenton, S.C. 29847

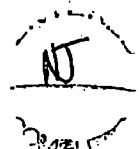
CERTIFICATE OF SERVICE

I, James Douglas Tinsley, Sr., hereby certify that I did cause the foregoing to be served upon all counsel of record this 11 day of September, 2015, by placing a true and correct copy in the U.S. mail with proper postage affixed thereto, and addressed as follows:

WALT WHITMIRE
Assistant Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Hugh W. Welborn
Attorney at Law
P.O. Box 173
913 Carolina Circle
Anderson, S.C. 29622


James Douglas Tinsley, Sr.



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

COUNTY OF OCONEE)

James Tinsley, #171943)

2013-CP-37-0272

2014-CP-37-0737

Applicant,)

ORDER OF MERGER

vs.)

State of South Carolina,)

Respondent.)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 DEC 10 PM 2 31

Applicant in the above-captioned matters has filed two applications for post-conviction relief; the first of those was filed April 4, 2013 (2013-CP-37-0272), and the second was filed December 16, 2014 (2014-CP-37-0737). Since an applicant is not generally allowed to have two post-conviction relief proceedings in regard to the same conviction (See Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90), this Court hereby orders that the two proceedings be merged. The application for post-conviction relief filed December 16, 2014 (2014-CP-37-0737) will be considered an amendment to the initial application for post-conviction relief filed April 4, 2013 (2013-CP-37-0272).

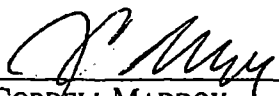
The Clerk of Court is therefore ordered to merge the two cases, with docket number 2013-CP-37-0272 being the surviving case. Hereafter, the word "Application" will refer to docket number 2013-CP-37-0272; the word "Amendment" will refer to docket 2014-CP-37-0737, which will be considered as an amendment to the application for post-conviction relief.

Copies to:

 Atty. (P) (D)
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IT IS THEREFORE ORDERED that the Oconee County Clerk of Court merge docket number 2014-CP-37-0737 into docket number 2013-CP-37-0272, with file 2013-CP-37-0272 being the surviving file and all future pleadings bearing docket number 2013-CP-37-0272. Docket number 2014-CP-37-0737 will be dismissed upon the merger.

AND IT IS SO ORDERED this 1 day of Dec., 2015.



J. CORDELL MADDOX
Chief Judge for Administrative Purposes
Tenth Judicial Circuit

Anderson, South Carolina.

2015 DEC 10 PM 2 31

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	In The Court Of Common Pleas
COUNTY OF OCONEE	)	
JAMES TINSLEY, # 171943,	)	CASE NO: 2014-CP-37-737
Applicant,	)	
vs.	)	APPLICANTS SUPPLEMENTAL ISSUE
STATE OF SOUTH CAROLINA,	)	FOR POST-CONVICTION RELIEF
Respondent.	)	

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 DEC 16 PM 1 23

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL, WHERE COUNSEL FAILED TO RAISE THE DENIAL OF DUE PROCESS ISSUE THAT A MATERIAL VARIANCE BETWEEN THE STATE'S EVIDENCE AND THE ALLEGATIONS IN THE INDICTMENT EXISTED WHICH ALSO DEPRIVED THE COURT OF SUBJECT MATTER JURISDICTION.

In Bailey v. State, 392 S.C. 422, 709 S.E.2d 671 (2011), the South Carolina Supreme Court recently held that "...while a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged". Id. at 677. When this occurs the court went on to say, "the conviction violates principals of due process because the State has failed to prove ... **every fact necessary** to constitute the crime." Id. In essence, it deprives the defendant of the right to be indicted by a grand jury.

In the Case sub-judice, Applicant was charged with one (1) count of possession of a stolen vehicle under S.C.Code, § 16-21-80 (3)(2008-GS-37-881) and four (4) counts of receiving stolen goods under S.C.Code, §16-13-180 (2008-GS-37-882 through 885). The offenses

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of receiving stolen goods and possession of a stolen vehicle closely mirror each other. Both offenses require the State to prove the elements of "possession" and "knowledge" of the goods stolen character. Hicks v. State, 314 S.C. 280, 443 S.E.2d 907 (1994); State v. Williams, 350 S.C. 172, 564 S.E.2d 688 (2002). Both offenses also require the State to prove the additional element that the goods were "received from someone else who stole them". State v. Tindall, 213 S.C. 484, 50 S.E.2d 188 (1948) ("where a larceny has been committed, the principal thief, that is, the one who is guilty of the actual caption and asportation, cannot be adjudged guilty of criminally receiving the thing stolen for the reason that he cannot receive from himself"); State v. Sweat, 221 S.C. 270, 70 S.E.2d 234 (1952) (applying principal to receiving stolen goods offense); State v. McNeil, 314 S.C. 473, 445 S.E.2d 461, 462 (1994) (extending this principal to the possession of a stolen vehicle offense); State v. Wiles, 383 S.C. 151, 679 S.E.2d 172 FN1 (2009) (affirming the validity of principal under current law); The Criminal Law of South Carolina, (4th Ed. 2002), W. McAnich and G. Fairly, at 410 (For a complete list of essential elements for receiving stolen goods, the State must also prove that the goods were stolen by someone else); State v. Barksdale, 428 S.E.2d 498, 501 (1993) (State must prove every element of the offense).

During the trial however, the State proceeded on a theory that Applicant had stolen all of the goods himself. (See Testimony of State witness Hogan Hugh Justice, III, Appendix to Summary Judgment Motion, page 225, line 8-page 226, line 5; and page 253, lines 17-24).

Even the trial judge admitted that Applicant was a principal in the actual thefts:

Court: "In this case this man was principal. He was involved in the theft and he was involved in the transportation from North Carolina back to South Carolina with the property. So there's no question he was principal".

(Id. Appendix at page 260, lines 2-6). Additionally, in closing, the Solicitor argued to the jury that they should convict Applicant, not because he "received the goods from someone else who stole them", as required by law, but because the State had shown Applicant had stolen them himself - something the law does not allow.

Solicitor: "...what that shows is that they were acting in concert. They were equally in it together, just like Mr. Justice said. Mr. Justice took responsibility for what he did. He admitted what they done. He says they stole the stuff. And if the fact that they stole the stuff doesn't show he knew it was stolen, I don't know what would".

(Id. Appendix at page 354, line 25 - page 355, line 5). In other words, the State proceeded on the theory that Applicant had stolen the goods and vehicles and that that should be sufficient to convict him of receiving or possessing those same goods and vehicles. This position was flawed however, because the State failed to prove a **necessary fact** of the offense, (i.e. that the goods were received from someone else who stole them). In doing so, the State relied upon arguments, evidence and a theory different from that alleged in the indictment and violated Applicants due process rights.

Simply put, Applicant was actually convicted of larceny, a crime in which Applicant was never indicted by a grand jury. See: United States v. Mason, 41 Fed. App. 612 (4th Cir. S.C. 2002) (when the governments arguments and evidence broadens the basis for a conviction beyond those in the indictment, it constitutes a "con-

structive amendment" or "fatal variance" which violates the Fifth Amendment Right to be indicted by a grand jury); State v. Jones, 536 S.E.2d 397 (2000); See also: 41 AM. Jur. 2d Indictments and Informations § 252 (2005)(stating that one of the two ways an indictment can be improperly modified is through "a variance, whereby the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment").

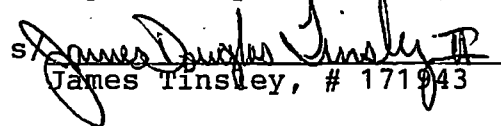
A criminal defendant is entitled to be tried only on indicted offenses. State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987). It is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment. State v. Gunn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993).

The trial court lacked subject matter jurisdiction to convict Applicant for receiving and possessing stolen goods and vehicles by alleging and proving that Applicant "stole them himself" when there was no indictment charging him with stealing the goods and vehicles when the jury was sworn.

The proof at trial was at variance with the indictment thereby denying Applicant due process of law and depriving the court of subject matter jurisdiction. Since previous case law has held such convictions to be reversible error, it was ineffective assistance of counsel not to have raised this issue on direct appeal.

December 1, 2015

Respectfully submitted,


James Tinsley, # 171943

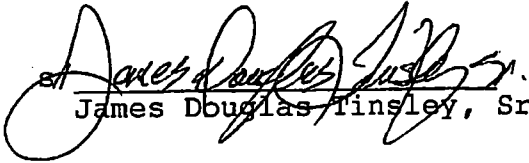
Trenton C.I. 3-C-18
84 Greenhouse Road
Trenton, S.C. 29847

CERTIFICATE OF SERVICE

I James Douglas Tinsley, Sr., hereby certify that I did cause the foregoing Supplemental PCR Issue to be served upon counsel of record this 14th day of December, 2015, by placing a true and correct copy in the U.S. mail, with proper postage affixed thereto and addressed as follows:

Walt Whitmire
ASSISTANT ATTORNEY GENERAL
P.O. Box 11549
Columbia, S.C. 29211

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2015 DEC 16 PM 1 23


James Douglas Tinsley, Sr.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

COURT OF
COMMON PLEAS
2013-CP-37-0272

ORIGINAL

JAMES TINSLEY,)
APPLICANT)
vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,)
RESPONDENT)

FEBRUARY 10, 2016
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH

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

HUGH W. WELBORN, ESQUIRE
RELIEVED ATTORNEY FOR PLAINTIFF

APPLICANT APPEARING PRO SE

PATRICK SCHMECKPEPER, ESQUIRE
ATTORNEY FOR RESPONDENT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X

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1 * * * P R O C E E D I N G S * * *

2
3 THE COURT: Whenever you're ready.

4 MR. SCHMECKPEPER: Thank you, Your Honor, may it
5 please the court. This is James Tinsley vs. State of
6 South Carolina, 2013-CP-37-0707. The Applicant was
7 indicted in Oconee County for receiving, possession and
8 concealing, or selling or disposing of a stolen vehicle
9 over \$5,000, and four counts of receiving stolen goods
10 over \$5,000. He proceeded to a trial by a jury.

11 After several of these indictments were
12 consolidated, he was ultimately convicted of -- he was
13 ultimately convicted of receiving, possessing,
14 concealing, selling or disposing of a stolen vehicle
15 over \$5,000, and receiving stolen goods over \$5,000.

16 Judge Nicholson sentenced the applicant to five
17 years imprisonment, suspended to five years probation
18 on one indictment; and then to ten years imprisonment,
19 suspended to the service of seven years and five years
20 probation on the stolen vehicle indictments.

21 Your Honor, at this time, I believe the
22 applicant has a motion through his counsel.

23 THE COURT: Mr. Welborn.

24 MR. WELBORN: Your Honor, please the court, I
25 represent Mr. Tinsley. Some time back, Mr. Tinsley

1 asked me to file a motion to be relieved as his lawyer.
2 His wants to represent himself. He's done this before,
3 represented himself. And so I filed this back in
4 November, and I would ask that I be relieved and he
5 represent himself.

6 THE COURT: Well, Mr. Tinsley, tell me why you
7 wish for your attorney to be relieved?

8 MR. TINSLEY: Well, I just believe I'd do a better
9 job of just handling the case myself. He's very busy
10 and I know he doesn't make a lot of money to do this.
11 And this is a very complicated case. There's a lot of
12 issues. It would take -- take quite a while, and it
13 would be a big effort on his part to try to keep up
14 with all that and interview all the witnesses. And he
15 hadn't had the opportunity to interview the witnesses.
16 He wouldn't know what to ask them if they took the
17 stand, so I just feel I would be better able to do it
18 myself.

19 THE COURT: You have witnesses?

20 MR. TINSLEY: Yes, sir.

21 THE COURT: I understand that you've done this
22 before, but if I'm -- if I'm looking at the file
23 correctly, things didn't turn out the way you wanted
24 them to turn out; did they?

25 MR. TINSLEY: It did when I represented myself.

1 It just -- it don't always when people do things that's
2 illegal or unconstitutional. I can't -- I have no
3 control over that. That's what this is for, an
4 opportunity for me -- for me to bring those issues up
5 to be heard, so.

6 THE COURT: Now, you've read the State's reply to
7 your application; hadn't you?

8 MR. TINSLEY: Yes, I read it.

9 THE COURT: Let me -- let me ask you a question:
10 You are alleging that who did what wrong?

11 MR. TINSLEY: I'm looking -- well, there's
12 numerous issues. There's several issues that should
13 have been raised on direct appeal that weren't. So
14 that's ineffective assistance of counsel on appeal for
15 not raising those issues.

16 THE COURT: Well -- all right. Let's just stop
17 right there. Help me -- help me get focused on it.
18 Who handled the direct appeal?

19 MR. TINSLEY: The appellate defense office.

20 THE COURT: I was looking for that and I hadn't
21 seen that yet. And so it all has to do with the appeal
22 then; is that right?

23 MR. TINSLEY: No. There's -- there's a few
24 issues, but then there's other constitutional issues
25 that are outside the scope of the ineffective

1 assistance of counsel; just failure, you know, to
2 provide me with stand-by counsel; failure to provide me
3 with resources to prepare my trial. They withheld
4 Brady material. The -- the evidence of a co-defendant
5 -- dealing with the co-defendant to testify for me in
6 exchange for probation. And when they gave false
7 testimony about that on the stand, the Solicitor didn't
8 correct that.

9 And then he went on to give false information to
10 the jury in closing arguments about that deal. And
11 then later we got ahold of the transcript that proves
12 that all that was not true and none of that was
13 provided to me.

14 THE COURT: And the State's position?

15 MR. SCHMECKPEPER: Your Honor, if he wants to
16 proceed pro se, I have no objection to it. I would
17 just ask that -- I think Your Honor is aware, that he
18 be given the conflict -- the dangers of proceeding pro
19 se. As one of his allegations today, I believe, is
20 that he wasn't advised of the dangers of proceeding pro
21 se in his trial.

22 THE COURT: Mr. Tinsley, how old are you?

23 MR. TINSLEY: Forty-six this year, Your Honor.

24 THE COURT: And how far did you go in school?

25 MR. TINSLEY: Eleventh grade.

1 THE COURT: Well, what did you do for a living?

2 MR. TINSLEY: I'm a CNC programmer.

3 THE COURT: Have you had any legal training?

4 MR. TINSLEY: I've been doing it for 20 years.

5 THE COURT: You've been trained in law for 20
6 years?

7 MR. TINSLEY: No. I've been studying it for 20
8 years.

9 THE COURT: You've been doing what for 20 years?
10 I'm sorry.

11 MR. TINSLEY: Studying law for 20 years.

12 THE COURT: Where have you been studying law for
13 20 years?

14 MR. TINSLEY: Well, I handled a lot of my own
15 cases, civil suits and things like that.

16 THE COURT: Tell me about your civil suits.

17 MR. TINSLEY: Well, that's part of this case. I
18 -- I had filed a -- when I got arrested, I had filed a
19 -- a civil suit because the county had seized my
20 property and a bunch of cash from me, and I needed that
21 to make bond and hire an attorney. And they refused to
22 give me that property even though I asked them twice
23 for it, and I had to sue them in federal court to get
24 the return -- the property returned to me and that kind
25 of angered them a little bit. And that's where I think

1 a lot of this came from. But --

2 THE COURT: And -- and was that successful?

3 MR. TINSLEY: Yes.

4 THE COURT: You got -- you got your stuff back?

5 MR. TINSLEY: Yes.

6 THE COURT: And other than that, what -- what kind
7 of cases have you been working on?

8 MR. TINSLEY: I've handled PCR cases before.

9 THE COURT: You've handled other PCRs?

10 MR. TINSLEY: Yes.

11 THE COURT: Tell me about that.

12 MR. TINSLEY: I -- I got the conviction
13 overturned.

14 THE COURT: And where -- where was that and when?

15 MR. TINSLEY: Greenville County.

16 THE COURT: And you represented yourself?

17 MR. TINSLEY: Yes.

18 THE COURT: Are you familiar with the rules of
19 evidence?

20 MR. TINSLEY: Ah, that's not my strong part, but I
21 don't -- I don't think that's going to be a big issue
22 in this case. All the evidence and stuff is already in
23 the record. I filed a motion for summary judgment and
24 there's an appendix with all the records and documents
25 and all that's already before the court. And the court

1 could really review this case based on that summary
2 judgment motion without a hearing. Because the case
3 law says that on these particular type of issues, it's
4 all based on -- all my issues are based on stuff that's
5 in the court transcript, so it doesn't matter what I
6 say or any of my witnesses say really. The court can
7 resolve the issues just by looking at the transcript
8 and the records.

9 And so I had moved for summary judgment on that
10 basis. And so the court could -- could address the
11 issues that way.

12 THE COURT: Well, if you -- if you have witnesses
13 that will be -- if witnesses are going to be called and
14 presented to the court, the rules of evidence get to be
15 awfully important.

16 MR. TINSLEY: I --

17 THE COURT: They may have things that they wish to
18 say that they may not be able to say.

19 MR. TINSLEY: Right.

20 THE COURT: Due to the rules.

21 MR. TINSLEY: Right. I believe all their
22 testimony is going to be about what they did themselves
23 during the trial or what they witnessed in the
24 courtroom, that type of thing; which, again, based --
25 all their testimony is on the transcript, so their --

1 their testimony basically is going to be saying the
2 same thing that's in the transcript already. That's
3 the reason I said I did a summary judgment motion.

4 THE COURT: You don't want stand-by counsel on
5 this matter either?

6 MR. TINSLEY: No, sir, that would be fine. I
7 don't need stand-by counsel.

8 THE COURT: I have not found that motion for a
9 summary judgment, but I have not --

10 MR. TINSLEY: I -- I have it here, Your Honor. I
11 brought a copy for you.

12 THE COURT: You've got a copy.

13 MR. SCHMECKPEPER: I believe I have a copy, Your
14 Honor. I didn't include it in the record because -- I
15 believe when it was filed, the applicant was
16 represented by counsel and it wasn't signed by counsel.

17 THE COURT: All right, Mr. Tinsley, I'll grant
18 your motion.

19 MR. TINSLEY: Thank you, Your Honor.

20 THE COURT: Are you ready to proceed?

21 MR. TINSLEY: Yes, Your Honor. A couple of
22 things, I had filed a motion for funds for an expert.
23 I guess we're not granting that as we're proceeding
24 forward and -- I wanted to mention that -- and
25 corresponding summary judgment motion. And I guess

1 you're not going to proceed with that if we're
2 proceeding with the trial, if you just want to kind of
3 take that under advisement.

4 THE COURT: Well, I'll -- I'll be glad to hear you
5 argue your motion for summary judgment.

6 MR. TINSLEY: Well, it's so complicated that's the
7 reason I brought the record. But, basically, I moved
8 for summary judgment because there wasn't any facts in
9 dispute. All the issues were part of the record, trial
10 transcript, and could be resolved by looking at the
11 transcript.

12 The State hadn't disputed any of the evidence or
13 affidavit or statements or transcript, or said that
14 there was anything wrong with them, or that they
15 inaccurate, so there's no dispute. All we have is a
16 legal issue. The legal question that could be resolved
17 by the court since there was no material facts in
18 dispute. I -- I believe that the court could resolve
19 the issues that way.

20 THE COURT: Well, you have to help me out and tell
21 me what the issues are.

22 MR. TINSLEY: Well, during the trial -- the
23 ineffective assistance of counsel, during the trial the
24 State had me indicted for receiving stolen goods. And
25 the State's witness testified that I had went with him

1 and helped steal the goods. So my position was that in
2 order to be convicted of that, you have to be -- the
3 receiver, you had to be a receiver and not a thief. A
4 person guilty of receiving goods cannot be convicted of
5 receiving them if they were the thief that took them.

6 But then they also introduced -- and so his
7 testimony showed that I had stolen them. But they also
8 introduced some bill of sales that they had claimed
9 that they found, and that created a dispute. Because
10 then the jury can infer that there was a receipt based
11 on a bill of sale.

12 So I asked the court -- it's part of the
13 appendix there, the written request for jury
14 instructions to instruct the jury on the law regarding
15 that, that if they believe that there was any -- that I
16 was a thief, that they would have to find me not guilty
17 under the law. The judge refused to give that
18 instruction. I was indicted for -- that was one issue
19 that wasn't raised.

20 The next issue was that the judge refused to
21 dismiss the charge where there was a -- a variance as
22 to the evidence. The evidence on the indictment said
23 that I was the receiver. But when I got to court, the
24 evidence that I was actually faced with was based --
25 the arguments and basis of their case was they claimed

1 that I had stolen the goods. And the judge even said
2 on the record that there's no doubt in my mind that you
3 weren't involved in the actual theft of the goods. And
4 then the Solicitor argued to the jury in closing
5 arguments that I was the thief that stole the goods and
6 so I have to be convicted.

7 But the problem with that is that's different
8 than what I was indicted for. The notice part of the
9 indictment placed me on notice to show up in the
10 courtroom and be prepared to defend myself against the
11 claim that I had received the goods from somebody else.
12 And then when I got to trial, I ended up having to
13 defend myself against the claim that I had actually
14 stolen the goods. So that issue -- charge should have
15 been dismissed on that and raised on appeal and wasn't.

16 The judge erred in failing to charge mere
17 presence and abandonment. It was supported by the
18 evidence in the record. I testified that I was only
19 merely present around the goods. And when I discovered
20 that there was something funny about it going on, I
21 abandoned any further involvement with the -- with the
22 the goods, and the judge did not give that instruction.

23 The judge did not merge all the charges into a
24 single offense. That's an issue that should have been
25 raised. The law in South Carolina is that the

1 possession of multiple items at a single time
2 constitutes a single offense. I asked the judge to
3 merge all the charges and he -- he refused to do that.

4 And -- and he gave me multiple -- multiple
5 consecutive sentences and gave me more time on -- on
6 multiple counts than I could have received if I had
7 received the maximum amount of time for a single
8 offense, so that was a double jeopardy violation that
9 should have been raised and wasn't.

10 The judge did not give me an incamera
11 suppression hearing. That issue should have been
12 raised. It denied me the opportunity -- a full, fair
13 and adequate opportunity to raise my fourth amendment
14 claims. I had previously filed a motion to suppress
15 for an unlawful search and seizure of property. And
16 when we got to the hearing, the judge -- the judge
17 would not allow me to put up my own testimony or
18 witnesses in my defense. He just let the State's
19 testimony -- the State's witnesses testify and -- and
20 didn't allow me to present any evidence.

21 And my evidence would have demonstrated that
22 they entered privately posted property in order to be
23 able to see the items in plain view. And so,
24 therefore, they weren't in plain view because they
25 weren't lawfully standing in a place where they had a

1 right to be when they viewed the item.

2 And then they went and got a warrant and did not
3 tell the magistrate that they had already previously
4 trespassed on private property in order to gain the
5 information to obtain the warrant. And so that issue
6 should have been raised.

7 The next issue that I was -- that I was denied
8 due process of law because the court didn't provide me
9 with resources to prepare my defense. I was locked up
10 in the jail. And like I say, they was holding my
11 property. I couldn't make bond. And so I had asked
12 for a -- you know, a stand-by counsellor or some sort
13 of assistance to help me do -- do the legal research
14 since I didn't have access to a law library.

15 They gave me absolutely no resources whatsoever
16 to do any legal research with, and that deprived me of
17 a due process of law. That's all of the fourth
18 amendment issues -- I mean, all of the ineffective
19 assistance of counsel issue.

20 MR. WELBORN: Your Honor, may I interrupt briefly?
21 I know he has his day in court. May I be excused since
22 I no longer represent him?

23 THE COURT: Yes. I'm sorry.

24 MR. WELBORN: Thank you, Your Honor.

25 THE COURT: I thought y'all were just going to