



# SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense  
1330 Lady Street, Suite 401

Columbia, South Carolina 29201-3332  
Post Office Box 11589  
Columbia, South Carolina 29211-1589  
Telephone: (803) 734-1330  
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender  
Wanda H. Carter, Deputy Chief Appellate Defender

ORIGINAL

June 28, 2017

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JUN 28 2017

S.C. SUPREME COURT

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, SC 29211

Re: James Tinsley v. State of South Carolina  
Appellate Case No. 2016-001435  
Lower Court Case No. 2013-CP-37-0272

Dear Mr. Shearouse:

In accordance with this Court's Order dated June 13, 2017, please find enclosed for filing a Supplemental Appendix in the above-referenced case. Included in the Supplemental Appendix are all of the items listed in this Court's Order: the Record on Appeal, Petitioner's Motion for Summary Judgment and Appendix, and two letters which represent the exhibits from the PCR hearing. I communicated with the Oconee County Clerk of Court as well as opposing counsel in compiling these documents, and I believe they represent the remainder of the lower court record.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Taylor D Gilliam  
Appellate Defender

TDG/tg  
Enclosure

cc: Lindsey McCallister, Esquire

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Oconee County

Honorable Brooks P. Goldsmith, Circuit Court Judge

---

JAMES TINSLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001435

---

SUPPLEMENTAL  
APPENDIX

---

TAYLOR D GILLIAM  
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

LINDSEY MCCALLISTER  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED

JUN 28 2017

S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM OCONEE COUNTY

J. C. Buddy Nicholson, Jr., Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

JAMES DOUGLAS TINSLEY,

APPELLANT

---

RECORD ON APPEAL

---

TRISTAN M. SHAFFER  
Appellate Defender

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

Attorney for Appellant

HENRY DARGAN MCMASTER  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

DAVID SPENCER  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

(803) 734-3727

CHRISTINA T. ADAMS  
Solicitor, Tenth Judicial Circuit  
PO Box 8002  
100 S. Main Street  
Anderson, SC 29622-8002  
(864) 260-4046

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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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 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 mislead 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 [REDACTED], address here in [REDACTED], 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].

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], 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],  
2 [REDACTED], 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

(Whereupon, Court reconvened with all parties present, when the following proceedings were had outside the presence of the jury:)

THE COURT: Anything from the State before we bring the jury?

MR. WAGNER: No, sir.

THE COURT: Anything from the defendant before we bring the jury?

MR. TINSLEY: Yes, sir, your Honor. I would like for you to maybe have a look at rule 583. Yesterday I was arguing --

THE COURT: Look at what now?

MR. TINSLEY: Five-eighty-three.

THE COURT: Rules of Court, Rules of Evidence, or what?

MR. TINSLEY: Criminal Rules of Evidence. And I was trying to argue that I wasn't provided that timely.

THE COURT: Give me a chance to find the rule, then I'll listen to you. Time for disclosure?

MR. TINSLEY: Yes, Your Honor.

THE COURT: All right. Glad to hear you.

MR. TINSLEY: Yesterday I was trying to argue these alleged documents were not provided to me timely.

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 Oconee  
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 Ocone 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 Ocone 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 Ocone 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



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## FOR DEPARTMENT USE ONLY

Check One:  
☐ Purchase License Plate  
☐ Transfer License Plate

I, \_\_\_\_\_ Seller \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
state that on the 13th day of December Yr. 2007 the following vehicle:  
MAKE JAYCO MODEL VR1 BODY TYPE CAMPER YEAR 2006  
VEHICLE IDENTIFICATION NO. 4YDT228766V160585 LICENSE NO. NONE  
was sold to JAMES TINSLEY  
Street \_\_\_\_\_ City \_\_\_\_\_ State SC Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle ..... \$ 9,800.00  
Less trade-in ..... \$ \_\_\_\_\_  
Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in **EXCESS** of its mechanical limits.
2. I hereby certify that the odometer reading is **NOT** the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) James Tinsley Date \_\_\_\_\_ Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_  
Hand Print Name(s) of Buyer(s) JAMES Tinsley Hand Print Name(s) of Seller(s) \_\_\_\_\_

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Columbia, S.C. 29216-0024

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# South Carolina Department of Motor Vehicles

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## FOR DEPARTMENT USE ONLY

Check One:  
☐ Purchase License Plate  
☐ Transfer License Plate

I, \_\_\_\_\_ Seller \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
state that on the 16<sup>th</sup> day of January Yr. 2008 the following vehicle:  
MAKE CARAYON MODEL 8.5X16 BODY TYPE enclosed YEAR 2007  
VEHICLE IDENTIFICATION NO. 4YMCL17267H280562 LICENSE NO. None  
was sold to JAMES Tinsley Buyer  
\_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ 2,500.00  
Less trade-in \$ \_\_\_\_\_  
Taxable Total \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein. UNLESS one of the following statements is checked.

**STOP!**

DO NOT check one of the following unless it applies.

1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

James D. Tinsley /  
Signature(s) of Buyer(s) Date  
JAMES D. Tinsley  
Hand Print Name(s) of Buyer(s)

\_\_\_\_\_  
Signature(s) of Seller(s) Date  
\_\_\_\_\_  
Hand Print Name(s) of Seller(s)

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|                                |                        |
|--------------------------------|------------------------|
| <b>FOR DEPARTMENT USE ONLY</b> |                        |
| Check One:                     |                        |
| <input type="checkbox"/>       | Purchase License Plate |
| <input type="checkbox"/>       | Transfer License Plate |

I, \_\_\_\_\_ Seller \_\_\_\_\_

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the 16th day of January Yr. 2008 the following vehicle:

MAKE CARRY ON MODEL 7x16 BODY TYPE Enclosed YEAR 2007

VEHICLE IDENTIFICATION NO. 4YMCL17267H280488 LICENSE NO. None

was sold to JAMES Tinsley

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle ..... \$ 2,500.00

Less trade-in ..... \$ \_\_\_\_\_

Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tens) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

- I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

|                                                        |            |                                       |            |
|--------------------------------------------------------|------------|---------------------------------------|------------|
| Signature(s) of Buyer(s) <u>James D. Tinsley</u>       | Date _____ | Signature(s) of Seller(s) _____       | Date _____ |
| Hand Print Name(s) of Buyer(s) <u>JAMES D. Tinsley</u> |            | Hand Print Name(s) of Seller(s) _____ |            |

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I, \_\_\_\_\_ Seller \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
state that on the 11th day of January Yr. 2008 the following vehicle:  
MAKE Tes Along MOD SC L828U4F BODY TYPE Flat Trailer YEAR \_\_\_\_\_  
VEHICLE IDENTIFICATION NO. 4SANS37594M283354 LICENSE NO. None  
was sold to JAMES TINSLEY  
Street \_\_\_\_\_ City \_\_\_\_\_ State SC Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle ..... \$ 400.00  
Less trade-in ..... \$ \_\_\_\_\_  
Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

- \_\_\_\_ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- \_\_\_\_ 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_ Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_  
Hand Print Name(s) of Buyer(s) James Tinsley Hand Print Name(s) of Seller(s) \_\_\_\_\_

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Check One:

- ☐ Purchase License Plate  
☐ Transfer License Plate

I, \_\_\_\_\_  
Seller

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the 16th day of January Yr. 2008 the following vehicle:

MAKE CAROLAN MODEL 7X16 BODY TYPE Enclosed YEAR 2007

VEHICLE IDENTIFICATION NO. 4YMCL17267H280823 LICENSE NO. None

was sold to James D. Tinsley

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle ..... \$ 2,500.00

Less trade-in ..... \$ \_\_\_\_\_

Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein. **UNLESS** one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in **EXCESS** of its mechanical limits.
2. I hereby certify that the odometer reading is **NOT** the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_

Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

Hand Print Name(s) of Buyer(s) James D. Tinsley

Hand Print Name(s) of Seller(s) \_\_\_\_\_

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☐ Transfer License Plate

I, \_\_\_\_\_  
 Seller

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the 16th day of January, Yr. 2008 the following vehicle;

MAKE \_\_\_\_\_ MODEL 8X-28 BODY TYPE enclosed YEAR \_\_\_\_\_

VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. none

was sold to James Tinsley

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle ..... \$ 3,800.00

Less trade-in ..... \$ \_\_\_\_\_

Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

1. I hereby certify that in the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

James D. Tinsley  
 Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_

James D. Tinsley  
 Hand Print Name(s) of Buyer(s) \_\_\_\_\_

\_\_\_\_\_  
 Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
 Hand Print Name(s) of Seller(s) \_\_\_\_\_

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☐ Purchase License Plate  
☐ Transfer License Plate

I, \_\_\_\_\_ Seller \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
state that on the 12th day of January Yr. 2008 the following vehicle:  
MAKE \_\_\_\_\_ MODEL 8X28 BODY TYPE Camper YEAR \_\_\_\_\_  
VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. \_\_\_\_\_  
was sold to JAMES TINSLEY  
\_\_\_\_\_ SC \_\_\_\_\_  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \$ 4,200.00  
Less trade-in \$ \_\_\_\_\_  
Taxable Total \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

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2. I hereby certify that the odometer reading is **NOT** the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_ Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_  
Hand Print Name(s) of Buyer(s) JAMES D. TINSLEY Hand Print Name(s) of Seller(s) \_\_\_\_\_

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## FOR DEPARTMENT USE ONLY

Check One:  
☐ Purchase License Plate  
☐ Transfer License Plate

I, \_\_\_\_\_ Seller \_\_\_\_\_

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the 16th day of January Yr. 2008 the following vehicle:

MAKE \_\_\_\_\_ MODEL \_\_\_\_\_ BODY TYPE small Flat Bed YEAR \_\_\_\_\_

VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. None

was sold to James [redacted] [redacted]

[redacted] [redacted] [redacted] [redacted] SC [redacted]

Street \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle ..... \$ 100.00

Less trade-in ..... \$ \_\_\_\_\_

Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N/A (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

- \_\_\_\_ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- \_\_\_\_ 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

James D. Tinsley Date \_\_\_\_\_ Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_

JAMES D. Tinsley Hand Print Name(s) of Buyer(s) \_\_\_\_\_ Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

Hand Print Name(s) of Seller(s) \_\_\_\_\_

Return to: South Carolina Department of Motor Vehicles  
P.O. Box 1498  
Columbia, S.C. 29216-0024

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.  
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.



# South Carolina Department of Motor Vehicles

**BILL OF SALE**  
(Must Be Typed or Printed in Black Ink)

**FOR DEPARTMENT USE ONLY**

Check One:

☐ Purchase License Plate

☐ Transfer License Plate

I, \_\_\_\_\_  
Seller

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the \_\_\_\_\_ day of \_\_\_\_\_ Yr. \_\_\_\_\_ the following vehicle:

MAKE \_\_\_\_\_ MODEL \_\_\_\_\_ BODY TYPE \_\_\_\_\_ YEAR \_\_\_\_\_

VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. \_\_\_\_\_

was sold to \_\_\_\_\_  
Buyer

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \_\_\_\_\_ \$ \_\_\_\_\_

Less trade-in \_\_\_\_\_ \$ \_\_\_\_\_

Taxable Total \_\_\_\_\_ \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads \_\_\_\_\_ (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

- \_\_\_\_\_ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in **EXCESS** of its mechanical limits.
- \_\_\_\_\_ 2. I hereby certify that the odometer reading is **NOT** the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_

Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

Hand Print Name(s) of Buyer(s) \_\_\_\_\_

Hand Print Name(s) of Seller(s) \_\_\_\_\_

Return to: South Carolina Department of Motor Vehicles  
P.O. Box 1498  
Columbia, S.C. 29216-0024

**ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.**  
**ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.**



# South Carolina Department of Motor Vehicles

**BILL OF SALE**  
(Must Be Typed or Printed in Black Ink)

## FOR DEPARTMENT USE ONLY

Check One:

- ☐ Purchase License Plate  
☐ Transfer License Plate

I, \_\_\_\_\_  
Seller  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_  
state that on the \_\_\_\_\_ day of \_\_\_\_\_ Yr. \_\_\_\_\_ the following vehicle:  
MAKE \_\_\_\_\_ MODEL \_\_\_\_\_ BODY TYPE \_\_\_\_\_ YEAR \_\_\_\_\_  
VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. \_\_\_\_\_  
was sold to \_\_\_\_\_  
Buyer  
Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances.)

Sale price of vehicle ..... \$ \_\_\_\_\_  
Less trade-in ..... \$ \_\_\_\_\_  
Taxable Total ..... \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads \_\_\_\_\_ (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

- \_\_\_\_\_ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in **EXCESS** of its mechanical limits.  
\_\_\_\_\_ 2. I hereby certify that the odometer reading is **NOT** the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_ Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_  
Hand Print Name(s) of Buyer(s) \_\_\_\_\_ Hand Print Name(s) of Seller(s) \_\_\_\_\_

Return to: South Carolina Department of Motor Vehicles  
P.O. Box 1498  
Columbia, S.C. 29216-0024

**ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.  
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.**



# South Carolina Department of Motor Vehicles

**BILL OF SALE**  
(Must Be Typed or Printed in Black Ink)

**FOR DEPARTMENT USE ONLY**

Check One:

- ☐ Purchase License Plate  
☐ Transfer License Plate \_\_\_\_\_

I, \_\_\_\_\_  
Seller

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

state that on the \_\_\_\_\_ day of \_\_\_\_\_ Yr. \_\_\_\_\_ the following vehicle:

MAKE \_\_\_\_\_ MODEL \_\_\_\_\_ BODY TYPE \_\_\_\_\_ YEAR \_\_\_\_\_

VEHICLE IDENTIFICATION NO. \_\_\_\_\_ LICENSE NO. \_\_\_\_\_

was sold to \_\_\_\_\_  
Buyer

Street \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle \_\_\_\_\_ \$ \_\_\_\_\_  
Less trade-in \_\_\_\_\_ \$ \_\_\_\_\_  
Finable Total \_\_\_\_\_ \$ \_\_\_\_\_

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads \_\_\_\_\_ (no tenths) miles and to the best of my knowledge that it reflects the **ACTUAL MILEAGE** of the vehicle described herein, **UNLESS** one of the following statements is checked.

**STOP!** DO NOT check one of the following unless it applies.

- \_\_\_\_\_ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in **EXCESS** of its mechanical limits.  
\_\_\_\_\_ 2. I hereby certify that the odometer reading is **NOT** the actual mileage. **WARNING: ODOMETER DISCREPANCY.**

**WARNING:** Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

Signature(s) of Buyer(s) \_\_\_\_\_ Date \_\_\_\_\_ Signature(s) of Seller(s) \_\_\_\_\_ Date \_\_\_\_\_

Hand Print Name(s) of Buyer(s) \_\_\_\_\_ Hand Print Name(s) of Seller(s) \_\_\_\_\_

Return to: South Carolina Department of Motor Vehicles  
P.O. Box 1498  
Columbia, S.C. 29216-0024

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.  
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.



34250

STATE OF SOUTH CAROLINA

COUNTY OF Oconee  
STATE VS.

James Tinsley

AKA:

Race: W Sex: M Age: 37

DOB: SS#:

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#: K226473

Date of Offense: 1/13/2008

S.C. Code §: 16-21-0080(3)

CDR Code #: 0430

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

in violation of § 16-21-80 of the S.C. Code of Laws, bearing CDR Code # 0430 0513

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)  
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

David Wagner  
Solicitor:

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of 737 days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: combined EE2, EE3 & EE4

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

SPECIAL CONDITIONS: RESTITUTION CONF for 6mos + transport direct from jail to center

☒ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☒ Ordered

Total: \$ 6227.50 plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       | Sports  | \$        |
| § 14-1-211(A)(1) (Conv Surcharge)      | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 35.13 (Public Def/Prob)              | \$500   | \$        |
| § 73.3, 1B TP (Law Enforce. Funding)   | \$25    | \$ 25.00  |
| § 33.7, 1B TP (Drug Court Surcharge)   | \$100   | \$        |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$        |
| 3% to County (if paid in installments) | \$      | \$ 3.75   |
| § 90.11 TP (SCCJA Surcharge)           | \$5     | \$ 5.00   |
| TOTAL                                  |         | \$ 133.75 |

Sallie C. Smith  
Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA 1217 (07/2008)

PTUPL days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Toll probatica while in jail

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

7/31/08

## STATE OF SOUTH CAROLINA

COUNTY OF Oconee

STATE VS.

James Tinsley

AKA:

Race: W Sex: M Age: 37

DOB: SS#

Address:

DL#: SID#

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

A/W#: K226492; K226489; K226493

Date of Offense: 1/22/2008

S.C. Code §: 16-13-0180(3)

CDR Code #: 0514

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS TO:

in violation of § 16-13-180 of the S.C. Code of Laws, bearing CDR Code # 0514

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Solicitor:

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of 7 days/months/years and/or payment of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: EE1☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

## SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☒ Ordered

Total: \$2800.00 plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

\*Fine:

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |                  |
| § 14-1-211(A)(1) (Conv Surcharge)      | \$100   | \$ 300.00        |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$               |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$               |
| § 35.13 (Public Def/Prob)              | \$500   | \$               |
| § 73.3, 1B TP (Law Enforce. Funding)   | \$25    | \$ 75.00         |
| § 33.7, 1B TP (Drug Court Surcharge)   | \$100   | \$               |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$               |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$               |
| 3% to County (if paid in installments) |         | \$ 11.25         |
| § 90.11 TP (SCCJA Surcharge)           | \$5     | \$ 15.00         |
| <b>TOTAL</b>                           |         | <b>\$ 401.25</b> |

Sallie C. Smith

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA /217 (07/2008)

PTUP

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: THE ABOVE 3 INDICTMENTS WERE CONSOLIDATED INTO ONE UNDER THE STATUTE - Transport directly to RESTITUTION CENTER from jail

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21171

Sentence Date: 7/31/08

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

34352  
COUNTY OF Oconee  
STATE VS.  
James Tinsley

AKA:  
Race: W Sex: M Age: 37  
DOB: [REDACTED] SS#: [REDACTED]  
Address: [REDACTED]  
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2008-05-37-885  
A/W#: K226540  
Date of Offense: 1/29/2008  
S.C. Code § : 16-13-0180(3)  
CDR Code #: 0514

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Receiving Stolen Goods \$5000

in violation of § 16-13-180 of the S.C. Code of Laws, bearing CDR Code # 0514  
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)  
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor: [Signature]

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135

## SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☒ Ordered

Total: \$ 2789.05 plus 20% fee: \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient:

Eric Spears, GM

\*Fine:

|                                        |         |                  |
|----------------------------------------|---------|------------------|
| § 14-1-206 (Assessments 107.5 %)       | \$      |                  |
| § 14-1-211(A)(1) (Conv Surcharge)      | \$100   | \$ <u>100.00</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$               |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$               |
| § 35.13 (Public Def/Prob)              | \$500   | \$               |
| § 73.3, 1B TP (Law Enforce. Funding)   | \$25    | \$ <u>25.00</u>  |
| § 33.7, 1B TP (Drug Court Surcharge)   | \$100   | \$               |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$               |
| § 56-5-2942(J) (Vehicle Assessment)    | \$40/ea | \$               |
| 3% to County (if paid in installments) | \$      | \$ <u>3.75</u>   |
| § 90.11 TP (SCCJA Surcharge)           | \$5     | \$ <u>5.00</u>   |
| TOTAL                                  | \$      | \$ <u>133.75</u> |

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA /217 (07/2008)

PTUP

for six mos. & transport directly from  
days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning

\$ \_\_\_\_\_ paid to Public Defender Fund

Other:

Toll Probation  
while in jail

☐ Appointed PD or appointed other counsel §35.13 TP  
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2117

Sentence Date:

7/31/08

## WITNESSES

OCSD/SMITH

*[Signature]*

ARREST WARRANT NO.

K226473

## ACTION OF GRAND JURY

*The Bill*  
MAY 27 2008*Janet D. Bailey*  
Foreman of Grand Jury

## VERDICT

*Guilty**Brice H. Justice* 7/31/08  
Foreman of Petit Jury Date:

DOCKET NO.

2008-GS-37-

881

The State of South Carolina,

County of

OCONEE

COURT OF GENERAL SESSIONS

MAY 27 2008

TERM

2008

THE STATE

vs.

JAMES DOUGLAS TINSLEY

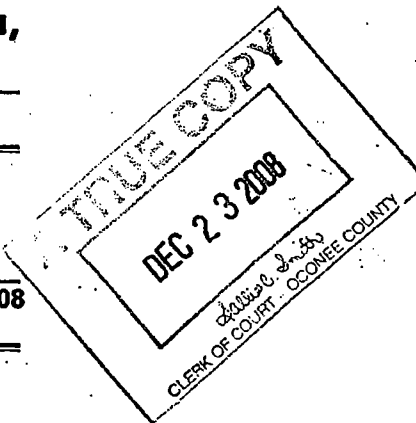
## Indictment for

POSSESSION OF STOLEN VEHICLE  
(MORE THAN \$5000)

16-21-0080(3)

[0430]

DAVID R. WAGNER, JR., DEPUTY SOLICITOR



2008 MAY 28 P 4: 57

FILED OCONEE, SC  
SALLIE C. SMITH  
CLERK OF COURT*[Signature]*

346354

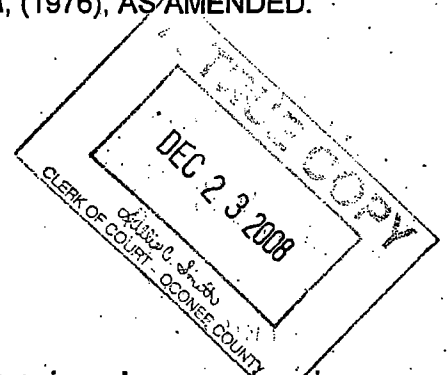
FORM 32 (12/87)

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

INDICTMENT FOR  
POSSESSION OF STOLEN VEHICLE  
(MORE THAN \$5000)  
16-21-0080(3) [0430]

At a Court of General Sessions, convened on MAY 27 2008,  
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES DOUGLAS TINSLEY DID IN OCONEE COUNTY ON OR BETWEEN JANUARY 13, 2008 AND JANUARY 25, 2008, RECEIVE, POSSESS, CONCEAL, SELL, OR DISPOSE OF A 2008 POLARIS RANGER 70, CAMO IN COLOR, VIN NUMBER 4X4RH65A184408423 AND A 2008 POLARIS RANGER 70, GREEN IN COLOR, VIN NUMBER 4X4WH65AX82381740 AND A TRAILER, BLACK IN COLOR MADE BY HORTON HAULER, VALUED AT MORE THAN FIVE THOUSAND DOLLARS, KNOWING THAT IT WAS STOLEN OR CONVERTED UNDER CIRCUMSTANCES CONSTITUTING A CRIME. ALL IN VIOLATION OF 16-21-80, CODE OF LAWS OF SOUTH CAROLINA, (1976), AS AMENDED.



Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

David Wagner  
SOLICITOR

347

WITNESSES  
OCSD/SMITH

*Da. l. 85*

ARREST WARRANT NO. K226493

ACTION OF GRAND JURY

*True Bill*  
MAY 27 2008

*Janet D. Bailey*  
Foreman of Grand Jury

VERDICT

*Guilty*

*Bruce A. Justice* 7/31/08  
of Petit Jury Date:

DOCKET NO. 2008-SS-37-884

The State of South Carolina,  
OCONEE

County of \_\_\_\_\_

COURT OF GENERAL SESSIONS

MAY 27 2008

2008

TERM

THE STATE

vs.

JAMES DOUGLAS TINSLEY

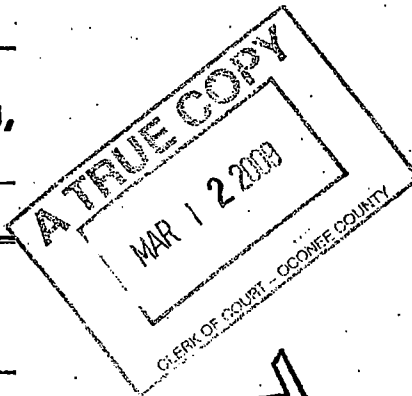
Indictment for

RECEIVING STOLEN GOODS  
(MORE THAN \$5000)

16-13-180(3)

(514)

DAVID R. WAGNER, JR., DEPUTY SOLICITOR



COPY

2008 MAY 28 P 4: 57

FILED OCONEE, SC  
SALLIE G. SMITH  
CLERK OF COURT

*EW*

34856

FORM 32 (12/87)

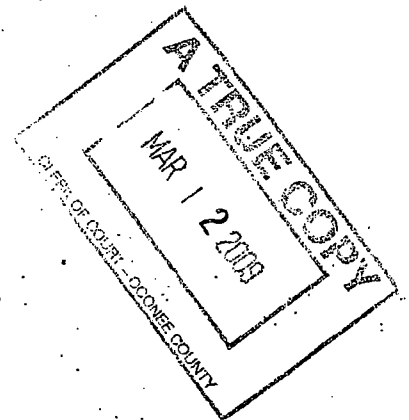
STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

INDICTMENT FOR  
RECEIVING STOLEN GOODS  
(MORE THAN \$5000)  
16-13-180(3) (514)

At a Court of General Sessions, convened on MAY 27 2008,  
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES DOUGLAS TINSLEY DID IN OCONEE COUNTY ON OR ABOUT JANUARY  
22, 2008, RECEIVE OR POSSESS STOLEN GOODS, TO WIT: A 2008 KEYSTONE VR1  
CAMPER WITH ALTERED VIN NUMBER AND TOOLS WITH KENWOOD RADIO AND  
PROPERTY, VALUED AT MORE THAN \$5000, AND THE SAID DEFENDANT KNEW OR HAD  
REASON TO BELIEVE SUCH GOODS HAD BEEN STOLEN.

COPY



Against the peace and dignity of the State, and contrary to the statute in such case made and  
provided.

  
SOLICITOR

WITNESSES

OCSD/SMITH

*Re-l 85A*

REST WARRANT NO.

K226540

ACTION OF GRAND JURY

*True Bill*  
MAY 27 2008

*Janet D. Bailey*  
Foreman of Grand Jury

VERDICT

*Guilty*

*Bruce H. Gutter*  
Foreman of Petit Jury

Date:

*7/31/08*

DOCKET NO.

2008-GS-37-

885

The State of South Carolina,

County of

OCONEE

COURT OF GENERAL SESSIONS

MAY 27 2008

TERM

2008

THE STATE

vs.

JAMES DOUGLAS TINSLEY

Indictment for

RECEIVING STOLEN GOODS  
(MORE THAN \$5000)

16-13-180(3)

(514)

DAVID R. WAGNER, JR., DEPUTY SOLICITOR

2008 MAY 28 P 4: 57

FILED OCONEE, SC  
SALLIE C. SMITH  
CLERK OF COURT

35849



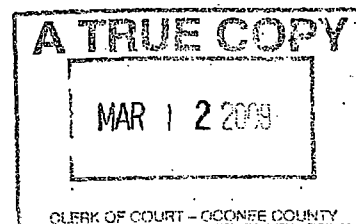
STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

INDICTMENT FOR  
RECEIVING STOLEN GOODS  
(MORE THAN \$5000)  
16-13-180(3) (514)

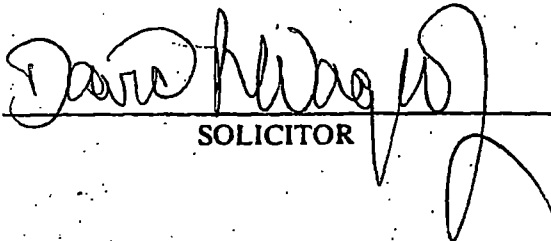
At a Court of General Sessions, convened on MAY 27 2008,  
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES DOUGLAS TINSLEY DID IN OCONEE COUNTY ON OR ABOUT JANUARY  
29, 2008, RECEIVE OR POSSESS STOLEN GOODS, TO WIT: A 2003 DEERE BACKHOE  
TRACTOR AND A CARRY ON CARGO TRAILER, VALUED AT MORE THAN \$5000, AND  
THE SAID DEFENDANT KNEW OR HAD REASON TO BELIEVE SUCH GOODS HAD BEEN  
STOLEN.

COPY



Against the peace and dignity of the State, and contrary to the statute in such case made and  
provided.

  
SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 7th, 2011



Tristan M. Shaffer  
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

In The Court of Common Pleas  
Case No: **2014-CP-37-737**

JAMES D. TINSLEY, #171943, )  
Applicant, )

vs. )

STATE OF SOUTH CAROLINA, )  
Respondent. )

**APPLICANTS MOTION FOR  
SUMMARY JUDGMENT**

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2015 MAR 30 P 3:37

COMES NOW, James D. Tinsley, II, the above Applicant, pursuant to Rule 56 (c), of the South Carolina Rules of Civil Procedure, Rule 71.1 S.C.R.Civ.P. and Arnold v. State, 420 S.E.2d 834, 842 (1992)(establishing that post-conviction relief actions are civil proceedings and therefore the South Carolina Rules of Civil Procedure apply to the extent that they are not inconsistent with the UPCA),\* to move this Honorable court for Summary Judgement in his favor because there are no material facts in dispute and Applicant is entitled to relief in his favor as a matter of law.

This case is unique in that the facts, and legal arguments can be addressed by reviewing the trial transcripts, court documents and other court records who's credibility cannot reasonably be questioned. (See Appendix attached hereto).

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\* The Statute specifically incorporates the applicable civil practice rules into post-conviction practice. See: S.C.Code, § 17-27-80 (1985); Gamble v. State, 298 S.C. 176, 379 S.E.2d 119 (1989). Applicant incorporates herein, his application and all documents contained in the Appedix, as if fully reproduced herein.

ISSUES

- I. THE APPLICANT WAS DENIED DUE PROCESS OF LAW AND A FAIR TRIAL WHEN THE TRIAL JUDGE REFUSED TO CHARGE THE JURY THAT IF THEY FIND THAT APPLICANT WERE THE THIEF WHO STOLE THE GOODS HIMSELF, THEY MUST FIND APPLICANT NOT GUILTY OF POSSESSION OF A STOLEN VEHICLE AND RECEIVING STOLEN GOODS.

The Applicant was charged with one (1) count of possessing a stolen vehicle (2008-GS-37-881), (Appendix pg. 389), and four (4) counts of receiving stolen goods (2008-GS-37-882-885), (App. pgs. 391-396). At trial, the State presented the testimony of co-defendant Hogan Hugh Justice, III, who contended that he and the Applicant actually stole the goods at issue themselves.

DIRECT EXAMINATION BY SOLICITOR

- Q. Okay. And so what did you do next? What happened after that?
- A. Well, sometime after that we went and we found a camper in Duncan, South Carolina, and stole the camper and brought it to the LDMA Gold Mine in Oconee County that same evening, same night. (App. pg. 225, lns. 8-13).
- Q. Okay. What else did you all do?
- A. After we--after we got the camper, we took other things too. During that period of time between the 10th and the end of January. We took some trailers from Lavonia, Georgia, We took some ATV's from Waynesville, North Carolina, took an ATV and a--and some trailers and some tools from a park off of, I think if my memory serves me correctly, 181, going up towards 64 into North Carolina, like going up towards Bad Creek, up through there. (App. pgs 225, ln. 21-pg. 226, ln. 5).

REDIRECT EXAMINATION BY SOLICITOR

- Q. You mentioned a number of times in your testimony we did this or we did that. When you say we, when you're referring to we, you referring to yourself and Mr. Tinsley?
- A. Yes, I was.
- Q. You all did all this stuff together. "We" means the two of you?
- A. Yes, sir. (App. pg. 253, lns. 17-24).

During Mr. Justices guilty plea hearing, held the morning of Applicants trial, Mr. Justice again informed the trial judge and solicitor that Applicant was involved in the caption and asportation of all the stolen goods and proceeded to plead guilty to larceny rather than receiving stolen goods.

Solicitor: He's wanting to plead guilty to the larceny and he's going to admit to the court that he, along with Mr. Tinsley, stole the property listed in these indictments, that they actually committed the theft and was caught with the property later. (App. pg. 401, lns. 13-17).

Solicitor: Your Honor, in each of these he's charged with going with Mr. Tinsley and being there when they stole all of this property and transported it back to Oconee County. (App. pg. 402, lns. 23-25).

Solicitor: Yes sir. This all occurred, started back in January of this year here in Oconee County. The defendant and his co-defendant, Mr. Tinsley, apparently were going around to various jurisdictions, mostly in North Carolina, a few in Georgia, stealing four wheelers. They stole a number of four wheelers out of Haywood County which is up near Waynesville. a particular dealership up there; also a black enclosed utility trailer. They also went over to Georgia and stole some other trailers. Stole a backhoe out of North Carolina, another four wheeler out of Gorges State Park. All these items, almost every one, were pretty much worth more than \$5,000 a piece just on the face. He went with Mr. Tinsley, they were putting these four wheelers and trailers and stuff apparently on eBay, on the internet, selling some of them that way and then some other ways they were selling them too. (App. pg. 411, lns. 2-18).

Court: Q. Mr. Justice, are the facts the solicitor gave the court true here today?  
 A. Yes, Sir they are.  
 Q. Did you steal the items that the solicitor has explained to the court?  
 A. Yes Sir, your honor, I did.  
 Q. And you stole those items in conjunction with Mr. Tinsley?  
 A. Yes Sir, your honor.  
 Q. You were working together?  
 A. Yes, Sir, your honor. (App. pg. 415, lns 4-14).

At the close of the State's case, the Applicant moved for directed verdict of acquittal on all charges contending that the States evidence proved that Applicant was actually involved in the caption and asportation of the stolen property and therefore he could not be held criminally responsible for receiving or possessing goods he stole himself. (App. pgs. 257, ln. 20-pg. 258, ln. 14).

This State has consistantly held that: "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. Hamilton, 172 S.C. 453, 455, 174 S.E. 396, 397 (1934); State v. Tindall, 213 S.C. 484, 50 S.E.2d 188 (1948); State v. Sweat, 221 S.C. 270, 70 S.E.2d 234 (1952); State v. McNeil, 314 S.C. 473, 475-76, 445 S.E.2d 461, 462 (1994)(extending this principal to the "possession" of a stolen vehicle); State v. Shawn Wiles, 383 S.C. 151, 679 S.E.2d 172 FN1 (2009).

In other words, if a defendant comes to "receive or possess" stolen property "before the crime of larceny is complete", he is the thief and may not be convicted as a receiver or possessor of the property he stole himself. Tindall, supra, at 189 ("the serious question before us is... was the crime of larceny complete before Appellant received the stolen goods?").

While the trial judge found the Applicant to be a principal in the thefts;

Court: "In this case this man was principal. He was involved in the theft and he was involved in the transport-

ation from North Carolina back to South Carolina with the property. So there's no question he was principal". (App. pg. 260, lns. 2-6).

The trial judge apparently misunderstood the law in this area and denied the directed verdict motion because he believed that "if you steal it, you can still possess the stolen property". (App. pg. 264, lns. 21-25).

On appeal, the Appellate Court did not agree with the trial judge's findings that one in possession of goods he stole himself could nevertheless be convicted of the indicted offenses, but upheld the conviction on a different premise. The Appellate Court suggested that there was some evidence in the record which created a dispute as to whether Applicant was a thief or a receiver. That dispute the court held, should have been submitted to the jury. The court found that the Bill of Sales came in on the record and indicated that Applicant was a "receiver" who had bought the goods from some unknown person and that that evidence, which was also offered by the State, contradicted Mr. Justice's testimony that Applicant was a "co-thief", thereby creating a dispute for the jury. The Appellate court failed to realize however, that the jury was never allowed to make that determination, because the trial judges misunderstanding concerning the law, lead him to refuse to properly instruct the jury on the applicable law.

During the trial, Applicant recognized that the States own evidence may have created a dispute as to whether he was a "receiver" or a "thief", and that it may be proper to allow the jury to make that determination. However, Applicant main-

tained that if the jury found that he was a co-thief, they must be instructed to find Applicant not guilty of the indicted offences.

The Applicant provided the court with a list of written jury charges, (App. pg. 397), one of which requested that "If the jury believes that the defendant is the thief they must find the defendant not guilty of receiving and possession of stolen goods and vehicles". (App. pg. 333, lns. 4-12).

This is the current and correct statement of the law. Davis v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (2003). Stating a legal conclusion which would result if the jury found certain facts is not an improper charge on the facts. State v. Clamp, 225 S.C. 89, 80 S.E.2d 918 (1954). The law is the right of a party arising out of a state of facts. A jury ought to be instructed about what right springs out of a fact to be determined by them. The jury ought not to be left to cut a way through the woods with no compass to guide it. Eaddy v. Jackson Beauty Supply Co., 244 S.C. 256, 136 S.E.2d 297 (1964).

Because the trial judge misunderstood the law as allowing a thief to be convicted of possessing goods he stole himself, the judge denied the requested charge.

COURT: "That's a legal question I have already made at the directed verdict stage. That's not a jury question. So I'm not going to charge on that. That's the reason I'm not going to charge. That's a legal question the court made. That's not going to be submitted to the jury, that issue. You're not even charged with stealing so there's no way I can charge that. Do you follow me? There's no charge of stealing this property". (App. pg. 334, lns. 1-9).



Apparently, the judge believed that since he had previously ruled that "a person who is a thief can nevertheless be convicted of possessing goods he stole himself", there was no need to instruct the jury to find Applicant not guilty if they believed he was in fact a co-thief. By failing to charge the jury accordingly, the judge failed to instruct the jury on all of the necessary elements of the indicted offense and relieved the State of part of its burden of proof.

The judge was apparently relying upon cases such as State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (2002), in which the court held that defense counsel may not argue a defendant was charged with the wrong offense. In Condrey, however, there was no evidence in the record to support that the defendant was actually guilty of an unindicted offense. In this case, there was evidence in the record, offered by the State, by way of Mr. Justice's testimony, that established that Applicant was actually guilty of larceny, an unindicted offense and was actually innocent of the indicted offense.

The fact that one who is guilty of larceny cannot be convicted of receiving those same goods, was essential to the juries understanding and definition of receiving stolen goods and possession of a stolen vehicle.<sup>1</sup>

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The trial judges adamant but erroneous beliefs prevented Applicant from making this legal argument to the jury during closing arguments and prevented Applicant from objecting to the States closing arguments when they claimed Applicant should be convicted "because he stole the goods himself". (Appendix pg. 354, lns 25-pg. 355, ln. 5). This was something the law does not allow and lead to Applicant being convicted on an improper basis. Based upon the trial judges previous rulings, Applicant believed that it would have been fruitless

By failing to charge the jury accordingly, the jury was left to assume that there is no distinction in the law between larceny, receiving and possession of stolen goods and vehicles

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to object or attempt to make arguments to the jury when the judge had already voiced an opinion that contradicted Applicant's trial strategy that he could not be convicted if he were the thief who stole the goods. Applicant feared that if he continued to object or make arguments to the jury that they cannot convict Applicant if they believe he were the thief, that the trial judge might find him in contempt of court. Staubes v. City of Folly Beach, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000) (A defendant is not required to engage in futile actions in order to preserve issues for appeal).

In fact, even had Applicant not preserved this issue, the trial judge under Article V, § 21, (formerly § 26), of the South Carolina Constitution had a duty to "declare the law" which means that he shall explain so much of the criminal law as is applicable to the issues made by the evidence. State v. White, 211 S.C. 276, 281-82, 44 S.E.2d 741, 743 (1947) (quoting State v. Durant, 87 S.C. 532, 70 S.E. 306, 307 (1911)). Under this section a statement of the issues presented, and all the evidence on which the State and the defendant relied to support their respective positions, is authorized. State v. Johnson, 66 S.C. 23, 44 S.E. 58 (1903). A judge does not violate this section by the use of hypothetical or supposed facts for the purpose of illustrating some principal of law. State v. Young, 238 S.C. 115, 119 S.E.2d 504 (1961). **Stating a legal conclusion which would result if the jury found certain facts, is not a charge on the facts.** State v. Clamp, 225 S.C. 89, 80 S.E.2d 918 (1954). "The law is the right of a party arising out of a state of facts. A jury ought not to be left to cut a way through the woods with no compass to guide it". Eaddy v. Jackson Beauty Supply Co., 244 S.C. 256, 136 S.E.2d 297 (1964). Typically, the failure to request additional charges or to object to the charges given, does waive the right to complain about the charge. However, if the omission relates to a matter which is basic or fundamental, the failure to request additional charges or the failure to object to the charges given does not constitute a waiver because the trial judge was already required to charge the jury on the correct principals of law. State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947); State v. McGee, 185 S.C. 184, 193 S.E. 303 (1937).

The failure to charge the jury appropriately, unfairly prejudiced Applicant because it prevented him from arguing that particular defense to the jury and allowed him to be convicted on an improper basis. State v. Brown, 360 S.C. 581, 597, 602 S.E.2d 392, 401 (2004) (noting that a trial court's ruling can affect how a party prepares and presents their opening statements, case in chief and closing arguments and that a party may forgo a defense or strategy due to the court's rulings). Allowing the State to argue that Applicant should be found guilty because he was a "co-thief", instead of because he was a "receiver", amounted to allowing the State to switch horses in midstream. Id. at 401. Because of the trial judge's misunderstanding concerning this area of law, Applicant was indicted for receiving stolen goods and related offenses, but was convicted on evidence and the State's arguments that Applicant actually stole all the goods himself.

and that they were authorized to convict Applicant "even if" they believed that Applicant was a principal in the thefts.

Applicant was prejudiced because the trial judges' charges could have lead the jury to find guilt on receiving stolen goods and related offenses, regardless of whether he was the thief who stole the goods. It is more likely than not, that Applicant was convicted on evidence that reasonably indicated that he was actually guilty of an unindicted offense. In other words, it must be presumed that the jury, as did the trial judge, (App. pg. 260, lns. 2-6), did believe the States evidence that Applicant was a co-thief. To an untrained ear, the fact that Applicant stole the goods himself, would have seemed to be overwhelming evidence that Applicant should be convicted of receiving and possessing stolen goods and vehicles. Clearly, Applicant was convicted on a improper basis.

In State v. Henderson, 285 S.C. 320, 329 S.E.2d 448 (1985) the trial judges charges could have lead the jury to find guilt regardless of what County the items were received in. The court noted that where the crime occurred was a question of fact for the jury, not the court on appeal and held that there was no way of knowing whether the jury would have found the goods were received in Spartanburg County had a proper charge been given. Id. at 324, 329 S.E.2d at 451; See also: Sullivan v. Louisiana, 508 U.S. 275, 280 (1993)(holding that erroneous definition of "reasonable doubt" vitiated all the jury's findings because one could only speculate what a properly charged jury might have done); Arizona v. Fulminante, 499 U.S. 279, 310 (1991)(such

errors are "structural defects" because they affect the framework within which the trial proceeds).

Likewise, there is no way of knowing whether the jury would have found that Applicant was the "thief" and not a "receiver", had the judge properly instructed the jury on that question. By failing to give this charge, the trial judge allowed the jury to convict Applicant on evidence of an unindicted offense. "When the State, through its presentation of evidence, broadens the basis of a conviction beyond those charged in the indictment, a constructive amendment occurs and violates the right to be indicted by a grand jury". United States v. Mason, 41 Fed. Appx. 612 (CA4 SC 2002); State v. Gunn, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993)(a defendant may be convicted, if convicted at all, of the particular offense charged in the bill of indictment); State v. Jones, 342 S.C. 248, 251, 536 S.E.2d 396, 397 (Ct. App. 2000)(a material variance between the charge and proof entitles the defendant to a directed verdict); Berger v. United States, 295 U.S. 78 (1935); Stirone v. United States, 361 U.S. 212 (1960)(an unlawful variance applies where the constructive amendment involves an essential element of the crime).

Clearly, because the court of appeals held that the issue of whether Applicant was a "receiver" or the "thief" was in dispute and should have been decided by the jury; the trial judges failure to properly instruct the jury deprived Applicant of his Constitutional Rights. It is well settled that the failure to submit a question concerning an element of the offense is reversible error, especially where there is a conflict in the

evidence or a dispute as to the facts supporting the element. See e.g. State v. Bostick, 243 S.C. 14, 131 S.E.2d 841 (1963).

It is error of law for the trial court to refuse to charge the jury when the charge is based upon a sound principal of law and is supported by the record. State v. Santiago, 370 S.C. 153, 634 S.E.2d 23 (2006). This is especially true, if the requested charge is not included within the courts jury charge. State v. Williams, \_\_\_ S.C. \_\_\_, 624 S.E.2d 443 (2005). Without question, the law to be charged in a particular case is determined by the evidence presented at trial. State v. Long, 325 S.C. 59, 480 S.E.2d 62 (1997); State v. Day, 341 S.C. 410, 535 S.E.2d 431 (2000)(failure to tailor jury instructions to adequately reflect facts and theories presented by the defendant constitutes reversible error); State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989)(a charge is erroneous where the trial court fails to charge the elements of the "defense" which were applicable to the issues raised by the evidence).

The Due Process Clause of the Constitution places on the prosecution the burden of proof on every element of the crime charged. In re Winship, 397 U.S. 358, 364 (1970). The reasonable doubt standard applies to both State and Federal prosecutions. Sullivan v. Louisiana, 508 U.S. 275, 278 (1993). A courts jury instructions, or failure to properly instruct, can impermissibly ease a prosecutions burden of proof, thereby requiring a reversal. Cage v. Louisiana, 498 U.S. 39, 41 (1990); United States v. Gaudin, 515 U.S. 506, 511, 522-23 (1995)(the defendants conviction must be overturned when the court omits from the

jury instructions any element that the prosecution must prove beyond a reasonable doubt).

A jury has to be given instructions on all the elements of a charged offense, not just some of them. Relevant terms in the instructions must be defined accurately. Incorrect or misleading definitions of terms such as "willfully", "knowingly", "reasonable doubt", and as here, the difference between "receiving" and "larceny" should result in the reversal of convictions. See: United States v. Lewis, 592 F.2d 1282 (1979)(Court may not refuse to define defense theory, if believed by the jury, would be legally sufficient to render the accused innocent).

Based upon the foregoing, Applicant was denied his rights to due process of law when the trial judge refused to charge the jury with the applicable law concerning the evidence and defense positions, which if believed by the jury would have been legally sufficient to find Applicant not guilty of the indicted offense.

II. APPLICANT WAS DENIED HIS SIXTH AMENDMENT RIGHTS AND DUE PROCESS RIGHTS WHEN THE TRIAL JUDGE MADE DECISIONS CONCERNING DISPUTED FACTS WHICH DENIED APPLICANT A JURY TRIAL BECAUSE THE WRONG ENTITY JUDGED APPLICANT GUILTY.

As stated in the previous issue, the trial judge failed to instruct the jury that if they believe that Applicant were the thief who stole the goods himself, that they must find Applicant not guilty of the indicted offenses.

The trial judge mistakenly believed that the question of whether or not Applicant were a "thief" or a "receiver", was for the court to decide, not the jury:

COURT: "That's a legal question I have already made... That's not a jury question. So I'm not going to charge on that...That's not going to be submitted to the jury, that issue...There's no charge of stealing this property". (App. pg. 334, lns. 1-9).

This belief was clearly erroneous because the court of appeals found that there was a dispute as to whether Applicant was a "thief" or a "receiver" and that question should have been submitted to the jury.

One of the essential elements of receiving stolen goods and possession of a stolen vehicle, is that the State must prove that "the goods were stolen by someone else" as the thief cannot receive from himself. Tindall, supra, at 50 S.E.2d 188, and McNiel, supra, at 445 S.E.2d 461-62.

By failing to instruct the jury that there is a dispute as to whether Applicant was a "thief" or a "receiver" and that they could not find Applicant guilty under the law, if they determine that Applicant was involved in the caption and asportation of the goods, the jury was left to believe that there is no distinction in the law between larceny and receiving stolen goods and related offenses and that they could convict Applicant regardless of whether they found him to be the "thief" or a "receiver".

In Sullivan v. Louisiana, 508 U.S. 275, 277 (1993), the Supreme Court reiterated that the Sixth Amendment Right includes,

"of course, as its most important element, the right to have the jury, rather than the judge, reach the requisite finding of guilty".

First, the trial judge determined Applicants guilt when he found that Applicant could be convicted of "receiving stolen goods" even if he were the thief who stole them, which was an incorrect application of the law. Secondly, the question of whether Applicant was the "thief" or a "receiver" was not a legal question for the court, but a fact-finding question that should never be made by a judge and this decision denied Applicant his right to have a jury make that determination and then to determine if Applicant were guilty based upon that factual determination.

It is also important to note, that one might assume that if there is sufficient evidence in the record for which a jury might have properly found guilt, that the conviction need not be reversed. In Sullivan, supra, the court reviewed the Chapman v. California, 386 U.S. 18 (1967) standards and held that when a reviewing court hypothesizes that a guilty verdict could have been rendered, the reviewing court itself is violating the jury trial guarantee. Id. at 279. The proper question to be decided is whether the guilty verdict resulted from the error. Id. at 279. Anything else is only pure speculation - the courts view of what a reasonable jury would have done. And when the court does that, "the wrong entity judges the defendant guilty". Id. at 281 (quoting Rose v. Clark, 478 U.S. 570, 578 (1986)).



Based upon the foregoing, there has been no jury verdict within the meaning of the Sixth Amendment. There was ~~no~~ jury verdict of guilty-beyond-a-reasonable-doubt of every element of the offense, because the trial judge refused to inform the jury of all the elements. Instead, the judge incorrectly determined that one who steals goods himself, can be convicted of receiving or possessing those same goods, and failed to inform the jury that there was a dispute as to whether Applicant was a "thief" or a "receiver" and instead believed that this was a question for the court. In other words, the wrong entity determined Applicants guilt, ~~thereby~~ denying him due process of law and the right to have the jury determine guilt based upon the relevant factual disputes and the controlling law which governed the outcome of the case if certain facts were found by the jury.

III. THE APPLICANT WAS DENIED HIS CONSTITUTIONAL RIGHT 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.

Applicant was charged with possession of a stolen vehicle and receiving stolen goods. Applicant maintained that an acquaintance of Applicant, Hogan Hugh Justice, III, had informed Applicant that he acquired the property in question through a government I.R.S. seizure auction, did not tell Applicant that they were stolen, but asked Applicant to help sell the ATV's on eBay since Applicant had owned an eBay business in the past. (App. pgs. 285, lns. 3-pg. 299, ln. 15).

As a result of the State's inducement, Mr. Justice testified for the State, that Applicant had acted as a co-thief and helped him steal all of the stolen items. (App. pg. 238, lns. 4-7). If true, Applicant argued for directed verdict of acquittal, that he could not be convicted of receiving stolen goods and related offenses if he were the thief. In response, and outside of the jury's presence, the State admitted that Mr. Justice's testimony was a lie.

Solicitor: "In this case, you've got--the only evidence that ever puts this defendant in North Carolina is the testimony of his co-defendant, [Mr. Justice], who's already admitted on the stand that he's changed his story several times." (App. pg. 261, lns. 12-15).

"What we have here, a defendant caught in our jurisdiction with nothing but a co-defendant [Mr. Justice] who has lied, linking him in North Carolina." (App. pg. 262, lns. 4-6).

"So there's no evidence at all except the co-defendant, [Mr. Justice], who's lied, to say he was there." (App. pg. 263, lns. 10-11).

However, during closing arguments the State argued to the jury that Justice's testimony was truthful.

Solicitor: "Has no deal. The deal was to tell the truth. I think that's what he did here today. Sometimes you have to make deals with people to find the truth. We would not have found the truth from Mr. Tinsley". (App. pg. 353, lns. 16-19).

"Mr. Justice, on the other hand, at least helped them get some of the four wheelers back. He lied about his involvement in it. Said he didn't want to go to jail. I understand why he lied. It's not right. At least he cleared the air, told the truth here today". (App. pg. 355, lns. 18-22).

The trial judge held that Mr. Justice's testimony was used by the State to show Applicant had "knowledge" the goods were stolen.

Court: "I think the only reason [Mr. Justices'] testimony about you as a principal in the theft of the property was to show you had knowledge. Didn't have anything to do with charge, or the theft. That was just to show that you had knowledge the property was stolen." (App. pg. 340, lns. 15-19).

According to the States argument in opposition to directed verdict, Justices' testimony was a lie and his testimony that Applicant was a co-thief should not be believed. If that is the case and Applicant is not a co-thief, there is no evidence to demonstrate that Applicant had "knowledge" the goods were stolen - for as the judge noted, Justices' testimony was used to show Applicant had knowledge. Id.

The State used this perjured testimony knowing it to have been false in an attempt to prove the knowledge element. (See App. pg. 398, Affidavit of David Johnson). Due process bars a prosecutor from making knowing use of false evidence. United States v. Boothe, 994 F.2d 63 (1993). Although the State knew it was a lie, the solicitor allowed it to go uncorrected in front of the jury and instead argued that it was the truth.

Secondly, Detective Scott Arnold testified that he searched the camper and found some "alleged" Bill of Sales which indicated that Applicant purchased the stolen goods, and was thus a "receiver".

#### DIRECT EXAMINATION OF SCOTT ARNOLD

Q. Were you involved in the service of a search warrant on the stolen trailer the defendant was living in back on

about the 29th of January this year?

A. Yes, I was.

Q. As a result of that, did you take some pictures?

A. Yes, I did.

Q. Let me show you what's been marked State's Exhibit 1AB. Do you recognize that?

A. Yes, I do.

Q. What is that a picture of?

A. This is a picture of inside the camper that was at the property at the gold camp.

Q. And did you find anything that was in one of those cabinets in that picture?

A. Yes, I did. Upon searching inside this camper, I located several bill of sales in this top part here above this kitchen table. Located several bill of sales in this cabinet area.

Q. Let me show you what's been marked State's exhibit 3 through 13. Do you recognize those?

A. Yes, I do.

Q. What are those?

A. These are the bill of sales that were in the cabinet in that camper.

Q. Are they in the same condition they were in when you got them?

A. Yes. (App. pg. 220, lns. 8-pg. 221, ln. 9).

Although the State did not argue that Applicant actually bought the stolen items, or that the bill of sales were accurate, the State suggested that because Applicant allegedly fabricated the bill of sales in an attempt to claim lawful ownership, the bill of sales should indicate Applicant must have known the goods were stolen or else he would not have fabricated them. (App. pg. 90, lns. 18-pg. 91, ln. 3).

Applicant's argument all along was that the detectives fabricated the bill of sales in an attempt to overcome Applicants § 1983 civil action; that the bill of sales did not contain Applicant's handwriting or signature, (and this is the reason Applicant needed an expert), (App. pgs. 103, lns. 1-20; pg. 105, lns. 1-14; pg. 307, ln. 10-pg. 308, ln. 5; pg. 327, ln. 1-pg. 328, ln. 1; pg. 328, ln. 23-pg. 329, ln. 12; pg. 346, lns. 2-12; pg. 309, ln. 19-pg. 310, ln. 24; pg. 312, ln. 10-pg. 314, ln. 3; pg. 314, lns. 16-22; and pg. 344, lns. 8-pg. 345, ln. 2).

However, because the court denied Applicant funds for a handwriting expert, (See issue # IV), Applicant had no information or evidence to call the bill of sales or the States witnesses testimonies into question.

Following the trial, detective Arnold testified in a sworn deposition in the Federal case, that he never took any pictures of the camper and never searched or seized anything from the camper.

Q. And you -- I'm sorry, one (1) other thing about it. Do you know who took that photograph?

A. No, I don't.

Q. Okay. Did you take any photographs--

A. No.

Q. --At the site that day?

A. No. (App. pg 459, lns. 19-25).

Q. So prior to hauling the camper off, did you have an opportunity to enter the camper?

A. Yes. I walked in and looked around.

Q. Looked around. Did you conduct the investigation?

A. No.

Q. Okay. Who was responsible for the investigation in the Camper?

A. That would be David. He organized it. I just walked in and looked around and I just remember vaguely looking and walked out. (Id. at pg. 462, lns. 14-23).

Q. And you didn't really go in with any investigation purpose?

A. No.

Q. You just were kind of curious I guess. What were David and Jerry doing when you were in the camper?

A. They were, at the time they were just standing there at the time. I didn't stay in there long.

Q. But they would have been the ones that conducted the investigation within the camper and--

A. The inventory.

Q. --- The catalog, inventorying any of the---

A. Yeah, Yeah, Yes sir. (Id. at pgs. 464, ln. 16-pg. 465, ln. 2).

It is common for liars to forget their previous stories and apparently, detective Arnold must have forgotten his previous untruthful trial testimony about taking the photographs of the cabinet and finding the bill of sales therein.

Because the conviction was obtained by the use of these two prejured testimonies, it undermines confidence in the outcome of the trial. Without these two perjured testimonies, there was no evidence that Applicant had "knowledge" the goods were stolen. Possession alone, is insufficient to prove the crimes of

receiving stolen goods or possession of a stolen vehicle offenses. Knowledge that the goods were stolen is an indispensable element of the crime. State v. Rountree, 80 S.C. 387, 61 S.E. 1072, 1073 (1908), and the State carries the burden of proving the knowledge element. 76 C.J.S. Receiving Stolen Goods, §26, at 33 (1994)(the burden is on the prosecution to show that the accused knew the property was stolen).

Without Justice and Arnolds perjured testimony, Applicants' testimony demonstrated a reasonable alternative hypothesis for how he came to be involved and present around the stolen goods. That explanation was consistent with his innocence. "Mere presence" is insufficient to establish the possession or knowledge elements. State v. Robinson, 306 S.C. 399, 412 S.E.2d 411 (1991); State v. Thomas, 514 S.E.2d 486 (1999)(mere presence does not trigger knowledge element).

If the trial were not infected by the perjured testimony, it is likely that the jury would have found Applicant not guilty or that a directed verdict motion would have been granted. 66 Am. Jur. 2d, Receiving Stolen Property, § 25, at 25 (2001) (only "unexplained" possession of recently stolen goods authorizes presumption of guilty knowledge); State v. Lee, 365 S.E.2d 734 (1988)(where the facts of the case, even if proved, do not constitute the alleged criminal conduct, direct verdict must be granted). At the very least, without Arnolds false testimony concerning the bill of sales, Applicant would have been successful on direct appeal, because there would have been no other evidence to suggest Applicant was a receiver to dispute Justices'

testimony that Applicant was a co-thief.

It is likely that the jury convicted Applicant because they, like the trial judge, believed Justices' perjured testimony that Applicant was a co-thief and not because they believed he "received the goods from someone else who stole them" or had knowledge that they were stolen from some other source.

In connection, Arnold's perjured testimony that he searched the camper and located the fabricated bill of sales is the only evidence disputing Applicants reasonable explanation that was consistent with his innocence. "The conviction must be reversed when the court is reasonably well satisfied that the testimony given by a material witness is false; that without it the jury might have reached a different conclusion; and that the defendant was taken by surprise when the false testimony was given and was unable to meet, or did not know of its falsity until after the trial." Larrison v. United States, 24 F.2d 82 (1928); DeMarco v. United States, 928 F.2d 1074 (1991)(we conclude that the prosecutors argument to the jury capitalizing on the perjured testimony reinforced the deception of the use of the false testimony and thereby contributed to the deprivation of due process).

Without the perjured testimony of Justice and Arnold, the only other evidence remaining before the jury was Applicant's testimony and contention that he was unaware the goods were stolen but did eventually discover that some type of scam was taking place.

According to Applicant, Justice did eventually tell him that Justice had gotten the ATV's from the owner of the dealer-



ship and that the two of them were in a partnership to commit fraud and collect money from the owners insurance company. Applicant testified that he abandoned any involvement at that time; told Justice he did not want to be involved and asked Justice to remove the ATV's from the storage facility. (App. pg. 296, lns. 12-pg. 299, ln. 15; pg. 302, lns. 17-pg. 303, ln. 11; pg. 305, ln. 24-pg. 306, ln. 7).

Some practitioners may be of the opinion that this testimony alone demonstrates that Applicant had knowledge that the goods were stolen. Such is not the law however. While it is true, that in the end, Applicant was aware that the ATV's were obtained under suspicious circumstances, it does not stand to reason that Applicant knew they were stolen. There is a fundamental difference between larceny and attempting to commit fraud.

In Rountree, supra, the court held that "it is not sufficient to show that the prisoner had a 'general knowledge' of the circumstances under which the goods were taken", unless "the circumstances were such as constituted larceny". Id. at 1073.

In this case the circumstances may have been suspicious and may have even constituted a crime or that a crime was going to happen in the future, but do not demonstrate that Applicant knew a larceny had "already occurred". State v. Thompson, 647 S.E.2d 702 (2007)(mere presence and even prior knowledge that a crime was going to take place is insufficient to convict).

Simply put, Applicants conviction was obtained by the knowing use of perjured testimony and evidence. The very premise

of our adversary system of criminal justice is that a defendant is entitled to a fair trial that will "best promote the ultimate objective that the guilty be convicted and the innocent go free'". Herring v. New York, 422 U.S. 853, 862 (1975). When the State knowingly uses perjured testimony to obtain a conviction, the adversary process itself becomes presumptively unreliable.

"The deliberate deception of a court and jurors by the presentation of known false evidence is incompatible with 'rudimentary demands of justice'". Riddle v. Ozmint, 631 S.E.2d 70, 75 (2006)(quoting Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972)). The same result occurs when the State although not soliciting false evidence, allows it to go uncorrected when it appears. Id. at 766. The knowing use of false testimony to obtain a conviction violates due process regardless of whether the prosecutor solicited the false testimony or merely allowed it to go uncorrected when it appeared. Napue v. Illinois, 360 U.S. 264, 269 (1959).

Therefore, "a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgement of the jury". Simpson v. Moore, 627 S.E.2d 701 (2006)(quoting United States v. Bagley, 105 S.Ct. 3375, 3381-82 (1985)); United States v. Thomas, 987 F.2d 1298 (1993)(the governments use of perjured testimony at trial violates due process when the perjury could deceive the jury into unjustly convicting a defendant).

In this case it is likely that the perjured testimony affected the jury's verdict and that they, as did the trial judge, believed the false testimony of Justice claiming Applicant was a co-thief. Moreover, it is likely that the perjured testimony of Arnold -that Applicant must have fabricated the bill of sales and therefore knew the goods were stolen - because he found them in the camper, must have affected the jury's verdict. Therefore, the verdict was a result of not only false testimony but also the jury was allowed to essentially convict Applicant of larceny, a crime for which he was not indicted. United States v. Mason, 41 Fed. Appx. 612 (2002) (when the State through its presentation of evidence, broadens the basis of a conviction beyond those charges in the indictment, a constructive amendment occurs and violates the right to be indicted by a grand jury). In other words, Applicant was convicted on an improper basis because he was believed to have been a co-thief rather than a "receiver". Thomas, supra; Larrison, supra; DeMario, supra; Tindall, supra; and McNiel, supra.

Even assuming arguendo, that the State was unaware of the perjured testimony, Applicant would nevertheless be entitled to have the convictions overturned because the perjured character of the witnesses' testimony constitutes after-discovered evidence. See S.C. Code, § 17-27-20(a)(4); State v. South, 427 S.E.2d 666, 668-69 (1993).

Even with the upmost exercise of due diligence, Applicant could not have discovered this evidence prior to trial. Mr. Justice was not about to confess that he had been induced to

lie in exchange for probation because he was facing a lengthy prison sentence. Arnold was not about to confess that he had fabricated the bill of sales and was intending to lie in hopes that a successful conviction might lead to the dismissal of the Federal Civil lawsuit filed against him and his friends.

Applicant discovered the truth after Justice was convicted and given probation (App. pg. 398-99) and after Arnold's attempts failed to have the federal suit dismissed. (App. pg. 423-477). State v. Kelly, 329 S.E.2d 442, 443 (1985)(defendant must show evidence could not have been discovered with due diligence before the trial).

Based upon the foregoing, Applicant believes that his due process rights were violated because he was convicted with the use of perjured testimony and fabricated evidence which the State relied upon to a significant degree.

IV. APPLICANT WAS DENIED DUE PROCESS, EQUAL PROTECTION OF THE LAW AND A FAIR OPPORTUNITY TO DEFEND AGAINST THE STATES ACCUSATIONS, WHEN THE COURT FAILED TO PROVIDE APPLICANT WITH FUNDS FOR AN EXPERT FOLLOWING THE STATES SURPRISE EVIDENCE.

During the trial the State introduced a number of alleged Bill of Sales that they claimed had Applicants handwriting and signature on them. (App. pgs. 197, ln. 5-pg. 198, ln. 15), (See also: App. pgs 481-490). The State used these Bill of Sales to suggest that Applicant fabricated them in an attempt to claim lawful ownership of the stolen goods and that this demonstrated 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 a dispute for the jury. (App. pgs. 532-534).

Applicant maintained that it was not his handwriting and signature and filed a pre-trial motion for a continuance (App. pg. 494) and a request for funds (App. pgs. 497), to hire an expert to testify that it was not Applicants handwriting or signature. The motions were not addressed until the day of trial.

The trial judge mistakenly believed that Applicants motions were not timely and denied them. (App. pg. 22, lns 18-21). Applicant was provided with the initial discovery on April 3, 2008. (App. pg. 478). However, that initial discovery did not contain the alleged Bill of Sales. On July 7, 2008, less than a month prior to trial, the alleged Bill of Sales "magically" turn up and are provided to Applicant in a supplemental discovery disclosure. (App. pgs. 480-490); (See also: App. pg. 89, lns. 5-19).

Applicant's motions were made immediately following notice by the Solicitors Office that they intended to introduce the alleged Bill of Sales. The denial of funds for an expert deprived Applicant of the opportunity to put forth a defense.<sup>2</sup>

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<sup>2</sup> Numerous photographs of the search of the camper were taken by police, which included evidence that police found therein; but none of them show the alleged Bill of Sales as being found inside the camper as alleged by Detective Arnold. Applicant contended that the alleged Bill of Sales were fabricated by police long after Applicants arrest because he had sued the Sheriff's Office in Federal Court for the unlawful seizure of Applicants property. The Applicant attempted to argue that the police manufactured the evidence under a misguided belief that if they could convict Applicant, they could have the federal suit dismissed under Heck v. Humphreys, 512 U.S. 477 (1994), but Applicant had no evidence to support that position. The recent fabrication by police explains why the alleged Bill of Sales did not

The State suggested that the Return to the warrant mentioned that several Bill of Sales containing Applicants name were listed as being found during the search of the camper and that this should have notified Applicant that he would need an expert sooner. (App. pgs. 206, lns. 24-pg. 207, ln. 9). Applicant maintains that such boiler-plate information was insufficient to inform him that he might need an expert handwriting analyses because the camper contained numerous Bill of Sales and Titles containing Applicants name that were lawful documents belonging to Applicant. Applicant simply thought the warrants return was referencing those documents, (App. pgs. 499, 501-505, and 506, photos 4 and 5), and in no way placed Applicant on notice that he might need to dispute any evidence that would be useful to a criminal prosecution.

The Sixth Amendment Right to Notice, Confrontation, and Compulsory Process Guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, and the orderly introduction of evidence. State v. Gillian, 360 S.C. 433, 449-50, 602 S.E.2d 62, 71 (2004). These basic rights are applicable to the States through the due process clause of the Fourteenth Amendment and basically "Constitution-alizes" the right to present a defense in an adversary criminal trial. State v. Schmidt, 342 S.E.2d 401, 402 (1986). While a State is not required to provide unlimited funding, it is

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exist on 4-3-08 when the initial discovery was provided, and why they were not provided within (30) days of the arrest as required by Rule 5(a)(3), S.C. Rules of Crim. P. A violation of discovery rules require reversal if it prejudices a defendants case as it did here. State v. Hill, 597 S.E.2d 822 (2004); State v. Proctor, 559 S.E.2d 318 (2001).

required to ensure that a defendant has funds for services of experts necessary to a meaningful defense. Bailey v. State, 424 S.E.2d 503 (1992).

Our State's Constitution and Legislature have further ensured individuals accused of a crime will enjoy these rights. The Constitution of the State of South Carolina asseverates:

"The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury, to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both".

S.C. Const. Art. 1, §14; See also: S.C. Const. Art. 1, §3 (due process rights). Additionally, the South Carolina Code confirms these guarantees by allowing criminal defendants to compel witnesses to appear in their favor and to produce witnesses and evidence. See: S.C. Code Ann. § 17-23-60 (1976); S.C. Code Ann. § 19-7-60 (1976). These safeguards ensure the accused will benefit from a fair and impartial trial.

"Few rights are more fundamental than that of an accused to present witnesses in his own defense". Chambers v. Mississippi 410 U.S. 284, 302 (1973); See also: California v. Trombetta, 467 U.S. 479, 485 (1984)(finding the due process clause of the Fourteenth Amendment affords criminal defendants a meaningful opportunity to present a complete defense); State v. Hutton, 595 S.E.2d 876, 881 (2004); State v. Harris, 427 S.E.2d 909, 912 (1993)(same). "The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations". Chambers, at 294.

In Washington v. Texas, 388 U.S. 14, 19 (1967), the United States Supreme Court elucidated the rights of an accused to present testimony:

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendants' version of the facts as well as the prosecutions' to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecutions' witnesses for purposes of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." Id. at 19.

In the case sub-judice, the courts failure to provide funds to hire a handwriting expert deprived Applicant of his fundamental right to present witnesses in his own defense, deprived him of a fair and impartial trial and was prejudicial to Applicants version of the facts.

The juries actions in wanting to view letters and documentation used by Applicant during the trial, demonstrates that they were attempting to determine whether the handwriting on the letters matched the handwriting on the alleged Bill of Sales. (App. pgs. 370-71). Thus, an experts opinion that the handwriting and signatures did not belong to Applicant would have bolstered Applicants claim that police fabricated them and Justice was lying for the State in exchange for probation, and would likely have raised questions of doubt in the minds of the jury.

For this reason, it cannot be said to have been harmless because this court cannot conclude the error did not contribute to the verdict beyond a reasonable doubt. State v. Mizzell,



349 S.C. 326, 334, 563 S.E.2d 315, 319 (2000).<sup>3</sup>

- V. THE APPLICANT WAS CONVICTED IN VIOLATION OF THE DOUBLE JEOPARDY CLAUSE, CONTRARY TO LEGISLATURES INTENT IN CREATING THE STATUTE, AND SOUTH CAROLINA CASE LAW, 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 APPLICANT CONSECUTIVE SENTENCES ON CRIMES STEMMING FROM THE SAME EVENT.

The Applicant was charged with four (4) counts of receiving stolen goods, (App. pgs. 391-396), and one count of possessing a stolen vehicle, (App. pgs. 389-390), which referred to the same ATV's, trailers and events.

Applicant sought to have all of the charges consolidated or merged into a single offense. (App. pgs. 330, lns. 14-pg. 332, ln. 19). The Applicant contended that legislature intended that all charges stemming from the same event be consolidated. South Carolina Code of Laws, § 16-13-180(3) states in relevant part, that:

"For purposes of this Section, the receipt of multiple items in a single transaction or event constitutes a single offense."

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<sup>3</sup> Here, the only tangible evidence the jury could have taken with them during deliberations, were a few photographs of stolen items and the alleged Bill of Sales. Since Applicant contended all other evidence and testimony was bias, unreliable, motivated by the Federal law suit, and Mr. Justices' desire to lessen his own culpability, it is clear the issue of whether the handwriting and signature belonged to Applicant, was very important to the outcome of the trial. If it belonged to Applicant, it would establish that Applicant had knowledge of the stolen character of the goods, and, if it were not Applicants' handwriting, it would prove that the Detectives and Mr. Justice were acting in concert to fabricate evidence and lie to convict Applicant. Moreover, had a expert informed the State that the Bill of Sales were not written or signed by Applicant, the State may have elected to exclude them from the trial. Had they not been introduced, Applicants direct appeal would have been granted because there would have been no remaining evidence which disputed Mr. Justices' testimony that Applicant was a "thief". In other words, there would have been no evidence that Applicant was a "receiver" and he would have been entitled to directed verdict.

The trial judge did merge indictments (2008-GS-37-882, 883, and 884, but did not consolidate 881 or 885.

As to indictment 885, the judge refused to merge this offense because it had a date of January 29, 2008, rather than a date of January 22, 2008 which appeared on indictments 881, 882, 883 and 884. Since there was a variance as to the dates, the judge apparently believed that it could not have been possessed as a single transaction. (App. pg. 332, lns. 16-19).

The dates on the indictments are not evidence however, (App. pg. 26, lns. 7-14). The evidence during the trial indicated that all of the property (except a backhoe), was possessed long before the date of January 22, 2008, although they may have been seized four days apart. At times, according to the evidence, the Applicant was in "actual" possession of the goods at the campsite, while at the same time he was in "constructive" possession of all the goods and vehicles at the storage facility, with the exception of the backhoe. The backhoe was not possessed until January 29, 2008.

The date of January 29, 2008, referred to the date a John Deere backhoe was brought to the gold mine camp and allegedly possessed by Applicant. (App. pgs. 169, lns. 22-pg. 170, ln. 4). The court failed to realize that it granted directed verdict as to the backhoe, (App. pgs. 265, lns. 25-pg. 266, ln. 6), and the only remaining property on indictment 885 was a carry-on cargo trailer that according to the States evidence was possessed on or before the January 22, 2008 date along with all the other goods. (App. pg. 265, lns. 18-24).

Because all of the property - other than the backhoe - was possessed on the same day and under the same event, it was a violation of double jeopardy and State law to refuse to merge the multiple offenses into a single count. Stevens v. State, 617 S.E.2d 366 (2005)(The possession of multiple goods at one time constitutes a single offense and the number of indictments do not necessarily indicate the number of offenses); See also: State v. Waller, 312 S.E.2d 552, 553 (1984)(larceny of multiple items constitutes a single offense even if stolen from multiple victims); United States v. Vest, 913 F.Supp. 1345 (1995)(the problem with multiplicitous indictments is that it may suggest to the jury that the defendant committed more than one crime).

Secondly, indictment 881 should have been consolidated because possession of stolen goods and possession of a stolen vehicle are the "same offense" under the law and facts of this case and violate the tenents enunciated in United States v. Blockburger, 284 U.S. 299 (1932). The Blockburger test determines whether multiple prosecutions for a single act constitute prosecutions for the same offense. Double Jeopardy bars multiple prosecutions for a single act unless the act can be prosecuted and punished under different statutory provisions that require proof of different elements. Id. at 304.

Indictment 881 deals with the possession of ATV's and a trailer that came from the same ATV dealership and area on the same day as those in indictments 882, 883, and 884. More importantly, both possession of a stolen vehicle and possession of stolen goods contain similar elements requiring a person

to possess or receive items which are stolen and have knowledge of their stolen character. See: S.C. Code, § 16-21-80(3) and § 16-13-180(3). These same elements prevent them from being separate and distinct offenses under Blockburger.

It should be noted that two separate charges are the "same offense" even if a fact must be proven for one charge that does not have to be proven for the other. For instance, receiving stolen goods does not require that the goods be a "vehicle", but possession of a stolen vehicle does.

In Brown v. Ohio, 97 S.Ct. 2221 (1977), the United States Supreme Court shot down such strict interpretations of the Blockburger test. Quoting Ashe v. Swenson, 90 S.Ct. 1189 (1970) and Inre Nielson, 131 U.S. 176 (1889), the court noticed that Ashe required proof that a "different individual" had been robbed and Nielson required proof of "sexual intercourse while married to another" on one hand and that he had "lived with more than one woman at a time" on the other. Thus, "separate statutory crimes need not be identical - either in constituent elements or in actual proof - in order to be the same within the meaning of the constitutional prohibition." Id. at 2225-26.

In this case, there is no evidence that Legislature clearly intended to impose cumulative punishments. Legislature clearly intended that if one possesses multiple stolen items at once, it should be treated as a single crime. Here the possession of multiple items at a single time - although stored in two different locations - constitutes a single offense because they were all part of a single scheme or were jointly planned and

possessed.

It is axiomatic to think that Legislature would intend that if two or more items can constitute both "stolen goods" and a "stolen vehicle", that the State can circumvent double jeopardy principals by charging the accused under each statute separately, and then impose consecutive sentences for unlawful receipt and possession of the same goods and vehicles. Ball v. United States, 470 U.S. 856, 861 (1985)(double jeopardy prevents conviction of both "possession" and "receiving" the same handgun); State v. Tinsley, (order on appeal)(App. pg. 533)("The offenses of receiving stolen goods and receiving, possessing, concealing, selling, or disposing of a stolen vehicle closely mirror each other).

VI. APPLICANT WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN THE TRIAL JUDGE 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. (App. pgs. 510-523). The judge refused to conduct an in camara suppression hearing and wanted Applicant to argue those points during the trial. (App. pg. 88, lns 19-23).

As a result, the State was allowed to introduce the testimony of the 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.

The States' witnesses basically contended that when they entered the property in question, that numerous stolen items were in plain view. This tactic of the court allowed the State to circumvent the real issue Applicant sought for review.

Had Applicant been allowed to introduce his own testimony and witnesses, the evidence would have indicated that the property in question was privately posted and fenced against trespassing. (App. pg. 511, 515-16). That the items seized were 3/4 of a mile down a dirt driveway in the woods and could not have been viewed from any public vantage point. That the police admit that when they initially entered the property they had no warrant, but later left the property to obtain a warrant based upon what they discovered during the initial warrantless entry.

A "search" occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. United States v. Jacobsen, 466 U.S. 109, 113 (1984); Illinois v. Andreas 463 U.S. 765, 771 (1983). "What a person knowingly exposes" to police "is not a subject of Fourth Amendment protection". California v. Ciraolo, 476 U.S. 207, 213 (1986). Thus, a law enforcement "officers observations from a public vantage point where he has a right to be" and from which the activities or objects he observes are "clearly visible" do not constitute a "search" within the meaning of the Fourth Amendment. United States v. Bellina, 665 F.2d 1335, 1341-42 (4th Cir. 1981).

The Applicant contends the items were not in plain view

because they could not be viewed from the road or any public vantage point. Horton v. California, 496 U.S. 123, 136-37 (1990). The Applicant maintains that even if the items stolen character were immediately apparent, the police were not in a place with which they had a lawful right to be, because they were trespassing on privately posted property at the time. United States v. Hersh, 464 F.2d 228, 230 (9th Cir.), cert. den. 409 U.S. 1008 (1972); United States v. Taylor, 90 F.3d 903, 909 (4th Cir. 1996).

When police sought the warrant they failed to inform the Magistrate that they had already conducted an unlawful entry and search and this invalidates the warrant itself. United States v. Tate, 524 F.3d 449 (4th Cir. 2008)(agent omitted fact that he jumped a fence and trespassed in order to obtain the information supporting the warrant). This must be the case, because it is unreasonable to believe the Magistrate would have signed a warrant after learning of the unconstitutional investigation tactics. If he would it suggests the Magistrate was acting as a "rubber stamp" and not a "neutral and detached factfinder" which would have also invalidated the warrant. Aguilar v. Texas, 378 U.S. 111 (1964).

A defendant must be given a full, fair and adequate opportunity to address his constitutional claims. Allen v. McCurry, 449 U.S. 90, 101 (1980). Precluding a criminal defendant from presenting evidence and his own testimony in support of a motion to suppress deprives a defendant of a fair opportunity to address his claims. Crane v. Kentucky, 476 U.S. 683 (1986)

Moreover, the denial was prejudicial. Had an in camera hearing been conducted and Applicant allowed to introduce his own evidence in support of his suppression motion, it is likely that the evidence would have been suppressed and even if the court failed to suppress some or all of the evidence, the issue would have been preserved for the Appellate courts and Federal courts who would have eventually held the search and seizure unlawful.<sup>4</sup>

VII. APPLICANTS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL WERE VIOLATED WHEN THE TRIAL JUDGE REFUSED TO CHARGE THE JURY WITH "ABANDONMENT" AND "MERE PRESENCE".

At trial, Hogan Justice testified for the State that he and Applicant, acting together, stole all of the goods and vehicles subject to the indictments. (App. pgs. 225, lns. 10-pg. 227, ln. 19; pg. 238, lns. 4-7; and pg. 253, lns. 17-24).

The Applicant maintained that Justice was lying in an attempt to lessen his own culpability and receive a probation sentence in exchange for his testimony. (App. pgs. 344, ln. 8- pg. 345, ln. 2). Applicant maintained that Justice had brought the ATV's and trailers to the campsite. (App. pg. 289, lns. 25-pg. 290, ln. 8). According to Applicant, Justice told him the ATV's came from a government I.R.S. seizure auction and wanted Applicant to help him sell them on eBay. (App. pgs. 288, lns. 24-pg. 289, ln. 5).

The Applicant became suspicious about how they were acquired

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<sup>4</sup> Applicant settled his suit in Federal Court which revolved around these same set of facts and evidence which indicated police conducted an unlawful entry, search and seizure of the mining property and Applicants belongings.



and confronted Justice about them. (App. pg. 296, lns. 7-25). Justice told Applicant that Justice and the owner of the ATV dealership were in a partnership to scam his insurance company. (App. pg. 297, lns. 1-15). At that point, Applicant told Justice he did not want to be involved with the ATV's anymore and wanted Justice to take the ATV's from the storage facility. (App. pg. 297, lns. 16-23). The Applicant maintains that he "abandoned" any involvement with the ATV's, stopped answering his phone, stopped responding to questions on eBay or otherwise trying to sell the ATV's on eBay. (App. pgs. 297, lns. 24-pg. 298, ln. 6).

At the close of the evidence, the Applicant provided a written request for jury charges, (App. pg. 333, lns. 4-12); (App. pg. 397), asking the court to instruct the jury on "abandonment" and "mere presence". (App. pg. 333, lns. 21-24). The judge refused the charges contending that Applicant denied "knowing" the ATV's were stolen, (App. pg. 335, lns. 18-22), and that "Mere presence" was covered by his receiving stolen goods charge. (App. pg. 334, lns. 18-pg. 335, ln. 3). However, the request for "abandonment" charge had more to do with the "possession" element of the receiving stolen goods, than it did the "knowledge" element. United States v. Lothian, 976 F.2d 1257 (1992)(once the defendant introduces evidence of withdrawal, the burden shifts to the government to prove that the defendant did not withdraw).

This is particularly important in this case, because the charges of receiving stolen goods and related offenses, are

not continuing offenses the way that larceny can be considered a continuing offense. All of the elements must exist at the moment the goods are initially "received" and cannot establish the offense by demonstrating they existed at some later point. In other words, knowledge that the goods were stolen must exist at the moment the goods are received and evidence that Applicant later discovered something suspicious about the ATV's - even if it constituted knowledge of the goods stolen character - would be insufficient to convict, particularly since Applicant immediately "abandoned" any involvement with selling the ATV's and this "abandonment" could hardly constitute a "dishonest or fraudulent intent to deprive the owner of his property". State v. Rountree, 80 S.C. 387, 61 S.E. 1072 (1908)(knowledge must exist at the moment the property is received); State v. Henderson, 329 S.E.2d 448 (1985)(receiving stolen goods does not follow a person from County to County or from time to time in the same way as larceny); State v. Vareem, 74 S.E.2d 223 (1956); State v. Rutledge, 101 S.E.2d 289 (1957)(larceny is a continuing offense).

Moreover, the "mere presence" charge was necessary to inform the jury that a defendants "mere presence" near the contraband or stolen goods does not establish his possession or guilty knowledge. State v. Robinson, 412 S.E.2d 411 (1991); State v. Kimbrell, 362 S.E.2d 630 (1987); State v. Thomas, 514 S.E.2d 486 (1999)(a defendants mere physical proximity to stolen items does not trigger the inference of doctrine of recently stolen goods that the defendant is presumed to have knowledge goods

are stolen).

Without question, the law to be charged in a particular case is determined by the evidence presented at trial. State v. Long, 480 S.E.2d 62 (1997); State v. Gourdine, 472 S.E.2d 241 (1996). Accordingly, it is well settled that a trial court commits reversible error when it fails to give a requested charge on an issue raised by the evidence. State v. Burriss, 513 S.E.2d 104 (1999); State v. Hill, 433 S.E.2d 848, 849 (1993). As our Supreme Court has stated, "[a] request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused". State v. Austin, 385 S.E.2d 830, 831 (1989); See also: State v. Addison, 540 S.E.2d 449 (2000).

Although the refusal to give a specific charge may not be error "when the given instructions use the proper test for determining the issues before the jury", State v. Hughey, 529 S.E.2d 721, 728 (2000), such is not the case when the charge as given fails to cover the substance of the request. See: State v. Day, 535 S.E.2d 431 (2000)(failure to tailor jury instructions to adequately reflect facts and theories presented by the defendant constituted reversible error). <sup>5</sup>

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<sup>5</sup> Issues may be preserved by motion or by objection. State v. Tessnear, 185 S.E.2d 611 (1971). No objection is necessary if earlier in proceeding judge had an opportunity to pass on the issue. State v. Grantt, 272 S.E.2d 169 (1980). If request is made but denied, it is unnecessary to renew request at conclusion of court's instructions. State v. Johnson, 508 S.E.2d 29, 31 (1998). In this case, the judge specifically instructed Applicant not to object to his rulings. (App. pg. 79, lns. 2-9).

In this case the Applicants own testimony demonstrated that he "abandoned" any involvement, including possession, of the ATV's when he discovered something inappropriate was taking place. "Abandonment" is a complete defense to criminal charges that must be given if supported by the evidence. State v. Fair, 40 S.E.2d 634 (1946); Brown v. United States, 150 U.S. 93 (1893); and Lothian, supra.

Moreover, Applicants testimony is consistent with his innocence because it demonstrated that he was merely present around the property and did not aid, abet or assist in the commission of that crime.

"Mere presence" is generally applicable in two circumstances. First, in instances where there is some doubt over whether a person is guilty of a crime by virtue of accomplice liability, the trial court may be required to instruct the jury that "a person must personally commit the crime or be present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act". Austin, supra; See also: State v. Leonard, 355 S.E.2d 270 (1987)(to be liable as an aider or abetter, the participant must be chargeable with knowledge of the principals' criminal conduct; mere presence at the scene is not sufficient to establish guilt as an aider or abetter).

Moreover, "mere presence" is generally an issue where the State attempts to establish the defendants possession of stolen goods because the defendant is present where the stolen goods is found. State v. Dennis, 468 S.E.2d 674, 678 (1996). Such

as in this case, where the State introduced evidence that Applicant was staying at the campsite and had been seen at the storage facility. In such cases, the trial court may be required to charge the jury that the defendant's "mere presence" near the stolen goods does not establish his possession, See: Robinson supra, and Kimbrell, supra, or his "guilty knowledge" that the goods are stolen. Thomas, supra.

To be guilty of receiving stolen goods or possession of a stolen vehicle, a defendant must "receive" or "possess" the goods "knowing" them to have been stolen. State v. Williams, 564 S.E.2d 688, 690 (2002); Hicks v. State, 443 S.E.2d 907 (1994). Knowledge must exist at the moment the property is received. Rountree, supra; Henderson, supra; Vareem, supra; and Rutledge, supra.

The evidence introduced by the defense in this case, demonstrated that Applicant never had any knowledge the ATV's were stolen but only knew they were obtained under suspicious circumstances. If the jury disbelieved Mr. Justices' testimony because he promised to help Applicant through his testimony, and if the jury instead believed Applicants version of the case, this would not be sufficient to render a conviction.

In Rountree, the court noted that "it cannot be successfully contended that a mere inadvertent failure to pursue an inquiry with reasonable diligence is the equivalent of guilty knowledge", and "it is not sufficient to show that the prisoner had a general knowledge of the circumstances under which the goods were taken, unless, the circumstances were such as constituted larceny".

In this case the evidence may have indicated that the ATV's were obtained under suspicious circumstances, but do not indicate that they were obtained in a way that constituted larceny. There is a difference between "stolen goods" and running a scam to defraud an insurance company, and it is illegal to punish Applicant for this crime simple because he did not pursue further inquiry.

Nevertheless, it is clear that Applicant did possess the ATV's prior to learning of their suspicious circumstances, but did not possess them afterwards, because he "abandoned" all involvement with them and it cannot be said that Applicant had dishonest or fraudulent intent to deprive the owner of the ATV's once he abandoned his involvement.

In this case, the jury was free to disbelieve Justices' testimony, and it is likely that they did, because Justice was looking for a deal to lessen his own culpability and had promised to help set Applicant free through his testimony.

If the jury did disregard Justice's testimony, it is likely that they found Applicant guilty because he possessed the ATV's "prior to" learning about their questionable character and did not realize that that was not a crime (possession alone is not a crime), or that Applicants abandonment was a complete defense.

The Applicant was prejudiced because the jury was allowed to find guilt based upon Applicants "possession without knowledge" or his later "knowledge without possession" once he abandoned possession of the ATV's.

The jury was allowed to make this error, because the trial

judge refused to properly instruct the jury concerning the law, facts, or issues raised by the defense. Without these charges, the jury was left to assume that Applicant could be found guilty even if he were merely present around the stolen goods and even if he abandoned any involvement once he discovered the suspicious circumstances surrounding the stolen goods. In other words, the jury was left to believe they could convict Applicant even if he did not "intentionally, or thorough a common design, aid, abet, or assist in the commission of the crime through some overt act".

VIII. APPLICANT DID NOT KNOWINGLY, INTELLIGENTLY OR VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL.

Prior to trial the Applicant sought to represent himself with the assistance of stand-by counsel. A hearing was held before Judge Maddox in which the judge asked Applicant if he wanted to represent himself. (App. pgs. 524-529). Judge Maddox may have asked Applicant if he understood the dangers of self-representation, but the colloquy amounted to nothing more than pro forma answers to pro forma questions. Judge Maddox never informed Applicant that Applicant could be forced to stand trial without the assistance of stand-by counsel if he choose to represent himself. Applicants understanding of the hearing was that the attorney that had been appointed to represnt Applicant did not want to proceed as stand-by counsel and sought to be relieved. Applicant assumed that some other attorney would be appointed to assist Applicant in pretrial preparations.

Judge Maddox filed an order following the hearing, dated April 29, 2008, (App. pgs. 530-31), allowing Applicant to represent himself but declined to appoint stand-by counsel under the misguided belief that it would constitute "hybrid representation".

The Applicant was incarcerated in the local County jail without access to a law library or other forms of research resources. 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.

The Applicant again filed a subsequent motion for stand-by counsel and for a continuance, (App. pgs. 491 and 494), and maintained that his requests were not for "hybrid representation", but for the sole purpose of helping Applicant in a pre-trial context, to conduct legal research into possible defenses. No hearing was ever scheduled.

On the day of trial, Applicant again raised these issues. The trial judge failed to realize that Applicant had a right to counsel even if he was representing himself.

COURT: "You either have a lawyer represent you or you don't..." (App. pg. 22, lns 12-13).

South Carolina has repeatedly held that a defendant has the right to the assistance of counsel, even if he is representing himself. State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977); State v. Brewer, 328 S.C. 117, 492 S.E.2d 97 (1997).



This right seems to stem from Article I, § 14 of the South Carolina Constitution and the realization that due process and equal protection of the law, require that a defendant be provided with the resources necessary to prepare a defense. Milton v. Morris, 767 F.2d 1443, 1445-47 (1985); United States v. West, 557 F.2d 151 (1997)(stand-by counsel can be appointed to conduct research on the defendants behalf and report that information back to the defendant).

In an attempt to overcome any mistakes, the trial judge appointed Mr. Day of the public defenders office, to "set-by" Applicant during the trial. (App. pg. 12, lns 25-pg. 13, ln. 3). However, this assistance was too little and came too late, to be of any assistance to Applicant in conducting legal research into possible defenses, locating witnesses, or having relevant case law available that might have caused the judge to not make the errors he made during this trial. Applicant needed assistance prior to trial to prepare a substantive defense, not during trial to answer questions. Milton, supra, (a defendant is entitled to the assistance of counsel prior to trial to prepare for trial and during trial to answer questions). This deprivation denied Applicant his rights under the United States Constitution, South Carolina Constitution and State law.

The right to counsel is guaranteed by the Sixth Amendment to the United States Constitution. Gideon v. Wainwright, 372 U.S. 335, 339, 345 (1963). The right to counsel may be waived and a defendant allowed to proceed pro se, if the defendant clearly asserts his rights prior to trial. State v. Sims, 405

S.E.2d 377 (1991). The waiver of the right to counsel must be knowing, intelligent and voluntarily made. State v. Brown, 347 S.E.2d 882 (1986). To validly waive the right to counsel, the defendant must be (1) advised of his right to counsel; and (2) adequately warned of the dangers of self-representation. Prince v. State, 392 S.E.2d 462, 463 (1990). The ultimate test however, of whether a defendant made a knowing and intelligent waiver of the right to counsel, is not the trial judge's advice, but rather the defendants' understanding. Graves v. State, 422 S.E.2d 125 (1992).

In this case, while the record reflects that defendant knew he had a right to counsel - and even knew he had the right to stand-by counsel, even if he represented himself - the record does not establish that the Applicant was adequately warned that he could be forced to stand trial without the assistance of "any" pretrial stand-by counsel. (i.e., without adequate research resources). State v. Gardner, 570 S.E.2d 184, 187 (2002). The record clearly indicates that the Applicant chose to represent himself only if he were provided with stand-by counsel to assist him in preparing for trial. Applicants subsequent motions and repeated requests - even on the day of the trial - should have placed the trial court on notice that Applicants' waiver was not knowingly or intelligently given.

**IX. APPLICANT WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAW WHEN HE WAS NOT PROVIDED WITH ACCESS TO A LAW LIBRARY, ATTORNEY OR OTHER FORM OF CONDUCTING LEGAL RESEARCH IN PREPARATION 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 wished to represent himself with stand-by counsel and while he may have been potentially capable of constructing a substantive defense, he recognized that he lacked the resources to do so and took definitive steps to negate this impediment.

The Applicant filed motions and a writ of mandamus to be released on bond so that he could go to his local law library on his own. (App. pg. 15, lns. 24-pg. 17, ln. 8). The Applicant maintained that he was already out on bond on two of the five charges and that under State law, he could not lawfully be convicted, more than once, of possessing multiple items in a single event. See: S.C. Code, § 16-13-180(3); and Stevens v. State, 617 S.E.2d 366 (2005). Applicant maintained that the stacking of multiple charges was being used by the State to gain an unfair tactical advantage and as a pretext for keeping Applicant from accessing legal resources and constituted malicious prosecution.

The Applicant also requested that if the court could not provide access to legal resources, that it should appoint stand-by counsel that could conduct legal research on Applicant's behalf and report the information back to him. Love v. Summit County, 776 F.2d 908, 912-13 (10th Cir. 1985), cert. den. 479 U.S. 814 (1986)(pretrial detainee not entitled to access to a law library if other available means to access the court exists); United States v. West, 557 F.2d 151 (8th Cir. 1997) (stand-by counsel can be appointed to conduct research on the

defendants behalf and report that information back to the defendant).

The court declined Applicant the appointment of stand-by counsel under the belief that it would constitute "hybrid representation". (App. pgs. 530-31). The court did appoint Mr. Day to "sit-by" Applicant during the trial to answer questions, (App. pgs. 12, lns. 25-pg. 13, ln. 3), but this assistance was too little, and came too late, to be of any assistance to Applicant in preparing a substantive defense. Milton v. Morris, 767 F.2d 1443, 1445-47 (9th Cir. 1985)(a defendant is entitled to the assistance of counsel "prior to" trial to prepare for trial and "during" trial to answer questions). Due process and equal protection of the law require that pro se defendants be provided with the resources necessary to prepare a defense to criminal accusations, Id., and the denial of stand-by counsel or any other alternative means of preparing for trial, violates the defendants constitutional rights. See: Benitez v. Wolff, 907 F.2d 1293 (2nd Cir. 1993)(Inmate facing prison disciplinary charges was "denied due process" when he was moved from his cell and not allowed to take his papers with him, which hampered his right to properly prepare his defense).

Contrary to the trial courts belief, counsels assistance for this purpose does not constitute "hybrid representation". Hybrid representation arises when a defendant represents himself pro se and is also represented by counsel. In hybrid representation the self-represented defendant and the attorney act as co-counsel for the defense. State v. Cabrera-Pena, 567 S.E.2d

472 (2002). There are many problems associated with hybrid representation. For instance, counsel still "represents" the defendant and any errors can lead to ineffective assistance of counsel claims. Also, if counsel is too overzealous in their representation, the defendant could claim that counsels behavior could have appeared to the jury that defendant was not representing himself and therefore he was denied his rights under Faretta v. California, 422 U.S. 806 (1975).

As a result of the many problems associated with "hybrid representation", South Carolina has declared that there is no "right" to hybrid representation. Jones v. State, 558 S.E.2d 517 (2002). The court in Faretta, supra, recognized that the lack of resources to prepare a defense would raise due process and equal protection concerns, Id. at 95 S.Ct. 2525, 2541 n. 46, 2546 and 2547 n. 7, but did not specify what legal aid the State ~~owes~~ to a defendant. Kane v. Garcia Esptia, 546 U.S. 9, 10 (2005).

This is a common practice of the United States Supreme Court, to identify a potential problem but not order injunctive relief that the government provide a certian remedy. See: Lewis v. Casey, 518 U.S. 343 (1996)(where court held it was error for district court to grant injunctive relief to solve access to court problems. Better practice is to allow government agencies to design their own rules and practices for providing access to courts). The court in Faretta, did suggest that one favorable method of providing due process and equal protection of the law to pro se defendants, would be to appoint stand-by

counsel. Id.; See also: McKaskle v. Wiggins, 465 U.S. 168, 187 (1984)(a judge may appoint stand-by counsel even over a defendant's objection).

Recognizing the due process and equal protection problems and apparently relying upon South Carolina's own Constitution, this State has attempted to overcome the hybrid representation problems, by creating what is referred to as "stand-by counsel". State v. Sanders, 269 S.C. 215, 217, 237 S.E.2d 53, 54 (1977)(a defendant has the "right" to stand-by counsel, even if he is representing himself); State v. Brewer, 492 S.E.2d 97 (1997) (same).

Stand-by counsel is a role assumed by an attorney who agrees to assist a pro se defendant with his defense and possibly represent him if the defendant loses or voluntarily relinquishes his pro se status. In stand-by counsel cases, the defendant specifically waives the ability to claim ineffective assistance of counsel against ~~either~~ himself or the attorney assisting him. Unlike hybrid representation, stand-by counsel does not "represent" the defendant. Faretta, supra, at 834 n. 46 (stating stand-by counsel may be available to represent the accused in the court in the event the accused can no longer represent himself); McKaskle v. Wiggins, 465 U.S. 168, 177 n. 8 (1984)(In stand-by counsel cases the defendant waives the right to claim ineffective assistance of counsel).

Stand-by counsel is used by the courts for three main reasons: (1) to provide advice to the defendant, such as advice on the procedural and evidentiary rules of the court; (2) to

assist the defendant in developing his substantive case; and (3) to ensure judicial efficiency by carrying on with the trial in the event the pro se defendant cannot continue in the defendant's representative capacity. McKaskle, supra, at 183.

There seems to be some confusion among attorneys and judges in South Carolina surrounding the role and necessity of stand-by counsel. Just over a decade ago was the doctrine of stand-by counsel more clearly defined. In Sanders, supra, this State confronted the doctrine for the first time. In the thirty-seven years since Sanders, the South Carolina courts have confronted the doctrine of stand-by counsel in relatively few cases. Nevertheless, the courts must look to the existing case law for direction. United States v. Moussaoui, 2002 WL 1987962 (Aug. 22, 2002)(E.D. Va.)(stand-by counsel's participation in pretrial matters "to file motions" does not constitute hybrid representation nor interfere with defendants Faretta rights. Stand-by counsel is required by McKaskle to be prepared to take over the case in the event the defendant waives or loses his right to proceed pro se. In order to do that, stand-by counsel must be free to file motions, gather evidence and take steps to be prepared for trial); See also: State v. Campen, 469 S.E.2d 619 (1996)(stand-by counsel sat with defendant during trial, made motions on his behalf and advised him on several occasions); State v. Roberts, 632 S.E.2d 871, 873 (2007)(stand-by counsel allowed to object to the introduction of improper evidence); State v. Reed, 503 S.E.2d 747, 751 (1998)(defining stand-by counsel for the first time as "an aid to the defendant to the

extent he desires").

This seems to solve the problem associated with hybrid representation because stand-by counsel can vigorously assist the defendant and if counsel becomes overzealous or goes beyond what the defendant "desires", he can simply request an in camera hearing and object to the extent of counsels assistance. If no objection is made, it may be presumed from the record, that the defendant consents to the extent of counsels vigorous assistance. In connection, the defendant waives any claim of ineffective assistance of counsel either against himself or stand-by counsel.

In this case the Applicant is not complaining that stand-by counsel was overzealous, but rather, that he was not provided with resources to prepare a defense, including the assistance of stand-by counsel, over his objections, and that this denial deprived him of due process and equal protection of the law. Applicant maintains that this type of assistance does not constitute "hybrid representation" and the trial judges' belief that it did, lead to the denial of this fundamental right to a fair trial and the ability to present a complete defense.

Even though South Carolina has held that a pro se defendant is entitled to the assistance of stand-by counsel, even if he is representing himself, Sanders, supra, Applicant also understands that the court could provide due process and equal protection of the law by some means other than appointing counsel. Love, supra. The court could ~~order~~ that the defendant be provided with direct access to a law library or could release



a defendant on bond so that he may access his local law library to prepare his defense himself.

In cases in which the court does appoint stand-by counsel, the Applicant believes that stand-by counsels' role should be to assist the pro se defendant in substantive preparation by gathering the necessary materials needed to construct a capable defense. He should assist the defendant in conducting legal research into possible defenses. He should assist the pro se defendant procedurally, if requested to do so, by issuing subpoenas, filing motions, and addressing general procedural issues relevant to the pro se defendants case. He should assist the defendant in reviewing his questions for witnesses in order to ensure they are appropriate and help rephrase any questions that can be asked if in proper form. He should advise the defendant on all evidentiary matters. He should object to any questionable matters overlooked by the defendant in order to preserve the issue for appeal, and counsel should be prepared to represent the defendant in the event he chooses to waive his right to proceed pro se or in cases where the defendants disruptive behavior constitutes a waiver of his right to proceed pro se.

Whatever the requirements of due process and equal protection of the law are, it is clear that a defendant may not be confined to his jail cell to stare at four walls and then be brought before the court and expected to represent himself. He must be provided with access to the resources necessary to prepare a defense and providing access to a law library or

appointing counsel to assist the pro se defendant are two acceptable methods of providing those resources. Milton, supra. Under our system of law, it can never be considered a fair trial, if unarmed prisoners are forced to defend themselves against Gladiators. The complete denial of all methods of conducting legal research deprived Applicant of due process and equal protection of the law.

X. APPLICANT WAS GIVEN A DISPARATE SENTENCE IN VIOLATION OF EQUAL PROTECTION OF THE LAWS WHEN APPLICANT'S CO-DEFENDANT WAS SENTENCED TO TIME SERVED AND APPLICANT WAS GIVEN A FOURTEEN (14) YEAR CONSECUTIVE SENTENCE FOR THE SAME ACTS.

Both the Applicant and his co-defendant, Hogan Hugh Justice, III, were charged with one (1) count of possession of a stolen vehicle and four (4) counts of receiving stolen goods. The Applicant had filed a 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. (App. pg. 253, lns. 17-24). The Applicant contended that the State was prosecuting him in retaliation for bringing the federal law suit, (App. pg. 329, lns. 1-14), and that Mr. Justice was implicating the Applicant to lessen his own culpability and to get a guilty plea deal to time served and probation. (App. pg. 344, lns. 8- pg. 345, ln. 2). In fact, even though Mr. Justice had a lengthy criminal record, (App. pg. 252, lns. 3-17), and Applicant had no felony criminal convictions; Mr. Justice was allowed

to plead guilty to six (6) months time served and probation.  
(App. pg. 416, lns. 13-pg. 417, ln. 8).

Because Applicant maintained that he was innocent, that the prosecution was motivated by the federal law suit and Mr. Justices' testimony was motivated by a plea deal; Applicant sought a jury trial. Applicant was convicted of the same acts but was sentenced to two (2) seven (7) year consecutive sentences.

The Applicant contends that these lengthy consecutive sentences violate equal protection of the law, constitute disparate sentences in light of the sentences given to Applicants alleged co-defendant and constitutes a vindictive sentence in retaliation for Applicant exercising his right to file a federal suit for the return of his cash and gold and for redress of grievances for the unlawful search and seizure of his property. See: United States v. Nichols, 937 F.2d 1257 (1991) (actual vindictiveness may be shown by proving that the defendant was penalized for asserting his legal rights).

It is self evident that "the punishment should fit the offender and not merely the crime". William v. New York, 337 U.S. 241, 247 (1949). A defendants right to refuse to incriminate himself by pleading guilty promotes two legitimate interests; the right to remain silent and the right to a jury trial, the exercise thereof should not be grounds for the court to punish a defendant more harshly than other similarly situated defendants such as Applicants co-defendant.

"There can be no doubt that a judge would be barred from increasing the length of a jail sentence because of a defendants

refusal to cooperate based on the constitutional privilege against self-incrimination. In such a case, the threat of a longer sentence of imprisonment would plainly be compulsion within the meaning of the Fifth Amendment. Such as aggravation of sentence would amount to an impermissible penalty imposed solely because of the defendant's assertion of the Fifth Amendment privilege". Roberts v. United States, 445 U.S. 552, 564 (1980).

Many sentencing judges have taken the position that by admitting guilt and pleading guilty, the defendant has demonstrated a likelihood that he will transgress no more and will respond well to rehabilitative efforts. Based on this reasoning, judges have given more lenient sentences to those who plead guilty and more lengthy sentences to those who exercise their right to remain silent, plead not guilty and exercise their right to a jury trial or other redress of grievances.

What is missed by these practices is that a defendant's decision to remain silent may be the result of his attorney's advice and the decision to plead not guilty and proceed to a jury trial may be the result of being indicted improperly, such as where the defendant is indicted for one crime but is actually guilty of an unindicted crime. In such cases, the decisions bear no relation to the defendant's prospects for rehabilitation nor to any legitimate purpose of sentencing. See: United States v. Grayson, 438 U.S. 41 (1978); United States v. Tucker, 404 U.S. 443 (1972).

The Applicant believes that a trial judge, whose impartiality is the cornerstone of our criminal justice system, may be

tempted, under the guise of exercising discretion in sentencing, to join forces with the prosecution in securing a defendants cooperation by imposing harsher sentences in an attempt to induce defendants to waive rights they would otherwise exercise, [See: North Carolina v. Pearce, 395 U.S. 711, 725 (1969)(the fear of such vindictiveness may unconstitutionally deter a defendants exercise of his rights)], or by punishing those vindictively for the exercise of what is lawful under the law. See: Bordenkircher v. Hayes, 434 U.S. 357, 363 (1978)(To punish a person because he has done what the law plainly allows him to do is a due process violation "of the most basic sort"); United States v. Goodwin, 457 U.S. 368, 373 (1982)(In certain cases in which action detrimental to the defendant has taken place "after" the exercise of a legal right, the court has found it necessary to "presume" an improper vindictive motive). In Goodwin, the court found that when an action detrimental to a defendant has taken place "after" the exercise of a legal right, the presumption of an improper vindictive motive is presumed if there is a "reasonable likelihood of vindictiveness". Id. at 373-74. The court went on to quote Pearce, that whenever a judge imposes a more severe sentence upon a defendant,...the reasons for doing so must be based upon objective information concerning identifiable conduct on the part of the defendant and must be made part of the record. Id. at 726.

As judge Lumbard once said, "It is one thing to extend leniency to a defendant who is willing to cooperate with the government; it is quite another thing to administer additional

punishment to a defendant who by his silence has committed no additional offense". United States v. Ramos, 572 F.2d 360, 363 n.2 (1978); United States v. Cruz, 977 F.2d 732 (1992); United States v. Pellier, 57 F.3d 936 (1995).

In the case sub-judice, Applicant exercised his right to remain silent by not pleading guilty, exercised his right to redress of grievances by seeking a § 1983 relief for law enforcements search, seizure and retention of his lawfully owned property and exercised his right to a jury trial because he believed he was actually innocent of the crimes for which he had been indicted. Applicant had no felony criminal record but received a much harsher punishment than did his co-defendant who did have a long list of criminal convictions. Moreover, based upon the States arguments during the trial and on appeal, Mr. Justice lied when he testified and was therefore rewarded by a lenient sentence for his false testimony.

Since Applicants sentence only occurred "after" he exercised his rights as above stated, it can only be presumed that the sentence was a result of a vindictive motive, or a belief that Applicants federal action might be dismissed if the court gave Applicant a significant sentence. See: Heck, supra, because no legitimate sentencing consideration or rehabilitative purpose would apply to this case.

Here, there were no objective information that concerned identifiable conduct on the part of Applicant that might have warranted giving him a harsher sentence than his co-defendant who had a long criminal record. Under the facts of this case,

it must be presumed that there is a reasonable likelihood of vindictiveness because the harsher sentence occurred only "after" Applicant exercised his rights to remain silent, seek a jury trial, represent himself with stand-by counsel, and after having filed a federal civil suit seeking damages from law enforcement for seizing and retaining his property.

Since the record is silent as to any objective information that would justify a harsher punishment than his co-defendant received and since the harsher sentence and exercise of constitutional rights are immaterial to Applicants prospects for rehabilitation, it must be presumed that there is a reasonable likelihood of vindictiveness.

Finally, since Applicant could not have been convicted lawfully, of more than one offense under § 16-13-180(3) for the possession of multiple stolen items at a single time, any consecutive sentence which requires the service of more time than the maximum permitted on a single offense, is vindictive. United States v. Kaplan, 588 F.2d 71 (4th Cir. 1978)(Although one may be convicted for both possession and manufacturing of illegal firearms, court may not impose total sentence exceeding maximum penalty provided for one violation); Ball v. United States, 470 U.S. 856, 861 (1985)(a defendant may not be convicted of both "possession" and "receiving" the same handguns).

XI. APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL.

The Applicant represented himself at trial and attempted to represent himself on direct appeal. The Applicant submitted a pro se brief of issues for review containing some of the issues addressed herein. The court of appeals ruled that a criminal defendant has no right to represent himself on appeal, State v. Roberts, 614 S.E.2d 626 (2005), and returned Applicants brief without filing it.

The Applicant was appointed Celia Robinson,<sup>6</sup> Susan Hackett and Tristan Shaffer as appellate counsel. Applicant sent several letters to each of these attorneys asking them to 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 appellate counsels failures constitute a denial of effective assistance of appellate counsel. See: e.g. Southerland v. State, 524 S.E.2d 833 FN4 (1999)(the failure to amend or supplement brief to include additional issues prior to oral arguments constitutes ineffective assistance of counsel); and Ezell v. State, 548 S.E.2d 852 (2001)(the failure to include evidence in record on appeal constitutes ineffective assistance of appellate counsel).

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<sup>6</sup> Before Applicants appeal could be heard, Ms. Robinson left the Appellate Defense Office and went into private practice. Susan Hackett and Tristan Shaffer were then appointed to replace her.



It is well settled that to be entitled to relief based upon ineffective assistance of counsel, in a PCR action, the defendant must show that counsel "felled to render reasonably effective assistance under prevailing professional norms; and that the deficient performance prejudiced the defendants case". Custodio v. State, 644 S.E.2d 36 (2007). There is a strong presumption that counsel rendered adequate assistance, Morris v. State, 639 S.E.2d 53 (2006), and there can be no unreasonable assistance for failing to raise a claim which is not legally viable. Almon v. United States, 302 F.Supp.2d 575 (DSC 2004).

The right to effective assistance of counsel includes the right to assistance of appellate counsel. Anderson v. State, 581 S.E.2d 834 (2003); Evitts v. Lucey, 469 U.S. 387 (1985) (the due process clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on a first appeal, as of right). Although counsel need not press on appeal particular issues of the defendant's choosing, counsel must consult with the defendant to identify whether there are any meritorious issues to appeal. Frazer v. South Carolina, 430 F.3d 696 (CA 4 SC 2005). Moreover, counsel is not required to raise every colorable claim on appeal and cannot be found ineffective for failing to raise issues as to which there is no reasonable likelihood of success, Jones v. Catoe, 9 Fed. Appx. 245, cert. den. 534 U.S. 1047 (2001), or if counsel articulates a valid reason for employing a certain strategy. Gilchrist v. State, 565 S.E.2d 281 (2002).

However, counsel can be found ineffective if they fail to raise an issue that has a likelihood of success and cannot

articulate a valid reason for failing to do so. Frazer v. South Carolina, 430 F.3d 696 (2005)(imposition of consecutive rather than concurrent sentences is a non-frivolous issue for appeal and constitutes prejudice); Patrick v. State, 562 S.E.2d 609 (2002); Southerland, supra; and Ezell, supra.

In other words, for ineffective assistance of counsel claims, a defendant need only show that: (1) "appellate counsel has failed to raise a significant and obvious issue" (such failure is viewed as deficient performance), and (2) "the issue not raised may have resulted in reversal of the conviction, or an order for a new trial", and therefore the failure is prejudicial. Grey v. Green, 778 F.2d 350 (1985); See also: Griffin v. Aiken, 775 F.2d 1226, 1235-36 (4th Cir. 1985).

In fact, appellate counsel took such little interest in Applicants appeal, that they did not even object, complain, bring it to the courts attention or even notice, that the courts decision to uphold the conviction was based on an unrelated issue that Applicant did not even raise on appeal. The appellate court upheld the conviction because they claim Applicants appeal had no merit because the law prevents a defendant from being convicted of both receiving stolen goods and larceny of those same goods. And since Applicant was not convicted of both receiving stolen goods and larceny, the conviction should be upheld. Applicants claim was something completely different. Applicant contended that it was an element of the offense, that the State must prove that the goods were stolen by someone else, and since the States' evidence actually proved that Applicant

was the thief who stole the goods himself, he should have been granted his directed verdict motion. There can be no valid reason for failing to notice that the appellate court ~~was~~ not addressing the issue raised and preserved by Applicant.

Likewise, Applicants other issues had a likelihood of success and there was no valid reason for failing to amend or supplement the issues since they were requested to do so long before any oral argument were conducted. Ezell, supra.

Finally, because Applicant was deprived of effective assistance of appellate counsel, this court is authorized to grant relief in this PCR action for counsels' failure to raise those issues on direct appeal. Bozeman v. State, 414 S.E.2d 144 (1992) (hearing direct appeal issue because of counsels ineffectiveness) Drayton v. Evatt, 430 S.E.2d 517, 520, cert. den., 114 S.Ct. 607 (1993); Murray v. Carrier, 477 U.S. 478, 488 (1986).

XII. APPLICANTS FEDERAL EQUAL PROTECTION RIGHTS AND STATE CONSTITUTIONAL AND STATUTORY RIGHTS TO BE INDICTED BY A GRAND JURY WERE DENIED HIM BECAUSE THE SOLICITOR UTILIZED AN ILLEGAL GRAND JURY, OUTSIDE THE JURISDICTION OF THE COURT OF GENERAL SESSIONS, WHICH DEPRIVED THE TRIAL COURT OF SUBJECT MATTER JURISDICTION AND VOIDS THE INDICTMENT AND CONVICTION AND CONSTITUTES A CRIMINAL ACT OF FRAUD, PERJURY, CONSPIRACY AND AMOUNTS TO PROSECUTORIAL MISCONDUCT.

Applicant contends that the State knowingly employed the use of unlawful procedures for the return and publication of its true-billed indictments. That the State unlawfully impaneled its grand jury outside the jurisdiction of the Court of General Sessions, and then willfully caused false and misleading information to be printed in its indictment. Consequently, the unlawful and illegal acts committed by the State amount to a constitutional violation and lack of jurisdiction, which requires this court to find Mr. Tinsley's indictments null and invalidate all judicial proceedings resulting therefrom.<sup>1</sup>

"The jurisdiction of a court over subject matter of a proceeding is determined by the constitution, the laws of the State, and is fundamental". State v. Heyward, 564 S.E.2d 379 (2002)(citing

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The matter presented for review is not a challenge to the court's general grant of authority to hear and determine cases. That authority is rightfully granted by our constitution, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005), and will not be at issue here. Instead, Mr. Tinsley contends that the Court of General Sessions failed to comply with Statutory Law, which is jurisdictional in nature, and specifies the manner and means for a lawful return of a true-billed indictment.

Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989)(emphasis added)). Subject matter jurisdiction may NOT be waived even with consent of the parties, and may be raised at any time. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001).

And, "No indictment may be true billed by a Grand Jury when the circuit court lacks jurisdiction, since the grand jury's jurisdiction is coextensive with criminal jurisdiction of the court in which it is impaneled and for which it is to make inquiry..." State v. McClure, 277 S.C. 432, 289 S.E.2d 158 (1982); State v. Funderburk, 259 S.C. 256, 191 S.E.2d 520 (1972); and State v. Wheeler, 259 S.C. 571, 193 S.E.2d 515 (1972).

The question then arises whether S.C. Code, § 14-9-210<sup>2</sup> is jurisdictional in nature and whether it requires that all criminal indictments must be issued through a grand jury impaneled before the court of General Sessions, and whether the State's noncompliance with mandatory indictment procedures, and willful acts of perjury have rendered all judicial proceedings invalid and its indictments null. In other words, did the State deny Mr. Tinsley his Constitutional Rights to be indicted by a lawful grand jury,

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2

S.C. Code, § 14-9-210 provides in pertinent part that:

"The County Solicitor shall prepare and through the presiding judge of the Court of General Sessions submit to the grand jury while in attendance upon the Court of General Sessions, bills of indictments in all cases pending in the County Court in which the punishment may exceed a fine of one hundred dollars or imprisonment for thirty days, when such cases have not been previously acted on by the grand jury. The grand jury shall act thereon, and shall report its action to the presiding judge of the Court of General Sessions and said judge shall direct the Clerk of Court of General Sessions to report the same to the presiding judge of the County at it's next ensuing term..."

because the State utilized unlawful procedures to gain a true-bill indictment which deprived the court of subject matter jurisdiction.<sup>3</sup>

Mr. Tinsley contends that the Statutory terms contained in S.C.Code, § 14-9-210 are clear, unamiguous, and require the County Solicitor to prepare and submit bills of indictment through the presiding judge of the Court of General Sessions to a grand jury impaneled under the authority of the Court of General Sessions. NO EXCEPTIONS. State v. Parker, 344 S.C. 250, 543 S.E.2d 255 (2001)(a trial court acquires subject matter jurisdiction to hear a criminal case by way of a legally sufficient indictment or a valid waiver thereof).

3

Mr. Tinsley has a Federal and State Constitutional and Statutory Right to be indicted by a Grand Jury before standing trial. A Grand Jury serves the "dual function of determining if probable cause exists to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions." United States v. Sells Eng'g, Inc., 463 U.S. 418, 423 (1983). Although there is no Federal Constitutional Right that States institute prosecutions by means of an indictment returned by a grand jury, States that do employ grand juries must comply with the commands of the Fourteenth Amendment Equal Protection Clause in the operation of those juries. Rose v. Mitchell, 443 U.S. 545, 557 (1979); Curtis v. Warden of Green Haven, 463 F.2d 84 (1972); Duncan v. Louisiana, 391 U.S. 145 (1968)(State which has grand jury procedure must administer that system consonantly with the Federal Constitution). To provide a trial to some defendants based upon a lawfully obtained indictment, but not Mr. Tinsley, amounts to a denial of Equal Protection.

SEE Also: S.C. Const. Art. I § 11 (No person may be held to answer for a crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the County where the crime has been committed...); State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997)(more expansive rights may be afforded under State Constitutional provisions than those conferred by the federal constitution); Art. V, § 22 and S.C.Code, § 17-19-10 (No person shall be held to answer in any court for an alleged crime or offense, unless upon indictment by a grand jury except in specified instances); S.C.Code §§ 14-9-210 and 14-9-170. A criminal defendant has a State Constitutional Right to have the indictment issued by a legally constituted grand jury. State v. Williams, 263 S.C. 290, 210 S.E.2d 298, 301 (1974); State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999)(a court lacks subject matter jurisdiction to convict and sentence a defendant for an offense for which he was not indicted). Here, Mr. Tinsley was not indicted and a violation of these procedures constitutes a Federal Constitutional Equal Protection violation as well as a violation of the States Constitutional and Statutory Rights.

It is a cardinal rule of statutory construction that the primary purpose in interpreting statutes is to ascertain the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). When a Statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power and Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994). And words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statutes operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1998). Moreover, penal statutes must be construed strictly against the State and in favor of a defendant. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

Accordingly, Section 14-9-210, requires strict compliance with its provisions, and mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true billed indictment can take place. Without which, the trial court lacks **subject matter** jurisdiction resulting in Mr. Tinsley being denied his Constitutional and Statutory Rights to be indicted lawfully by a grand jury. State v. Johnston, supra, FN3.

In the case sub-judice, the face of the alleged indictments, numbers 08-GS-37-881 to 885 falsely claim that there was a true bill returned "at a Court of General Sessions" convened on May 27, 2008 and that "the Grand Jurors of Oconee County present upon their oath". (See: **App. pgs. 389-395**).

It is also signed by the Assistant Solicitor David R. Wagner, who, by his signature is in agreement with or otherwise confirms the facts as being truthful. The indictments go on to claim that they were published at a Court of General Sessions term on May 27, 2008. (See: Id.).

However, the evidence presented below and submitted as Exhibits, will conclusively establish that the State printed and published FALSE information in indictment numbers 08-GS-37-881 to 885.

The terms of the Court of General Sessions for Oconee County are fixed by State Statute and for which it does not offer provisions for a court to be open on May 27, 2008. Thus, the State could not have lawfully returned its indictment "at a Court of General Sessions, convened on May 27, 2008 as FALSELY alleged in its fraudulent indictments.

An additional piece of evidence very clearly settles the matter of the State's FALSE condition. A letter from the Oconee County Clerk of Court also establishes that no special term of the Court of General Sessions was convened on May 27, 2008. (See: **App. pg. 542).**

Moreover, a letter from the South Carolina Court Administration and their "Judicial Department Circuit Court Calander", (See: **App. pgs. 543-545)** proves beyond doubt that no Court of General Sessions was convened on May 27, 2008 in Oconee County as alleged in the fabricated indictments.

Therefore, recognizing the jurisdictional requirements set forth in § 14-9-210, mandating the only process allowed for impaneling a lawful grand jury, and considering the facts and evidence



presented above, it becomes apparent that Mr. Tinsley was indicted outside the jurisdiction of the Court of General Sessions and by a mode of procedure that the State had no lawful authority to adopt - resulting in depriving the court of subject matter jurisdiction and Mr. Tinsley's Rights to a lawful true bill indictment.

When a legislative enactment limits the manner in which something may be done, the enactment also evinces the intent that it shall not be done another way. Thus, since the court utilized an unlawful mode of procedure not allowed under § 14-9-210,<sup>4</sup> the State lacked the requisite jurisdiction<sup>5</sup> to complete a return of its true-billed indictments.

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4

Apparently what the Solicitor did was attempt to impanel a grand jury at a time when the court of general sessions was not authorized to be open, and without the oversight of a judge, took the jury members into a closed room and had them sign numerous indictments as true-billed without the presentment of any evidence or witnesses. The purpose of the grand jury is to determine if probable cause exists. If the Foreman acts as a rubber stamp and Solicitor presents no evidence for grand jury to consider, the entire process is unreliable. Clearly the grand jury could not have considered evidence and witness testimony or even the Solicitors explanation of the cases in such a short period of time. This is apparent by the fact that the grand jury was impaneled at 9:00 a.m. on May 27, 2008 and allegedly true-billed numerous indictments in just a few hours. This is physically impossible if any witnesses or evidence were properly presented. The Solicitors Fraud, Conspiracy, Perjury, and Misconduct is the reason solicitors have long bragged that they can indict a ham sandwich. They are violating every right a defendant possesses in order to gain these illegal indictments.

5

Section 14-9-210 is clearly a jurisdictional statute and sets forth mandatory procedures to be utilized by the State for a lawful return of a true-billed indictment. A substantial body of South Carolina law holds that a failure to comply with Statutory Law, jurisdictional in nature, deprives the court of subject matter jurisdiction. State v. Lee, 564 S.E.2d 372 (2002); State v. Brown, 570 S.E.2d 559 (2002); State v. Felder, 437 S.E.2d 43 (1993); State v. Richburg, 403 S.E.2d 315 (1991); State v. Loftin, 275 S.E.2d 575 (1981); State v. Grey, 281 S.E.2d 226 (1981) (failure to comply with statutory procedures deprived trial court of subject matter jurisdiction to revoke probation); State v. Brunson, 262 S.E.2d 44-45 (1980) (apparent waiver of statutory requirement did not confer jurisdiction upon the court); State v. Castleman, 64 S.E.2d 250 (1951), and many more.

Consequently, and in keeping with the mandatory provisions of § 14-9-210, the State has NO jurisdiction to issue a return of a true-billed indictment except during a time when the Court of General Sessions is lawfully convened to oversee the Grand Jury process. Any acts of the court taken outside those statutory restrictions would by necessity be null and void. In fact, our Supreme Court has already determined that NO indictment may be true billed by a grand jury when the court lacks jurisdiction. The grand jury must be impaneled under the jurisdiction of the Court of General Sessions before a lawful return of an indictment can take place. See: McClure, supra; Funderburk, supra; and Wheeler, supra.

Therefore, since no court of General Sessions was convened on May 27, 2008, the date the indictments were allegedly true-billed, the grand jury proceedings would therefore by necessity be held invalid, and its illegally issued indictment null, void and without binding legal effect, including any trial, conviction or sentence that rested upon those invalid indictments.

In other words, Mr. Tinsley was denied his rights under both the Federal Equal Protection Clause and the State Constitution and Statutes, not to be put on trial except upon a valid true-billed grand jury indictment. The lack thereof requires Mr. Tinsleys' immediate release.

#### AFFIRMATIVE DEFENSES

Next, Mr. Tinsley would like to address any possible defenses the State might raise against Mr. Tinsley's claim of a Constitutional and Statutory violation.

First, it should be noted that § 14-9-210 is not a local rule or statute but a general provision applicable to the courts in every County, and as shown, mandates that the grand jury must be impaneled under the jurisdiction of the Court of General Sessions before lawful return of a true-billed indictment can take place. Thus, § 14-9-210 is clearly a jurisdictional statute, and sets forth the only process allowed for a lawful return of indictments.

No local rule of court, administrative order, policy, or other procedure can take precedent over Statutory law, which is always controlling. See: S.C. Constitution, Art. §§ 1, 4 and State v. Cottingham, 224 S.C. 181, 77 S.E.2d 897 (1953)(statutes override rules of court if in conflict); Sate v. Duncan, 264 S.E.2d 421 (1980)(Circuit court rule promulgated by individual judicial circuit was unconstitutional and void). However, the issue of whether or not a local rule, order, policy or procedure was utilized for process and return of indictments number 08-GS-37-881 to 885 is irrelevant, because by State law, it would still have to be in agreement with the provisions of § 14-9-210 for it to be constitutional.<sup>6</sup>

S.C. Code, § 14-5-310, rules of court, states that "The circuit courts may make and establish all necessary rules for the orderly conducting of buisness in said courts, provided such rules are not repugnant to the laws of the State or the rules prescribed by the

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<sup>6</sup>

Article V, § 4 of our Constitution provides in pertinent part:

"The Supreme Court shall make rules governing the Administration of all courts of this State, subject to the Statutory Law the Supreme Court shall make rules governing the practice and procedures in all such courts". (emphasis added).

justices of the Supreme Court and Circuit judges". (Emphasis added). Thus, under those requirements, no rules can be made or established for process and return of indictments, unless it comports with § 14-9-210. Otherwise, it would be unconstitutional and null, being without legal effect.<sup>7</sup>

Finally, Mr. Tinsley would show that he cannot be penalized by the failure to object to the illegal grand jury and void indictments, because the procedural default, if any, is a direct result of the State's act of perjury and criminal conspiracy, (which will be shown later), and that the United States Constitutional law requires the default be imputed against the responsible party, the State of South Carolina.

S.C. Code, § 17-1-10 provides that, "A criminal action is prosecuted by the State as a party, against a person charged with a public offense, for the punishment thereof". Thus, all criminal violations of § 16-9-10, perjury, and § 16-17-410, conspiracy, must by necessity be imputed against both the individuals actually responsible and the State of South Carolina. Consequently, South Carolina is a party to criminal acts.

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7

The court of common pleas is vested with no authority to take any action on matters pertaining to a return of a true-bill criminal indictment. "The Court is made up of the court of common pleas which hears civil actions and the court of general sessions which hears criminal cases". See: Dove v. Gold Kist Inc., 442 S.E.2d 598, 600 (1994); also: S.C. Const., Art. v, § 1. Thus, there is no grant of concurrent jurisdiction, and no true bill criminal indictments can be lawfully issued through grand jury proceedings held before a court of common pleas. It is also no defense that a circuit court judge acted on his own standing to conduct and oversee grand jury proceedings outside the bounds of a lawfully convened court of general sessions. A judge has no authority to do so. "Under our judicial system the presiding judge in the circuit court loses jurisdiction with the adjournment of the team". State v. Best, 186 S.E.2d 272 (1972); State v. Thompson, 115 S.E. 326 ( ); and State v. Rinheart, 430 S.E.2d 536 (1993).

The record in this case has clearly established that Mr. Tinsley was indicted by way of a grand jury process, which the Court of General Sessions had no lawful authority to adopt. And in order to keep secret the fact of the illegal grand jury, the Assistant Solicitor, David R. Wagner willfully printed false information in Mr. Tinsley's alleged indictments and then joined into a criminal conspiracy with the grand jury foreman and other State judicial officials, including the clerk of court, and trial judge, to make effective a null indictment. Consequently, these criminal acts of the State resulted in violating Mr. Tinsley's Constitutional and Statutory Rights, and were the direct and proximate cause of Mr. Tinsley's failure to object to the illegal grand jury and null indictments.

Mr. Tinsley recognizes that the court in Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005), held that "challenges to the legality and sufficiency of the process of a County grand jury must be made before the jury renders a verdict in order to preserve the error for direct appellate review".

Mr. Tinsley contends that Evans does not act as a bar to raising this issue in a PCR for two reasons. First, Evans, simply means that no issue can be raised in direct review unless it was preserved in the trial court by entering an objection. There can be no proper appellate review of an issue unless the trial judge was given the opportunity to correct the error. State v. Hoffman, 440 S.E.2d 869 (1994); S.C.R.Crim.P., rule 17; State v. Thomason, 584 S.E.2d 143 (2003). It does not stand for the proposition that subject matter jurisdiction arguments are waived if not objected to prior

to the jury rendering a verdict, nor, does it stand for the proposition that subject matter jurisdiction issues cannot be raised in a collateral attack. Even, Evans recognized that subject matter jurisdiction issues can be raised at any time, including, collaterally.

Secondly, Evans simply suggests that subject matter jurisdiction arguments should be raised on direct appeal if they were properly preserved. In other words, if the issue was preserved by an objection prior to the entry of the verdict, and if direct appeal is still available to a defendant, he must raise the issue on direct appeal instead of skipping direct appeal and raising the issue collaterally. Ashley v. State, 196 S.E.2d 501(1973)(Applicant is prevented from raising in PCR any claim that could have been raised on direct appeal).

However, if no objection was made to preserve the issue for direct appeal, or if the time for filing a direct appeal has already expired before the discovery of the subject matter jurisdiction argument, direct appeal would not be available to a defendant and a PCR would be appropriate. Otherwise, the issue could not be raised at any time.

In the case sub-judice, no objection was raised to the courts lack of subject matter jurisdiction because it was unknown to Mr. Tinsley at the time of trial due to the State's fraud, perjury, conspiracy and deceit designed to keep this fact hidden. Moreover, this fact was only recently discovered, long after the time for filing a direct appeal had expired. Thus, a direct appeal would not be available to Mr. Tinsley today and the issue could not have

been raised on direct appeal immediately following the conviction. Since Mr. Tinsley is free to raise this issue at any time, he maintains it may be raised in this action. Slack v. State, 429 S.E.2d 801, 802 (1993)(trial court lacked jurisdiction to accept plea because defendant had not been indicted nor waived indictment and issue is proper for PCR review).

Moreover, unlike Evans, Mr. Tinsley is not raising an irregularity of an indictment or some disqualification to an otherwise lawful act, but his claim goes to the existence of the grand jury as a body, that it is void as such, and that the court was without jurisdiction, rendering the indictment and convictions a nullity. In other words, Mr. Tinsley is not simply challenging an act that could be "voidable", he is maintaining that the entire process is "void".<sup>8</sup>

Mr. Tinsley realizes that "Circuit Courts obviously have subject matter jurisdiction to try criminal matters", Gentry, supra, at 499,

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The Federal Courts have come to the same conclusions, finding that a Grand Juries actions taken outside the scope of its standing and statutory authority deprives the court of subject matter jurisdiction. United States v. Macklin, 523 F.2d 193, 195 (1975)(finding grand juries true bill of indictment after their 18 month term had expired deprived them of subject matter jurisdiction). The Federal courts have found that "a grand jury is a creature of statute", In re Mills, 135 U.S. 263, 267 (1890) and that there can be no such thing as a de facto grand jury. United States v. McKay, 45 F.Supp. 1007, 1015 (1942).

The failure to follow statutes governing grand juries is not a "mere defect in the institution of the prosecution", but amounts to a "lack of jurisdiction". United States v. Fein, 504 F.2d 1170 (1974); Macklin, supra, at 195. In Macklin, at FN2, the court went to great lengths to explain the differences between circumstances where the court is deprived of subject matter jurisdiction and cases such as Evans v. State, 611 S.E.2d 510 (2005), where a defendant challenges a defect which affects only a member of a body otherwise lawful or an irregularity that does not deprive the court of subject matter jurisdiction. Here, we are dealing with a statutory requirement that deprives the court of subject matter jurisdiction automatically.

provided however, that the court has obtained a lawful indictment. Lollis v. Manning, 242 S.C. 316, 130 S.E.2d 847 (1963). "A trial court acquires subject matter jurisdiction to hear a criminal case by way of a legally sufficient indictment or a valid waiver thereof." State v. Parker, 344 S.C. 250, 543 S.E.2d 255 (2001). Therefore, obtaining subject matter jurisdiction demands much more than simply handling criminal charges. Brunson, supra, (failure to comply with statutory law, jurisdictional in nature, deprives court of subject matter jurisdiction).

Mr. Tinsley, therefore contends that the acts complained of herein, constitute a Federal and State Constitutional and Statutory violation which are appropriately brought in a PCR. Finlea v. State, 255 S.E.2d 447-48 (1979). The PCR Act recognizes almost any abridgment of a State created right. See: S.C. Code, § 17-27-20(a)(1), including a claim that: (1) the conviction and sentence was in violation of the Constitution of the United States or the Constitution or laws of this State; Singleton v. State, 437 S.E.2d 53, 58, 61 (1993)(execution of prisoner not presently competent violates Federal Constitution and forcibly medicating prisoner in an effort to restore competency violates State Constitution); and (2) the court was without jurisdiction to impose sentence, Slack, supra, at 802. Here, the court lacked jurisdiction because Mr. Tinsley had not been indicted. The State presented what appeared to be an indictment, but was a worthless piece of paper because it was not obtained by following the proper State Constitutional and Statutory requirements.



Even if this court were to find that an objection must be made before the verdict is rendered, Mr. Tinsley contends that he must be excused from the procedural default under Murry v. Carrier, 106 S.Ct. 2639, 2645 (1986). There the United States Supreme Court held that the existence of a cause for a procedural default [for failure to comply with the State's contemporaneous objection rule], must ordinarily turn on whether the prisoner can show that some objective factor external to the defense impeded his efforts to comply with the State procedural rule. The court stated, "without attempting an exhaustive catalog of such objective impediments to compliance with a procedural rule, we note that a showing that the factual or legal basis for a claim was not reasonably available to the defense, or that some interference by officials made compliance impracticable, would constitute cause under this standard". Id. at 2645 (Citations omitted). See also: Amadeo v. Zant, 486 U.S. 214, 224-27 (1988)(excuse for default exists if interference by officials caused claim to be reasonably unknown. This lack of knowledge is shown because defense made no intentional decision to forego the claim); Strickler v. Greene, 527 U.S. 263 (1999)(if State officer led defendant to believe that a constitutional violation had not occurred cause is shown for why defendant did not object to the violation at trial). If a procedural rule requires defense to object to the error before the error was apparent or if the rule was applied in the case in a way that could not have been anticipated, there is no procedural default. United States ex. rel. Duncan v. O'Leary, 806 F.2d 1307, 1314 (1986)(Petitioner's default of not raising claim under State

law was invalid because claim was such that Petitioner could not have known about the claim and could not have been said to have waived it).

Here, the Solicitor willfully printed false information in Mr. Tinsley's indictments, and then joined into a criminal conspiracy to keep secret the illegal grand jury process. Mr. Tinsley acted reasonably in trusting that the Solicitor had obtained a lawful true bill indictment and is the reason an objection was not made at trial. Surely those acts by the State constitute an external factor sufficient to show cause for a failure to make an objection, assuming an objection is even necessary for challenging Federal and State constitutional violations.

Here, Mr. Tinsley only recently discovered this violation because he relied upon the regularity of grand jury proceedings and that they are presumed correct absent clear evidence to the contrary, State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (1991), and Mr. Tinsley was given no prior reason for doubting the trustworthiness of the Solicitor, Clerk of Court and trial Judge and thus never requested to review the impaneling documents and supporting materials.

Even had he requested them, as a pro se he would likely have been denied them because S.C. Code § 14-7-1720 prevents authorized personnel from disclosing information about the grand jury proceedings because they are secret. Evans, supra at 504. Because of this secrecy a clerk's decision to withhold impaneling documents have been upheld in a pre-conviction circumstance, but must be released for a post-conviction attack. Id.

In this case, the State utilized the presumption of correctness to assist in keeping its criminal acts secret and to make effective an unlawful taking of Mr. Tinsley's rights to make contemporaneous objections. The State used to its benefit, the fact that no one, especially a pro se defendant who is representing himself, would be checking into its grand jury process which is secret.

Therefore, in light of Murry, and taking into consideration the State's criminal acts, the responsibility for Mr. Tinsley's failure to make an objection to the illegal grand jury and null indictment, if one is even necessary in a PCR challenging constitutional issues, must be imputed to the State. It should be noted also that a waiver of a constitutional and statutory right requires a showing on the record that the defendant made the waiver knowingly and intelligently, State v. Arthur, 296 S.C. 495, 374 S.E.2d 291 (1988) (citing Patton v. United States, 281 U.S. 276 (1930)), which is absent in this case because the issue was hidden from Mr. Tinsley.

This same standard should apply here, because under no circumstance can a silent record be construed to effect a forfeiture of the Constitutional Right to a true bill indictment, jurisdiction,<sup>9</sup> or the ability to make objections which were impeded by the States criminal acts designed to keep their behavior secret. See: Zant, supra, at 224-27.

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S.C. Code, § 17-25-10 provides that:

"No person shall be punished for an offense unless duly and legally convicted thereof, in a court having competent jurisdiction of the cause and of the person".

South Carolina law holds that words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction. Sate v. Muldrow, 559 S.E.2d 847 (2003). And statutory prescriptions couched in language such as "shall" and "must" are mandatory in application and effect. Starnes v. SC Dept. of Public Safety, 535 S.E.2d 655, 667 (2000). A plain reading of § 17-25-10 requires that a criminal defendant cannot be sentenced for an offense until after the State has duly and legally convicted the individual. That did not happen in this case.

Simply put, the State knowingly violated the provisions of § 14-9-210 by (1) unlawfully impaneling its grand jury outside the jurisdiction of the Court of General Sessions; (2) utilizing an unlawful process for the return of true bill, and (3) causing false information to be printed and published in Mr. Tinsley's indictments. Consequently, the grand jury was illegal and its indictments null. Without lawful authority to incarcerate, the Solicitor, Clerk of Court and trial Judge have acted in concert with SCDC to kidnap and imprison Mr. Tinsley without lawful judicial process for over eight (8) years.

It would be hard to imagine a situation where the State of South Carolina has violated more of a criminal defendant's rights, than in the case found here. Indeed, it would take a novel rule of law, which would allow the State to maintain a conviction and sentence under the circumstances described herein. To adopt such a rule of law here would be tantamount to an unrighteous, perverted judgement and an abomination.<sup>10</sup>

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See: Deuteronomy 25:16 (For all that do such things, and all that do unrighteously, are an abomination unto the Lord thy God).

"Tampering with the administration of Justice in the manner undisputedly shown here involves far more than injury to a single litigant. It is a wrong against the institution set up to protect and safeguard the public institution in which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud". Hazel-Atlas Glass Co. v. Hartford Empire Co., 322 U.S. 238 (1944).

Accordingly, fraud on the court is misconduct by an officer of the court that is directed at the judicial machinery itself. Fraud on the court is very evident here and requires an immediate reversal of the sentence and conviction and Mr. Tinsley's immediate release.

#### CRIMINAL CHARGES

Furthermore, SLED, the Department of Justice or one of the Courts of this State should initiate an investigation into this misconduct and criminal violations of law.

S.C. Code, § 16-9-10, "PERJURY AND SUBORNATION OF PERJURY", states in pertinent part:

A(2). It is unlawful for a person to willfully give false, misleading, or incomplete information on a document, record, or form required by the law of this State.

B(2). A person who violates the provisions of subsection A(2) is guilty of a misdemeanor, and upon conviction, must be imprisoned not more than six months, or fined not less than one hundred dollars, or both.

C. A person may be convicted under this section...if he commits perjury by his **own act, consent or agreement.**

First, § 14-9-210, mandates that the County Solicitor shall prepare and process bills of indictment through the jurisdiction of the Court of General Sessions. Also, it is a fact that Mr. Tinsley's indictments were allegedly true billed, and **consented** to or overseen by Assistant Solicitor David R. Wagner, who's name appears thereon as showing his **agreement** that the Court of General Sessions convened on May 27, 2008, even though the evidence clearly

shows this to be a lie and fraud upon the court because no Court of General Sessions was convened on that date.

Second, a criminal indictment is a document required by the law in this State. State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (determining that it is required by State Constitution and Statutes); S.C. Const. Art. I, § 11 and Art. V, § 22, and S.C. Code, §17-19-10 (2003).

Thus, the allegedly true billed indictment 08-GS-37-881 to 885 satisfies the provisions of Section 16-9-10 (A)(2) and (C), perjury, that specify the false information must be included in a "document...required by State law" which was signed "by his own act or shows his consent or agreement" with the information.

Third, and importantly, it must be emphasized for purposes of blame that the Solicitor holds full knowledge and understanding of the laws of this State. It is a requirement of the high office of a prosecutor. The prosecutor occupies a quasi-judicial position, and must see that justice is done, that no conviction takes place except in strict conformity with the law. See: State v. Quattlebaum, 527 S.E.2d 105 (2000); State v. Durden, 212 S.E.2d 587 (1975); State v. King, 71 S.E.2d 793 (1952). Hence, the Solicitor is required to know and obey the legal mandates of § 14-9-210 and lawfully impanel a grand jury accordingly.

Instead of discharging his responsibilities in conformity with State law, the Solicitor broke his oath of office. The Solicitor intentionally violated the provisions of § 14-9-210 by unlawfully processing the challenged indictments, outside the jurisdiction of the Court of General Sessions, and then by willfully printing false

and misleading information in the indictment incorrectly stating that it had been returned at a May 27, 2008 term of General Sessions Court. Thus, he committed the offense of perjury and must be punished accordingly.

Next, S.C. Code, § 16-17-410 "CONSPIRACY" provides in pertinent part that: "The common law crime of conspiracy is defined as a combination between two or more persons for the purpose of accomplishing an unlawful object, or lawful object by unlawful means.<sup>11</sup> A person who commits the crime of conspiracy is guilty of a felony and upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

In this case, the actual type of unlawful process utilized by the State to complete the return of the allegedly true bill indictment is not important or determinative of the criminal conspiracy issue. What is determinative is the fact that the grand jury proceedings were held outside the jurisdiction of the Court of General Sessions for an illegal return of a true bill, and that Solicitor David R. Wagner committed an offense of perjury in order to keep secret the unlawful process. That overt act of perjury, along with the cooperation provided by the other parties to make complete and secret the illegal process, amounts to criminal cons-

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See: State v. Buckman, 347 S.C. 316, 555 S.E.2d 402 (2001). The gravamen of conspiracy is the agreement or mutual understanding. State v. Hammitt, 341 S.C. 638, 535 S.E.2d 459 (2000); State v. Dasher, 298 S.E.2d 215, 217 (1986)(citing 16 Am. Jur. 2d, Conspiracy § 11 (1979)). Conspiracy does not require an overt act. State v. Ferguson, 221 S.C. 300, 70 S.E.2d 355 (1952).

piracy. It would have been impossible for the Solicitor to fully complete the return of a true bill indictment and proceed to a conviction on his own. Cooperation from the below listed judicial officials would have been necessary.

First, the Solicitor, David R. Wagner is a central figure in the criminal conspiracy because he committed perjury and fraud by willfully printing the false information or by consenting and agreeing to its publication.

Second, the grand jury foreman was the individual responsible for signing the true bill and dating it. By signing the false and incorrect true bill, the grand jury foreman by his own actions, committed an offense of perjury and fraud as well as assisted the others in the conspiracy.

Third. The Clerk of Court pursuant to § 14-9-210 reported the indictment with its false information to the presiding judge at the next term. Moreover, the indictment containing the false information was filed in the Court's public records.

Finally, the presiding judge J.C. Nicholson, at the July 29-31, 2008 term of General Sessions Court allowed the false and fraudulent indictment to be reported and published in his trial court. Judge Nicholson allowed the illegal indictment to enter into the official court record unchallenged even though he would have known that NO County grand jury was impaneled under the jurisdiction of the Court of General Sessions on that date. Also, it should be noted that the Code of Judicial Conduct, Cannon 2 (A), requires a judge in this State to comply with the law and promote public confidence in the integrity of the judiciary.



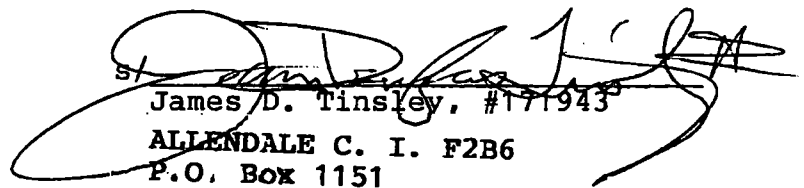
Again, unless the Solicitor is willing to admit that acting alone, he knowingly and completely forged the indictments, the existence of a criminal conspiracy is established. Because, barring the existence of an outright forged indictment, it would have taken the combined effort of the above listed judicial officials all working in concert to establish scheduling, to order and impanel the grand jury during a time when no Court of General Sessions was convened, to meet and execute the return of the illegal indictments, to then file the illegal indictments into the court records and conduct a criminal trial resulting in Mr. Tinsley's illegal conviction and sentence.

For the reasons shown herein, Mr. Tinsley moves that this Court initiate an official investigation into the misconduct and criminal violations of law, or, in the alternative, vacate the illegal conviction and sentence and order Mr. Tinsley's immediate release.

WHEREFORE, Premises considered, Applicant prays that this Honorable Court grant this Motion for Summary Judgment in Applicants favor, as a matter of law, and remand this case for a new trial, or otherwise enter an order to conduct an evidentiary hearing.

Respectfully submitted,

March 23, 2015

  
 James D. 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 summary judgment and the attached appendix, to be served upon opposing counsel of record this 30<sup>th</sup> day of March, 2015, by placing a true and correct copy in the United States 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

  
 James Douglas Tinsley, Sr.

STATE OF SOUTH CAROLINA )

COUNTY OF OCONEE ) In the COURT OF COMMON Pleas

James Tinsley, #171943, ) CASE NO: 2014-CP-37-0737

Applicant, )

- VS - )

STATE OF SOUTH CAROLINA, ) AFFIDAVIT OF JAMES  
Respondent, ) Tinsley, #171943

---

 )

Comes Now, James Tinsley, #171943, affiant, being competent to testify and having first hand knowledge of the Facts contained herein, states under the penalties of perjury:

1. AFFIANT states that originally he was represented by Cecilia Robinson on direct appeal and that she and affiant discussed whether or not the issues would be raised on direct appeal.
2. AFFIANT STATES that Ms. Robinson told affiant that she liked all of the issues and intended to raise them all on direct appeal.

3. AFFIANT STATES that on the day the BRIEF on appeal was due, affiants Father Doug Tinsley contacted Ms. Robinson to find out why the BRIEF did not contain all of the issues previously agreed too.
4. Ms. Robinson told AFFIANTS Father that she had been in the Hospital having brain surgery and had failed to put AFFIANTS case on her calendar. She stated that the morning the BRIEF was due, the clerk of COURT OF Appeals contacted her wanting to know where the BRIEF was that was due. It was at that time Ms. Robinson realized she had failed to prepare affiants brief. She quickly wrote up the single issue in order to get it Filed by the end of the day.
5. AFFIANT STATES that Ms. Robinson later left the appellate Defense Office and affiant was appointed Tristan Shaffer to take over the case. AFFIANT wrote him asking him to amend the BRIEF and add the missing issues since it was an accident and oversight on Ms. Robinson's part that they were left out.

6. MR. Shaffer informed affiant that he was not going to amend the issues but was going to leave the issue the way Ms. Robinson had decided to submit the brief.

7. AFFIANT STATES that the decision to submit the single issue was not a strategic strategy. It was the result of Ms. Robinson's oversight and case load at a time when she was dealing with health issues and the result of laziness on the part of MR. Shaffer after taking over the case. The record cannot support any legitimate strategic claim in failing to raise issues that would have been clearly more likely to result in reversal.

FURTHER AFFIANT SAYETH NOT.

UNDER THE PENALTIES OF PERJURY.

March 20, 2015

s/ Sandra Douglas Tinsley  
James Tinsley, #171943

Allendale Correctional Inst. F2B6

P.O. Box 1151

Fairfax, S.C. 29827

STATE OF SOUTH CAROLINA )

) IN the COURT OF COMMON PLEAS

COUNTY OF OCONEE )

James Douglas Tinsley, Sr ) CASE NO: 2014-CP-37-0737

Applicant )

vs- )

) AFFIDAVIT OF James

STATE OF SOUTH CAROLINA ) Douglas Tinsley, Sr.

Respondent )

Comes now, James Douglas Tinsley, Sr, affiant, being competent to testify and having first hand knowledge of the facts contained herein, states under the penalties of perjury:

1. Affiant states that I am the father of James Tinsley and that I have been involved in his appeal in this case since its beginning.

2. Affiant states that I did speak to Cecilia Robinson, Appellate Defense Attorney, originally assigned to this case, on at least six separate occasions.

3. Affiant states that he did discuss with Cecilia Robinson numerous issues which she would be raising

on direct appeal.

4. Affiant states that Cecilia Robinson did tell me that she would be briefing the court on all of the issues which James Tinsley had brought to her attention. She further stated, "All of these issues are good and you never know which one the court will agree with you on, so I intend to brief the court on all of them."

5. Affiant states that in one of the later phone conversations with Cecilia Robinson she told me she was suffering from a serious illness and was going to be hospitalized.

6. Affiant states that weeks later as the deadline for filing the brief drew near I did speak with Cecilia Robinson again. I was told by Ms. Robinson that she was recovering from brain surgery and that she was only working part time while recuperating.

7. Affiant further states that Ms. Robinson did assure him that she was aware of the due date for the brief and that she would prepare and file it as we had previously discussed.

8. Affiant later learned that Ms. Robinson claimed to

have forgotten to prepare and file the brief as promised only realizing her mistake when contacted by the Clerk of the Court of Appeals on the day the brief was due.

9. Affiant states that as a result of Ms. Robinson's mistake she hurriedly filed the brief citing only a single issue in order to meet the deadline.

10. Affiant tried to contact Cecilia Robinson concerning the omission of the other issues previously agreed upon to be included in the brief. It was at that time Affiant learned that Ms. Robinson had left the office of Appellate Defense.

11. Affiant states that he learned from his son, James Tinsley, that Tristan Shaffer at Appellate Defense had taken over the case from Ms. Robinson and that he, James, had written Tristan Shaffer asking him to amend the brief to include the missing issues, but had gotten no response.

12. Affiant states that he did then call Tristan Shaffer and did ask him if he had received the letter from James to which Mr. Shaffer replied, "Yes, I have." Affiant then asked Mr. Shaffer if he were going to amend the brief and include the missing issues.



13. Affiant states that Mr. Shaffer did answer me, 'No. I am not going to ammend it. I'm going to leave it the way Ms. Robinson filed it.'

14. Affiant states that I did try to convince Mr. Shaffer to amend the brief to include the missing issues as had been agreed upon with Cecilia Robinson in the beginning, but he would not

15. Affiant states that at no time was a strategic decision made to submit a single issue. To the contrary, Affiant states that the strategic strategy was always to submit all issues as agreed upon by James Tinsley and Cecilia Robinson.

16. Affiant states that upon information and belief that the proximate cause for the ommission of these critical issues was the serious illness which was having an adverse effect on Cecilia Robinson's brain.

Further Affiant sayeth not,  
under the penalties of perjury.

March 30, 2015

~~James Douglas Tinsley Sr.~~  
James Douglas Tinsley, Jr.  
1004 South Welcome Rd.  
Greenville, S.C. 29611

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE )

In The Court of Common Pleas

JAMES TINSLEY, #171943, )  
Applicant, )

Case No: **2014-CP-37-737**

-vs- )

State of South Carolina, )  
Respondent. )

**APPENDIX IN SUPPORT OF APPLICANT'S  
MOTION FOR SUMMARY JUDGMENT**

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT  
2015 MAR 30 P 3:37

OFFICE OF ATTORNEY GENERAL  
Walt Whitmire  
Assistant Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

JAMES D. TINSLEY, !!  
#171943  
ALLENDALE CORRECTIONAL INST  
B2B6  
P.O. Box 1151  
Fairfax, S.C. 29827

ENTERED  
COMPUTER

*copy sent to Tana*

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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