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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenwood County

Honorable J. Mark Hayes, Circuit Court Judge

JOVAN MITCHELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001004

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA ,)
)
PLAINTIFF,)
)
-VS-)
)
JOVAN ALEXANDER MITCHELL)
)
DEFENDANT.)
_____)

2013-GS-24-1568

TRANSCRIPT OF RECORD

 ORIGINAL

OCTOBER 1-2, 2013
GREENWOOD, SOUTH CAROLINA

BEFORE:

THE HONORABLE DONALD B. HOCKER, JUDGE, AND A JURY

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

SHANNON S. ODOM, ASSISTANT SOLICITOR
CAM MORROW, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

CARSON HENDERSON, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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1 DAY 1: 09/30/13

2 THE COURT: Mr. Mitchell, would you please stand, sir?

3 (Defendant complies)

4 THE COURT: That Jovan Alexander Mitchell, in Greenwood
5 County between the period of time of March 20 and March 24,
6 2010 did feloniously take and carry away the personal goods
7 of Stan Gaines, value of more than \$10,000, described as
8 follows. A quantity of metal. Done so with the intent to
9 deprive the owner permanently of such goods. All in
10 violation of the laws in this state. You can have a seat,
11 Mr. Mitchell. Thank you very much, sir. Now, that's just
12 a very basic description of what this case is about. I
13 know nothing more than what you know because I've just told
14 you all I know. Let me ask you some questions to make sure
15 that you would be qualified to serve on this particular
16 trial jury.

17 Is anyone on the jury panel related by blood or
18 marriage to either the defendant, Jovan Alexander Mitchell,
19 or Stan Gaines?

20 (No response)

21 Has anyone ever had a close personal or social
22 relationship with either Jovan Alexander Mitchell or Stan
23 Gaines?

24 (No response)

25 Next, I'm going to publish to you a list of potential

1 witnesses in this case. It does not mean that they will
2 necessarily testify in this trial, but they may do so. So
3 the potential witnesses in this case are the following:
4 Matt Blackwell, Robbie Byrd, Jeff Crisp, Virginia Calvert,
5 Stan Gaines, Chris Morgan, Nick Futch, Steffanie C. Dorn,
6 and the first name of Mr. Nichols would be what?

7 MR. HENDERSON: Phillip. Phillip Steve.

8 THE COURT: Phillip Steve or Steve Phillip Nichols. Is
9 anyone related by blood or marriage to any of those I've
10 just listed as potential witnesses on this case?

11 MR. HENDERSON: Your Honor, I think several of those
12 witnesses are in the courtroom if you would like them to
13 stand.

14 THE COURT: Any witness that I've published the name if
15 you'll please stand just so the jury panel can see you.
16 Thank you, Mr. Henderson. I've already told you who the
17 attorneys are in this case from the Solicitor's Office as
18 well as Defense counsel. Has any member of the jury panel
19 ever been represented by any of the attorneys involved in
20 this case or any of their law firms?

21 (A potential juror raises her hand.)

22 Ma'am, if you'll please stand. Give us your jury
23 number again and your name.

24 POTENTIAL JUROR: 84, Melissa Leroy.

25 THE COURT: Yes.

1 POTENTIAL JUROR: Carson Henderson represented me.

2 THE COURT: He has represented you in the past?

3 POTENTIAL JUROR: Yes, sir. Well, Bob Merritt, under
4 him, did it. But he was the first one I talked to.

5 THE COURT: The fact that you talked with Mr. Henderson
6 and then ended up being represented by someone in Mr.
7 Henderson's office, Bob Merritt, would that prevent you
8 from being fair and impartial to both the State and the
9 defense in this case?

10 POTENTIAL JUROR: Yes.

11 THE COURT: Thank you, ma'am. Is anyone related by
12 blood or marriage or have any sort of close personal or
13 social relationship with any of the attorneys involved in
14 this case?

15 (No response)

16 THE COURT: Has any member of the jury panel formed or
17 expressed an opinion about any issue or matter involved in
18 this case? Again, all that you know is what I know and
19 that is based upon what the indictment indicates. But you
20 may have some other information or knowledge. Does that
21 question apply to any of you?

22 (No response)

23 THE COURT: Is any member of the jury panel aware of
24 any bias or prejudice towards either the State or the
25 defendant in this case?

1 (No response)

2 I don't think this applies, but I'm going to ask it
3 anyway. Is there any member of the jury panel that was a
4 member of the Grand Jury which issued the indictment in
5 this case?

6 (No response)

7 Is there any member of the jury panel who is the
8 member of or a contributor to any group which has as its
9 primary concern the promotion of law enforcement or
10 victim's rights. These groups would include, but are
11 certainly not limited to, groups such as MADD, SADD, or the
12 Citizens Against Violent Crime. If that applies to you,
13 please stand.

14 (No response)

15 Is there any member of the jury panel know of any
16 reason whatsoever why he or she should not serve as a juror
17 in this case, with particular emphasis being placed on your
18 ability to be fair and impartial to both the State and the
19 defendant?

20 (No response)

21 Are there any additional voir dire from the State or
22 any objections to the voir dire already conducted by the
23 court?

24 MR. MORROW: None from the State, Your Honor.

25 THE COURT: Same question to the defense.

1 MR. HENDERSON: None from the defense, Your Honor, and
2 no objections.

3 THE COURT: Thank you very much. You may proceed.
4 While the clerk is compiling the list, let me mention one
5 thing to you members of the jury panel. If your name is
6 called, you will be asked to come down to the front, stand
7 facing the State and the defense, and then they will
8 determine whether or not they wish to have you seated as a
9 member of the trial jury panel or excuse you.

10 If you are not selected, don't take offense to that.
11 There are just certain reasons for the Solicitor and for
12 the defense for the type of juror they feel like they would
13 like to have on their case. So don't take offense in any
14 way if you're not selected. We've got a five/ten split.

15 (Whereupon, a bench conference was held in the
16 presence of the jury panel but out of the hearing of the
17 jury panel.)

18 Let the record reflect that with consent of counsel
19 the indictment was actually amended by pen on the
20 indictment to show the date of March 20 as opposed to March
21 1. Does counsel need any additional time reviewing the
22 list?

23 MS. ODOM: No, sir.

24 MR. HENDERSON: No, sir, Your Honor.

25 THE COURT: Let's proceed with selection of a jury.

1 MADAME CLERK: This time when I call you'll come stand
2 right here and face the attorneys. Juror number 39, Mr.
3 Glenn D. Dubose.

4 (Whereupon, Glenn D. Dubose, a white male, comes
5 forward.)

6 MADAME CLERK: What say the State?

7 MR. MORROW: Please present Mr. Dubose for the trial of
8 this case.

9 MADAME CLERK: What say the defense?

10 MR. HENDERSON: Please swear the juror.

11 MADAME CLERK: Juror number 15, Marina H. Burke.

12 (Whereupon, Marina H. Burke, a white female, comes
13 forward.)

14 MADAME CLERK: What say the State?

15 MR. MORROW: Please excuse this juror.

16 MADAME CLERK: Juror number 8, David W. Bell.

17 (Whereupon, David W. Bell, a white male, comes
18 forward.)

19 MADAME CLERK: What say the State?

20 MR. MORROW: Please present Mr. Bell for the trial of
21 this case.

22 MADAME CLERK: What say the defense?

23 MR. HENDERSON: Please excuse this juror.

24 MADAME CLERK: Juror number 105, Callie D. Moses.

25 (Whereupon, Callie D. Moses, a black female, comes

1 forward.)

2 MADAME CLERK: What say the State?

3 MR. MORROW: Please present this juror.

4 MADAME CLERK: What say the defense?

5 MR. HENDERSON: Please swear the juror.

6 MADAME CLERK: Juror number 137, Patia L. Thomas.

7 (Whereupon, Patia L. Thomas, a black female, came
8 forward.)

9 MADAME CLERK: What say the State?

10 MR. MORROW: Please present the juror for the trial of
11 this case.

12 MADAME CLERK: What say the defense?

13 MR. HENDERSON: Please swear the juror.

14 MADAME CLERK: Juror number 84, Melissa L. Leroy.

15 (Whereupon, Melissa Leroy, a white female, came
16 forward.)

17 MADAME CLERK: What say the State?

18 MR. MORROW: Please excuse this juror.

19 MADAME CLERK: Juror number 61, Brandy N. Adams. She's
20 Harvley on your sheet. We haven't fixed her name yet.

21 (Whereupon, Brandy Adams, a white female, came
22 forward.)

23 MADAME CLERK: What say the State?

24 MR. MORROW: Please present Ms. Harvley.

25 MADAME CLERK: What say the defense?

1 MR. HENDERSON: Please excuse this juror.

2 MADAME CLERK: Juror number 34, Samuel J. Deery.

3 (Whereupon, Samuel J. Deery, a white male, came
4 forward.)

5 MADAME CLERK: What say the State?

6 MR. MORROW: Please present this juror.

7 MADAME CLERK: What say the defense?

8 MR. HENDERSON: Please swear the juror.

9 MADAME CLERK: Juror number 116, Jonathan F. Rexrode.

10 (Whereupon, Jonathan Rexrode, a white male, came
11 forward.)

12 MADAME CLERK: What say the State?

13 MR. MORROW: Please present this juror.

14 MADAME CLERK: What say the defense?

15 MR. HENDERSON: Please swear the juror.

16 MADAME CLERK: Juror number 10, Kendrecus Wardlaw.

17 (Whereupon, Kendrecus Wardlaw, a black male, came
18 forward.)

19 MS. ODOM: I'm sorry. What number was he?

20 MADAME CLERK: 142. Sorry.

21 MR. MORROW: Please present the juror for the trial of
22 this case.

23 MADAME CLERK: What say the defense?

24 MR. HENDERSON: Please swear the juror.

25 MADAME CLERK: Juror number 26, Michael A. Carwise.

1 (Whereupon, Michael Carwise, a black male, came
2 forward.)

3 MADAME CLERK: What say the State?

4 MR. MORROW: Please present this juror.

5 MADAME CLERK: What say the defense?

6 MR. HENDERSON: Please swear the juror.

7 MADAME CLERK: Juror number 60, Artemus O. Hart.

8 (Whereupon, Artemus Hart, a black male, came forward.)

9 MADAME CLERK: What say the State?

10 MR. MORROW: Please present this juror.

11 MADAME CLERK: What say the defense?

12 MR. HENDERSON: Please swear the juror.

13 MADAME CLERK: Juror 16, Grover Busby, Jr.

14 (Whereupon, Grover Busby, a black male, came forward.)

15 MADAME CLERK: What say the State?

16 MR. MORROW: Please excuse the juror from the trial of
17 this case.

18 MADAME CLERK: Juror number 6, Cullette T. Barr.

19 (Whereupon, Cullette Barr, a black female, came
20 forward.)

21 MADAME CLERK: What say the State?

22 MR. MORROW: Please present the juror for the trial of
23 this case.

24 MADAME CLERK: What say the defense?

25 MR. HENDERSON: Please swear the juror.

1 MADAME CLERK: Juror number 75, Jamere A. Jones.

2 (Whereupon, Jamere A. Jones, a black male, came
3 forward.)

4 MADAME CLERK: What say the State?

5 MR. MORROW: Please present the juror for the trial of
6 the case.

7 MADAME CLERK: What say the defense?

8 MR. HENDERSON: Please swear the juror.

9 MADAME CLERK: Juror number 17, Denise M. Bussey.

10 (Whereupon, Denise Bussey, a black female, came
11 forward.)

12 MADAME CLERK: What say the State?

13 MR. MORROW: Please present the juror for the trial of
14 the case.

15 MADAME CLERK: What say the defense?

16 MR. HENDERSON: Please swear the juror.

17 MADAME CLERK: Juror number 7, Tonnie E. Belcher.

18 (Whereupon, Tonnie Belcher, a black male, came
19 forward.)

20 MADAME CLERK: What say the State?

21 MR. MORROW: Please excuse the juror from the trial of
22 this case.

23 MADAME CLERK: Juror number 148, Larry O. Wightman.

24 (Whereupon, Larry Wightman, a white male, came
25 forward.)

1 MADAME CLERK: What say the State?

2 MR. MORROW: Please present this juror.

3 MADAME CLERK: What say the defense?

4 MR. HENDERSON: Please excuse this juror.

5 MADAME CLERK: Juror number 145, Tawanda G. White.

6 (Whereupon, Tawanda White, a black female, came
7 forward.)

8 MADAME CLERK: What say the State?

9 MR. MORROW: Please present this juror.

10 MADAME CLERK: What say the defense?

11 MR. HENDERSON: Please swear the juror.

12 THE COURT: We have twelve. We will have one
13 alternate.

14 MADAME CLERK: Juror number 48, Kimberly D. Goodman.

15 (Whereupon, Kimberly Goodman, a black female, came
16 forward.)

17 MADAME CLERK: What say the State?

18 MR. MORROW: Please present this juror.

19 MADAME CLERK: What say the defense?

20 MR. HENDERSON: Please swear the juror.

21 THE COURT: Ladies and gentlemen, what I'm going to do
22 at this time is ask the bailiff to take you to the jury
23 room, which is right here. A place that you'll call home
24 for a couple of days, as I understand the length of this
25 trial. Then we'll bring you out shortly. I need to deal

1 with the lawyers for just a minute and excuse the remaining
2 jury panel. At this time I'll ask that you go to your jury
3 room.

4 Let me mention just one other thing to you. You're
5 going to hear me say this a lot. It's very very important.
6 You cannot discuss anything about this case, even though
7 you know very little. You cannot discuss this case among
8 yourselves, and when you are released for the day, discuss
9 this case with any friend or family member. You cannot
10 begin your discussions until I tell you to, which will be
11 at the end of the case. Talk about other things. Get to
12 know each other. We'll bring you out shortly. Thank you.

13 (Whereupon, the jury exited the courtroom at 4:00 pm)

14 THE COURT: Any exceptions or objections to jury
15 selection from the State?

16 MR. MORROW: No, Your Honor.

17 THE COURT: From the defense?

18 MR. HENDERSON: No, sir, Your Honor.

19 THE COURT: Remaining members of the jury panel, you're
20 not off the hook yet. We may have another trial after we
21 finish this one. I don't know that. But you will need to
22 call after 6:00 this evening and you will receive
23 instructions on what to do. We may very well tell you
24 don't come back tomorrow but call tomorrow evening after
25 six. So just make that a priority on your schedule to call

1 after 6:00 to the call in number to receive your
2 instructions. It's very important that you do that. It's
3 very important that you come back when you're instructed
4 to. It's my understanding we've got some people who were
5 summoned to be on jury duty and have not come. They will
6 have to be dealt with. They probably will receive a visit
7 from a member of the sheriff's department sometime soon, so
8 it's extremely important to know what your instructions are
9 and to return when instructed. Apart from that I am going
10 to excuse you and I hope that you have a great afternoon
11 and a great evening.

12 (Whereupon, the remaining jury pool exited the
13 courtroom at 4:01 p.m.)

14 THE COURT: Is there anything that we need to take up
15 before we start the trial from the State?

16 MS. ODOM: Your Honor, the defendant did give a
17 statement, so I just need to know whether the defense is
18 going to request a Jackson v. Denno hearing. If they're
19 not I need to address that.

20 THE COURT: Mr. Henderson, what is your position on
21 that?

22 MR. HENDERSON: We haven't asked for one, Your Honor.

23 MS. ODOM: Your Honor, since the defendant hasn't asked
24 for one, to protect the record I feel like I need to ask
25 that they stipulate that the statement was given freely and

1 voluntarily and it was given after Miranda Warnings. I
2 just feel like not doing a Jackson v. Denno is setting the
3 case up for appeal, and to protect -- I'm sorry, Your
4 Honor. No Miranda was issued, but they did Dunaway. Since
5 there was a statement given, that's certainly something
6 we're going to address in our case in chief, that the
7 defendant gave a statement. We will be attempting to
8 introduce it into evidence, so I feel like a Jackson v.
9 Denno is necessary.

10 THE COURT: Let me think through this just a little
11 bit, then I'll hear from Mr. Henderson. Well, let me hear
12 from Mr. Henderson first and then I'll do some thinking
13 through.

14 MR. HENDERSON: Your Honor, we'll go ahead and consent
15 for that being State's Exhibit Number 1, my client's
16 statement.

17 THE COURT: I think what Solicitor Odom is wanting is
18 for there to be, if I understand her position correctly,
19 wanting a stipulation that apart from it being admissible
20 into evidence without objection a stipulation that it was
21 voluntarily made, which would be at the standard that I'd
22 have to make that determination if in fact a Jackson v.
23 Denno hearing was requested. Is that a correct statement?

24 MS. ODOM: Yes, sir, Your Honor.

25 MR. HENDERSON: Your Honor, we agree it was freely and

1 voluntarily made.

2 THE COURT: Then let's go ahead and state on the record
3 that it has been agreed by counsel that the statement made
4 on -- what day?

5 MR. HENDERSON: March 24, 2010, Your Honor. I assume
6 that will be State's Number 1. We'll go ahead and consent
7 to that.

8 THE COURT: Number 1, will be admitted into evidence as
9 a State's Exhibit, whatever number it may turn out to be.
10 And two, is stipulated and the jury will be so charged at
11 the appropriate time that the statement was given freely
12 and voluntarily pursuant to Jackson v. Denno. Is that
13 sufficient?

14 MS. ODOM: Yes, sir, Your Honor. Another matter for
15 housekeeping, I'm not sure if defense has any other
16 motions, but the State is limited on appeal on what we can
17 and cannot appeal once a jury is sworn. So I would ask
18 that if there's any motions that defense would have that we
19 cover those before the jury is sworn. To the extent they
20 can be.

21 THE COURT: I think if there's anything that Mr.
22 Henderson knows in advance or reasonably anticipates will
23 be at issue in the case then certainly I think he needs to
24 bring it up. If there are none, then certainly anything
25 that comes as -- I hate to use the word surprise. Not

1 anticipated, that we'll deal with it during the course of
2 the trial. Are you aware of anything that you reasonably
3 anticipate that would cause you some concern that you'll
4 need to deal with it at this time?

5 MR. HENDERSON: Nothing right now, Your Honor.

6 THE COURT: Now, let me ask you attorneys -- my watch
7 says about ten after four. Do you want to go ahead and do
8 a preliminary charge and opening and then recess for the
9 remainder of the day, or would it be your preference to not
10 do anything and leave work early?

11 MS. ODOM: Your Honor, it would be my preference to
12 just start fresh in the morning. Not do anything this
13 afternoon since we might be able to get through maybe 30 or
14 45 minutes worth of opening. I would just rather start
15 fresh in the morning.

16 THE COURT: I did not want to imply that you folks
17 would not be working after we finished up today. I was not
18 suggesting or implying that. Even though the judge may be
19 leaving the courthouse. Are you in agreement with that,
20 Mr. Henderson?

21 MR. HENDERSON: Your Honor, I agree, because if we do a
22 preliminary opening and opening statements folks are going
23 to be out of here tonight Googling, doing their own
24 research. I mean, I would rather start off tomorrow
25 morning. Truly I would.

1 THE COURT: Bring the jury out and we'll excuse them
2 for the evening. Swear and pick a foreperson in the
3 morning. I'd like to start at nine. Is that too early for
4 you folks?

5 MS. ODOM: I would like to start at nine as well.

6 THE COURT: Mr. Henderson?

7 MR. HENDERSON: That's fine, Your Honor. So long as I
8 can cut loose at the appropriate time to get my client
9 divorced.

10 THE COURT: I'll forget about that so you need to
11 remind me, okay?

12 MR. HENDERSON: I will.

13 THE COURT: Bring the jury out, please.

14 (Whereupon, the jury entered the courtroom at 4:11
15 p.m.)

16 THE COURT: Let the record reflect that the trial jury
17 is back in. I've got some good news for you. We're not
18 going to start this case until in the morning. I see some
19 relief on some faces. We are going to start back at 9:00
20 in the morning. So make sure -- the bailiff will instruct
21 you on where to come to when you get to the courthouse.
22 Again, I can't emphasize enough with you to be prompt when
23 you are instructed to be back. If you're late that creates
24 some issues for the court. I also remind you don't talk
25 about this case among yourselves or with any friends,

1 family members, anybody that you may come in contact with.
2 Don't think you can do any independent research by yourself
3 concerning this case. It is based solely on what is
4 presented in this courtroom. So with all that said I hope
5 you have a great afternoon and great evening. We'll start
6 back at 9:00 in the morning.

7 (Whereupon, the jury exited the courtroom for the day
8 at 4:12 p.m.)

9 THE COURT: Anything we need to take up on the record
10 before we recess for the evening?

11 MS. ODOM: No, sir.

12 MR. HENDERSON: No, sir, Your Honor.

13 THE COURT: Thank you very much. We'll recess and
14 start back at 9:00 in the morning.

15 DAY 2: 10/01/2013

16 THE COURT: Are we ready to get started? Anything we
17 need to take up on the record before we bring the jury out
18 from the State?

19 MS. ODOM: Your Honor, there's one thing that we're
20 going to try to get into with our first witness and I
21 thought it may be better to go ahead and address it now.
22 Mr. Morrow has some pictures that he had taken, or had our
23 investigator take, just a couple weeks ago, maybe even a
24 month ago or so. This crime happened three years ago, but
25 they took these pictures, you know, a month ago of the

1 crime scene, just the fence, the area surrounding
2 the property --

3 THE COURT: Hold that thought. Tell them to keep it
4 down just a little bit, please. Thank you, Jimmy.

5 MS. ODOM: And he's going to be presenting those to the
6 victim to say is this the property, is the fence that
7 surrounds it. And Mr. Henderson, I feel like -- we spoke
8 about this a few minutes ago. He's going to object because
9 the pictures don't necessarily reflect how it looked like
10 three years ago. But the State's position would be that
11 the victim can testify that that is the same fence, that's
12 how it looked like, that's what it looked like. And Mr.
13 Henderson would be able to cross-examine the witness as,
14 well, isn't this picture, you know, taken recently, not
15 three years ago. So it is something we're going to try to
16 get into evidence. And instead of the witness being out
17 here and the jury being out here and us kind of addressing
18 it like that, I wanted to go ahead and bring that to the
19 court's attention.

20 THE COURT: Okay. Mr. Henderson?

21 MR. HENDERSON: Your Honor, first of all, I don't
22 believe a picture taken three-and-a-half years later is not
23 relevant to how the scene looked on that date. The best
24 evidence seen looked on that day would be the pictures that
25 Detective Crisp should have taken that day, the other

1 detectives there that day because you can tell this
2 property has been cleaned up a lot in the last three-and-a-
3 half years. And, Your Honor, under rule 401 I don't think
4 it's relevant. And, if anything, it's not necessary to
5 substantiate any fact three-and-a-half years ago. Now,
6 obviously, Mr. Gaines was there that day. He can testify
7 as to what was going on that day. My client could testify
8 to what was going on that day. But taking a picture three-
9 and-a-half years later I don't think -- I think it would
10 confuse the issues. I mean, it could mislead the jury. I
11 mean, all of your 403 analysis. I just don't think it's
12 proper to get into all that because it would have an undue
13 tendency to suggest a decision on an improper basis, you
14 know, three-and-a-half years later.

15 THE COURT: Solicitor, again, the purpose for
16 wanting the picture into evidence is to show a fence? Is
17 that --

18 MS. ODOM: Yes, sir, Your Honor. The fence and get the
19 get idea -- I mean, -- excuse me. Give the jury an idea of
20 what this property looks like, because a lot of people if
21 they see it it's a lot easier to understand it than if
22 myself or Mr. Morrow or Mr. Henderson is talking about it.
23 And, Your Honor, Rule 401, as you know, states relevant
24 evidence means evidence having any tendency to make the
25 existence of any fact that is of consequence to the

1 determination of the action more probable or less probable
2 than it would be without the evidence. And a potential
3 issue that's going to come up during this trial is, you
4 know, if the property was abandoned, if it was clear that
5 it belonged to someone, and the state's position is if we
6 can give the jury a clear picture of how this fence looks,
7 that it is an upright fence, that it does have gates on it,
8 that, you know, the condition of the fence, that, you know,
9 that would be of consequence and, you know, is definitely
10 relevant. And the victim can testify as to what it looked
11 like then, what it looks like now.

12 THE COURT: You're witness is not going to try to claim
13 that the property as depicted in the picture is how the
14 property looked exactly three-and-a-half years ago? He's
15 not going to try to claim that, correct? You want to go
16 talk with your witness?

17 MS. ODOM: Yes, sir. If I could just have a minute.

18 MR. HENDERSON: That's what I'm scared of, Your Honor.

19 THE COURT: Well, that's what I want to try to find
20 out.

21 (Pause)

22 THE COURT: Okay, Solicitor, what's your witness going
23 to testify to?

24 MS. ODOM: Thank you, Your Honor. He's told me that
25 he's going to testify that the fence and the locks, that

1 they look pretty much exactly the same.

2 THE COURT: But as far as the other condition of the
3 property, he's going to readily admit that the property has
4 changed in appearance?

5 MS. ODOM: He's just told me that the grass looks
6 somewhat different because it was a different time of year,
7 but other than that that it looks -- it looks the same.
8 And the pictures, Judge, if you'd like to see them it's
9 just, you know, the fence and you can kind of see in the
10 background some metal. But the pictures are of the fence,
11 a gate, a sign that's covered up that says no trespassing.
12 So they're not really of the property but more of the fence
13 and the gate and a sign that surrounds the property.

14 THE COURT: Yeah, I believe it would go more towards
15 the weight of the evidence as opposed to the admissibility.
16 I don't see where necessarily the defendant would be
17 prejudiced by the admission of these photographs into
18 evidence. You can certainly cross-examine. And it may
19 come out to some extent on direct, you know, the fact that,
20 you know, take -- you know, alleged crime three-and-a-half
21 years ago, pictures were taken a month ago. Certainly, Mr.
22 Henderson, you can cross-examine the witness if there is
23 any discrepancy between how maybe the property looked
24 three-and-a-half years ago and today. So I don't really
25 find any prejudice resulting from the admissibility of the

1 pictures into evidence. So I will allow them in and your -
2 - certainly your objection is so noted on the record.
3 Anything else we need to take up with before --

4 MS. ODOM: No, sir, Your Honor.

5 THE COURT: Anything from defense?

6 MR. HENDERSON: So my objection is preserved without --

7 THE COURT: Oh, yes, sir. It is preserved and you will
8 not need to renew your objection when they get to the
9 pictures because you've already adequately noted that on
10 the record. Anything else? All right. Bring the jury out
11 please.

12 (Whereupon, the jury entered the courtroom at 9:10 am)

13 THE COURT: Good morning. I hope everyone is doing
14 well and everybody has had a good night's sleep and is
15 refreshed and ready to get to work this morning. First
16 off, I'm going to ask the clerk to swear you in. Madame
17 Clerk?

18 (Whereupon, the jury was duly sworn at 9:10 a.m.)

19 THE COURT: Solicitor, could I have the indictment
20 again, please. I think I gave it back. While you're
21 looking for it, I'm going to -- All right. Next thing we
22 need to do is to appoint a foreperson of the jury. Now the
23 foreperson's vote carries no more weight than the vote of
24 all of you others. The purpose, or the duty, rather, of
25 the foreperson is to be the go between, if necessary,

1 between the jury and the court. Secondly, the foreperson
2 oversees the activities of the jury, make sure that
3 deliberations and discussions about the case do not begin
4 prematurely. And, lastly, and probably most importantly,
5 the foreperson conducts the actual deliberations when the
6 case is given to the jury. Now, in looking at you and
7 hearing a little bit about you during roll call I believe
8 that any one of you could do just an excellent job at
9 serving as foreperson, but I don't need thirteen
10 forepersons. I only need one. And so, Mr. Hart, I believe
11 that's you, sir, I'm going to appoint you as the
12 foreperson. Your seat will remain the same throughout, and
13 that will be right here. You don't need to switch right
14 now. But when you come back out the next time you will
15 always remain in that seat right there. And the alternate,
16 Kimberly Goodman, okay, Ms. Goodman you are in the correct
17 seat. That will always be your seat when you return to the
18 courtroom. Now, as to all of you others, you're welcome to
19 sit in any seat you like. I understand in Greenwood it's
20 kind of a practice, according to my bailiff, that jurors
21 tend to sit in the same seat each time. And if you want to
22 do that, that's perfectly fine, but you certainly don't
23 have to, okay.

24 Mr. Foreman and ladies and gentlemen of the jury,
25 we're about to begin the case of the *State of South*

1 Carolina v. Romeko DeSlane Manic. That's the gentleman
2 there. If you would stand, Mr. Manic.

3 MR. HENDERSON: Your Honor, that's the wrong name.

4 THE COURT: Okay.

5 MR. HENDERSON: My client is Mr. Jovan Mitchell.

6 THE COURT: Well, I thought so. I was handed the wrong
7 indictment. I apologize for that error. It didn't sound
8 correct to me, but . . . Ladies and gentlemen of jury, you
9 got to understand that there are a lot of cases being dealt
10 with this week. Most of them result in a disposition other
11 than a jury trial, but there's a lot of paperwork to keep
12 up with. So, certainly it's very easy to have made the
13 mistake, and certainly we're not going to hold that against
14 the State and hopefully no one will hold that against me.
15 So we'll all be at ease for just a moment.

16 (Pause)

17 THE COURT: Okay, ladies and gentlemen of the jury, we
18 are now about to begin the case of *The State of South*
19 *Carolina v. Jovan Alexander Mitchell*. Mr. Mitchell, if you
20 would please stand.

21 (Defendant complies.)

22 THE COURT: Thank you. You can have a seat. Before we
23 begin this trial, ladies and gentlemen, I want to tell you
24 some things, and I want to tell you that this trial
25 probably will be different from what you might expect.

1 Many people do not have the chance to attend actual
2 sessions as you are doing now and may think from watching
3 television or movies or reading books that trials
4 are always full of high drama, intense action and riveting
5 circumstances. While all of these things may true at
6 times, this trial is definitely not for entertainment.
7 It's a fundamental part of our democracy. A search for
8 the truth in an effort to make sure that justice is done
9 between the parties before the court.

10 Searching for the truth and making sure that justice
11 is done is often slow, deliberate and repetitive, the
12 opposite of what you may have seen on television or in
13 movies or what you've read in books. This courtroom is a
14 place of honor dedicated to the protection and preservation
15 of citizen's rights through what may many have called the
16 greatest justice system ever created. There's no question
17 about that.

18 The attorneys appearing before you are advocates for
19 the parties they represent, but, first and foremost, they
20 are officers of the court sworn to uphold the integrity and
21 fairness of our judicial system and to help you in the
22 search for the truth. You should expect them to be
23 professional, competent and ethical in the representation
24 of their clients interests. You're also expected to be
25 professional, reasonable and ethical as well. And I want

1 to thank you again for accepting the important
2 responsibility of jury service and for your contribution
3 today to our justice system. As I told you before you were
4 selected, service on a jury is the second most important
5 civic responsibility that we all have, second only to
6 serving in our country's military.

7 What I will say this morning is intended to serve only
8 as an introduction to the trial of this case. These
9 remarks are not a charge on the law in this case. I will
10 instruct you on the law applicable to this case at the end
11 of the trial before you retire to consider your verdict.
12 This is merely an explanation of the procedure that we will
13 follow in the trial of this case so that you may better
14 understand what may be happening. And I would instruct
15 you now that you are not allowed or permitted to take notes
16 during this trial.

17 Now, as I told you previously, the defendant is
18 charged by an indictment. And that's the indictment --
19 this is the correct indictment filed in this court. And
20 he's charged with crime of grand larceny. The elements of
21 this crime will be explained to you later. But as I told
22 you, and I'll tell you again because it's so every
23 important, an indictment is simply the charge by which the
24 case is brought in to court. And it is not in any sense
25 whatsoever evidence of any of the allegations it contains.

1 The defendant has pled not guilty to this indictment and
2 the state, therefore, has the burden of proving each of the
3 elements of the indictment beyond a reasonable doubt. And
4 it will be your duty, Mr. Foreman, ladies and gentlemen, to
5 decide whether the State has met that burden. Your purpose
6 as jurors is to find and determine the facts. You're the
7 sole judge of the facts. If at any time I make any comment
8 regarding the facts you must disregard it. You are to
9 determine the facts from the testimony you hear and other
10 evidence introduced in court. It is up to you to determine
11 the inferences which you feel may properly be drawn from
12 the evidence. It is especially important that you perform
13 your duty of determining the facts diligently and
14 conscientiously because ordinarily there is no way to
15 correct an erroneous determination of the facts by a jury.
16 On the other hand, and with equal emphasis, the same law
17 that makes you the judges of the facts makes me the judge
18 of the law. The law as given by the court is the only law
19 you may consider. You must accept and follow it, even
20 though you may disagree with what I tell you concerning the
21 law. I cannot tell you what the facts are and you cannot
22 disagree with me about what the law is or should be. Your
23 job is to take the law as I give it to you and apply it to
24 the facts as you find them from the testimony of the
25 witnesses and any other evidence introduced. After doing

1 that, you will render your verdict, a verdict under the
2 solemn oath that you just took a moment ago.

3 Until I tell you that you may begin to deliberate, you
4 must not discuss this case with anyone. And I've already
5 told you that, and I will continue to remind that you as we
6 go through this trial. And this includes your fellow
7 jurors, family members, friends, and anyone involved in the
8 case. When you begin your deliberations at the end of the
9 case you may only discuss the case in the jury room with
10 your fellow jurors because they have seen and heard the
11 same evidence you have. Again, you may not start
12 discussing this case until I tell you to do so.

13 You must decide this case based solely on the evidence
14 presented here in this courtroom. This means that during
15 the trial you must not conduct any independent research
16 about the case, the facts of the case, the evidence
17 presented in the case, or the people or organizations
18 involved in any way in this case. You must not look at any
19 dictionaries, any other reference materials, you can't go
20 on the internet, you can't do any of that to find out any
21 information concerning this case or any aspect of this
22 case. Again, it is solely based upon the testimony and
23 evidence presented in this courtroom. And during this
24 trial do not read, listen to, or watch any news reports
25 about the case, and I'm not suggesting that there would

1 be any. But if there are do not do that.

2 And I would also mention to you as well, if you become
3 aware of a fellow juror's violation of these instructions
4 you must inform the court immediately. And I will tell you
5 ladies and gentlemen and Mr. Foreman that it is very
6 important that you keep an open mind and not decide any
7 issue in the case until all of the evidence has been
8 presented, parties have made their closing arguments, and I
9 have instructed you on the law in this case. It is your
10 solemn responsibility to determine the guilt or innocence
11 of the defendant. And your verdict must be based solely on
12 the evidence as it is presented to you in this trial and on
13 the laws I instruct you during at the close of the trial.

14 Now, in just a moment one of these solicitors will
15 make what is called an opening statement in which the
16 solicitor will explain to you the issues in this case, or
17 at least what the solicitor thinks the issues are in this
18 case. And the attorney for the defendant may also make an
19 opening statement, although he is not required to do so.
20 What the attorneys tell you during the opening statements
21 is not evidence in the case. It is only their contention
22 as to what the issues are and their respective position in
23 this case. The evidence in this case will be presented to
24 you by the testimony of sworn witnesses from the witness
25 stand and any of exhibits that may be introduced into

1 evidence.

2 Now, from time to time the attorneys may make an
3 objection or may state that they need to take up a matter
4 of law with the court. Consequently, there may be times
5 where I will need to excuse you and have you go back to
6 your jury room so we can take up that particular matter
7 with the attorneys outside of your presence. And the
8 reason for this is because you are the judges of the facts
9 in this case. And sometimes when I'm discussing the
10 matters of law with the attorneys it may be necessary
11 for me to make some comment on the facts in connection with
12 my ruling whether or not a particular law applies. I'm not
13 supposed to tell you what I think the facts are, so I will
14 excuse you from the courtroom to make these discussions
15 with the lawyers. We're not trying to hide anything from
16 you, but sometimes it's necessary to handle matters outside
17 of your presence.

18 Now, you will hear testimony from witnesses and in
19 deciding whether or not to believe what a witness says, you
20 have the right to consider the interest of any witness, the
21 bias of any witness, the prejudice of any witness, the
22 opportunity for the witness to have seen the matters and
23 things about which the witness may testify and the way the
24 witness acts on the witness stand. You have the right to
25 consider anything that is in the record that will help

1 you to evaluate the testimony of any of the witnesses.
2 That means that it is your duty to pay very close attention
3 to these witnesses, to observe the witnesses, to listen to
4 the witnesses and pay close attention to the attorneys and
5 to the court. Don't let your thoughts wander, but pay
6 strict attention to the testimony in this case so that at
7 the end of all the testimony after the arguments of counsel
8 and the charge in the law by the court you will then be in
9 a position to determine what the true facts are and to
10 apply the law to those facts and thus render a verdict.

11 Now, I will first ask the State are there any
12 exceptions or objections to the court's preliminary charge?

13 MR. MORROW: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. HENDERSON: No, sir, Your Honor.

16 THE COURT: Thank you very much. Now I will turn the
17 record over to the State and allow them to make their
18 opening argument.

19 MS. ODOM: Thank you, Your Honor.

20 THE COURT: Thank you, Solicitor.

21 MS. ODOM: Good morning, everyone. I'm glad to see
22 everyone made it back okay. If I sound a little rough
23 you'll have to excuse me, I'm fighting a cold, so don't
24 hold it against us that I kind of sound like Mickey Mouse
25 or a fish or something. But, you know, the facts in this

1 case are pretty straightforward, at least from the
2 prosecutor standpoint, from the State's standpoint. You're
3 going to hear from several witnesses today, and once you
4 get done hearing from those witnesses there will be a clear
5 picture painted. Back in March 2010, here in Greenwood
6 County, the defendant went onto some property located in
7 the City of Greenwood. If you go down Reynolds, it's off
8 of Reynolds, this property is where the old mill -- the old
9 mill site. He -- this property is surrounded by a fence,
10 has a gate, has several gates. The defendant went through
11 one of the gates and went onto the property and started
12 loading up metal. Now, the victim in the case happened to
13 come by, saw the defendant loading up metal, his metal, he
14 calls law enforcement. Law enforcement immediately comes
15 out. You'll hear from the victim, from the officer who
16 responded, Matt Blackwell, and then an investigator is able
17 to immediately come out as well. You'll hear from him,
18 Jeff Crisp. By the time law enforcement gets out there,
19 the defendant has already started unloading the items.

20 Law enforcement speaks with him and they're able to
21 determine that the defendant -- that wasn't the first time
22 he had loaded up some metal. In the days before then he
23 came on the property several times, loaded up metal and
24 then he had actually taken to Harvley's Scrap Yard and
25 scrapped it. So the facts are pretty straightforward.

1 Now, as the judge said, you know, you're going to hear from
2 many witnesses. Just please, please, please pay careful
3 attention to their answers. Pay attention to the questions
4 that are asked of them. You can pay attention to their
5 demeanor. Take it all in because in the end it's going to
6 be up to you decide this case, and it won't be a hard
7 decision.

8 Now, one of my favorite TV shows is Judge Judy. I
9 watch it everyday. And her famous saying is if it doesn't
10 make sense it's not true. Keep that in mind when you're
11 listening to these witnesses. If it doesn't make sense
12 it's not true. What makes sense is that the defendant,
13 seen by the victim, caught, gives a statement that he took
14 this metal. He didn't have permission to, so it's a clear
15 cut case. Now, I'm sure Mr. Henderson will get up here and
16 potentially argue differently. But in the end it will be
17 up to you to decide, and you'll decide guilty. Thank you.

18 THE COURT: Thank you, Solicitor. Mr. Henderson.

19 MR. HENDERSON: Yes, sir, Your Honor, if it pleases the
20 court. Good morning, ladies and gentlemen. I'm one of
21 these people, I like holding notes in my hand and a pen in
22 my hand, so I'm sure a lot of you are like that as well.
23 Ladies and gentlemen, I've got the pleasure of representing
24 Mr. Jovan Mitchell who's sitting over here, along with my
25 private investigator Mr. Jimmy Powers. And, ladies and

1 gentlemen, you've heard the judge say Mr. Mitchell was
2 charged with the crime of grand larceny. And before we're
3 done here today his Honor is going to tell you what grand
4 larceny means. And you're going to get the law somewhere
5 down the line, later on today, possibly tomorrow. But
6 for starters, ladies and gentlemen, I would like for you to
7 remember the old sayings don't judge a book by its cover
8 and don't jump to conclusions. Be sure to read the entire
9 book before you form an opinion. Ladies and gentlemen, you
10 know that there is always at least two sides to every
11 story. At least. Sometimes there are a lot more.

12 Ladies and gentlemen, Mr. Mitchell, even though he's
13 sitting over here with me at the defense table, he's not on
14 trial today. We're not here about Mr. Mitchell. As his
15 Honor said, he's presumed innocent of and not guilty of the
16 allegations made against him. And the allegation made
17 against his grand larceny. So as you sit here you've got
18 to presume that Mr. Mitchell is not guilty. Under our
19 system of government, Mr. Mitchell doesn't have to prove
20 anything, he doesn't have to disprove anything. He doesn't
21 even have to testify, ladies and gentlemen. As you sit
22 here, look at Mr. Mitchell, he is the face of innocence.
23 When you look at his face during the course of this trial
24 you think of the word innocent.

25 But, ladies and gentlemen, you're probably wondering

1 who or what is on trial here today if it's not Mr.
2 Mitchell. I tell you who is on trial is Mr. Gaines over
3 here, the person -- the alleged victim in this matter.
4 He's the one that got this ball rolling. He is on trial
5 today. Listen closely to what he says, ladies and
6 gentlemen. And you're probably wondering what's on trial
7 today. It's the allegations made by the government
8 against my client. That's what's on trial. You don't have
9 to judge anything about my client. Everything you have to
10 judge is about the State's allegations and Mr. Gaines'
11 allegations. I want you to remember that. And, again, as
12 you sit here, you must presume that the allegations made
13 against my client are not true, that they are lies. That
14 they are just mere fabrications. You've got to assume that
15 here. And unless and until the government convinces each
16 and every one of you that the allegations against Mr.
17 Mitchell are true beyond all and any reasonable doubt, then
18 you've got to find Mr. Mitchell not guilty. I want you to
19 keep in mind during the course of this trial what is
20 reasonable doubt. You're going to hear his Honor give
21 you a charge on the law of reasonable doubt. But I want to
22 give you just kind of a layman's perspective of what
23 reasonable doubt is. Think of it as giving Mr. Mitchell
24 the benefit of the doubt. Think about that as we go
25 through this trial. If you have a doubt about any

1 testimony given from that witness stand, or if you have a
2 doubt about any piece of evidence introduced during the
3 trial of this case, you must give Mr. Mitchell the benefit
4 of any doubt about that. And unless and until the
5 government removes 100 percent of your reasonable doubt,
6 then you've got to find Mr. Mitchell not guilty of the
7 crime of grand larceny. This is a high burden of proof,
8 ladies and gentlemen. After the trial of this case if the
9 government has only convinced each and every one of you
10 that Mr. Mitchell may be guilty of grand larceny, it's your
11 duty to find him not guilty. If you listen to all the
12 evidence and the government has only convinced you that Mr.
13 Mitchell might be guilty of the crime of grand larceny then
14 it's your duty to find him not guilty. If the government
15 only convinces each and every one of you that Mr. Mitchell
16 could be guilty of the crime of grand larceny it's your
17 duty to find him not guilty. And if the government only
18 convinces each and every one of you that Mr. Mitchell more
19 likely than not is guilty of the crime of grand
20 larceny then you must find Mr. Mitchell not guilty. And if
21 the government only convinces each and every one of you
22 that Mr. Mitchell is probably guilty of grand larceny then
23 you must find Mr. Mitchell not guilty.

24 The government's high burden of proof is as follows:
25 proof beyond a reasonable doubt is proof that leaves each

1 and every one of you firmly convinced of his guilty. And,
2 ladies and gentlemen, this reasonable doubt standard,
3 again, his Honor is going to describe it to you. It
4 protects you, the jury, as much as it protects my
5 client from the allegations made against him by the
6 government. The reasonable doubt standard ensures that you
7 the jury do not convict defendants like Mr. Mitchell based
8 upon speculation, possibilities, hunches. You've got to be
9 firmly convinced. The United States Constitution and the
10 South Carolina Constitution guarantee Mr. Mitchell, and
11 every other criminal defendant, the right to a trial by a
12 jury of his peers. And, ladies and gentlemen, you are Mr.
13 Mitchell's peers today and this week during the course of
14 this trial. And what is the primary function of the trial
15 jury? It's not to hand out punishment to citizens. That's
16 not what you do. That's not what juries do. But, instead,
17 the primary function of the trial jury is to protect fellow
18 citizens from abuses of power by the government. In other
19 words, overreaching by the government. In other words, bad
20 decisions by the government. In other words, bad
21 investigations by the government. In other words, bad
22 arrests by the government. I want you to keep that in mind
23 as you listen to the evidence that's going to be presented
24 to you today.

25 And our criminal justice system has long recognized

1 that a randomly selected jury is the best way to guard
2 against government overreaching. In fact, I submit it's
3 the only way to guard against government overreaching. As
4 Thomas Jefferson, one of the early founders of this
5 country, so -- he famously defended the jury system as the
6 only anchor yet devised by man which a government can be
7 held to principals of its constitution. Ladies and
8 gentlemen, he's talking about you. You are the only
9 safeguard of liberty this country has. And the way you say
10 no to government overreaching, in this case, is going to
11 find Mr. Mitchell not guilty. And, again, before the
12 government can punish Mr. Mitchell and take away his life,
13 liberty and pursuit of happiness, each and every one of you
14 have got to be firmly convinced beyond all and any
15 reasonable doubt that he is guilty of the crime of grand
16 larceny.

17 And, ladies and gentlemen, you heard Ms. Odom talk a
18 little bit about the evidence, but I want to key you in on
19 one piece of evidence I want you to be listening to in this
20 matter. My client gave a statement that was recorded by
21 Officer Crisp some hour after he was arrested, I will
22 submit to you. That's what's going to be shown in the
23 evidence. I want you to listen to that statement where my
24 client is very clear about his side of the story. And,
25 again, you've heard Ms. Odom say what they're going to

1 present is Mr. Gaines' side of the story. But, again,
2 you're going to hear from my client's own mouth his side of
3 the story. And listen to that very, very carefully
4 because, remember, as I told you, there's always at least
5 two sides to every story. Sometimes there's a lot of sides
6 to every story. And I will represent to you in this matter
7 there are two distinct sides to what happened on March 24,
8 2010. And, ladies and gentlemen, I want you to keep all
9 that in mind while you're listening to the testimony in
10 this matter. And I thank you.

11 THE COURT: Thank you, Mr. Henderson. Is the State
12 ready to proceed?

13 MR. MORROW: We are, Your Honor.

14 THE COURT: Call your first witness.

15 MR. MORROW: The State calls Stan Gaines.

16 STAN GAINES, having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MORROW:

20 Q. Mr. Gaines, would you state your name and address for
21 the record.

22 A. Stan R. Gaines. [REDACTED], Greenwood, South
23 Carolina.

24 Q. Mr. Gaines, what do you do for a living?

25 A. I run a foundery, machine shop.

1 Q. What's the name of that foundery.

2 A. Synehi Castings.

3 Q. And what do you do there?

4 A. We're a foundery. Pour iron.

5 Q. And once you have that iron, what do you do with it?

6 A. We either machine or paddle cut it and it's sent on to
7 the customers.

8 Q. Okay. And do you have a storage facility for that
9 iron?

10 A. Yes, we do. We have some storage on site on 310 Ginn
11 Street, and also on 109 Smythe Street.

12 Q. Is that 109 Smythe Street facility in Greenwood
13 County?

14 A. It's in the City of Greenwood.

15 Q. Right. Which is in Greenwood County?

16 A. Right. Yes, sir.

17 Q. Have you ever met Jovan Mitchell?

18 A. No.

19 Q. Have you ever encountered Jovan Mitchell?

20 A. Yes, I have.

21 Q. Is he sitting in the courtroom today?

22 A. Yes, he is.

23 Q. Could you point him out to the jury?

24 A. Right here.

25 THE COURT: Let the record reflect that the -- well,

1 which gentleman of the three, Mr. Gaines?

2 A. The one in the middle.

3 THE COURT: Let the record reflect that the witness
4 has identified the defendant. You may proceed.

5 Q. What were the circumstances of your meeting with Mr.
6 Mitchell?

7 A. I confronted him on -- in Smythe Street one morning,
8 March 24th, around ten a.m. in the morning.

9 Q. And when did that take place?

10 A. March 24, 2010.

11 Q. And that's where you store iron --

12 A. That's correct.

13 Q. -- as part of your business? Could you describe your
14 storage facility?

15 A. Well, upon arriving there I noticed a gate lock had
16 been cut and I noticed there was a car and a trailer in the
17 middle of the property, and I noticed that someone was
18 loading the iron onto the trailer.

19 Q. Okay. And who was loading iron on it?

20 A. Mr. Mitchell.

21 Q. Okay. Now, let's back up a bit. Could you just
22 describe what your property at Smythe Street looks . . .

23 A. Probably around two acres. It's surrounded with a
24 chainlink fence with barbed wire. All the gates are locked
25 with chain locks. It's got barbed wire across the top of

1 the fence.

2 Q. And are there any signs on --

3 A. Yes, there is.

4 Q. -- that fence?

5 A. No trespassing.

6 Q. I'm going to show you some pictures that were recently
7 taken of the property. I would like you to take a look at
8 them and tell me if this is a fair and accurate depiction
9 of the property as it exists today. And describe to me any
10 differences between the property as it exists today and the
11 property as it existed at the time.

12 A. This is the property, yes, sir.

13 Q. Could you just --

14 A. And basically it's the same as it was, a chainlink
15 fence with a gate lock, a pad lock. We hire Ferqueron
16 Grass Service to cut the grass during the cutting season,
17 so I don't know particularly, you know, if he had cut in
18 March of that year or not.

19 Q. Well, --

20 A. But basically it's the same.

21 Q. Could you just individually go through each one of
22 those pictures and tell me what we're seeing in each one of
23 those pictures.

24 A. This is the gate where I pulled up that morning. Had
25 the chain lock in it. The chain lock had been cut. And

1 probably 50 feet from this gate is where I saw the car with
2 a trailer attached to it with Mr. Mitchell loading metal on
3 it. This is another view of the front gate from the
4 street. This is the no trespassing sign, this falls under
5 the jurisdiction of the City of Greenwood. There's
6 another picture from the gate, the front gate.

7 Q. Are there any differences between that and how it
8 looked --

9 A. Basically, none at all.

10 Q. Thank you.

11 MR. MORROW: At this time, the State would move to
12 admit these pictures into evidence.

13 THE COURT: Okay. Are they marked one exhibit or
14 multiple exhibits?

15 MR. MORROW: Multiple exhibits, Your Honor.

16 THE COURT: Okay. How many are there?

17 MR. MORROW: There are five pictures.

18 MR. MORROW: Okay. All right.

19 MR. MORROW: Six pictures, excuse me.

20 THE COURT: Before we start the marking, because it
21 will take the court reporter a minute to do that, Mr.
22 Henderson, subject to our previous discussion concerning
23 the pictures, any other grounds for objection?

24 MR. HENDERSON: No, sir, Your Honor.

25 THE COURT: Okay. Thank you. All right, everybody be

1 at ease for just a moment, give the court reporter an
2 opportunity to mark those exhibits.

3 (Whereupon, State's Exhibits 2-7 were marked for
4 identification while off the record.)

5 THE COURT: All right. State's Exhibits 2-7 are
6 admitted into evidence.

7 Q. Now, Mr. Gaines, I just wanted to take you through
8 each one of these. This is marked as State's Exhibit 2.
9 Please describe.

10 A. That's a view from Smythe Street, front gate of the
11 property.

12 Q. Okay. This is state's 3. Describe that for me.

13 A. That's also, I believe, on the back gates of the
14 property with a chainlink on it.

15 Q. This is state's 4.

16 A. It's a view of the front gate with a chain lock on it.

17 Q. State's 5.

18 A. That's a view of the back gate with a chain lock on
19 it.

20 Q. State's 6.

21 A. That's also a view of the front gate.

22 Q. State's 7.

23 A. It's a no trespassing. It says fall under
24 jurisdiction of City of Greenwood sign on the gate -- on
25 the fence, excuse me.

1 Q. Thank you, Mr. Gaines. This property at -- on Smythe
2 Street, you own that property?

3 A. Yes, I do.

4 Q. Had you given anyone permission to access that
5 property?

6 A. No.

7 Q. Did you give Mr. Mitchell access to that property?

8 A. No.

9 Q. Did you give any third party the permission to grant
10 Mr. Mitchell the ability to remove --

11 A. No.

12 Q. -- metal from that property? Was metal taken from
13 that property?

14 A. Yes, it was.

15 Q. What kind of metal was taken from the property?

16 A. Mr. Mitchell took a metal called Niresist which is
17 used for your food industry, which is a real valuable
18 type of metal. He also took some regular cast iron parts
19 that belonged to our customers.

20 Q. Okay. Did you -- I'm not really familiar with this
21 Niresist metal. Could you describe that?

22 A. Niresist is a type of metal that's basically used as a
23 non-corrosive. You use it for your food industry like your
24 -- I'm sure all of you are familiar with Hobart food
25 grinders, foot meat grinders. It's that type of metal.

1 It's real expensive.

2 Q. So what makes it expensive?

3 A. The nickel and the chrome additives that are put in
4 it.

5 Q. And so what you're saying is -- why is this particular
6 metal used in kitchen supplies? Well, what is it's
7 advantage?

8 A. It's non-corrosive. It's also used for the food
9 preparation. When you actually clean your equipment it
10 doesn't rust on you. It doesn't get contaminated.

11 Q. Okay. And what was the approximate value of the metal
12 you had stolen from you?

13 A. It was over \$22,000.

14 Q. And how do you know that?

15 A. Well, basically we had a receipt from when we bought
16 the niresist, plus we also had to keep an inventory of
17 what's over at the warehouse.

18 Q. Okay. And you deal with selling and dealing in this
19 metal on a daily basis?

20 A. Yes, we do.

21 Q. Okay. And as part of your job you have to evaluate
22 the value of that metal?

23 A. Right.

24 Q. And in 2010 it's your contention that the metal was
25 valued at over \$22,000?

1 A. That's correct.

2 Q. Would that value be the same as what one could get for
3 it if it was taken to a scrap yard?

4 A. No, it would not.

5 Q. And why not?

6 A. Well, basically, when a scrap yard takes the metal,
7 they don't determine what type of metal it is. They're
8 just buying it as scrap. They don't have the resource to
9 have a spectrometer which tells you exactly what type of
10 metal it is. And had they had a spectrometer they would
11 have known the value of this metal was more than what they
12 paid Mr. Mitchell for it.

13 Q. So, if I understand you correctly, you're saying that
14 the value of the metal -- the market value, what you could
15 have used it and sold it for, what the -- what it was worth
16 to you was worth a lot more than what someone could have
17 gotten scrap value for it.

18 A. That's correct.

19 Q. Okay. Hold on.

20 MR. MORROW: I beg the court's indulgence.

21 THE COURT: Sure.

22 Q. Mr. Gaines, how many pounds of metal were taken from
23 that property?

24 A. Approximately 7,000 pounds.

25 Q. And what would be the value of 7,000 pounds of

1 niresist iron?

2 A. I think 5,069 pounds was actually niresist. The value
3 of it was close \$20,000.

4 Q. Okay. And that's based on?

5 A. Based on that day's market price.

6 Q. That day's --

7 A. Actually, the price the we actually paid for it.

8 Q. Okay. And the -- what was the value of the
9 other metal that was stolen that day?

10 A. At the time it was like at 85 cents a pound.

11 MR. MORROW: I beg the court's indulgence.

12 THE COURT: Sure.

13 Q. Now, October 24, 2010, how many pounds was Mr.
14 Mitchell loading on his trailer that day?

15 MR. HENDERSON: Your Honor, I think that's the
16 wrong date.

17 MR. MORROW: I am sorry.

18 Q. March 24, 2010, how many pounds was he loading on his
19 trailer that day?

20 A. I'm not exactly sure how many pounds he had on the
21 trailer that day. He had some on the trailer, and when the
22 officers arrived before they asked him to go to downtown he
23 actually took it off his trailer.

24 Q. But the valuation you have for that metal is based on
25 the market value, correct?

1 A. That's correct.

2 Q. And you saw Mr. Mitchell loading metal onto his
3 trailer that day on March 24, 2010?

4 A. Yes, I did.

5 MR. MORROW: Thank you. Please answer any questions
6 defense counsel may have for you.

7 THE COURT: Mr. Henderson, anything in cross?

8 MR. HENDERSON: Yes, sir, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. HENDERSON:

11 Q. Hello, Mr. Gaines, how are you, sir?

12 A. Fine. How are you today?

13 Q. Doing well. Now, if I'm not mistaken, Mr. Gaines, you
14 called the police about 10:09 that morning.

15 A. That's correct.

16 Q. And that's Wednesday, March 24 --

17 A. I'm not sure if it was a Wednesday. It was March
18 24th.

19 Q. I'll represent to you that was a Wednesday.

20 A. Okay.

21 Q. About 10:09 that morning. Is that correct?

22 A. Yes, sir.

23 Q. Okay. And I believe your testimony was here
24 previously that you saw Mr. Mitchell loading metal onto his
25 trailer?

1 A. That's correct.

2 Q. Okay. Have you seen that incident report?

3 A. Yes, I have.

4 Q. Okay. I'm just going to give you a copy. Just take a
5 look at it. Just read through it and refresh your memory
6 with it.

7 A. (Witness complies.)

8 Q. Have you looked through it?

9 A. Yes, sir.

10 Q. Okay. And you've read through it closely?

11 A. Yeah.

12 Q. Now, just out of curiosity, I don't recall seeing
13 anything in that incident report about there being cut
14 locks, open fences, stuff along those lines. Look through
15 there and tell me if maybe I'm missing something.

16 A. It's not in this report, no.

17 Q. It's not in this report, okay.

18 A. Huh-uh. (Negative)

19 Q. And you talked to Mr. Crisp or Detective Crisp that
20 day, didn't you?

21 A. Yes.

22 Q. Okay. So nothing in the report about fences being
23 opened, locks being cut? Nothing along those lines?

24 A. No, there isn't.

25 Q. Okay. And I believe you said you told the police, and

1 I assume Mr. Crisp, that you didn't give Mr. Mitchell
2 permission to be on your property?

3 A. I did not.

4 Q. Okay. And, yet, Mr. Mitchell wasn't charged with
5 trespassing, was he?

6 A. Trespassing what?

7 Q. On your property.

8 A. He was put on trespassing notice.

9 Q. He was put on notice that day, but he wasn't charged
10 with trespassing that day, was he?

11 A. Not by this report.

12 Q. Okay. Have you heard any different?

13 A. No.

14 Q. Did Detective Crisp ever tell you he charged Mr.
15 Mitchell with trespassing?

16 A. I didn't talk with Mr. Crisp after he took Mr.
17 Mitchell downtown.

18 Q. Okay. But you talked to him while he was on the
19 scene?

20 A. Yes, I did.

21 Q. Okay. And you recognize the only way you can be
22 arrested for trespassing is trespassing after notice. You
23 understand that, don't you?

24 A. I don't know the law.

25 Q. Okay. You can't be arrested for trespassing if you

1 don't know you can't be on the property, can you?

2 A. To my knowledge you can.

3 Q. Okay. And you've heard the indictment, haven't you?

4 MR. HENDERSON: Your Honor, may I see the indictment?

5 Q. And you understand that Mr. Mitchell was arrested for
6 stealing, allegedly, stuff from your property from March
7 20th through March 24th. Is that correct?

8 A. Correct.

9 Q. Kind of a four-day window. You would agree with that?

10 A. Yes.

11 Q. And, yet, on that day you're complaining to Detective
12 Crisp that people have been robbing you blind for weeks.
13 Is that fair enough to say?

14 A. I wouldn't say that.

15 Q. Okay. Well, go back and read the report.

16 A. We've had some theft there, but not for weeks on end,
17 no.

18 Q. Okay.

19 A. We've had several reports where the police department
20 actually locked other people up too for stealing.

21 Q. Okay. I want to read you a statement and see whether
22 or not you said it. You can admit you said it. You can
23 deny you said it. Mr. Gaines said someone has taken a
24 large quantity of metal from the location over the past
25 several weeks. Would you have told that to the police?

- 1 A. I might have, yes, sir.
- 2 Q. And have you got any reports about stuff that was
3 missing over the prior several weeks?
- 4 A. We've got several instances during 2010, 2009, 2011
5 with people stealing from our property.
- 6 Q. Okay. Now, I brought a lot of them with me. And
7 we're going to talk about them.
- 8 A. Okay.
- 9 Q. But I represent to you I don't see any before March
10 24, 2010. Had you ever filed a police report prior to
11 March 24, 2010?
- 12 A. Yes, I have.
- 13 Q. Okay. And that would be in the city here?
- 14 A. In the city.
- 15 Q. Okay.
- 16 A. And the county.
- 17 Q. Okay. But the county would be for your other
18 facility?
- 19 A. That's correct.
- 20 Q. Over on Ginn Street ??
- 21 A. Right.
- 22 Q. Okay. How do you pronounce that street?
- 23 A. Ginn.
- 24 Q. Ginn. Okay, hard g. Now, on that day did you have a
25 camera with you?

1 A. No.

2 Q. Did you take any pictures of anything going on that
3 day?

4 A. No.

5 Q. Okay.

6 A. I don't normally carry a camera with me.

7 Q. Okay. Do you know if law enforcement took
8 any pictures that day?

9 A. I don't know.

10 Q. Okay. You were there. I mean, --

11 A. There were several officers there.

12 Q. Okay. Did you see anybody taking pictures?

13 A. Not that I know of.

14 Q. And you would agree that the most accurate depiction
15 of what was going on on March 24, 2010 would be pictures
16 taken on March 24, 2010? You would agree with that,
17 wouldn't you?

18 A. I don't agree with that.

19 Q. You don't agree with that?

20 A. No.

21 Q. Okay. So you think you can take a picture of what
22 happened on March 24, 2010 sometime after March 24, 2010?
23 Is that what you're telling these ladies and gentlemen?

24 A. No, I'm telling them what I witnessed on March 24,
25 2010.

1 Q. Okay.

2 A. I don't have to have a picture. I witnessed it.

3 Q. Okay. But so, as far as you know, the police didn't
4 take any pictures or anything?

5 A. As far as a I know.

6 Q. Okay. You understand were they in some marked squad
7 cars, marked police cars?

8 A. Yes, they were.

9 Q. It's my understanding all those cars have video in
10 them. Do you know that?

11 A. No.

12 Q. Okay. Was any of this stuff video recorded, or do you
13 know?

14 A. I don't know.

15 Q. And it looks like from reading this report, Mr.
16 Gaines, that you never specifically told any member of the
17 police department what you thought had been stolen in those
18 last few day or over any time, for that matter.

19 A. No.

20 Q. You didn't?

21 A. I wasn't asked.

22 Q. Okay. So you're telling me the police didn't ask you
23 what Mr. Mitchell allegedly stole?

24 A. Well, it was pretty obvious. It was on the trailer
25 that Mr. Mitchell had.

1 Q. Okay. But --

2 A. Things were on the trailer that he had stolen.

3 Q. But anything on the trailer that day that you said he
4 voluntarily put back after y'all had your conversation.
5 I'm talking about before that.

6 A. He put it back after the police arrived.

7 Q. Okay.

8 A. Not on the conversation with me he didn't.

9 Q. Okay.

10 A. The police told him to take it off the trailer.

11 Q. Okay. The stuff that was -- forget the stuff that was
12 taken off the trailer. You never identified the stuff that
13 Mr. Mitchell took before that, did you?

14 A. Yes, I did.

15 Q. Okay. And you told that to Detective Mitchell?

16 A. I told him there were several -- several empty tubs
17 that had been emptied out.

18 Q. And I don't see any of that in this police report.

19 A. You might not see every statement I made that morning
20 in this police report.

21 Q. I mean, don't you think that's crucial --

22 A. I don't think my statements were verbatim on
23 everything I said that morning in this police report.

24 Q. Okay. You don't --

25 A. It's simply a synopsis of what was said.

1 Q. You don't think it would be crucial for the detective,
2 if he was told that, to put that in his police report.

3 A. I'm not a policeman.

4 Q. Okay. I mean, have you called up Detective Crisp and
5 said, hey, you did a sloppy job, I can't believe that?

6 MS. ODOM: Objection, Your Honor. I would say that
7 this witness is -- doesn't have the knowledge or he can't
8 testify as to what his opinion is of the police department.
9 That's irrelevant.

10 MR. HENDERSON: I'm not asking his opinion. I'm asking
11 if he called up and complained about their --

12 THE COURT: Well, I think he can ask did you call the
13 police officer and discuss the incident report or comment
14 on it. I'll overrule the objection. This is cross.

15 Q. Did you call him to complain?

16 A. Complain about what?

17 Q. About the sloppy police report, that you left out a
18 lot of stuff I told you?

19 A. That's not my job.

20 Q. Okay. Not your --

21 A. It's not my job to determine what job he does as a
22 police. He made a statement. And, like I said, this is
23 verbatim, it's not every single thing that happened that
24 morning.

25 Q. But you would agree that a lot of stuff that you've

1 testified here today isn't in Detective Crisp's report?

2 A. Mr. Crisp has no idea what was stolen off the
3 property.

4 Q. Okay. Because you didn't tell him?

5 A. No. We didn't make an evaluation of what was stolen
6 that morning.

7 Q. Okay. So that day -- okay, good. That day you didn't
8 know what had been taken off your property?

9 A. We didn't talk about it.

10 Q. Okay.

11 A. Is what you're asking me. No, we did not discuss it.

12 Q. Did you make an evaluation that day of what you
13 thought had been taken from your property?

14 A. I did personally.

15 Q. Okay. And when did you inform Detective Crisp of
16 that?

17 A. I didn't.

18 Q. You didn't inform him of that, okay.

19 A. I informed the Solicitor's department what was taken.

20 Q. And that was some four months later. We're going to
21 get into that. But I'm going to worry about what you did
22 that day. So you're telling this jury that you made an
23 evaluation that day of stuff that had been taken, and, yet,
24 you didn't call Detective Crisp and tell him?

25 A. Well, Mr. Crisp has the record of tickets where he had

1 taken to Harvley Scrap Yard and sold. So we had the amount
2 of iron that had been taken.

3 Q. You might have an amount. But I'm talking about
4 particular items that day did you evaluate --

5 A. No. That particular day, no.

6 Q. And you've still got that incident report up there,
7 don't you?

8 A. Uh-huh. (Affirmative)

9 Q. Look at that last page. Up there near the top, you
10 know, it's got you listed as the victim, Stan Gaines.
11 You'd agree with that, didn't you?

12 A. Yes.

13 Q. It's got the word scrap metal under it. Is that fair
14 to say?

15 A. Yeah.

16 Q. And then the value over there is blank. It doesn't
17 have a value. Is that fair to say it's blank?

18 A. That's what it says on the sheet.

19 Q. So is it fair to say that day you had not given
20 Detective Crisp any value of what may have been taken?

21 A. No, I did not.

22 Q. You didn't give him a value?

23 A. No.

24 Q. Okay. I'm just curious. If stuff had been missing,
25 according to your testimony, for a while, how do you know

1 that any items that were missing if they were taken prior
2 to March 20th or taken by Mr. Mitchell on March 20th
3 through the 24th? How would you know that?

4 A. We pretty well keep up with what's over -- as far as
5 inventory, we keep inventory sheets and we go over there
6 once or twice a week, sometimes more than that.

7 Q. And where are these inventory sheets at?

8 A. I've got one in my folder if you'd like to see it.

9 Q. Okay. And you hadn't produced that have you?

10 A. No.

11 Q. You hadn't given that to the solicitor's office, have
12 you?

13 A. No.

14 Q. Don't you think that's pretty crucial?

15 A. Nobody's asked for it.

16 Q. Okay. We're going to get into that in a little bit.
17 I want to show you another copy of that report. And I'll
18 take this one back from you, if you don't mind. And I
19 represent to you it's the same as that first report, except
20 look at the last page. Does it have a value there?

21 A. No, it does not.

22 Q. I want to show, and make sure we're looking at the
23 same document, out beside loss value, what's the police
24 department got your loss value as?

25 A. Zero.

1 Q. Zero. So you're telling them -- your testimony was
2 you hadn't told them any valuation of stuff that got taken?

3 A. They didn't ask for my valuation of it. They asked me
4 was anything stolen. That's what I told them.

5 Q. And they valued it at zero. Did you call and complain
6 about that?

7 A. No, I did not.

8 Q. Okay. And you thought it was odd. You here today I
9 heard the number twenty-two plus thousand dollars, and,
10 yet, we've got the police saying the value was zero and
11 you're not contesting that.

12 A. I said this incident report was made out in March 24th
13 --

14 Q. Oh, when was this property -- when was Mr. Mitchell
15 arrested?

16 A. The 24th.

17 Q. And you said that day you made an evaluation of what
18 got taken. Did I hear you wrong?

19 A. Yeah. I made the evaluation of what was taken.

20 Q. And you didn't call Detective Crisp?

21 A. No, I did not.

22 Q. Okay. And you let him -- you said you've seen these
23 incident reports and he said it was zero value. And you
24 didn't complain about it?

25 A. No, I didn't say anything.

1 Q. Okay. I'm just curious. And, again, you say the way
2 you would know prior to March 20, 2010 versus March 20,
3 2010 forward would be through some inventory logs?

4 A. Correct.

5 Q. And you've got those with you?

6 A. I do.

7 Q. Okay. And we're going to talk about them again. Have
8 you seen the arrest warrant on which Mr. Mitchell was
9 arrested?

10 A. Not to my knowledge.

11 Q. Okay. Nobody ever showed it to you? The solicitor's
12 office didn't show it to you? Well, I assume you know --
13 and that's a no? That was a no?

14 A. I haven't seen the arrest warrant, no.

15 Q. Okay. And I assume the police department didn't show
16 it you?

17 A. (Nonverbal response.)

18 Q. Is that a no or yes or you just don't know?

19 A. Not to my knowledge.

20 Q. Okay. But you know that Mr. Mitchell was arrested?

21 A. That's correct.

22 Q. Okay. I want you just to review the arrest warrant,
23 the document that started this ball rolling.

24 A. (Witness complies.)

25 Q. Have you looked through it?

1 A. I looked through it now.

2 Q. And you see Detective Crisp's name on this warrant,
3 don't you, up there at the top?

4 A. Uh-huh. (Affirmative)

5 Q. Is that a "yes"?

6 A. Yes.

7 Q. Okay. And the reason I say that the court reporter is
8 taking down everything you say and I say, so it would be
9 helpful to say yes, no.

10 A. Okay.

11 Q. And you would agree with me that it says between March
12 1, 2010 and March 24, 2010? Am I reading that correctly?

13 A. That's what this says.

14 Q. Where on earth would Detective Crisp have gotten March
15 1, 2010 from?

16 A. Couldn't tell you.

17 Q. Okay. So you're saying you didn't give it to him?

18 A. Not to my knowledge.

19 Q. Okay. Then where do you think it came from or do you
20 know?

21 A. I have no idea.

22 Q. Okay. And then you would agree with me looking
23 through the warrant it says in excess of \$10,000?

24 A. Yes, sir.

25 Q. Where on earth would Detective Crisp have gotten that

1 number from?

2 A. Undoubtedly that's what he was told.

3 Q. Okay. You said you didn't tell him.

4 A. I don't know -- remember discussions from three years
5 ago on a certain day.

6 Q. Okay. But you just told us a while ago you didn't
7 tell him anything about the value that day.

8 A. You asked did I give him a value. I told him no.

9 Q. Oh, what do you think greater than \$10,000 is? Is
10 that not a value?

11 A. You're asking was that what was reported on here, and
12 that's what was reported ?? zero value.

13 Q. Right. Zero value --

14 A. But, undoubtedly, he must have -- we must have
15 discussion over \$10,000 it would be on the actual report.

16 Q. Okay. But while ago you just said you didn't tell him
17 anything about the value that day.

18 A. I couldn't remember. I don't know. That's three
19 years ago.

20 Q. Okay. I'm just wondering where all this stuff is
21 coming from when you don't remember, it's --

22 A. You're asking me a course of events that took place
23 three years ago. Do you remember what you did three years
24 ago on this certain day?

25 Q. Well, aren't we here about what happened three-and-a-

1 half years ago.

2 A. But I don't remember every single detail.

3 Q. Okay. I want to show you that document. And I'll
4 take this back from you, Mr. Gaines. We're not putting it
5 into evidence. Do you recognize those documents?

6 A. Those are scrap tickets from Harvley's Scrap Yard.

7 Q. Okay. And as best you know that's why we're
8 here today?

9 A. That's correct.

10 Q. Okay. And let's see. I'm just going to flip through
11 them one at a time with you. On the first page it says
12 March 27, -- I'm sorry. March 22, 2010. I know it looks
13 like sloppy handwriting, but that's what it looks like.
14 You agree with me?

15 A. That's what it looks like.

16 Q. Okay. It says \$90. Is that fair to say?

17 A. That's what it says.

18 Q. Okay. And nothing listed about what was brought in.
19 Is that fair to say?

20 A. Yes, sir.

21 Q. It's just blank. And then the second page, also dated
22 March 22, 2010, it says \$63. Am I reading that right?

23 A. Yes, sir.

24 Q. Look at the third page. March 23, 2010 it says
25 \$21.60.

1 A. All right.

2 Q. Is that a "yes"?

3 A. Yes.

4 Q. Okay. And, again, it doesn't show what was brought
5 in, just a blank sheet of paper. Is that fair to say?

6 A. Like I said earlier, Harvley's had no discretion
7 between the metal. They just consider all scrap metal.
8 They don't have a spectrometer.

9 Q. But, again, --

10 A. They don't know what's valuable and what's not
11 valuable. They don't know brass from iron from steel.

12 Q. Sir, I don't --

13 A. They're just taking the scrap metal, and that's what
14 they pay for scrap metal.

15 Q. Sir, I don't know what they --

16 THE COURT: Hold on just a minute. Let me instruct the
17 witness and counsel don't be talking at the same time. The
18 court reporter needs to take down everything and it makes
19 it a little harder for her when both of you are speaking at
20 the same time. Make sure the question is finished before
21 the answer starts. Make sure the answer is finished before
22 the next question starts. You may proceed.

23 MR. HENDERSON: Thank you, sir.

24 Q. And, again, I don't know what they know or don't know.

25 All I'm making the observation is that these sheets are

1 blank. Is that fair to say?

2 A. Yeah.

3 Q. Okay. Next page is March 23, 2010. It looks like

4 \$277. 20. Is that correct?

5 A. That's correct.

6 Q. And, again, that page is blank about what was brought

7 in. Is that fair to say?

8 A. Yes.

9 Q. Okay. Next page says March 23, 2010. It says \$360.

10 Did I read that right?

11 A. Yes, sir.

12 Q. And, again, that page is blank about what was brought

13 in.

14 A. Right.

15 Q. Okay. And the next page is dated March 24, 2010. It

16 says \$162.

17 A. Right.

18 Q. And, again, that page is blank. Is that fair to say?

19 A. Yes.

20 Q. And, again, Mr. Mitchell's driver's license is on

21 every one of these pages. Is that correct?

22 A. Correct.

23 Q. Nobody is disputing that he took it down to --

24 property down to Harvley's, are they?

25 A. No, sir.

1 Q. Okay. And I will represent to you I totaled up these
2 receipts in this packet, and it came out to \$973.80. Do
3 you have any reason to dispute that?

4 A. That's what it said on the tickets.

5 Q. Okay. I mean, that's -- I added them up. I didn't
6 know if you had done a different calculation.

7 A. No.

8 Q. And you would agree to that amount?

9 A. I never seen this before.

10 Q. You've never seen these documents?

11 A. No, sir.

12 Q. Okay. You hadn't talked about that with
13 the solicitor's office?

14 A. Not these documents right here.

15 Q. Hadn't talked about these documents with Detective
16 Crisp?

17 A. No, sir.

18 Q. Okay. I mean, what documents had you seen from
19 Harvley's before today, if any?

20 A. I read the report that said they had the tickets from
21 Harvley's Scrap Yard.

22 Q. Okay. You just never seen them before?

23 A. Never seen them.

24 Q. Okay. Don't you think that would have been important
25 to bring to your attention?

1 A. It's not my job.

2 Q. Okay. Again, you're saying that's the police's fault
3 or solicitor's fault?

4 A. No. At the time they didn't show them to me. I had
5 where it was on the incident report.

6 Q. I'll take these back. And, again, you know, we've
7 discussed the indictment from March 20, 2010 to March 24,
8 2010. Do you have any evidence at all that Mr. Mitchell
9 was ever on your property before March 20, 2010?

10 A. Before March?

11 Q. Yeah. You got any evidence?

12 A. Except for he said he was.

13 Q. Okay.

14 A. And the incident report.

15 Q. Okay. And you understand that the solicitor doesn't
16 agree with that? That they've indicted him for March 20th
17 to March 24th. Have you got any evidence?

18 A. I don't have any evidence.

19 Q. Okay. And, again, none of this stuff looks to have
20 been recorded or videoed out there in the field, either,
21 was it as far as you know?

22 A. Not to my knowledge.

23 Q. Okay. Do you recognize that document?

24 A. Yes, it is a statement of losses, items that were
25 stolen.

1 Q. And, again, this is a document I think you produced or
2 created?

3 A. I produced, yes, sir.

4 Q. And your business -- I want to make sure I'm
5 pronouncing it right. - Synehi.

6 A. Yes, sir.

7 Q. Synehi Castings. And this document is dated July 16,
8 2010?

9 A. Yes, sir.

10 Q. Okay. And this is directed towards the solicitor?

11 A. Right.

12 Q. Okay. And you would agree that July 16th is some four
13 months after Mr. Mitchell's arrest?

14 A. Yes, sir.

15 Q. Okay. And prior to July 16th you hadn't provided
16 Detective Crisp with any evidence about what was taken or
17 the value of what was taken?

18 A. No.

19 Q. Okay. And, yet, you went straight to the solicitor's
20 office?

21 A. They asked for this.

22 Q. Okay. And you bypassed Detective Crisp?

23 A. I didn't know it was my job to tell it to Detective
24 Crisp.

25 Q. Okay. Well, he was the one investigating the case,

1 wasn't he?

2 A. As far as I know, yes, sir.

3 Q. Okay.

4 A. I don't really know. I don't have firsthand knowledge
5 of that to be sure.

6 Q. Okay. And, yet, you list here this niresist iron. Is
7 that correct?

8 A. That's correct.

9 Q. And you list these iron castings of about \$1,700 for a
10 total of \$22,584.28. Is that fair to say?

11 A. Yeah.

12 Q. And you created this on behalf of your company? I
13 mean, it's on your Synehi castings --

14 A. Yeah.

15 Q. -- letterhead.

16 A. Put it on letterhead and sent it to the solicitor's
17 office.

18 Q. Okay.

19 A. They asked for the value of the stolen property.

20 Q. And you're sure that's an accurate document there?

21 A. Pretty much so.

22 Q. I mean, you created it?

23 A. Yeah. That's correct.

24 Q. Okay.

25 MR. HENDERSON: I'd move that into evidence, Your

1 Honor.

2 THE COURT: Solicitor?

3 MR. MORROW: No objection, Your Honor.

4 THE COURT: Okay. Without objection it will be marked
5 as State's Exhibit 8.

6 MR. HENDERSON: Defense 1, Your Honor.

7 THE COURT: Defense 1.

8 (Whereupon, Synehi document was marked as Defense Exhibit 1
9 and entered into evidence.)

10 Q. In looking through the public documents of Greenwood,
11 just looking up on this, is it Smith Avenue or Smythe
12 Avenue?

13 A. Smythe.

14 Q. Smythe Avenue. Looks like you and your wife bought
15 this property in April 2002. Is that correct?

16 A. That's correct.

17 Q. Okay. And it is the old Grendle Mill site?

18 A. That's correct.

19 Q. Okay. And it's my understanding that since y'all
20 bought this property there's been no business licenses
21 issued for Smythe Avenue over there.

22 A. We don't operate a business. It's a warehouse.

23 You're not required to have a business license if you have
24 a warehouse.

25 Q. But you hadn't -- I mean, you hadn't got any type of

1 license is what I'm asking.

2 A. You're not required to have a license to have a
3 warehouse in the City of Greenwood.

4 Q. Okay. So you didn't get one? You didn't have one.

5 A. You're not required to have one, so I didn't get one.

6 Q. And your Synehi casting building, you said it's over
7 310 Ginn Street. Is that correct?

8 A. That's correct.

9 Q. Okay. And I believe that's over there behind the
10 Civic Center --

11 A. Correct.

12 Q. -- or in that neck of the woods behind the old
13 American Legion?

14 A. Yes, sir.

15 Q. And y'all been running that for a good many years, if
16 I'm not mistaken.

17 A. 1998.

18 Q. So fifteen years, give or take?

19 A. Yes.

20 Q. Is that fair to say? And I think your testimony was
21 when the Solicitor was asking you questions that that's
22 your place of business, that's where your iron comes into,
23 you powder coat it there, you ship it out of there. I
24 mean, you do -- that's your primary place of business?

25 A. That's correct.

1 Q. Okay. Now, you are aware, if you're not mistaken,
2 that I served a subpoena on you. Or, actually, Mr. Powers
3 brought a subpoena to you. You remember that?

4 A. Yes, sir.

5 Q. I want you to take a look at that.

6 A. All right.

7 Q. And I asked for certain documents. Is that fair to
8 say?

9 A. The first time you didn't ask for anything.

10 Q. Okay. But let me -- let's look at the subpoena here
11 and make sure --

12 A. The first time you sent me a blank page, if you
13 remember.

14 Q. Right. Right. But we --

15 A. The second time is what you sent.

16 Q. -- we got it to you, okay. I want to make sure -- and
17 you responded. Is that fair to say?

18 A. Yes, sir.

19 Q. Well, let's look at what I was asking you to provide
20 to me. And let's look at the subpoena. That's the second
21 page of the document I gave you. Are you with me?

22 A. Yeah.

23 Q. I asked for all documents related to the purchase of
24 the items listed on Exhibit A including but not limited
25 to income tax returns and purchase contracts and receipts.

- 1 You would agree with that?
- 2 A. Yes, sir.
- 3 Q. Okay. And number two I asked you for all documents
- 4 regarding any insurance claims filed related to the items
- 5 listed on Exhibit A. And you agree that's what I asked
- 6 for?
- 7 A. Yes.
- 8 Q. And Exhibit A was that letter dated July 16, '10. Is
- 9 that correct?
- 10 A. Yes, sir.
- 11 Q. The one that's been marked as Defense Exhibit number
- 12 1. You would agree that same letter?
- 13 A. Yes, sir.
- 14 Q. And you actually provided me some documents. Is that
- 15 fair to say?
- 16 A. Yes.
- 17 Q. I think you emailed them to me.
- 18 A. I believe so or one of the girls did.
- 19 Q. I want to show you those documents. Can you recognize
- 20 those?
- 21 A. Yes.
- 22 Q. Okay. And are all these documents kept in Synehi's
- 23 normal course of business?
- 24 A. We keep records for ten years.
- 25 Q. Okay. I mean, that's -- you're keeping --

1 A. Whatever is required by law.

2 Q. Okay. I mean, but you're keeping these -- Synehi is
3 keeping those in its normal course of business?

4 A. That's correct.

5 Q. Okay. And you would agree that these are documents
6 that you produced to me?

7 A. Yes, sir.

8 Q. Okay.

9 MR. HENDERSON: Your Honor, I'd move to introduce this
10 as Defense number 2.

11 THE COURT: What are the documents, Mr. Henderson? And
12 then maybe Solicitor needs to look at them. What are the
13 documents?

14 MR. HENDERSON: Your Honor, the first document is --

15 THE COURT: Just in general terms.

16 MR. HENDERSON: It's an -- how he came to acquire this
17 property, for want of a better term.

18 THE COURT: Okay. The alleged goods that were
19 allegedly stolen?

20 MR. HENDERSON: Correct.

21 THE COURT: Okay. All right. Solicitor, any objection
22 to --

23 MR. MORROW: No objection, Your Honor.

24 THE COURT: Without objection it will be marked
25 as Defense 2.

1 (Whereupon, 3 pages of Synehi documents were marked as
2 Defense Exhibit and were entered into evidence.)

3 Q. And from the letter dated July 16, 2010 to this letter
4 dated August 30, 2013 you've upped your loss value, haven't
5 you?

6 A. Well, we added the freight on for niresist, \$364,
7 which wasn't included in the original.

8 Q. Why didn't you include that in the original?

9 A. It was an oversight.

10 Q. And let's take a look at this second page in this
11 document. It looks like a commercial invoice fro Remelt
12 Sources. Is that fair to say?

13 A. Yes, sir.

14 Q. Okay. And they're shipping it to 310 Ginn Street. Is
15 that correct?

16 A. That's correct.

17 Q. Okay. Your foundry over there behind the Civic
18 Center. Is that right?

19 A. That's right.

20 Q. And it looks like it was shipped -- Now, correct me if
21 I'm reading this wrong. But it looks like it was shipped
22 on May 6, 2008.

23 A. That's correct.

24 Q. Okay. It looks like you paid or Synehi paid a check
25 on May 30, 2008. Is that correct?

1 A. That's correct.

2 Q. It looks check number 30806.

3 A. Yes, sir.

4 Q. And that looks like to be a company check.

5 A. Yes, sir.

6 Q. Okay. In the amount of \$20,844.28.

7 A. Yes.

8 Q. And then the third page here looks like it's from

9 Averitt, A-v-e-r-i-t-t. That looks to be like a shipping

10 company. Is that fair to say?

11 A. Freight company.

12 Q. Okay. They do shipping for you or freight for you?

13 A. It's a regular freight line.

14 Q. Okay. And it looks like on May 6, '08 they delivered

15 this stuff that you bought from Remelt to 310 Ginn Street.

16 Is that fair to say?

17 A. Correct.

18 Q. Okay. And it looks like niresist. And it looks to be

19 the same stuff that you're alleging got taken by Mr.

20 Mitchell was delivered to 310 Ginn Street?

21 A. That's correct.

22 Q. Okay. No doubt about that?

23 A. No.

24 Q. Okay. And, again, you're alleging that he took this

25 stuff from Smythe Avenue when it's delivered over to Ginn

1 Street.

2 A. That's why we have a warehouse. We cannot possibly
3 store everything at 310 Ginn Street. A lot of it has to be
4 moved to the warehouse, storage facility.

5 Q. So let me get this straight. You're paying a company
6 shipping. And I think it was coming out of what,
7 Darlington? Let's look back at that. I think it was
8 coming out of Darlington. It shipped from Darlington. Is
9 that correct?

10 A. That's correct.

11 Q. And they shipped it out of Darlington over to Ginn
12 Street and it cost you \$364.70. Am I reading that right?

13 A. Yes, sir.

14 Q. Okay. Why on earth would Synehi pay for items to be
15 shipped from Darlington to Ginn Street and then turn around
16 to pay my employees to move it from Ginn Street to Smythe
17 Avenue?

18 A. It's a warehouse. There's no one that works at this
19 warehouse. There's no unloading done over there unless
20 it's by us. There's no employees there.

21 Q. But you could have shipped it over there.

22 A. There's no employees there to unload it.

23 Q. Okay. And I think you told the jury a little while
24 ago that after this chain of events with Mr. Mitchell that
25 you were having other theft problems over on Smythe Avenue.

1 A. We have had some.

2 Q. And I think you called the police a bunch of times.

3 A. Yes, I have.

4 Q. It sounds -- looks like they've done a lot of incident

5 reports.

6 A. I don't know how many.

7 Q. Okay. But, I mean, do you get copies of them when

8 somebody allegedly --

9 A. I'm sure I do.

10 Q. Okay. I want you to take a look at this document.

11 See if you recognize this. It's probably going to take you

12 a little bit to read through it.

13 A. (Witness complies.)

14 Q. Have you looked through that?

15 A. Yes, sir.

16 Q. And you would agree on the front page of this, this is

17 a pretty thick document, you would agree?

18 A. Right.

19 Q. And it looks like on the first page it looks like an

20 incident report from an incident that occurred on July 21,

21 2011. Is that fair to say? I want to make sure I'm

22 reading it right.

23 A. July 22nd, yes.

24 Q. I just wanted to make sure I was reading that right.

25 I want you to skip to the eighth page of this document.

1 Let me double check and make sure I'm telling you the right
2 one. And you would agree with me at the top of that page
3 it says supplementary report?

4 A. Yes, sir.

5 Q. Okay. And you would agree with me that the first few
6 words of that report are after receiving this case for
7 investigation? I just want to make sure we're on the same
8 page is what I'm getting at.

9 A. Yes.

10 Q. Okay. Now, is it true or not true that on that day
11 when the police were out there investigating something that
12 happened on this property over on Smythe Avenue that you
13 told them that you had been working on moving stuff from
14 Smythe Avenue over to Ginn Street?

15 A. What are you asking, now?

16 Q. Is it fair to say that on that date -- and if you look
17 at the bottom this day is July 26, 2011. And is it fair to
18 say on that date --

19 MR. MORROW: Objection, Your Honor. I don't see how
20 any of this is relevant to the incident as it occurred.

21 THE COURT: Can you tie this line of questioning into
22 the --

23 MR. HENDERSON: Absolutely, Your Honor, if you'll give
24 me a couple -- a little bit of leeway.

25 THE COURT: Okay. All right. Well, let's try to lay a

1 foundation and -- so I'll overrule your objection at this
2 time. But, Solicitor, if you feel like you need to make it
3 again then do so and we can -- we'll deal with it. So lay
4 some foundation for us, Mr. Henderson.

5 Q. And you would agree that on July 26, 2011 you were
6 talking to a police officer?

7 A. Yeah.

8 Q. Okay. And at the bottom it looks like reporting
9 officer is Nichols, apostrophe "S"?

10 A. Yes.

11 Q. And I'll represent to you that's office Phillip
12 Nichols of the Greenwood police department. You may know
13 Mr. Nichols.

14 A. Yes, I do.

15 Q. Okay. And you -- do recollect that conversation with
16 him?

17 A. No, I do not. That's something that took place two
18 years ago.

19 Q. Okay. But you agree there was some alleged theft
20 going on that officer Nichols was investigating?

21 A. Yes, sir.

22 Q. Okay. And I just want to know -- I want you to tell
23 this trial jury that on that day during that conversation
24 with Officer Nichols did you say something to the effect of
25 he says that he simply has not been able to remove the

1 items from the property due to time constraints?

2 A. I don't recall that.

3 Q. Okay. You don't think officer Nichols would just be
4 making this stuff up, do you?

5 A. Like I said, I don't know what took place two years
6 ago on a certain day ---

7 Q. Okay. But you seem to have a good --

8 THE COURT: All right. Now, wait a minute. Again,
9 both of you don't need to be talking at the same time,
10 please.

11 Q. Well, you seem to have a good memory of three-and-a-
12 half years ago.

13 A. Well.

14 Q. All I'm wondering, and I'm sure this jury is wondering
15 too, is if you're running into time constraints moving
16 stuff from Smythe Avenue to Ginn, when on earth are you
17 finding the time to move stuff from Ginn to Smythe?

18 A. I don't know what the conversation was at the time.
19 I don't know if we were talking about cleaning up or moving
20 some other items back and forth.

21 Q. And, okay, let's go a little bit farther. Admit or
22 deny that you said this. He states that he plans on
23 reprocessing most of the steel, copper, and aluminum scrap
24 there.

25 A. We're talking about steel, copper and aluminum. We're

1 not talking about the cast iron.

2 Q. Right. I'm just wondering about whatever you're
3 talking about that you're trying to move that stuff from
4 there. Is that fair to say?

5 A. You're talking about the steel, the copper, and
6 aluminum. We're not talking about the cast iron, the
7 niresist, or anything else.

8 Q. Okay. So you're saying, again, that you're telling
9 the jury you're finding time to move stuff from one
10 location to the other, but not from the other back to your
11 Ginn Street?

12 A. Well, the price of copper and aluminum is a whole lot
13 more than cast iron is. That's why we want to move it from
14 there to a more secure location.

15 Q. It seems to suggest that you believe this place over
16 on Smythe Street is not secure.

17 A. It's secure as I can get it.

18 Q. And, yet, you're moving all this alleged valuable
19 stuff over there to Smythe Street that was delivered over
20 on Ginn Street?

21 A. We have to have storage. The nature of the business,
22 we don't have a facility to store everything inside.

23 Q. So you just put this stuff over there on an abandoned
24 mill site?

25 A. It's not an abandoned mill site.

1 Q. Okay.

2 A. It's a warehouse.

3 Q. Okay. And you got all this stuff laying out there?

4 A It's in tubs, documented. We were keeping inventory
5 of it.

6 MR. HENDERSON: If I may have one minute, Your Honor.

7 THE COURT: Certainly.

8 Q. Just a couple things, Mr. Gaines.

9 THE COURT: Let me see counsel up here for just a
10 second, please.

11 (Whereupon, a bench conference took place in the
12 presence of but out of the hearing of the jury panel was in
13 the courtroom.)

14 Q. A couple more things, Mr. Gaines. That morning when
15 Mr. Mitchell unloaded his trailer, did you inventory what
16 he took off?

17 A. No, I did not.

18 Q. Okay. Do you know if Detective Crisp or anybody with
19 the police department inventoried it?

20 A. No.

21 Q. Okay. You just don't know?

22 A. I said no, they did not inventory it.

23 Q. Okay. And you recall that on what's been introduced
24 as State's number -- Defense number 2, I'm sorry, you
25 recall on that subpoena I ask you how you came into

1 possession of these 2,000 pounds of iron castings.

2 A. I said we keep an inventory of the tubs that are over
3 there. The tubs were emptied out, so we knew exactly what
4 was in the tub to begin with.

5 Q. And you didn't produce any documents in response to my
6 subpoena about that, did you?

7 A. Didn't ask me to. You asked me how I got these
8 figures. You didn't ask me how I got the amount of
9 tonnage.

10 Q. No, I'm just asking how you purchased them, how you
11 got them. And you agree you didn't answer that?

12 A. You didn't ask me for it.

13 Q. Okay. I just want to make sure that I asked for all
14 documents related to the purchase of these items alleged to
15 have been taken by Mr. Mitchell. And you agree -- let me
16 let you read the subpoena. I see you produced those
17 documents for the niresist --

18 A. Right.

19 Q. -- that were taken over to Ginn Street. But you
20 didn't produce any documents --

21 A. Not for the 2,000 pounds, no.

22 MR. HENDERSON: One moment, Your Honor. I don't have
23 anything further right now, Your Honor.

24 THE COURT: Let me just ask the witness. Can you spell
25 for us this niresist, this material that you alleged that

1 was taken. Would you spell that for the court reporter,
2 please.

3 MR. GAINES: N-i-r-e-s-i-s-t type I.

4 THE COURT: Okay. Thank you very much. Ladies and
5 gentlemen of the jury, we're going to take a morning break.
6 Kind of gone a little bit longer than I normally do, but
7 we're going to take a morning break at this time. So if
8 you will go to the jury room and get you something to
9 drink, use the restroom if you need to, and we'll start
10 back in just a little bit. And I remind you do not
11 start your discussions concerning this case or any aspect
12 concerning the case.

13 (Whereupon, the jury exited the courtroom at 10:41
14 a.m.)

15 THE COURT: Okay. Mr. Gaines, you're free to step
16 down. However, you're not free to discuss your testimony
17 with anyone. But you certainly can talk about other
18 matters with anyone you like. We'll be at ease.

19 (Whereupon, the Court was in recess from 10:41 a.m.
20 until 11:13 a.m.)

21 (Whereupon, the jury entered the courtroom at 11:13
22 a.m.)

23 THE COURT: Let the record reflect that the jury is
24 back in. And I think we are still with Mr. Gaines'
25 testimony and re-direct by the State. Come back up Mr.

1 Gaines. I remind you're still under oath. You may
2 proceed, Solicitor.

3 RE-DIRECT EXAMINATION

4 BY MR. MORROW:

5 Q. Mr. Gaines, I want to ask you about some receipts the
6 defense counsel showed you. I'm going to hand those to you
7 and allow you to look at them.

8 THE COURT: Is that an exhibit, Solicitor?

9 MR. HENDERSON: It's not, Your Honor.

10 THE COURT: It's not, okay. All right.

11 Q. Mr. Gaines, at the top of those receipts beside the
12 amount given for them, is there anything beside there
13 indicating how much metal was brought?

14 A. There's a weight ticket.

15 Q. There's a weight ticket?

16 A. Yes.

17 Q. And on March 22, 2010, on the first receipt, how many
18 pounds of metal were brought in that day?

19 A. A thousand.

20 Q. And on the second receipt, March 22, 2010?

21 A. Seven hundred.

22 Q. And on the third receipt, March 23, 2010?

23 A. Four thousand.

24 Q. And on the fourth receipt, on March 23, 2010, how many
25 pounds?

1 A. Two hundred forty.

2 Q. And on the fourth receipt or -- excuse me, fifth
3 receipt, March 23, 2010, how many pounds?

4 A. Three thousand eighty.

5 Q. And on the sixth receipt, March 24, 2010, how many
6 pounds of metal --

7 A. One thousand eight hundred.

8 Q. And the values that -- I'll take this back. The
9 values that you discussed that were on the ticket earlier
10 with Mr. Henderson, what does that represent, again?

11 A. That's actually what -- half of what scrap is actually
12 selling for.

13 Q. Okay. But at the time -- that's the scrap value?

14 A. That's the scrap value of it.

15 Q. But the metal, for the purpose that you use it for,
16 for the purpose of what it's created for, what was
17 the value of that? Was that over \$10,000?

18 A. Oh, yes.

19 MR. MORROW: I beg the court's indulgence.

20 THE COURT: Sure.

21 MR. MORROW: No further questions for this witness.

22 THE COURT: All right. Anything in re-cross?

23 MR. HENDERSON: No, sir, Your Honor.

24 THE COURT: Okay. Thank you for your testimony. You
25 can step down, sir.

1 (Whereupon, the witness exited the witness stand.)

2 THE COURT: Any objections to this witness being
3 excused if he so desires to leave the courthouses?

4 MR. MORROW: None from the State, Your Honor.

5 MR. HENDERSON: No, sir, Your Honor.

6 THE COURT: Mr. Gaines, you're welcome to leave or
7 you're welcome to remain with us. Thank you. Call your
8 next witness, Solicitor.

9 MR. MORROW: The State calls Matt Blackwell.

10 THE COURT: Okay. And where is Mr. Blackwell?

11 MR. MORROW: They went to get him, Your Honor.

12 THE COURT: Okay. Do you have -- do we have witnesses
13 sequestered?

14 MR. MORROW: We don't, Your Honor.

15 THE COURT: Okay. I just didn't know.

16 MATT BLACKWELL, having been first duly
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MORROW:

20 Q. Could you state your name and address for the record?

21 A. I'm Matt Blackwell. [REDACTED].

22 Q. Okay. And Officer Blackwell, what is your occupation?

23 A. I'm a detective with the Greenwood City police
24 department.

25 Q. And how long have you been with the Greenwood City

1. Police Department?
- 2 A. Since 2008.
- 3 Q. So you're a detective currently?
- 4 A. Yes.
- 5 Q. Were you working for the Greenwood Police Department
- 6 in 2010?
- 7 A. I was.
- 8 Q. And what was your position at that time?
- 9 A. I was on uniform patrol at that time.
- 10 Q. And what were your duties and responsibilities?
- 11 A. Just to answer calls of service and to
- 12 conduct property checks and traffic stops and stuff of that
- 13 nature.
- 14 Q. And were you working on March 24, 2010?
- 15 A. Yes.
- 16 Q. Did you get a call about a larceny in progress?
- 17 A. Yes, sir, I did.
- 18 Q. And where was that larceny in progress?
- 19 A. It was at 107 Smythe Avenue in the city limits of
- 20 Greenwood, South Carolina.
- 21 Q. And that -- Greenwood City is in Greenwood County?
- 22 A. Yes.
- 23 Q. Okay. Who was present when you arrived at the scene?
- 24 A. At the -- when I was present the complainant was Mr.
- 25 Stan Gaines.

1 Q. Okay.

2 A. And also Jovan Mitchell was also present, who I talked
3 to.

4 Q. Okay. As you arrived on the scene could you describe
5 what it looked like as you were pulling up?

6 A. When I was pulling up, I met Mr. Gaines standing
7 outside of the gate on Smythe Avenue. He said that he
8 owned a property right there --

9 MR. HENDERSON: Your Honor, I will object to what Mr.
10 Gaines told him, Your Honor.

11 THE COURT: Okay. The basis for your objection?

12 MR. HENDERSON: It's hearsay, Your Honor.

13 THE COURT: Solicitor, your position?

14 MR. MORROW: Your Honor, hearsay is an out of court
15 statement made to prove the truth of the matter asserted by
16 a party who is not in the courtroom today. Mr. Gaines is
17 here in the courtroom today. He may be called to -- and
18 defense may cross him.

19 THE COURT: Right. And I think there's already been
20 some testimony from Mr. Gaines concerning discussions he
21 had with law enforcement. I'll overrule the objection.

22 Q. As you were saying?

23 A. When I arrived, Mr. Gaines was standing outside of a
24 gated property. He said that he owned the property there
25 on Smythe Avenue. It's an old mill place. And gates

1 around it. He was standing in front of an open gate when I
2 got out and talked to him.

3 Q. Okay. After you talked to Mr. Gaines, what action did
4 you take?

5 A. When Mr. Gaines told me at the time that I was there
6 that for several weeks he's had people coming onto his
7 property taking metal. And he said that there was
8 currently a subject on the property right now in a vehicle
9 and a trailer taking metal off of his property. So I
10 went down there and spoke with him. And it turned out to
11 be Mr. Mitchell there. And asked him about it. He said
12 that he was just scrapping metal. He said he needed some
13 money, he was going to scrap metal. And said he's been
14 taking it off the property for several weeks. And I asked
15 him if he had permission to take any metal off the
16 property. He told me he contacted somebody with Exit
17 Realty and said that they gave him permission. And Mr.
18 Gaines said that nobody should have been on his property
19 taking his metal at all.

20 Q. Okay. Once you spoke with the defendant, which you
21 said you spoke to Jovan Mitchell. Is he in the courtroom
22 today?

23 A. Yes.

24 Q. Could you identify him for the jury?

25 A. Yes. He's right there wearing a white shirt and

1 suspenders with a tie.

2 THE COURT: Let the record reflect that the witness has
3 identified the defendant.

4 Q. So once you spoke with the defendant, Mr. Mitchell,
5 what actions did you take?

6 A. At that time I called Lieutenant Crisp. He was then a
7 detective. And advised him of the situation. And he told
8 me he would be on his way to the scene. I stood by while
9 he came there.

10 Q. Now, I wanted to get into something that
11 defense counsel mentioned earlier. Do you have video
12 cameras in your police car?

13 A. Yes, we do.

14 Q. Okay. And how do those video cameras work?

15 A. When you turn on your blue lights the cameras
16 automatically come on and it's audio and video recorded.

17 Q. Okay. And so on a routine investigation like this
18 where you pull up to the scene and you're trying to
19 determine what's going on, would you normally turn on your
20 blue lights when you pull up to a situation like that?

21 A. No, I wouldn't.

22 Q. Okay. So it would not be your procedure to record --
23 to turn on your blue lights so it would record --

24 A. No. Right then it would have been no --

25 Q. Okay.

1 A. There's nothing saying that we had to record.

2 Q. When are the recordings in your vehicle most commonly
3 used?

4 A. Traffic stops.

5 Q. So after you spoke with each person who was there on
6 the scene you then waited for Lieutenant Crisp to arrive?

7 A. Yes.

8 MR. MORROW: I beg the court's indulgence.

9 THE COURT: Sure.

10 Q. Please answer any questions defense counsel has.

11 THE COURT: Cross examination, Mr. Henderson?

12 MR. HENDERSON: Yes, sir, Your Honor.

13 CROSS EXAMINATION

14 BY MR. HENDERSON:

15 Q. Detective, how are you, sir?

16 A. Good, sir. How are you?

17 Q. Good, good, good. And you've got your incident
18 report --

19 A. Yes.

20 Q. -- from this matter? I just want to clarify. It
21 looks like you arrived about 10:12 the morning of Wednesday
22 March 24th?

23 A. Yes.

24 Q. Okay. It looks like you arrived also with an Officer
25 Byrd. Is that correct?

1 A. It didn't arrive with him. I believe he came to back
2 me up that day.

3 Q. Okay. And I think he's now with the Sheriff's
4 Department?

5 A. Yes.

6 Q. So you were in a patrol car?

7 A. Yes.

8 Q. A marked car? Was officer Byrd in a marked car?

9 A. If -- yes, sir, he would have been.

10 Q. Okay. So y'all were in separate cars?

11 A. Yes, sir.

12 Q. And no doubt that y'all had in-car video?

13 A. Yes, sir. We had in-car video.

14 Q. You had body mics on you?

15 A. Yes, sir.

16 Q. So you could have recorded any of these conversations
17 that you had with anybody?

18 A. Yes.

19 Q. Okay. And you just didn't do it?

20 A. Huh-uh. (Negative)

21 Q. Is that fair to say?

22 A. Yeah, I didn't record that. I didn't feel that it
23 was necessary for me to record that conversation with
24 anybody that day.

25 Q. Did you have a camera with you?

- 1 A. A camera?
- 2 Q. Right.
- 3 A. I did not have a camera with me.
- 4 Q. Okay.
- 5 A. Except for the video camera in the car.
- 6 Q. Okay. Did you have -- would your cell phone take
- 7 cameras?
- 8 A. My cell phone might have took a picture, but if I was
- 9 needing to take any pictures I would have probably
- 10 contacted my supervisor. He would have brought a camera to
- 11 the scene.
- 12 Q. Do you recall -- I mean, to the best of your
- 13 knowledge, were any pictures taken that day?
- 14 A. Not that I know of. I did not take any.
- 15 Q. Have you seen any?
- 16 A. Not that I know of.
- 17 Q. Okay. So you didn't take any?
- 18 A. No, sir.
- 19 Q. Okay. So there's nothing to indicate where Mr.
- 20 Mitchell's vehicle was at, as far as you know?
- 21 A. Nothing but my recollection of it being there where it
- 22 happened.
- 23 Q. Okay. And there's nothing to indicate what was on Mr.
- 24 Mitchell's vehicle or trailer?
- 25 A. No.

1 Q. When you arrived what was on his trailer?

2 A. It was scrap metal on his trailer.

3 Q. Okay. And did he unload that?

4 A. I believe -- he -- I don't if he unloaded it when I
5 was there or not. I think he unloaded it after I left or
6 was in the process of unloading it later.

7 Q. Okay. Did you take any notes at the scene? I mean,
8 did you do anything at the scene other than just talk and
9 listen?

10 A. No.

11 Q. Okay. Now, you understand that Mr. Mitchell has been
12 indicted for allegedly stealing from March 20th of 2010
13 through March 24th of 2010. You understand that or do you
14 know that?

15 A. I understand.

16 Q. Okay. It's just a four day period?

17 A. Uh-huh. (Affirmative)

18 Q. You would agree with me the 20th to the 21st is one
19 day to the 22nd is --

20 A. Well, when I was on scene Mr. Mitchell told me that he
21 had been taking metal from the property for a few weeks, a
22 couple of weeks.

23 Q. And none of that is recorded any place, right?

24 A. No.

25 Q. And have you seen any incident reports to even back

1 that up?

2 A. Not that I know -- I haven't --

3 Q. Okay.

4 A. -- personally seen any incident reports.

5 Q. And as best you know Mr. Gaines hasn't complained
6 about anything about that --

7 A. Mr. Gaines also told me when I pulled up that somebody
8 had been taking metal off his property for a few weeks.

9 Q. Okay.

10 A. So and Mr. Mitchell admitted to taking property -- I
11 mean metal -- off of his property to a few weeks, to me
12 personally.

13 Q. Okay. But you understand the State here is
14 only dealing with like a four-day window?

15 A. Well, I'm just telling you what I was told at the
16 scene.

17 Q. I Understand, but that's not recorded any place?

18 A. No, sir.

19 Q. Okay. And you would agree that the best evidence of
20 what Mr. Mitchell said would be his recorded statement?

21 A. It would have been, but I had no reason to take a
22 recorded statement from him then. He was giving me this
23 information on his own free will. He wasn't under arrest
24 or anything at that point.

25 Q. I understand that. But you recognize he subsequently

1 gave a recorded statement?

2 A. Well, yes to Lieutenant Crisp.

3 Q. Right. Like an hour later?

4 A. Yes.

5 Q. And you would agree that what he says on that
6 statement would be more accurate than your recollection?

7 A. That was your opinion, yes. But I'm true that he told
8 me he had taken metal off the property for a few weeks.

9 But he said several thousand pounds of metal off the
10 property for a few weeks.

11 Q. Okay. Now, I understand what you're saying. But I
12 just -- don't you think it would have been helpful for you
13 to record this?

14 A. Yeah. Now it would have been.

15 Q. Right.

16 A. But it's just not -- usually when you pull up to a
17 situation like that you don't record it as a road officer.

18 Q. Because this didn't look out of the ordinary? Is that
19 fair to say?

20 A. Yeah, it looked out of ordinary when I have a victim
21 telling me that there's somebody stealing metal off
22 his property. That did look out of the ordinary.

23 Q. Now, I was looking -- I guess you prepared part of
24 this incident report. Is that fair to say?

25 A. Yes.

1 Q. Okay. And I don't see anything in this incident
2 report that you wrote dealing with cut locks.

3 A. No.

4 Q. I don't see anything in this incident report, at least
5 the portion that you wrote, dealing with open gates or
6 closed gates?

7 A. No, sir. The gates were open when I was there.

8 Q. I mean, I don't see anything in the part of the report
9 that you wrote dealing with trespassing issues.

10 A. No, sir.

11 Q. And after you turned this over to Detective Crisp did
12 you have any other involvement in this matter at all?

13 A. No, sir. I did not.

14 Q. Okay. Are you pretty familiar with this area? I
15 mean, do you patrol that area or did patrol that area?

16 A. Yes, sir.

17 Q. Okay. I want to show you -- and that's from the GIS
18 department downstairs. Can you look at that and kind of
19 get your bearings?

20 A. Yes.

21 Q. And can you spot Mr. Gaines' property on there, the
22 old mill?

23 A. Right here.

24 Q. And can you hold that up? I'll let you point it to
25 the jury.

1 A. This will be the old mill property right there in
2 between Smythe and Pelzer, here.

3 Q. Okay. And, Your Honor, I believe with the State's
4 consent I would move that into evidence as Defense number
5 3.

6 THE COURT: Solicitor?

7 MR. MORROW: We consent to that, Your Honor.

8 THE COURT: Okay. Without objection. It's a aerial
9 map. Is that what it is?

10 MR. HENDERSON: Yes, sir. Printed by the county
11 downstairs.

12 THE COURT: Okay. It will be marked as Defense 3.

13 (Whereupon, an aerial GIS map was marked as Defense
14 Exhibit 3 and was entered into evidence.)

15 Q. Let me ask you, Detective, are you aware --

16 THE COURT: Let her get it marked.

17 Q. Are you aware of how many people own the old mill
18 property?

19 A. No, sir, I am not.

20 Q. You just don't know?

21 A. I don't know.

22 Q. You understand that Mr. Gaines doesn't own all the old
23 mill property?

24 A. If he doesn't, I wasn't aware of that.

25 Q. Okay. Do you recollect where at all you met Mr.

1 Mitchell that morning?

2 A. Yes, sir. It would have been right in here where --
3 this is the entrance I came in. It was just right below
4 here.

5 Q. Could you point that to the jury? I mean, show them
6 because they're the ones that need -- you might want to
7 stand up and -- just be careful.

8 A. This is the entrance I came in right here. This is
9 where Mr. Mitchell was right here when I got out. So it's
10 just right down through the gate right there.

11 Q. Are you aware of how Mr. Mitchell got on the property
12 that day?

13 A. I believe he drove a car onto it.

14 Q. I mean, do you know from what entrance or . . .

15 A. I have no clue.

16 Q. You don't have a clue. Okay.

17 MR. HENDERSON: Let me have one moment, Your Honor.

18 THE COURT: Certainly.

19 Q. Detective, one thing I was thinking about and meant to
20 ask you. When you arrived there, did you inventory what
21 was on Mr. Mitchell's trailer?

22 A. I did not inventory it.

23 Q. And you didn't take any pictures of it?

24 A. I did not.

25 Q. Okay.

1 MR. HENDERSON: I don't have anything further, Your
2 Honor.

3 THE COURT: Any re-direct, Solicitor?

4 RE-DIRECT EXAMINATION

5 BY MR. MORROW:

6 Q. Officer -- or Detective Blackwell, excuse me, at the
7 time you were an officer -- a road officer, correct?

8 A. Yes, sir.

9 Q. Would it have been your job to take pictures or
10 anything of that nature?

11 A. Not at that point, no, sir.

12 Q. Who normally takes pictures?

13 A. Normally it would have been the detective that would
14 have come on scene.

15 Q. Okay. Would it have been your job to record any
16 statements that were made?

17 A. No, sir.

18 Q. Who would normally do that?

19 A. That would have been the detective that came on scene.

20 MR. MORROW: Thank you, no further questions.

21 THE COURT: Re-Cross?

22 MR. HENDERSON: No, sir, Your Honor.

23 THE COURT: Thank you for your testimony. You can step
24 down. Call your next witness.

25 MS. ODOM: Your Honor, if I could have just a moment to

1 make sure --

2 THE COURT: Sure.

3 MS. ODOM: -- she is here.

4 MR. MORROW: The State calls Virginia Calvert.

5 THE COURT: Virginia who?

6 MR. MORROW: Calvert.

7 VIRGINIA CALVERT, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MORROW:

11 Q. Would you please state your name and address for the
12 record?

13 A. Virginia Calvert. [REDACTED],
14 South Carolina.

15 Q. Ms. Calvert, where do you work?

16 A. Harvley's Scrap Metal.

17 Q. And how long have you been employed by Harvley's
18 Scrap Metal?

19 A. Approximately three years.

20 Q. And what is the nature of your employment at
21 Harvley's?

22 A. I'm basically office manager. I handle all the
23 paperwork for the company.

24 Q. Okay. Do your duties as office manager include
25 responsibility for records ---

1 A. Yes.

2 Q. --- concerning metal?

3 A. Yes.

4 Q. Okay. In March 2010 what system did Harvley's have in
5 place to record transactions involving metal that was
6 brought into the scrap yard?

7 A. At that point it's what's called hand tickets. You
8 have a triplicate copy carbon ticket that you would slide
9 into a printer. And when a truck would pull on the scale
10 it would register the weight. And you hit print on it and
11 it would document the weight of the vehicle.

12 Q. So when a vehicle pulls on the scales it weighs the
13 total weight of the vehicle?

14 A. Yes.

15 Q. And then when -- what happens after that?

16 A. They pull around. They unload their materials. They
17 come back to the scales empty. We punch another weight on
18 it, subtract the empty weight from the full weight and it
19 tells us how much material they had sold.

20 Q. Okay. And how do you determine what amount -- it's
21 just done solely by weight?

22 A. Yes. All scrap metal is bought by weight.

23 Q. Okay. So you don't have a spectrometer on site or
24 anything of that nature to determine what type of metal it
25 is or --

1 A. We have it, but it's only used for odd specialty
2 metals, certain grades of aluminum, stainless, such as
3 that. General scrap steel it's not -- not used on.

4 Q. So these hand tickets, that you write, are they
5 completed in the normal and ordinary course of business?

6 A. Yes.

7 Q. What happens to receipts after it's prepared at the
8 time of sale?

9 A. When they pull in we document the tag number of the
10 vehicle on there, because we don't know who's driving the
11 vehicle until they come back around. We generally put
12 white Ford, tag number. When they come back up they bring
13 us their ID and we put the ID on the photo copier with the
14 ticket and scan a copy of both of them together to identify
15 who had that scale ticket. Deduct the weight, mark off
16 what material it was, and calculate it according to what
17 we're paying for that material per pound and give them a
18 total price.

19 Q. At this time, I'm going to show you some documents.
20 I'd like you to take a look at them and see if you could
21 identify them for me.

22 A. Okay. (Witness complies.)

23 Q. Could you identify each of those documents separately
24 for me? Tell me what each of them are.

25 A. Okay. All of these are Harvley's Scrap Metal weight

1 tickets. This is scrap steel at 1,800 pounds, \$162 to
2 Jovan. Is that how you pronounce the man's name? With his
3 tag number on there, 3/24/10. All the same information.
4 This is 3,080 pounds of scrap steel of \$277. It's another
5 one, scrap steel at 240 pounds, 21.60. This is another
6 one, 4,000 pounds at \$260. This is another one, scrap
7 steel, 700 pounds at \$63. 1,000 pounds at \$90. This is
8 standard procedure tickets for us up until the permit law
9 kicked in later.

10 Q. Since you stored these forms have they been altered in
11 any way?

12 A. No, sir.

13 MR. MORROW: At this time, I'd like to move that these
14 be entered into evidence.

15 MR. HENDERSON: Without objection, Your Honor.

16 THE COURT: Okay. Without objection. Be at ease to
17 give the court reporter an opportunity to mark.

18 (Whereupon, Harvley's Scrap Metal tickets were marked
19 as State's Exhibits 8-13 for identification.)

20 THE COURT: 8-13 be admitted into evidence on behalf of
21 the State.

22 Q. Ms. Calvert, I'm going to show you what's been marked
23 as State's exhibit 8. I'd like briefly for you to explain
24 the pieces of the document and what's on there.

25 A. This is one of Harvley's Scrap Metal scale tickets

1 with an in-weight and an out-weight identifying scrap steel
2 of 1,000 pounds. Scrap steel at that time was \$9 per
3 hundred, so it equaled \$90. Jovan's ID is laying here on
4 the copier with this ticket and scanned together so that we
5 know that this person is the one that had these weights,
6 that his tag number is on here so know what truck they were
7 also driving. When we processed these tickets they're in
8 triplicate. One copy goes to the police department. One
9 copy goes to the customer. And one copy goes to us.

10 MR. MORROW: Your Honor, may I have permission
11 to publish this to the jury?

12 THE COURT: Certainly.

13 Q. So this is the ID that you take?

14 A. Yes.

15 Q. This is the amount of weight?

16 A. Yes.

17 Q. And this is the amount that you pay?

18 A. Yes.

19 Q. This is State's Exhibit 9. Could you describe this as
20 well?

21 A. It's the same thing, a scale ticket with an in-weight,
22 out-weight, total weight of 700 pounds. It's \$63 to the
23 same person.

24 MR. MORROW: Your Honor, at this time I'd like
25 permission to publish to the jury.

1 THE COURT: Certainly. You have permission to publish
2 each one, if you so desire.

3 Q. Again, this is the ID of the individual?

4 A. Yes.

5 Q. The weight?

6 A. Yes.

7 Q. And the amount that you paid?

8 A. Yes.

9 Q. Again, can I have you go through State's Exhibit 10?

10 A. The same thing, a Harvley's scale ticket with scrap
11 steel, 4,000 pounds paid out at \$360 to the same person.

12 Q. And, again, the ID of the individual that sold it?

13 A. Yes.

14 Q. The weight?

15 A. Yes.

16 Q. And then the amount?

17 A. Yes.

18 Q. Would you do that for State's 11 as well?

19 A. Yes. A Harvley's scrap ticket, total weight of scrap
20 steel at 240 pounds. Paid 21.16 to the same person.

21 Q. And, again, ID?

22 A. Yes.

23 Q. Weight?

24 A. Yes.

25 Q. And the amount that was paid out?

1 A. Yes.

2 Q. State's 12.

3 A. Same thing. Harvley's scrap ticket. Total amount of
4 scrap steel was 3,080 pounds for a total amount of 277.20
5 to the same person.

6 Q. And, again, that's the ID?

7 A. Yes.

8 Q. The weight?

9 A. Yes.

10 Q. And the amount that was paid out?

11 A. Yes.

12 Q. Finally, State's 13.

13 A. Harvley's scrap ticket for 1800 pounds of scrap steel
14 and \$162 to the same person.

15 Q. And, again, that's the ID?

16 A. Yes.

17 Q. The weight?

18 A. Yes.

19 Q. The amount that was paid out?

20 A. Yes.

21 MR. MORROW: I beg the court's indulgence.

22 THE COURT: Sure.

23 Q. Ms. Calvert, you keep saying this metal is --

24 identifying this metal as scrap metal. Is that how you

25 would normally identify any metal that came into your --

1 A. Scrap steel, anything that a magnet sticks to that is
2 considered steel. Because aluminum, copper, brass --
3 magnets don't stick to them, so we classify steel in one
4 general category.

5 MR. MORROW: Thank you. No further questions for this
6 witness. Please answer any questions defense counsel may
7 have.

8 THE COURT: Mr. Henderson, any cross-examination of
9 this witness?

10 MR. HENDERSON: Yes, sir, Your Honor.

11 (CROSS-EXAMINATION)

12 BY MR. HENDERSON:

13 Q. Hey, Ms. Calvert. How you doing today, ma'am?

14 A. I'm very well.

15 Q. I think you said you've been down at the scrap yard
16 for three years. Did I hear you right?

17 A. Yes, sir. Approximately.

18 MR. HENDERSON: I think I set my phone off, Your Honor.

19 THE COURT: That's not a good thing, is it?

20 MR. HENDERSON: It was. I did. And I've turned it off
21 so.

22 Q. Were you working at the scrap yard in March 2010?

23 A. No, sir, I wasn't.

24 Q. And when did you start working there?

25 A. I started helping there in November 2010.

- 1 Q. And Danny is Mr. Danny Harvley?
- 2 A. Yes.
- 3 Q. Who owns Harvley Scrap Yard?
- 4 A. Yes.
- 5 Q. Am I correct about that?
- 6 A. Yes.
- 7 Q. Is it fair to say he's fairly knowledgeable about
- 8 scrap?
- 9 A. He's been in it all his life.
- 10 Q. Okay. He wouldn't misunderstand stuff that's brought
- 11 to him, would he?
- 12 A. Not likely.
- 13 Q. I mean, he could look at it and tell what it is?
- 14 A. Yes.
- 15 Q. Does he know -- you think in your opinion -- well, let
- 16 me ask you. Do you know the difference, say, between
- 17 aluminum and steel?
- 18 A. Yes.
- 19 Q. You know the difference between aluminum and iron?
- 20 A. Yes.
- 21 Q. You know the difference between steel and iron?
- 22 A. Yes.
- 23 Q. And what else? Like copper. You know the difference
- 24 between copper and aluminum?
- 25 A. Yes.

1 Q. I mean, you could spot the stuff and tell the
2 difference. Is that fair to say?

3 A. Ninety percent of it can be identified visually.

4 Q. Okay. And from your three years at the scrap yard, do
5 you think Mr. Danny Harvley can tell the difference between
6 all this stuff?

7 A. Yes.

8 Q. Any doubt about that?

9 A. No.

10 Q. Okay. And I heard you -- I think the Solicitor asked
11 you about a fancy machine.

12 A. A barometer so that you can scan the metals and tell
13 exactly what the chemical chemistry of it is.

14 Q. And could you say that word again?

15 A. A barometer.

16 Q. Barometer.

17 A. Yes. Our scrap yard lingo for it is the gizmo gun.

18 Q. The gizmo gun. But barometer would be b-a-r-o-m-e-t-
19 e-r?

20 A. I'm not sure. You'd have to look it up.

21 Q. Okay. Okay. But y'all refer to it as the gizmo gun,
22 okay.

23 A. That's why we refer to it that way.

24 Q. And, I believe, you looked at those six tickets, I
25 believe State's Exhibits 8, 9, 10, 11, 12 and 13.

1 A. Yes.

2 Q. I'm going to put them back up here for you, ma'am, and
3 let you take a look at them and clarify something for me.
4 Now, on each one of those tickets what was sold is blank.
5 Is that fair to say?

6 A. Scrap steel, because 90 percent of the material that
7 we take in is scrap steel. If anything else is indicated
8 we get a separate scale ticket from the guys who weigh up
9 copper, aluminum, and brass on a separate set of scales.
10 We use big truck scales because it weighs in twenty pounds
11 increments. And we were weighing complete vehicles loaded.
12 You're weighing large amounts. It's the same way they
13 weight 18 wheelers.

14 Q. Okay. Is there anything else marked on those tickets
15 -- or there's nothing marked on those tickets.

16 A. That indicates steel.

17 Q. That it's steel scrap?

18 A. Yes.

19 Q. Not aluminum?

20 A. No, sir.

21 Q. Not copper?

22 A. No, sir.

23 Q. Not tin?

24 A. No, sir.

25 Q. Not iron?

1 A. No, sir.

2 Q. But steel scrap. Is that fair to say?

3 A. Yes.

4 Q. Let me ask you. Has -- maybe you. Let me ask you
5 about you first before I ask about Mr. Harvley. If you see
6 something suspicious that comes through the yard, have you
7 ever called the police to say, hey, this looks suspicious?

8 A. We have.

9 Q. Probably do it on a fairly regular basis, somewhat?

10 A. It's not as common as you think. But, yes, sir, we
11 have.

12 Q. And, to the best of your knowledge if something comes
13 in that looks kind of suspicious would Mr. Harvley call the
14 police to report that?

15 A. Yes.

16 Q. Okay. Do y'all have any records that Mr. Harvley
17 called the police about Mr. Mitchell?

18 A. No, sir.

19 Q. Have you seen anything about that?

20 MS. ODOM: Objection your honor. I'd say this witness
21 -- I don't think she has direct knowledge of whether it was
22 done or not. She can speculate, but I don't know if she
23 has direct knowledge.

24 THE COURT: I think he asked the question, if I
25 understood the question. Are there any records that she

1 has seen to indicate that a report to the police was made.
2 Then she can indicate whether or not she's seen any records
3 or not. So to that extent I'll overrule your objection,
4 Solicitor. So you want to repeat the question again,
5 maybe, Mr. Henderson?

6 Q. I will, Your Honor. You haven't seen any records kept
7 in the course of business that Mr. Danny Harvley called
8 the police or the Sheriff's Department about Mr. Mitchell
9 have you?

10 A. No, sir.

11 Q. Have you ever seen Mr. Mitchell?

12 A. I wouldn't know. There's such a traffic of the public
13 I really don't remember faces well. I couldn't identify
14 him.

15 Q. I mean, y'all were busy?

16 A. Yes.

17 Q. I mean, y'all are as knowledgeable about this material
18 as anybody? Is that fair to say?

19 A. At that point in time a good average would have been
20 100 to 150 tickets a day.

21 Q. Okay. And that's pretty busy?

22 A. Yes.

23 Q. And from looking at these tickets you feel comfortable
24 that what Mr. Mitchell sold as scrap steel?

25 A. We bought it as scrap steel.

1 Q. Okay. And you feel comfortable that's what it was?

2 A. Yeah.

3 Q. Mr. Harvley knows the difference from looking at all
4 this stuff, doesn't he?

5 A. There's other cast materials and things like that that
6 may be mixed into a load, but if the customer doesn't want
7 to break them down and separate them it goes to scrap
8 steel.

9 Q. And there's nothing indicating that Mr. Harvley broke
10 it down and thought it was anything other than scrap steel?

11 A. No, sir.

12 MR. HENDERSON: I don't have anything further, Your
13 Honor.

14 THE COURT: Redirect, solicitor?

15 MR. MORROW: I beg the court's indulgence.

16 THE COURT: Sure.

17 RE-DIRECT EXAMINATION)

18 BY MR. MORROW:

19 Q. Ms. Calvert, were you working at Harvley's in March
20 2010?

21 A. No, sir.

22 Q. Did you personally take this metal or write
23 these tickets?

24 A. No, sir.

25 Q. Okay. So you don't know whether or not the gizmo gun,

1 I believe that's what you called it, was used on
2 this metal?

3 A. No, sir, I do not.

4 Q. And when someone brings in metal, as long as it's made
5 out of steel or made -- it doesn't stick to a magnet, you
6 don't even question what that is?

7 A. No, sir.

8 Q. Okay. And so if someone were to bring in like an
9 antique metal table that was actually worth a lot of money,
10 you -- as long as it didn't stick, you wouldn't bother
11 testing it?

12 A. Actually as long as it did stick to a magnet.

13 Q. As long as it did stick?

14 A. Yes. Anyone can scrap anything from your old
15 refrigerator to an antique tractor. It's up to you. If it
16 doesn't mean anything to you anymore and you want to get
17 rid of it, that's where you recycle steel. What's worth
18 something to me may not be worth anything to you. I pull
19 the antiques back out and keep, personally.

20 MR. MORROW: Thank you, no further questions.

21 THE COURT: Re-cross?

22 MR. HENDERSON: Nothing further, Your Honor.

23 THE COURT: Thank you for your testimony, ma'am. You
24 can step down. Any objection to this witness being
25 excused?

1 MR. HENDERSON: No, sir, Your Honor.

2 MS. ODOM: No, sir, Your Honor.

3 THE COURT: Ma'am, your free to leave the courthouse or
4 you're certainly welcome to stay with us, if you like.

5 MS. WITNESS: I'm done. I need to get back to the
6 office. Thank you.

7 MS. ODOM: Your Honor, if before we call the next.
8 witness if we could address some scheduling issues.

9 THE COURT: Okay. You want to do it sidebar or do we
10 need to do it on the record?

11 MS. ODOM: No, we can sidebar it.

12 THE COURT: Come on up, then.

13 (Whereupon, a bench conference took place while the
14 jury panel was in the courtroom.)

15 THE COURT: Mr. Foreman and ladies and gentlemen of the
16 jury, the State has not finished their case yet, but
17 their last witness they indicate will probably be a
18 lengthy witness. So this would be a good time to break
19 for lunch, and that's what we're going to do. My
20 clock says about twelve o'clock, so if you'll be back here
21 at 1:15. Hopefully that gives you enough time to get some
22 lunch or if you've got some errands to run or something to
23 tend to hopefully that will be enough time for you. So if
24 you'll be back at 1:15. Again, I remind you not to discuss
25 anything about this case among yourselves or with any

1 people that you may come into contact with over lunch
2 break. Have a good break and see you back in just a little
3 bit.

4 (Whereupon, the jury exited the courtroom at 11:58
5 a.m.)

6 THE COURT: Okay. We'll be at ease until 1:15.

7 (Whereupon, the trial resumed at 1:15 p.m.)

8 THE COURT: Is the State ready?

9 MS. ODOM: Yes, sir, Your Honor.

10 THE COURT: Defense?

11 MR. HENDERSON: Yes, sir, Your Honor.

12 THE COURT: Bring the jury out, please, sir.

13 (Whereupon, the jury entered the courtroom at 1:16
14 p.m.)

15 THE COURT: Let the record reflect that the jury is
16 back in. Is the State, ready?

17 MS. ODOM: Yes, Your Honor. The State calls Detective
18 Jeff Crisp.

19 THE COURT: Come around, please, sir.

20 JEFF CRISP, having been first duly sworn, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MS. ODOM:

24 THE COURT: Your witness.

25 MS. ODOM: Thank you, Your Honor.

1 Q Can you state your name for the record.

2 A I'm Lieutenant Jeff Crisp with the Greenwood City
3 police department.

4 Q And how long have you worked at the police department?

5 A I've been at the police department roughly eight years
6 now. Been in investigations about six of those years.

7 Q And as an investigator what are your job duties?

8 A Roughly, to follow up on investigations that the
9 patrol would take, we respond. We follow up on cases that
10 they didn't necessarily have time for or any major crimes
11 of that nature.

12 Q Okay. And did you have an opportunity to work on a
13 case back in 2010, March 24th at Smythe Avenue?

14 A I did.

15 Q And is that in Greenwood County?

16 A Yes, ma'am.

17 Q Tell me a little bit about that.

18 A I was contacted by Officer Blackwell who had received
19 the call. He was responding to a location in regards to a
20 larceny. Upon his arrival he called me. He said that
21 someone is stealing from this mill site, Mr. Gaines'
22 property. And once I got there I was briefed by him. He
23 advised me that Mr. Mitchell was seen on the property by
24 the landlord, the actual land owner, stealing property,
25 loaded property on his trailer.

1 Q Okay. And after you spoke with officer Blackwell what
2 did you do then?

3 A I pulled Mr. Mitchell aside. He gave me the same kind
4 of events. Asked him why he was there and what was his
5 purpose of taking the metal. He advised me that he had
6 actually gotten permission from Exit Realty to take the
7 property. Therefore, that's why he was taking the property
8 from the location.

9 Q And did you check on that story?

10 A I did. I asked Mr. Mitchell why -- how he thought
11 Exit Realty could give him permission to take the property.
12 I didn't know at the time that the Exit Realty sign on
13 the back side of the property on Pelzer Street. He pointed
14 the sign to me. I called them. I spoke with someone.
15 From that conversation I learned that Mr. Mitchell did
16 not have any reason to be on the property, did not have
17 permission. In fact, Exit Realty did not even have
18 the property under contract. They had no reason to have
19 their sign there. They couldn't tell me anything about the
20 property.

21 Q Okay. So he had told you that he had called, had
22 permission to be there. You checked the story out. It
23 didn't pan out. And what did you tell Mr. Mitchell?

24 A I confirmed Mr. Mitchell with this new information
25 after calling Exit Realty. And Mr. Mitchell advised me

1 that that's correct, I did try to call them, I did not get
2 an answer. Therefore, I went on the property anyway and
3 took the property.

4 Q So at first he said he had permission. Then the
5 story changed to, well, he attempted to contact somebody
6 and when he didn't get a response he went on the property
7 anyway?

8 A That's correct.

9 Q Now, tell me about the scene when you arrived. Tell
10 me what it looked like.

11 A When I arrived, I know this property, I guess, fairly
12 well from being on patrol. It's a fairly tall fence,
13 barbed wire at the top. But when I arrived Officer
14 Blackwell was on the scene. The property owner, Stan
15 Gaines. And Mr. Mitchell was inside the fence with his SUV
16 with a trailer attached actually with the gate open, backed
17 into property.

18 Q And did you see any metal on his trailer?

19 A I did.

20 Q And --

21 A Once we saw the metal on the trailer we asked him
22 about it. He gave the same kind of answer. During the
23 course of the investigation we asked him to unload the
24 property. He did unload the property at the time.

25 Q Now, what happened after that? Did y'all go anywhere?

1 A We did. After I unloaded the property from the
2 trailer I asked Mr. Mitchell at the time I says, do you
3 mind coming to the police department talking to me further
4 about the incident. He agreed to do so. He got in his own
5 personal vehicle. He followed us to the police department.
6 We talked to him more. And that's when the investigation
7 went further from there at my office.

8 Q Okay. So did you get a statement from him?

9 A I did, a recorded statement from him. During that
10 conversations he admitted to going there several times,
11 taking several parts of the metal, and taking it to
12 Harvley's Scrap Yard.

13 MS. ODOM: Your Honor, may I approach the witness?

14 THE COURT: Certainly.

15 Q I'm going to show you what's been marked as State's
16 Exhibit 1 for identification purposes. Do you know what
17 that is?

18 A Yes, ma'am. That's the actual statement that was
19 given to me from Mr. Mitchell.

20 Q And do you know if the statement on that CD is a fair
21 and accurate representation of the statement that he gave
22 you? It's the same statement, it hasn't been changed?

23 A It is. I've actually listened to this actual CD.
24 I've initialed it stating that I have listened to it and
25 that is actual statement we had in my office.

1 MS. ODOM: Your Honor, I would move to have this
2 admitted into evidence.

3 THE COURT: I think based upon conversations of
4 yesterday afternoon, I think it's been stipulated to. It
5 will go into evidence.

6 (Whereupon, State's Exhibit 1, CD of audio statement,
7 was entered into evidence.)

8 MR. HENDERSON: That's correct. We want the jury to
9 hear the statement.

10 THE COURT: Okay. All right.

11 MS. ODOM: Your Honor, I would ask permission to go
12 ahead and publish this and let the jury hear it.

13 THE COURT: Okay. What kind of device do you have to
14 play it?

15 MS. ODOM: This computer and then it will come out
16 of these speakers.

17 THE COURT: Okay. All right. Well, loud enough for
18 everybody to hear? You hope so?

19 MS. ODOM: Yes. I hope so. If not, we'll fix it.

20 THE COURT: All right. Well, let's be at ease for just
21 a moment. Nothing said. And give the Solicitor a chance
22 to put it in.

23 MS. ODOM: And it's around eight minutes or so, so if
24 it's okay the detective could just stay on the stand.

25 THE COURT: Certainly.

1 (Whereupon, State's Exhibit 1 was published to the
2 jury.)

3 THE COURT: Could I get the lawyers to come up here for
4 just a minute, please.

5 (Whereupon, a bench conference took place while the
6 jury was in the courtroom.)

7 Q All right, Detective Crisp. We've just played the
8 disk of the recorded statement. But I -- even though the
9 jury has heard it, I kind of want to get back into it and
10 go over it a little bit more. So where were y'all when he
11 gave you this statement?

12 A It was actually the city detectives' office, in the
13 interview room.

14 Q Okay. And even though they've just heard it, can you
15 just tell me what he told you?

16 A Absolutely. We were out in the interview room. We
17 sat down. Started talking about the incident even further.
18 We got into why he had actually done -- why he had actually
19 took the property. Once there he started saying that he,
20 again, he called Exit Realty, didn't get permission, didn't
21 get answers, so he decided he thought the property was
22 abandoned, was not in use. So he then went to go open
23 gates. Some part of the conversation he said the gate was
24 open, but then he said he opened the gate. But he went on
25 the property, backed up, unloaded just some metal out of

1 some bins onto his trailer from some -- I think it was some
2 round tubs that was sitting there. He then took -- over
3 the course of several days, left the property, went to
4 Harvley's Scrap Yard, scrapped the property. Came back,
5 loaded some more up. This is over the course of like four
6 days. During the calculations of those four slips that was
7 given into evidence earlier, several thousand pounds.
8 There were several pounds of property from this warehouse
9 of Mr. Gaines. And after his statements to me there was --
10 we found it to be grand larceny. I did charge him with
11 grand larceny.

12 Q Okay. And is the defendant in the courtroom today?
13 Can you just point him out for us?

14 A Yes, ma'am. He's sitting to the left of Mr.
15 Henderson. White shirt.

16 THE COURT: Let the record reflect that the witness has
17 identified the defendant.

18 Q Thank you. Okay. So at that time you placed him
19 under arrest because you -- can you tell me what evidence
20 you had? Just go over --

21 A Yes, ma'am. From the -- from him actually being on
22 the scene, us physically seeing loading the property -- or
23 the property owner getting there saying he did not have
24 permission to be on my property, no one has permission to
25 give anyone else permission on my property except for me.

1 Him admitting to me he actually was on the property,
2 thought it was abandoned. Over the course of the previous
3 four or five days admittedly taking property from Mr.
4 Gaines' warehouse to Harvley's Scrap Metal Yard. That was
5 the basis I arrested him on for grand larceny. According
6 to the value of Mr. Gaines gave me the actual property for
7 which he used, not the scrap property value, but actual
8 property value Mr. Gaines advised me that his property was
9 used for.

10 Q Now, you've been out here the whole time.
11 You've heard other witnesses' testimony. I want to kind of
12 get into some other things that have been brought up.
13 You just now referenced the value.

14 MS. ODOM: Your Honor, may I approach?

15 THE COURT: Certainly.

16 Q I'm going to hand you what's been marked as State's
17 Exhibit 14 for identification purposes, incident report.
18 Now, I've handed you what's marked as State's Exhibit 14
19 for identification purposes only. Do you know what that
20 is?

21 A I do. It's a Greenwood City Police Department
22 incident report.

23 Q Okay. Now, on there it does have a zero value on
24 that. Can you speak to that why it would say zero value?

25 A I can. On the day on the 24th Officer Matt Blackwell

1 actually initially wrote the report. Anything else further
2 than that is my supplemental, but the only -- at the time
3 Officer Blackwell wrote the report there was no specific
4 value given to the property until my further investigation
5 after the report initially written and the property was
6 actually determined. I just didn't go back in and amend
7 the report for its actual value.

8 Q Now, even if Officer Blackwell had put an amount in,
9 just ball parking an amount, who is the best person to
10 speak to the value of the property: the officer or the
11 victim?

12 A Certainly Mr. Gaines. Under most circumstances where
13 any value is asked of us it's merely our opinion. We're
14 asked to judge property values on cars, things stolen,
15 actually property damage. Most of this stuff is merely a
16 suggested estimate on the officer's behalf and his
17 experience.

18 Q Now, a couple other things that were brought up. Why
19 didn't you charge the defendant with trespassing?

20 A As noted before, Mr. Carson Henderson mentioned that
21 you couldn't charge him unless he had been placed on
22 trespass notice. That is, in fact, not true. You can.
23 There's three separate statutes on trespassing, trespassing
24 after warning, trespassing after notice. One in particular
25 that he could have charged Mr. Mitchell on is if one of the

1 properties clearly marked is no trespassing. Officer could
2 then pursue charges for actually trespassing on that
3 property. As long as the property is clearly marked with
4 trespassing signs.

5 Q And in this case you didn't charge it, though.

6 A I did not.

7 Q Why?

8 A The reason I didn't charge it, after speaking with Mr.
9 Mitchell, he had been very cooperative with law
10 enforcement, I felt like it was very unnecessary for me to
11 continue other -- any other charge other than grand
12 larceny. This is merely a benefit for him for his
13 cooperating for not charging him trespassing.

14 Q Now, the warrants Mr. Henderson has referenced have a
15 wider date range.

16 A That's correct. The actual date on the warrant says
17 3/1/2010 through 3/24. The actual incidents did occur
18 between these dates, but upon initial statements from Mr.
19 Gaines the things occurred throughout the month, past
20 several weeks, and Mr. Mitchell's admission that it's been
21 over the past several weeks. Therefore, the whole month of
22 March was included on the warrant. That way we cover all
23 basis on the time frames that he possibly could have taken
24 metal from the mill site.

25 Q And another thing that's been harped on is that there

1 weren't pictures taken. Can you address that?

2 A I can. As an investigator there is several things
3 that pictures will be taken on. It's on a case by case
4 basis. This particular incident where it's a property
5 crime where Mr. Mitchell was on the property, the property
6 owner was there saying he didn't need to be there. There
7 was no physical property damage that I was aware of that
8 needed to be photographed. The fence that is around the
9 property that was mentioned by us not photographing is
10 concerned a permanent structure. It is still standing to
11 this day. Therefore, there was no reason for me to -- I
12 considered taking pictures of actual property surrounding
13 property at the time. And I guess the property that was on
14 his trailer, no pictures taken of it because it was
15 actually returned back to Mr. Gaines. So, therefore, I
16 didn't see a need in actually taking that picture because
17 it was still there. There was no need taking it.
18 Harvley's Scrap Metal actually did not have the property
19 that was taken to them any longer. So, therefore, I could
20 not take a picture of that either. So there was no
21 property to actually physically take pictures of.

22 Q Now getting back to how you said the defendant had
23 changed his story. Did that strike you as odd? What did
24 it mean to you when he said he has asked someone permission
25 to be there?

1 A When he asked for permission he gave me the state of
2 mind that he knew he did not have the right to be on the
3 property. If you know you got to call and ask for
4 permission to be on the property, you know you don't have a
5 right to be there. So when he said he called and asked for
6 permission then I found he didn't that gives more that he
7 was able to lie to us about being on the property, follow
8 up investigation and he knew from himself by not getting
9 permission and knowing to ask for permission for entering
10 the property that he shouldn't have been there in the first
11 place.

12 MS. ODOM: Your Honor, the State would move to have the
13 incident report introduced into evidence.

14 THE COURT: Okay. What says the defense?

15 MR. HENDERSON: Your Honor, I'm always just leery of
16 putting incident reports in and of themself in. I mean, I
17 use them for cross-examine and to examine just like the
18 solicitor did. And I'm just always leery of the document.
19 There's all sorts of other collateral stuff in incident
20 reports.

21 THE COURT: A specific ground for your objection as to
22 admissibility other than your normal practice concerning
23 incident reports?

24 MR. HENDERSON: I mean, it would be hearsay issues. I
25 mean, there would be all sorts of stuff that would be dealt

1 with on cross and be dealt with on normal examination.

2 THE COURT: Well, you know, if there is some hearsay in
3 there, of course, I would have to examine the document to
4 determine whether or not such hearsay exist. If that's the
5 basis for your objection then possibly at a break I can
6 examine the document and make a determination whether or
7 not I believe that there is some hearsay and then make a
8 ruling on that. So we'll just lay that to the side and
9 I'll deal with admissibility during the break.

10 MS. ODOM: Okay, Your Honor. Thank you.

11 THE COURT: Okay.

12 Q Just a few more questions, Detective. I'm going to
13 hand you what's been marked State's Exhibits 8-13. These
14 are the Harvley's metal receipts.

15 MS. ODOM: May I approach?

16 THE COURT: Sure.

17 Q Now, how did you come in possession of those receipts?

18 A These are the scrap metal from Harvley's Scrap Metal
19 actually was given to me by Mr. Mitchell during our
20 interview in the detective's office. He did provide me
21 with these. And in that time he said this is everything
22 I've taken from Mr. Gaines' property.

23 Q And the value on those receipts, can you speak to why
24 that value would be different than the value that was
25 charged?

1 A Yes, ma'am. As noted before through several other
2 testimonies, this -- the value from Harvley's Scrap Metal,
3 they deal with scrap metal. Anything usually comes there
4 business they consider scrap unless they see it's a special
5 just by a mere visual inspection. So the value on this
6 showing is that Harvley's showing it as scrap metal. It
7 may be scrap to them, but when it's the actual metal is
8 used for a purpose, as described in the antique table
9 incident before, is much valuable to someone else. So
10 Harvley's wouldn't know what these products are actually
11 for. The actual owner of the property actually would.

12 MS. ODOM: Please answer any questions Mr. Henderson
13 has.

14 THE COURT: Any cross-examination?

15 MR. HENDERSON: Yes, sir, Your Honor.

16 THE COURT: Solicitor, go ahead and hand me that
17 incident report. And I might can be looking at it while --
18 please.

19 CROSS-EXAMINATION

20 BY MR. HENDERSON:

21 Q. Detective, take a look at this and tell me who owns
22 these other tracts of land.

23 MS. ODOM: Objection as to hearsay.

24 MR. HENDERSON: This same tract of land which is
25 clearly identified that it's owned by X.

1 THE COURT: Right. But now the big map does not have
2 the writing as the small one does?

3 MR. HENDERSON: Correct. This has got the title of the
4 owners on it.

5 THE COURT: Right. And I think the objection from the
6 State is that that information on the small sheet is
7 hearsay provided by someone outside the courtroom. Is that
8 --

9 MS. ODOM: That's correct, Your Honor, that we --
10 the witness, who would need to get that in, is not
11 Detective Crisp.

12 MR. HENDERSON: Right.

13 MS. ODOM: He has no direct knowledge. That is
14 hearsay. Even though the larger picture that's in evidence
15 is on the small sheet he's asking him to read off the
16 small sheet in --

17 (Whereupon, counsel for the State and the defense
18 confer off the record.)

19 MS. ODOM: I'm going to object.

20 MR. HENDERSON: Your Honor, then we'll just -- then our
21 case we'll call somebody from downstairs at GIS --

22 THE COURT: I think probably that would be the little,
23 better way of doing it, Mr. Henderson. Thank you.

24 MR. HENDERSON: That sounds good. I'll be glad to do
25 that, Your Honor.

1 Q So, just from firsthand knowledge, forget anything
2 else, do you know who owns these other two tract of lands?

3 A No, sir, I do not.

4 Q But you recognize that you think they're part of the
5 old Grendle Mill Village?

6 A I think that all of this used to be part of it, but I
7 guess these dividing lines are actually different sections
8 of actual owners now. I'm not sure -- now, the entire
9 property itself did, I believe, used to be the mill site.

10 Q Looks like it's been cut somehow or another?

11 A Yes, sir. That's correct.

12 Q Let me ask you. On March 24th, I believe you arrived
13 around 10:15ish, somewhere in that neck of the woods?

14 A Approximate, yes, sir.

15 Q Okay. And where was Mr. Mitchell?

16 A Actually, the SUV was actually backed into this area
17 right here. Somewhere up along there he backed in that
18 area.

19 Q And then after you conversed with him did y'all happen
20 to walk around?

21 A I did to parts, probably. Not the entire length of
22 his property I did not.

23 Q But where all -- tell the jury where you walked that.

24 A I know we walked all along here. I went down through
25 the area where he was at. And I actually drove my vehicle

1 back down to here, because this is where the realtor sign
2 was.

3 Q Okay. So the realtor sign was down here on a piece of
4 property that wasn't Mr. Gaines' property?

5 A That's correct.

6 Q Okay. And --

7 A Well, I take that back. I'm not sure whose property
8 this is. It was in this corner where the sign was at.

9 Q Well, do you have any reason to believe it's Mr.
10 Gaines' property?

11 A I don't.

12 Q Okay. But y'all were running around there. And was
13 there a gate down there?

14 A I do believe there's a gate right here.

15 Q And was that gate open, to the best of your
16 recollection?

17 A No, sir, it was not.

18 Q Okay. It was not open, okay. So Mr. Mitchell told
19 you that he tried to make a phone call or he did make a
20 phone call?

21 A He said he tried to call them, yes, sir.

22 Q Do you know what number he called?

23 A I'm not sure exactly. I know it's to Exit Realty.

24 Q Okay. And you didn't keep any notes of what you
25 called?

1 A No, sir. I just called the Exit Realty, the number on
2 the sign for that company.

3 Q And it turned out that wasn't attributable to Mr.
4 Gaines' property?

5 A It was not.

6 Q Okay. Let me ask you, Detective. Kind of going back.
7 I got ahead of myself a little bit. But you didn't
8 take any pictures out there that day at all?

9 A I did not.

10 Q Okay. No pictures of where Mr. Mitchell's vehicle was
11 located?

12 A I did not.

13 Q Okay. No pictures of this Exit Realty sign?

14 A No, sir.

15 Q I mean, you didn't take a picture of the trailer that
16 had stuff on it?

17 A I did not.

18 Q Okay. Did you take any notes out there? I mean, did
19 you do anything other than talk?

20 A We spoke. That's pretty much the extent of our
21 conversation.

22 Q Okay. And, again, you didn't record this on your in-
23 car camera or anything?

24 A No, sir. My vehicle is not equipped with in-car
25 camera.

1 Q Okay. So -- but you would agree that the best
2 evidence of the conversation between you and Mr. Mitchell
3 would be this recorded statement the jury heard?

4 A Absolutely.

5 Q Okay.

6 A That's a lot of it. That's not saying what was spoken
7 with us on the scene, but that's what happened when we got
8 back to detective's office, yes.

9 Q Okay. And Mr. Mitchell told you that he thought this
10 property was abandoned?

11 A He did.

12 Q He said he didn't see any ownership signs up. Is that
13 fair to say?

14 A I don't think any property is listed as ownership
15 sign. My properties don't have ownership signs.

16 Q I mean, do you see any sign to indicate any type of
17 business being run there? He didn't see one, did he?

18 A He didn't mention any.

19 Q Okay. And he didn't mention seeing any no
20 trespassing signs I've heard you reference?

21 A No, but I've seen no trespassing signs.

22 Q How do you know he saw them?

23 A They were clearly posted as legally as you can be.

24 Q Okay. And you don't have any pictures of that?

25 A I do not.

1 Q Okay. I noticed your incident report doesn't say
2 anything about there being any cut locks. Is that fair to
3 say?

4 A That's correct.

5 Q Any missing chains from fences?

6 A That's correct.

7 Q Any closed gates? I mean, in your incident report?

8 A No. It was actually open when I got there because his
9 vehicle was actually inside the property.

10 Q Okay. And Mr. Mitchell told you that the gates he
11 went in that entering the property on were open.

12 A It depends on which form you take. One statement he
13 says was open. Then he said he opened it. I guess, by
14 means of opening it whether it was locked or unlocked. I
15 guess that could be questioned.

16 Q But listening to a statement, I understand there
17 might be some conflict on it. But at least some -- one of
18 the gates was opened, period, it sounded like he said he
19 told you.

20 A According to him, but whether it be that day or the
21 first day he came onto the -- the 22nd, I'm not sure of.

22 Q You don't know?

23 A That's correct.

24 Q Okay.

25 A I can only go off Mr. Gaines' statements to me, which

1 he says they stayed locked.

2 Q And did you walk the property to have Mr. Mitchell

3 tell you where he picked up variety of items at?

4 A It was all generally right where his vehicle was at.

5 Q Okay. He didn't walk you all around these other

6 fields around there?

7 A I did not walk with him, no, sir.

8 Q Okay. His children were there with him, weren't they?

9 A I do believe there was a child and a woman there with

10 him.

11 Q Okay. And this was in broad daylight, right?

12 A It was.

13 Q I mean, no evidence of him trying to hide or conceal

14 anything?

15 A No, sir.

16 Q I mean, he's out there with his vehicle and his

17 trailer and he's loading up to stuff.

18 A That's correct.

19 Q Is that fair to say?

20 A It is.

21 Q Okay. And that's what he told you he was doing?

22 A Yes, sir.

23 Q Okay. And he told you that he went down to Mr.

24 Harvley's. Is that correct?

25 A He did.

1 Q And, in fact, he gave you the tickets.

2 A He did.

3 Q And I think your testimony was for the jury that he
4 was very cooperative.

5 A Absolutely.

6 Q Nothing to hide.

7 A That's correct.

8 Q I mean, he was real open with you about what he
9 perceived was going on?

10 A He did.

11 Q Okay. And he told you that he didn't realize that
12 anyone owned the property.

13 A He said the property seemed to be abandoned. But, I
14 guess, since Columbus' days all property is owned by
15 somebody, but I'm not sure he actually physically had any
16 knowledge of this property being owned. But he did say the
17 property appeared to be abandoned.

18 Q Right. And you didn't charge him -- I know you said
19 you didn't charge him with trespass.

20 A That's correct.

21 Q Even though you think there are signs up?

22 A That's right.

23 Q Okay. But you put him on trespass notice?

24 A I did.

25 Q And you hadn't had any other problems with him going

1 on the property, have you, to the best --

2 A None are reported to law enforcement, yes, sir.

3 Q Okay. One thing you said, and I'm trying to get my
4 hands around it, you arrested Mr. Mitchell on March 24th,
5 correct?

6 A That's correct.

7 Q After he gave you that statement?

8 A That's correct.

9 Q And you said that Mr. Gaines sometime that day gave
10 you the value of this property?

11 A Between -- between location and me charging Mr.
12 Mitchell, he gave me the value of -- his estimated property
13 value of what was stolen.

14 Q Okay. But he didn't give you a list of stuff that was
15 taken?

16 A No, sir. He did not. He didn't give an itemized list
17 with me at all.

18 Q Did he give you a list of stuff that he thought was
19 taken from the 20th through the 24th?

20 A He -- I guess, verbally. He didn't give me a list of
21 anything, no inventory or anything, no, sir.

22 Q Okay. How about from the 19th back to the first of
23 the month? I mean, did he break this down or he just give
24 you some round number?

25 A He just gave me an estimated time where he had been on

1 the property, noticed things stolen. And that's where --
2 and according to the slips that he gave me, that's where I
3 based my charges.

4 Q From the 20th forward?

5 A From the slips that was given to me from Mr. Mitchell,
6 yes, sir.

7 Q Okay. That's the March 20th forward?

8 A That's correct.

9 Q Did you look in Mr. Mitchell's car? I mean, did you
10 physically --

11 A Did I look in it?

12 Q Right.

13 A I feel certain that I did, but I don't recall what was
14 in there.

15 Q I mean, you didn't find any instruments of cutting
16 locks or anything along those lines, did you?

17 A No, I feel certain I did not. I'm not sure I
18 physically searched his car based on the case itself.

19 Q I mean, if you did you would have brought that to our
20 attention, I --

21 A If I had have physically searched his car.

22 Q Okay.

23 A Then, yes, I would have. But at the time there was no
24 reason to search his vehicle. Therefore, nothing was
25 located in his car because it was not searched.

- 1 Q Did you go down to Harvley's to look into this matter?
- 2 A I did.
- 3 Q You physically went down there?
- 4 A Yes, sir.
- 5 Q And you didn't take any photographs?
- 6 A No, sir.
- 7 Q What day did you go down there?
- 8 A Either the day of -- I'm pretty sure it was the 24th
- 9 and maybe the 25th. But I did go down there. And I talked
- 10 to Mr. Harvley himself. And said the property -- that he
- 11 had, in fact, been down there on several occasions.
- 12 But the property that was taken there is -- couldn't be
- 13 found. So, therefore, there would be no pictures to take.
- 14 Q Okay. So you didn't reference in any of your reports
- 15 that you actually went down there.
- 16 A Okay.
- 17 Q So that's why I was having a hard time wondering how
- 18 you were investigating this matter not going down there.
- 19 A Yes, sir. And I think in the report I mentioned I
- 20 called. But I actually physically went down, too, to
- 21 actually see if the property was still there. That's when
- 22 he said it wasn't.
- 23 Q And nothing was there?
- 24 A That's correct.
- 25 Q Okay.

1 A He said the property had already been disposed of on
2 his property.

3 Q And I think your testimony on direct was that you felt
4 that Mr. Harvley would know if something unusual came in.

5 A If he was, in fact, the actual one to look at this
6 property, yes. I'm not sure if he's the actual one who
7 wrote this ticket. They've got numerous employees there.
8 It's just --

9 Q But did you ask him that?

10 A Did I ask him?

11 Q Yeah.

12 A No, sir. I guess under any circumstances if Harvley
13 is there and he sees someone coming in claiming scrap metal
14 they're going to take it as scrap. As they mentioned
15 before, she takes it as scrap and the actual employee will
16 take it to her own personal use because she knows it's
17 worth more than just scrap metal.

18 Q And I was thinking of something, Detective. Just
19 trying to think, you know, while we're at lunch just going
20 back to basic science class. Have you got a sample of this
21 niresistant --

22 A I do not.

23 Q -- casting? Have you seen one?

24 A I have not.

25 Q Okay. And if I'm not mistaken, it's some sort of iron

1 casting or some sort of iron casing?

2 A According to Mr. Gaines's testimony, I believe it is.

3 Q And, you know, iron's non-magnetic. Non-magnetic,
4 isn't it? I mean, magnets don't stick to it? Do I
5 remember that right from science class?

6 A I'm guessing.

7 Q Okay.

8 A I'm not sure myself. I know steel is magnetic. I'm
9 not sure whether --

10 Q Okay. Steel is magnetic. I remember that, too. That
11 was going to be my next question. And you heard the young
12 lady say from Harvley's that the stuff they took was scrap
13 steel being magnetic. Do you remember her saying that?

14 A Yes.

15 Q Okay. And, again, these iron casings, I guess just by
16 it's very nature, would be non-magnetic.

17 A I'm guessing.

18 Q And you heard the lady from Harvley's say there's
19 nothing on those slips indicating that anything other than
20 scrap steel was brought down there.

21 A According to them, yes. But I've been there on
22 numerous occasions myself for personal reasons, and they
23 don't come out and put a magnet to every piece of property
24 that comes through the door.

25 Q But you don't know what happened this day?

1 A I do not.

2 Q Okay. You weren't there?

3 A I do not.

4 MR. HENDERSON: Just looking through my notes, Your
5 Honor. Make sure . . .

6 THE COURT: Sure. Take your time.

7 MR. HENDERSON: If I might have one minute, Your Honor.

8 THE COURT: Sure.

9 MR. HENDERSON: I don't have anything further, Your
10 Honor.

11 THE COURT: Anything in re-direct?

12 MS. ODOM: Just very brief.

13 RE-DIRECT EXAMINATION

14 BY MS. ODOM:

15 Q Just a few questions for you, Detective. Mr.
16 Henderson asked you if you knew if Stan Gaines owned that
17 land. So you don't know whether he does or he doesn't?

18 A I do not.

19 Q Okay. And --

20 A You're referencing the actual incident location or the
21 property around it? Which one are you speaking of?

22 Q The property around it.

23 A The property around the location, I do not. I'm not
24 aware of whether he owns it or not. That's correct.

25 Q But when you responded, the property -- the piece of

1 dirt that everyone was standing on is Stan Gaines'?

2 A That's correct. He was actually there and said this
3 is my property, he's not supposed to be there.

4 Q The metal that was on the defendant's trailer belonged
5 to Stan Gaines?

6 A Yes, ma'am. Actually, his trailer was actually parked
7 very, very close proximity to where this property was, and
8 it was on Mr. Gaines' property.

9 Q And when the defendant gave you a statement he
10 referenced some tubs.

11 A He did.

12 Q Now, making that reference, with that in mind, the
13 previous instance where -- when he's taking this metal to
14 Harvley's Scrap Yard, that's what he's talking about when
15 he references the tubs?

16 A That's correct. That's where he's taking the money --
17 the metal out of, the tubs that's located on the property.
18 There are so heavy he had to take it out piece by piece
19 from the tub to actually put it on his trailer.
20 He couldn't pick up the whole tub by himself.

21 Q And you heard -- or how did Mr. Gaines store that
22 metal when you responded there that day? Was it in tubs?

23 A It was still in the tubs, yes.

24 Q So the previous metal he took was in the tubs, along -
25 - was in the tubs?

1 A That's correct.

2 Q Okay. Mr. Henderson said that the defendant -- or the
3 defendant told you he thought the property might have been
4 abandoned, but.

5 THE COURT: Need a verbal response.

6 A That's correct.

7 Q But you stated that the defendant had told you he
8 called a realty company, correct?

9 A That's correct. He called Exit Realty in an attempt
10 to get permission, I guess. Therefore, knowing that the
11 property possibly was not abandoned, actually owned by
12 somebody, he had to call and get permission. But he did
13 not receive permission, decided to go anyway.

14 MS. ODOM: Thank you. No further questions.

15 THE COURT: Re-cross?

16 (RE-CROSS EXAMINATION)

17 BY MR. HENDERSON:

18 Q Just to clarify, detective. The Exit Realty sign was
19 not even attached to Mr. Gaines' property?

20 A According to GIS, it looks like it was not. If, in
21 fact, he did not own this piece of property. I'm not sure
22 if he does or not.

23 Q Well, that's one reason I was trying to go into these
24 documents with you, Detective.

25 A That's correct.

1 Q To find out whether or not he did. And is it safe to
2 say that if he didn't own them -- that Mr. Gaines didn't
3 own that tract of land, then Mr. Mitchell was mistaken in
4 calling an Exit Realty person for Mr. Gaines if Mr. Gaines
5 didn't have property listed by Exit Realty?

6 A I guess if he were to actually call and actually got
7 in touch with someone they would have told him that the
8 property wasn't theirs and that, in fact, he did not have
9 permission to go. But, yet, he went anyway.

10 Q Right. But, again, whatever Exit Realty would have
11 told him wouldn't have made a difference about Mr. Gaines'
12 property.

13 A Yes. Correct.

14 Q Okay.

15 A If given the circumstances are true, that's correct.

16 Q Right. Okay. I just want to clarify that with you.

17 A Yes, sir.

18 MR. HENDERSON: I don't have anything further, Your
19 Honor.

20 THE COURT: Okay. Thank you, Detective. You can step
21 down.

22 WITNESS: Yes, sir. Thank you.

23 THE COURT: Anything further from the State?

24 MS. ODOM: No, sir, Your Honor.

25 THE COURT: Okay. State rests?

1 MS. ODOM: Yes, sir.

2 THE COURT: Okay. All right. Mr. Foreman and ladies
3 and gentlemen of the jury, I'm going to ask that you go
4 back to your jury room. We're going to take a short break
5 and bring you out very soon. Thank you. And I caution
6 everyone again don't begin discussing the facts of this
7 case among yourselves.

8 (Whereupon, the jury exited the courtroom at 11:11
9 a.m.)

10 THE COURT: Concerning Exhibit No. 14, what I did, I
11 redacted a small portion of this incident report dealing
12 with what Danny Harvley had told the detective. But I did
13 it prior to detective Harvley then stating without
14 objection what Mr. Harvley said. So you can either -- we
15 can either stay with this or get a clean incident report
16 and it will be admitted into evidence.

17 MS. ODOM: I'd like to get a clean incident report.

18 MR. HENDERSON: And that will be fine, Your Honor.

19 THE COURT: Okay. All right. So we'll just give this
20 back to the court reporter and she can deal with this
21 document and then mark a clean copy.

22 THE COURT: Okay. Anything from the defense?

23 MR. HENDERSON: Yes, sir, Your Honor. I do have a
24 directed verdict motion. And because of the kind of the
25 convoluted nature of this case my motion may be kind of

1 convoluted. But I think his Honor will understand where
2 I'm going.

3 THE COURT: Okay.

4 MR. HENDERSON: I hope they do. Sometimes I get my own
5 self tongue-tied.

6 THE COURT: Okay. All right. Well, we'll all do the
7 best that we can.

8 MR. HENDERSON: If you look at the indictment, and, of
9 course, under Gentry the indictment is a notice document.
10 They've got to -- put Mr. Mitchell on notice of what they
11 allege that he has done. And they said that on or about
12 March 20th through 24th - Which are the correct dates. No
13 dispute about that. I was the one that was adamant that
14 the government use those dates because those are the
15 relevant dates. But it says that it feloniously take and
16 carry away the personal goods of Stan Gaines of the value
17 of more than \$10,000.

18 Your Honor, if you look at the exhibits, and I would
19 call the court's attention to Defense Number one and the
20 first page of Defense Number two, and actually I guess all
21 of the pages of Defense Number two, that these items, or at
22 least a portion of these items, this niresistant -- I want
23 to make sure I'm using the right word. Niresist type I
24 iron was bought and delivered to Synehi Castings,
25 Incorporated over on Ginn Street here in Greenwood. Paid

1 for by Synehi Castings because that's what Mr. Gaines was
2 testifying to as it relates to that particular set of
3 documents or those particular items. Then he said those
4 items are transferred over to property that he owns over
5 here on Smythe Avenue. That's what I picked up from his
6 testimony. And, Your Honor, as it relates to those
7 documents, I think it's uncontradicted that those items are
8 owned by Synehi Castings, Incorporated and they've indicted
9 my client for stealing these same documents from Stan
10 Gaines who are two totally different creatures, Your Honor.
11 You know, Mr. Gaines didn't address anything along those
12 lines or didn't say they were the same people. Didn't say
13 they weren't the same people. But there's been no
14 testimony that they are the same entity. And his Honor
15 well knows that corporations are distinct legal entities
16 from human beings. And, you know, and that, as it relates
17 to niresist type I iron as it relates to the other item on
18 both of these exhibits, the iron castings, that he gave no
19 proof of ownership about those at all other than they were
20 allegedly located on his land. And I don't know if that
21 makes them his as a matter of law or not, them allegedly
22 being found on his land over there off of Smythe Avenue.
23 But as it relates to these niresistant type I irons the
24 only testimony in the record is that they belonged and were
25 bought and paid for by Synehi Castings and ended up over on

1 Mr. Gaines' property. And the government has indicted my
2 client again for stealing from Mr. Gaines when the only
3 testimony was they belonged to a corporation.

4 So, as it -- and, again, at least as it relates to the
5 nonresistant type I iron would ask for a directed verdict
6 that my client could not have stolen those items from Mr.
7 Gaines. And what makes it so convoluted was, Your Honor,
8 Mr. Gaines is saying that only certain things were stolen
9 from him on these items and, yet, we've got testimony just
10 pure junk scrap with no value to it that my client admitted
11 taking. So I don't think there's any dispute that my
12 client took something from this property. I'm just not
13 sure it's the items that Mr. Gaines has testified to on
14 these two documents. You know, I know that's kind of a
15 convoluted motion.

16 THE COURT: Would that not go to the issue of value as
17 opposed to actual -- as to the actual property taken? I
18 mean, there's no question that -- and we're going to use
19 the term metal kind of generically that some metal material
20 was taken. I understand that Mr. Gaines said, well, it was
21 this -- and I've yet to really get my hands around exactly
22 the material what it's called, the nonresistant, and that's
23 not -- I'm misstating that, but nonetheless -- and then
24 he's taking -- and then the defendant has taken material
25 to the scrap metal. I think it goes to the issue of

1 value more so as to whether or not there's any evidence,
2 direct or substantial circumstantial evidence, tending to
3 prove that the defendant committed the crime of grand
4 larceny or larceny. So I think it does more to value, but
5 certainly, you know, I'm open to anything you want to
6 argue. And I'm going to give the State an opportunity to
7 respond.

8 MR. HENDERSON: But I think my -- I guess as it relates
9 to directed verdict would be on ownership.

10 THE COURT: Right.

11 MR. HENDERSON: But the -- but clearly he testified
12 that these niresist items were owned, bought and paid for,
13 and shipped to Synehi Castings.

14 THE COURT: Right.

15 MR. HENDERSON: And somehow ended up over on his
16 individual property.

17 THE COURT: Right.

18 MR. HENDERSON: And -- but they've alleged that he
19 stole those items belonging to Mr. Gaines, but Mr. Gaines
20 testified they belonged to Synehi Castings.

21 THE COURT: Let's hear -- and I'm not trying to cut you
22 off. I'm going to give you more opportunity to argue --

23 MR. HENDERSON: I know that's an in-artful argument.

24 THE COURT: No, that's okay. It was good. Solicitor,
25 you want to respond? I think Mr. Henderson's main

1 complaint is he claims that the property was actually owned
2 by the corporation and the indictment alleges ownership by
3 Stan Gaines.

4 MS. ODOM: Your Honor, as you've stated on the directed
5 verdict, it goes to any evidence, not the weight of the
6 evidence, but if there's any evidence. And Stan Gaines
7 testified that that was his company. He's testifying that
8 the metal was his. He's -- we can listen to the -- to it
9 again, but if I recollect correct -- correctly that he
10 testified it was his company and that the metal was his and
11 kind of went interchanged company and him throughout the
12 trial. I think there's evidence there that it was his.
13 Even if it wasn't, Your Honor, I just say that there's
14 evidence there with his testimony and then some of
15 the officers, you know, repeatedly referred to the metal
16 being Mr. Gaines'. I mean, there's evidence there through
17 testimony that it's his metal.

18 THE COURT: All right. Thanks, Solicitor. Anything in
19 response to that?

20 MR. HENDERSON: Your Honor, I didn't recollect Mr.
21 Gaines saying that he owns the company. I think he said he
22 worked at the company, or worked for the company, or hung
23 around on the company premises, but I don't recollect there
24 being any testimony that he owned the company. And that
25 might be something for Madam Court Reporter to look back

1 through. Because I was looking back through my notes, too,
2 Your Honor.

3 MS. ODOM: I mean, the indictment says the goods of
4 Stan Gaines. And he -- unless I'm remembering incorrectly,
5 he referred several times he said they were his.
6 The document says they're his. He said they were his.

7 THE COURT: Well, my very able and trusted law clerk's
8 notes indicate that he said it was his business. Now, with
9 that said, if, Mr. Henderson, if you insist I will
10 certainly ask our court reporter to go back and see if she
11 can find his testimony directly related to that particular
12 issue about this corporation, his business, if, in fact, he
13 did say his business. All I'm saying is that my law
14 clerk's notes indicate that he said his business. So, but
15 if you insist I'll be glad to -- I'd be glad to do that.

16 MR. HENDERSON: I would like her to look, Your Honor.
17 But keep in mind, even if it is Mr. Gaines' business he
18 still doesn't own the property personally. The company
19 owns it. He and the company are distinct creatures of the
20 law.

21 THE COURT: Okay. All right. Well, let me just kind
22 of tell you where I'm kind of coming from, but, again,
23 we'll -- we can go back and review the testimony. When I
24 look at the evidence, direct and substantial circumstantial
25 evidence, in a light most favorable to the State I also

1 consider any inferences that are deduced therefrom. And
2 could it not be inferred that because the property was on
3 the real estate of Stan Gaines that, in fact, he took some
4 sort of ownership rights in that property. And I'm not
5 saying that happened, that was the case. But I'm saying
6 cannot that be an inference that the jury could reasonably
7 determine based upon the evidence presented.

8 If that inference is a permissible inference then is
9 there not enough evidence or creating any evidence to send
10 this case to the jury. That's kind of the direction I'm
11 going in on the primarily the basis for your directed
12 verdict, Mr. Henderson, is a very valid point concerning
13 ownership. But I think the jury could infer that he
14 obtained ownership rights, however, because it ended up on
15 property personally owned by him. Now, with that said,
16 I'll be glad to hear any further argument. If you still
17 want the court reporter to go back concerning the testimony
18 about the company then we'll take a break and have her do
19 that.

20 MR. HENDERSON: Just to protect my record, Your Honor.

21 THE COURT: Sure.

22 MR. HENDERSON: If I may have Madame Court Reporter do
23 that.

24 THE COURT: Okay. Sure. Listen, y'all all are doing
25 an excellent job in this case. And you're working hard for

1 your client. They're working hard for the State of South
2 Carolina. I don't fault you at all. All right. We're
3 going to take a recess. And, Madame Court Reporter, if
4 you could go back and see what you can dig up on that. All
5 right. We'll be at ease.

6 (Whereupon, the court took a brief recess so that the
7 court reporter could review the testimony.)

8 THE COURT: Okay. We're back on the record. And the
9 court reporter did have an opportunity to play a portion of
10 Mr. Gaines' testimony, basically kind of at the beginning
11 of his testimony. And the portion she played indicated
12 that he testified that he ran the business. The portion
13 that she played did not indicate or didn't get into actual
14 ownership of the business. But I'm going to deny the
15 motion for directed verdict on two grounds. One is what I
16 stated previously. In deciding on a directed verdict I
17 look at if there's any inferences that can be drawn from
18 the evidence. And I think the jury can find, if they so
19 chose, an inference that Mr. Gaines, through whatever
20 means, acquired ownership of the property by virtue of it
21 being located on his real estate.

22 The second ground is based upon *State v. Jones*. And
23 let me see if I can paraphrase the holding in that case
24 that will make some sense. Of course, it says a criminal
25 defendant is entitled to be tried only on indicted

1 offenses. That's pretty much stands to reason that's not
2 anything we didn't already know. It says a material
3 variance between the charge and proof entitles the
4 defendant to a directed verdict. Such a variance is not
5 material if it is not an element of the offense, okay.
6 Now, the identity of the owner, I don't believe, is an
7 element of the offense. And I'm going to hear from both
8 sides, okay. I'm going to give you an opportunity to try
9 to make one last effort to convince me otherwise, either to
10 uphold the denial of the motion for directed verdict or to
11 grant it. The definition of grand larceny is taking
12 property that belongs to another. And I don't think that
13 an element of the offense is the actual owner. If it
14 doesn't belong to the defendant then actually it has to
15 belong to somebody else. So based upon *State v. Jones*,
16 that case is 242-SC-248, it's a material variance that
17 would justify a directed verdict. A material variance
18 between the charge and the proof, so long as it is an
19 element of the offense. So, with that said, Mr. Henderson,
20 I'll be glad to hear from you, sir.

21 MR. HENDERSON: Very briefly, Your Honor. While we
22 were taking the break we were sitting here discussing this
23 and going back and again recollecting what Mr. Gaines said
24 is that all the property -- and I think this niresistant
25 and these other castings were brought over from Synehi

1 Corporation to be stored, that they all originated from
2 over at the company, thereby, I think the inference you
3 drew from that would be owned by the company and then
4 shipped over to property to be stored on behalf of the
5 company. And it just happened to be on Mr. Gaines's
6 property. And, again, I don't believe that gives him any
7 type of ownership interest in the stuff.

8 THE COURT: Right. But, again, is the identity of the
9 owner, is that an element of the offense?

10 MR. HENDERSON: Your Honor, in this indictment the
11 State has made it a material part of the allegations
12 against my client. And you notice, Your Honor, and I hope
13 you don't let them do it. They didn't move to conform the
14 indictment, which I think they could have done after they
15 rested their case and did not.

16 THE COURT: Right. But based upon *State v. Jones*, if
17 the indictment states one thing concerning an element of
18 the offense and the procf indicates something different on
19 that same element of the offense then under *State v. Jones*,
20 the way I read it, it justifies a granting of a motion for
21 directed verdict. But my point being is is does it -- is
22 it material to grand larceny that the identity -- the
23 correct identity of the owner is an element of the offense.
24 Does the elements of grand larceny just state property of
25 another? So that's my question based upon *State v. Jones*.

1 MS. ODOM: Your Honor --

2 THE COURT: And I'll hear more from you, Mr. Henderson.
3 We all want to make sure we do the right thing here.

4 MR. HENDERSON: Oh, I agree. When going back to Gentry
5 that the indictment is truly a notice document that the
6 government is constrained by the terms of their indictment,
7 if they are alleging X, and part of X is it's owned by Stan
8 Gaines and the evidence that comes out in trial is that
9 it's owned by Synehi Castings coming out of Mr. Gaines'
10 mouth, I think that is a material variance, Your Honor.

11 THE COURT: Well, but -- but it has to be on an element
12 of the offense. Let's go back --

13 MR. HENDERSON: Because larceny is a specific intent
14 crime, you've got to specifically intend to steal a
15 specific item from a specific person.

16 THE COURT: Oh, and I agree with you. But that's not
17 relevant to what we're dealing with here on your motion for
18 directed verdict. Let me just read the entire paragraph.
19 "A criminal defendant is entitled to be tried only on
20 indicted offenses." And I won't read the cited cases. "In
21 South Carolina it is a rule of universal observance in
22 administering the criminal law that a defendant must be
23 convicted, if convicted at all, of the particular offense
24 charged in the bill of indictment. A material variance
25 between the charge and proof entitles the defendant to a

1 directed verdict. Such a variance is not material if it is
2 not an element of the offense.

3 A variance between an allegation contained in the
4 indictment and proof is immaterial if the unproved
5 allegation is surplusage. Moreover, a conviction will not
6 be overturned due to evidence that tends to show a narrower
7 charge in that contained in the indictment if the narrower
8 charge is fully included within the indictment." So, let's
9 assume the indictment didn't even list Stan Gaines' name.
10 Just said that the defendant stole property belonging to
11 another. Would you maintain, Mr. Henderson, that the
12 indictment was fatally defective if it did not have Stan --
13 had no one's name, just said property of another?

14 MR. HENDERSON: If they say it's another, just property
15 of an other, I think that's a proper indictment.

16 THE COURT: Okay.

17 MR. HENDERSON: But when the state wants to be --
18 narrow it down to -- narrowing it down putting you on
19 notice and then puts a proof that varies from putting you
20 on that notice under Gentry, I mean, that's the problem.

21 THE COURT: Right. But since you have acknowledged
22 that that indictment, if it didn't name Stan Gaines, would
23 still be a proper indictment then listing the name of the
24 owner would not be an element of the offense. And all I
25 can go on is reading *State v. Jones*. So, you know, based

1 upon that, and then based upon my first ground -- and,
2 again, we -- if you want to -- I know you're wanting to
3 protect the record. I mean, if we need to have the court
4 reporter do a more thorough search of the -- of Mr. Gaines'
5 testimony, I'd be glad to do that. But my thinking is it -
6 - the variance is not as to an element of the offense.
7 Based upon *State v. Jones* that variance would not
8 justify granting of a motion for directed verdict.
9 Certainly, it may give you some real good jury arguments.

10 MR. HENDERSON: Oh, I understand.

11 THE COURT: And I can pretty much anticipate you, Mr.
12 Henderson, jumping up and down pretty good on some of those
13 points. But, be that as it may, I've got to, you know,
14 make a decision on this particular point and unless you've
15 got anything else you want to give to me, I'm inclined to
16 deny your motion.

17 MR. HENDERSON: Okay. I just want the record
18 preserved, Your Honor.

19 THE COURT: Sure. I understand that. Okay. All
20 right. Anything further before we get into the defense
21 case?

22 MR. HENDERSON: Your Honor, we don't anticipate putting
23 up a defense.

24 THE COURT: Okay. All right.

25 MR. HENDERSON: So I know we would need to do that in

1 front of the jury, I dare say.

2 THE COURT: Right. And what I've got to do, though, is
3 do the standard charge to your client concerning the right
4 to testify or not to testify, even though you're not
5 planning to call him because you're not putting up a case.
6 I still need to read him his rights concerning that. Give
7 me one moment.

8 One further point on the directed verdict. And I have
9 to admit that my law clerk often times makes me look good
10 and makes it appear that I'm smart. And in *State v. Sweat*,
11 *S-w-e-a-t*, 221-SC-270 has the very same situation we've
12 got, and that defense moved for directed verdict on the
13 ground that the person's name in the indictment were not
14 the true owners of the tobacco. I assume the tobacco was
15 stolen. And the court actually allowed -- after the motion
16 for directed verdict allowed the state to amend to make
17 some additional allegations concerning the ownership. So
18 that goes directly on point to what -- to what we've got
19 here.

20 MR. HENDERSON: But the State hasn't asked to amend,
21 Your Honor. That's --

22 THE COURT: Oh, I know that. But the point being is
23 that the fact that the indictment named the wrong owner did
24 not justify a motion for directed verdict. Let me -- I've
25 got to give the instruction to your client.

1 (PAUSE)

2 Okay. We're back on the record, and I just need to
3 advise you, sir, of what your rights are. If you would
4 stand, and I'm going to ask the clerk to swear you in,
5 please.

6 (Whereupon, the defendant was sworn by the Clerk of
7 Court.)

8 THE COURT: Remain standing. At this time I'm going to
9 explain to you certain of your rights that you have Mr.
10 Mitchell. If you do not understand that I say, please let
11 me know and I will be glad to explain anything else in more
12 detail. Okay, do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. And you need to speak up when you
15 respond.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Thank you. And even though your attorney
18 has indicated that it's been decided that the defense will
19 not put a case, which is certainly every bit your right, we
20 have reached the stage of the trial where you could, if you
21 had decided, to present your defense. And you have the
22 right to claim the protections given to you by the Fifth
23 Amendment to the Constitution of the United States. This
24 amendment states in part no person shall be compelled in
25 any criminal case to be a witness against himself. This

1 means that you cannot be required to testify in this case.
2 You have the right to testify on your own behalf, however,
3 no one can make you testify. This is a personal right and
4 no one can waive this right except you.

5 If you decide to testify you'll be subject to the same
6 rules that govern other witnesses and you may be examined
7 and cross-examined on any relevant issue in this case. In
8 addition, if you have any convictions involving
9 dishonesty or false statements or for crimes punishable by
10 imprisonment for more than one year and this court
11 determines that the probative value of admitting this
12 evidence outweighs its prejudicial effect to you, the
13 solicitor would be able to introduce your record to attack
14 your credibility.

15 If you decide to testify this decision on your part
16 must be freely, voluntarily and intelligently made with
17 knowledge of the protections given to you by the Fifth
18 Amendment and the consequences of your decision to testify.
19 If you decide not to testify, I will instruct the jurors
20 that they cannot give the fact that you did not testify
21 any consideration whatsoever and that there is to be
22 absolutely no prejudice to you because you did not testify.
23 It is left entirely up to you whether or not you testify.
24 Certainly, you've already talked with your attorney. You
25 can talk more with your attorney, any of your family or

1 friends, anyone else you would like to talk to. But the
2 final decision will be left entirely up to you. Have you
3 understood everything I've explained to you thus far?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And do you have any questions whatsoever
6 about what I have explained to you thus far?

7 THE DEFENDANT: No, sir.

8 THE COURT: Is that a "no"?

9 THE DEFENDANT: Yes, sir,

10 MR. HENDERSON: That was a "no", correct.

11 THE COURT: All right. Do you need any more time to
12 discuss with Mr. Henderson concerning whether or not you
13 will testify or not?

14 THE DEFENDANT: One moment, please.

15 THE COURT: Sure.

16 (Whereupon, Mr. Henderson and defendant conferred.)

17 MR. HENDERSON: We're done, Your Honor.

18 THE COURT: Okay. All right. And, Mr. Mitchell, is it
19 your decision to testify or not testify?

20 THE DEFENDANT: Not testify.

21 THE COURT: Not testify, okay. All right. Have a
22 seat. Thank you very much, sir. And, Mr. Henderson, it's
23 still your position not to put up a case?

24 MR. HENDERSON: That is correct, Your Honor.

25 THE COURT: All right. Let me tell you -- let's kind

1 of think out loud a little bit. Here's kind of where I'm
2 headed is to go ahead and excuse the jury for the day. I
3 want y'all to hang around because we're going to work on
4 charge. And what I'd like to do before Lyon and I leave
5 out this afternoon I'd like to have the charge fully
6 discussed with you guys and in place, start back in the
7 morning at nine o'clock with closing. Of course, the
8 defense did not put up a case, so they have the right if
9 they so chose to open and close. And just that will be Mr.
10 Henderson's decision. And then charge. What about that
11 plan?

12 MS. ODOM: Your Honor, that's what I was going to
13 suggest.

14 MR. HENDERSON: Yeah, because I think we might have a
15 good bit of work to do with the charge.

16 THE COURT: Yeah, yeah. I know we've got some request
17 to charge. I know Lyon has looked at. I have not looked
18 at them yet from the defense. I think the State's
19 indicated they would be agreeable to a standard
20 charge, even though, certainly, you have the right to take
21 exception to anything that I propose to charge. So let's
22 go ahead and do that. We'll put on when jury comes out the
23 defense will rest. And we'll go ahead and excuse the jury
24 for the day. Is that satisfactory?

25 MS. ODOM: Yes, sir.

1 MR. HENDERSON: Yes, sir, Your Honor.

2 THE COURT: All right. Let's bring the jury out.

3 (Whereupon, the jury entered the courtroom at 2:55
4 p.m.)

5 THE COURT: Let the record reflect that the jury is
6 back in. Y'all can have a seat. I think it was about this
7 time yesterday that I told you I had some good news -
8 I think it was about this time. - that I could let you go
9 early. Well, I've got good news again today. You can go
10 early. I'm going just on the record the -- is the
11 defense going to put up a case?

12 MR. HENDERSON: Your Honor, the defense rests.

13 THE COURT: Okay. Thank you very much, Mr. Henderson.
14 We've got some work -- the court has some work to do with
15 the lawyers to get preparation made to finalize this case
16 and present the court charge to the jury. So we're going
17 to be working this afternoon. We're not taking off early,
18 I can tell you that. We're going to be working. But I
19 just -- there's no need to have you sitting in the jury
20 room for an extended period of time when we can go ahead
21 and excuse you for the remainder of the day. We're going
22 to start back promptly at nine o'clock.

23 What we're going to do is the lawyers will make their
24 closing arguments to you and then the court will charge you
25 on the law in this case. And then you will be given the

1 opportunity then to begin your deliberations to reach a
2 verdict in the case.

3 So you're excused until nine o'clock in the morning.
4 Again, I remind you once again do not talk or discuss
5 anything about this case among yourselves, any family
6 members, friends, anybody that you come into contact with
7 when you go home this evening. And we'll see you back here
8 promptly at nine o'clock. Hope you have a good night.

9 (Whereupon, the jury exited the courtroom at 2:57 p.m.
10 for the remainder of the day.)

11 THE COURT: Okay. What we'll do -- I don't want the
12 court reporter to have to hang around. So any objections
13 or exceptions to the final charge that I decide to give we
14 can put those on the record before nine o'clock in the
15 morning. So you'll be protected there. So we'll be at
16 ease and we'll start working on the charge. And as soon as
17 we get a draft available we'll get it to you.

18 Mr. Henderson, you got a little place you can kind of
19 set up in the courtroom -- I mean, in the courthouse?
20 Because I want you to stay here in the courthouse.

21 MR. HENDERSON: I can sit in here, Your Honor.

22 THE COURT: All right.

23 MR. HENDERSON: I was going to take that order
24 downstairs and file it. I've got some stuff we can do.

25 THE COURT: Okay. Good, good. All right. Everybody

1 be at ease.

2 DAY 3: 10/2/2013

3 THE COURT: Back on the record in the Mitchell case.

4 Let me just put a couple things on the record. The court
5 had an opportunity to meet with the state and the defense
6 concerning the final jury charge. We worked on that, made
7 some modifications to the draft of the charge. The final
8 version has been provided to both the State and the
9 defense. Is there any -- and certainly at the end of my
10 charge I will certainly allow you to state any objections
11 or exceptions that you may have. But at this point in time
12 are there any objections or exceptions to the final draft
13 of the court charge?

14 MS. ODOM: Not from the State.

15 THE COURT: And how about the verdict form that
16 we prepared, any objections to that?

17 MS. ODOM: No, sir.

18 THE COURT: Thank you very much. From the defense?

19 MR. HENDERSON: Your Honor, the verdict form is fine.
20 And I would like to have my proposed mistake of fact to
21 good faith charge marked as a court's exhibit --

22 THE COURT: Already done.

23 MR. HENDERSON: Because I would like to have had that
24 be the court's charge on the state of fact in good faith.

25 THE COURT: All -- you submitted four requests for

1 charge. One was granted in full. The other three have
2 already been marked as a court's exhibit. I didn't think
3 there was a need to mark the one that the court adopted as
4 a court's exhibit. But the other three have been
5 already marked.

6 MR. HENDERSON: Yeah, because I went back and read
7 Logan. The language is exactly the same. I mean, word
8 for word.

9 THE COURT: Right. So that's why we didn't mark that
10 one.

11 MR. HENDERSON: Okay. And then the only other thing,
12 Your Honor, was that we discussed back in chambers that if
13 you feel that the State has proven its case beyond a
14 reasonable doubt then by the defendant you must find the
15 defendant guilty.

16 THE COURT: Okay.

17 MR. HENDERSON: As I suggested, then say so.

18 THE COURT: Right.

19 MR. HENDERSON: Or something along those lines.

20 THE COURT: Okay. So noted. Thank you very much. All
21 right.

22 MR. HENDERSON: And, Your Honor, while we're arguing,
23 law enforcement isn't going to carry this gentleman out in
24 handcuffs or anything are they? I mean, I want to make
25 sure over here that the jury doesn't see somebody

1 paraded...

2 THE COURT: No. They're experienced and they
3 understand what is appropriate, not appropriate. And I
4 trust that they will handle the situation accordingly.

5 MR. HENDERSON: Thank you.

6 THE COURT: Thank you. Closing arguments ready?
7 Are you going to open and close? What are you going to do?

8 MR. HENDERSON: I will close, Your Honor.

9 THE COURT: Okay. All right. I can't think of
10 anything else. Let's go ahead and let's get rolling.
11 Okay. Bring the jury in.

12 (Whereupon, jury entered the courtroom at 9:21 a.m.)

13 THE COURT: Okay. Let the record reflect that the jury
14 is back in. Good morning, everybody. As I explained to
15 you yesterday before we recessed for the day that what
16 we have this morning is the closing arguments from the
17 attorneys. And then the court will give you the final
18 charge on the law. And after that then you will begin your
19 deliberations in the case. So time the lawyers will make
20 their closing arguments.

21 And I told you at the beginning, we've got excellent
22 lawyers. They've worked extremely hard, and I know they've
23 worked extremely hard on their closing arguments, so I
24 would ask that you pay very close attention to what they
25 have to argue to you. Okay. State?

1 MR. MORROW: Thank you, Your Honor.

2 CLOSING ARGUMENT BY MR. MORROW

3 MR. MORROW: Ladies and gentlemen of the jury, I want
4 to share with you a story. Last night I was walking down
5 the street of Greenwood, South Carolina. And I saw
6 something that I thought was quite an amazing site. I saw
7 a gold mine. It was off and there was no really no problem
8 getting to it. It was free and open and anybody could just
9 walk up and take it, whatever they wanted. I mean,
10 granted there were some obstructions in the way. There was
11 a fence and it had some barbed wire around the top of the
12 fence and it was locked. And there were no trespassing
13 signs all along the fence, but I thought it was abandoned
14 so . . . And that was a ridiculous story. It's
15 preposterous, it's fiction. It's a lie.

16 On March 24, 2010 the defendant, Jovan Mitchell, went
17 onto Stan Gaines' property, was caught red-handed loading
18 metal onto a trailer. When he was caught red-handed by
19 Stan Gaines he told his first lie. He said I had
20 permission to be here. I contacted the realty company.
21 They said I could come here and take this metal. Stan
22 Gaines knew that was false. He called the police
23 department. The police department came out there, in the
24 form of officer Matt Blackwell. You heard from him
25 yesterday. Officer Blackwell talked with both subjects who

1 were on the scene, the victim and the defendant.
2 The defendant told his second lie. He said, officer
3 Blackwell, I talked to the realty company, they said I
4 could go out here and take this metal. So officer
5 Blackwell went back to his patrol car. He radioed it in to
6 an investigator. That's when investigator Crisp arrived on
7 the scene. Again, he went to talk to both parties in the
8 case. And he went and talked to the defendant. The
9 defendant told him again another lie, Investigator Crisp, I
10 talked to the realty company. They said I could be here
11 and take this metal.

12 So Investigator Crisp, he followed up on that. He
13 wanted to be sure that he didn't have permission to be on
14 the property. So he called the realty company. The realty
15 company informed him not only had they never heard from the
16 defendant, but they didn't even represent that piece of
17 property. So investigator Crisp asked the defendant to
18 come back and give a statement. The defendant did so. The
19 defendant went to the station. He admits on his statement
20 that you heard yesterday that he went to the property on
21 four separate days, that he made six trips from that piece
22 of property with metal from the property to Harvley's Scrap
23 Yard. There are receipts that we'll put into evidence that
24 show that he made those trips and that he sold that metal
25 in exchange for money. He states that he thought -- in

1 that statement there's a very important line I want you to
2 listen to it. It says he thought that he found a gold
3 mine. That he thought it was abandoned. That, too, was a
4 fairy tale of fiction. A preposterous and ridiculous claim
5 made by a man who had been caught red-handed.

6 Now, the State has to prove each and every element of
7 its case beyond a reasonable doubt. It's a high burden.
8 We welcome that burden. In this case the State has to
9 prove that the defendant took property that belonged to
10 someone else other than the defendant. It couldn't have
11 been his property they took. You can't steal your own
12 property. We've done that. You heard from Stan Gaines,
13 the owner of the property, the victim in this case, testify
14 that it was his property. You heard him testify that he
15 placed it on that site -- the storage site. That he locked
16 it and inside his fence. And he had posted no trespassing
17 signs on the outside of it.

18 We also have to prove that the defendant took and
19 carried away the property. We've proven that.
20 The defendant admits it in his statement. You heard his
21 statement yesterday. He admits that he took metal from the
22 property. And he admits that on six separate occasions he
23 transported that metal from the property to Harvley's Scrap
24 Yard.

25 We have to prove that the defendant did not have

1 permission to take the property. Now, Stan Gaines
2 testified yesterday he didn't give the defendant permission
3 to take his property. He didn't give a realty company
4 permission to give anybody permission to take his property.
5 In fact, no one gave the defendant permission to take the
6 property.

7 We also have to prove the defendant took the property
8 with the intent to permanently deprive the owner of the
9 property. We've also done that. Now, it's hard to prove
10 intent. I can't read the defendant's mind. I can't tell
11 you exactly what he was thinking on that day. What I can
12 do is make inferences based on his actions. And you can do
13 that as well. The defendant took Mr. Gaines' property to
14 Harvley's Scrap Yard and he sold it. He did this on six
15 separate occasions. And the only thing that prevented him
16 from taking metal again to the scrap yard on March 24th was
17 that he was caught by the defendant -- by the victim at the
18 property.

19 The final element we have to prove is that the amount
20 exceeded \$5,000. You heard testimony yesterday about the
21 value of this metal. The metal has specialized use when
22 it's being used in the marketplace. It's this
23 niresist iron. This iron is used in kitchen appliances and
24 industrial kitchens. Because it has anti corrosive
25 properties. And for that specific purpose this

1 metal's value is over \$5,000. You heard yesterday it
2 was actually \$22,000. The difference between what the
3 defendant received at Harvley's Scrap Yard and the value
4 that it's -- of its market value on the market is
5 completely different. For instance, if I take something to
6 the scrap yard it's junk it's going to be used for scrap
7 purposes. It's not -- they're not going to give you what
8 the market value is, especially if you don't know what you
9 have. If you don't know what you have and you take
10 something to sell it somewhere, of course, they're not
11 going to give you fair market value for it. They're going
12 to give you the junk value.

13 Let's talk about reasonable doubt. Proof beyond a
14 reasonable doubt. Every television show, movie you've ever
15 seen lawyers in the court room talks about the concept of
16 reasonable doubt. Reasonable doubt is simply this. It's
17 proof that leaves you firmly convinced of the defendant's
18 guilt. And you'll hear that in the judge's charge. He'll
19 talk about that a little bit later. It's not every doubt.
20 It's not any doubt. It's not all doubt. It's hard to
21 convince anybody a 100 percent of anything. If I were to
22 take a group of people and try to convince them of where to
23 go to lunch this afternoon, it would be hard to get all
24 those people to agree on where to go to lunch a 100
25 percent. Any tough decision you're going to have doubt.

1 And just because you go back there and debate this issue
2 and discuss what happened in this case does not mean the
3 state hasn't met its burden. What it means is that you're
4 smart people and you're going to think about what happened
5 and you're going to debate what happened and you're going
6 to come up with a decision. At the end of the day, if you
7 are firmly convinced that the defendant took that metal
8 with the intent to permanently deprive the owner of it then
9 you must find him guilty.

10 Now, I don't want you to be distracted. The defense
11 is going to say -- they're going to put the police on
12 trial. They're going to point out every little thing the
13 police maybe didn't do. They're going to say, well, they
14 didn't use their in-car cameras, even though the defense
15 knows that the police only really use their in-car cameras
16 when it's a traffic stop. They're going to say, well,
17 pictures weren't taken. Right. Pictures weren't taken.
18 Probably would have been helpful. However, they want you
19 to focus on everybody's actions in this case except for
20 their client. The defendant admits he took the metal. The
21 defendant saw the fence. The fence is still standing to
22 this day. He saw it was a locked gate. He saw there were
23 no trespassing signs and the defendant just didn't care.
24 He saw a gold mine and he wanted to get his. His idea this
25 property is abandoned is simply an excuse by a man who is

1 caught on the property taking what wasn't his. We all
2 learn as children we should not take things that don't
3 belong to us. And that's what the defendant did in this
4 case. And I'm asking you to go find him guilty.

5 THE COURT: Thank you, Solicitor. Mr. Henderson?

6 MR. HENDERSON: Yes, sir, Your Honor.

7 CLOSING ARGUMENT BY MR. HENDERSON

8 MR. HENDERSON: Good morning, ladies and gentlemen.

9 For starters, again, I've had the great pleasure of
10 representing Mr. Jovan Mitchell. And, like I said,
11 anything I do in this courtroom cannot be
12 accomplished without my client's help and my investigator's
13 help, Mr. Powers. I want to repeat a little bit about what
14 I told you yesterday in my opening argument, because I
15 think it's just as relevant now in closing arguments.

16 And, again, ladies and gentlemen, you know from your
17 daily experiences there is always at least two sides to
18 every story. And you've heard the State's story. You've
19 heard my client's version of the events. As you still sit
20 here right now Mr. Mitchell is presumed of and not guilty
21 of these allegations made against him. Under our system of
22 government Mr. Mitchell has nothing to prove or disprove.
23 He had no burden of proof whatsoever.

24 As I said, what is on trial are the allegations made
25 by the State against my client. Who is on trial is Mr.

1 Gaines, the alleged victim in this matter. I want you to
2 keep that in mind. Not my client. It's the allegations
3 made against my client that are on trial. And, again, as
4 you sit here even now you must presume that the allegations
5 made against my client are not true. Unless the government
6 convinces each and every one of you that the allegations
7 against Mr. Mitchell are true beyond all and any reasonable
8 doubt, you must find Mr. Mitchell not guilty.

9 And, again, what is reasonable doubt? His Honor is
10 going to give a very detailed legal explanation of
11 reasonable doubt. But, again, I want to give just the
12 layman's view of what reasonable doubt is. Think of it as
13 giving Mr. Mitchell the benefit of the doubt. If you have
14 any doubt about any testimony that was given from that
15 witness stand, if you have any doubt about any piece of
16 evidence that was introduced by a witness you must give Mr.
17 Mitchell the benefit of any doubt. And if there is an
18 alternative an innocent explanation concerning any of this
19 testimony or evidence you must give Mr. Mitchell the
20 benefit of that alternative and innocent explanation.
21 Again, unless the government removes 100 percent of your
22 reasonable doubt you must find Mr. Mitchell not guilty.

23 Mr. Mitchell's charged with the crime of grand
24 larceny. And his Honor is going to go into great detail
25 about what the elements are or the crime of grand larceny.

1 But let me just kind of be short and sweet. You have to
2 take away and carry away the property of another without
3 the consent of another with the intent to permanently
4 deprive the owner of the property.

5 Now, inherent in that you've got to prove that the
6 property is owned by someone. That's the key element of
7 the offense of grand larceny. The government's got to
8 prove beyond all and any reasonable doubt that any property
9 carried away actually belonged to someone. Now, his Honor
10 is going to go into also detail about circumstantial
11 evidence -- about two types of evidence: direct evidence
12 and circumstantial evidence. And direct evidence is kind
13 of what it sounds like, stuff you see, stuff you hear,
14 stuff you know, stuff that you did, stuff you smell.
15 Kind of like what an eye witness would sit up there and
16 testify to.

17 And circumstantial evidence is proof of a chain of
18 facts and circumstances indicating the existence of a fact.
19 And let me kind of give you a little bit more of an idea of
20 what I believe his Honor is going to charge about
21 circumstantial evidence. To the extent the state relies on
22 circumstantial evidence in an effort to convict Mr.
23 Mitchell all of the circumstances must be consistent with
24 each other and when taken together point conclusively to
25 the guilt. And I want to repeat that. Point conclusively

1 to the guilt of the accused beyond a reasonable doubt. If
2 these circumstances merely portray the defendant's behavior
3 as suspicious the proof has failed. And, again, you're not
4 here to judge suspicions and hunches. You are here in
5 order to determine whether or not the government has proved
6 its allegations beyond all and any reasonable doubt.

7 His Honor read the indictment to you at the start of
8 this trial. And the indictment accuses my client of
9 stealing property belonging to Mr. Stan Gaines valued at
10 more than \$10,000 from March 20, 2010 through March 24,
11 2010. And I want to recap a little bit of the testimony,
12 ladies and gentlemen, that I will submit that was testified
13 to on the stand. Now, you remember Mr. Stan Gaines. He
14 was the first that the State put up. He testified he runs
15 a business called Synehi Castings, Incorporated over on
16 Ginn Street over behind the Civic Center near the
17 old American Legion ballfield. He said it was a foundry
18 business, that they did coatings and whatnot over there.
19 And you heard Mr. Gaines say that Synehi Castings,
20 Incorporated bought and paid for this niresist iron that
21 he's alleging got stolen. You heard Mr. Gaines say, I will
22 submit, that niresist iron was delivered to Ginn Street
23 over at Synehi's manufacturing facility which is where they
24 do business. Had it shipped to there. All that's in
25 evidence. You can look at the documents. And then he gets

1 on -- then he says that then after that didn't have space
2 over at the manufacturing facility so we moved it across
3 town over to Smythe Avenue, put it in a couple of tubs and
4 it's outside. Wasn't even testimony that if anything got
5 moved over to Smythe that it was even put inside. It's
6 outside in the elements.

7 Ladies and gentlemen, I'm sure from your daily
8 experience you know where the old Grendle mill is. And at
9 times that can be kind of a rough neighborhood. Mr. Gaines
10 is alleging that Synehi paid over \$20,000 for something
11 that they then moved across town to a rough neighborhood
12 and left outside in a couple of tubs. And you heard Mr.
13 Gaines say that he knew there had been -- or he thought
14 there had been thefts over at Smythe Avenue ever before my
15 client admittedly went on that property on March 20, 2010.
16 And then also Mr. Gaines is saying that 2,000 pounds
17 of iron castings got sold. And, again, this is on the
18 documents. You can look at that. And as I recollect his
19 testimony he said that was moved from Synehi's casting
20 facility over on Ginn Street over to sit outside over on
21 Smythe Avenue.

22 Now, ladies and gentlemen, it doesn't make sense that
23 there wasn't enough space at this big manufacturing
24 facility over on Ginn Street that a couple of tubs of items
25 couldn't be stored over there. And that it doesn't make

1 sense again even further that the tubs had to be moved over
2 to Smythe Avenue and where they were stored outside. And
3 by his own testimony Mr. Gaines has said that this stuff is
4 worth more than \$22,000. You know, it's just hard to
5 believe that Synehi Castings would move \$22,000 worth of
6 stuff from a secure facility over and sit it outside in
7 what's admittedly somewhat of a rough neighborhood. And
8 you also heard Mr. Gaines say on the stand that he had some
9 invoice sheets showing where Synehi moved all this material
10 over to Smythe Avenue. And I don't remember the government
11 putting any of that stuff into evidence. Maybe I missed
12 it, but I don't think they did.

13 And, ladies and gentlemen, I think the uncontradicted
14 evidence here is that if anything got moved from Synehi
15 Castings that that stuff belonged to Synehi Castings. And,
16 again, Mr. Gaines is saying that it belonged to him, you
17 know. But I think the only evidence on the stand that we
18 heard it belonged to Synehi Castings. That in of itself,
19 ladies and gentlemen, is reasonable doubt. And on my
20 examination of Mr. Gaines, ladies and gentlemen, you heard
21 him say that he's not sure of the exact conversation, but
22 about not having enough time to move stuff from Smythe
23 Avenue over to Ginn Street, which leads me, you know, to
24 think about it that if he doesn't have time to do that when
25 on earth are they finding time to move stuff from Ginn

1 Street over to Smythe Avenue. I want y'all to think about
2 that, ladies and gentlemen.

3 And, also, basic science in here. I mean, and your
4 everyday experience. Iron, which Mr. Gaines is
5 alleging got stolen, is a non-magnetic material and magnets
6 don't attach to it. Steel is magnetic. Magnets will
7 attach to steel. And the reason that's important, ladies
8 and gentlemen, you heard the nice young lady from Harvley's
9 get up and testify yesterday from the scrap yard there.
10 And her testimony was that the scrap tickets clearly
11 indicate that it was scrap steel that was brought down to
12 Harvley's by Mr. Mitchell. And, again, you're going to
13 have all this back in the evidence room to look at it. And
14 that nice young lady said that the tickets would indicate
15 if any items other than scrap steel was brought down to
16 Harvley's. And I will submit to you, ladies and gentlemen,
17 those tickets indicate scrap steel. And, again, you've
18 heard Mr. Gaines say it was iron castings taken from him.
19 The lady said that there would be separate tickets for non-
20 magnetic items, i.e., iron. And if the State would ever
21 suggest, or the government would ever suggest that
22 Harvley's is not being straight up about what got delivered
23 by Mr. Mitchell then why on earth would they put them up as
24 a witness? You heard the lady's testimony. You heard this
25 lady say she knows the difference between steel and iron,

1 iron and copper, copper and brass. You know, they
2 understand the difference between all this stuff. And she
3 said that Mr. Danny Harvley, who owns this business,
4 understand the difference between all this stuff. You also
5 heard there was no evidence that Mr. Harvley or anybody
6 else down there called the police to say that Mr. Mitchell
7 was bringing in anything that remotely looked suspicious.
8 Now, you've heard the testimony from Mr. Gaines and all
9 this fancy iron is what got taken. Keep in mind you heard
10 them say that if something comes in that looks like it
11 doesn't belong to the person bringing it in Harvley's will
12 call the police. Again, police not called on this matter.
13 Because there is a big difference between scrap steel and
14 these iron castings that Mr. Gaines said were worth more
15 than \$22,000. And it would make sense that if Mr. Mitchell
16 was bringing on iron casings and castings he would have got
17 a whole lot more than the \$900, approximately, that he
18 received from Harvley's.

19 Now, ladies and gentlemen, I want to turn to the
20 police investigation in this matter. Or should I say the
21 lack of police investigation in this matter? Folks, I
22 think it's crucial anytime that the police go out here and
23 investigate anything you've got to do an investigation.
24 What would take away some of the confusion here?
25 Photographs. Why didn't they photograph where Mr. Mitchell

1 was found on the property? Why didn't they photograph what
2 he may or may not have had on his trailer? Why didn't they
3 photograph any trespassing signs that may have been there
4 or not been there? Why didn't they photograph any of these
5 private property signs that may or may have been there?
6 All of this stuff is crucial, folks. And, again, you've
7 heard the testimony from these officers.. They have the
8 ability to record all these conversations. They should
9 record my -- their conversation with my client. They
10 should have recorded their conversation with Mr. Gaines out
11 there. They should have done some filming. It would take
12 away some of the confusion that I believe is in this case
13 if they had actually done an investigation. You heard Mr.
14 Crisp say, the detective, that no mention of any cut locks
15 around here. There's not mention of any missing chains
16 around there. Didn't find any crime tools of any type on
17 or near my client in his vehicle that would be an indicia
18 of cutting locks, cutting chains, cutting fences. None of
19 that was found. And I thin it's crucial, folks, that my
20 client, Mr. Mitchell, wasn't arrested for trespassing. And
21 the state comes in here and brings a bunch of photographs.
22 They're going to be in evidence. They were taken last
23 month, six weeks ago. They couldn't take them three-and-a-
24 half years ago, but they decided to go out and take some
25 pictures a month or six weeks ago, you know, showing some

1 signs. I don't know when these signs were put up there.
2 But if you read this sign it, trying to read it through the
3 bramble and the briars, it looks like this property could
4 be subject to the jurisdiction of the police department.
5 Well, ladies and gentlemen, this building is subject to the
6 jurisdiction of the police department. That doesn't mean
7 anything. And, of course, you heard Mr. Mitchell say he
8 didn't say any signs anyway.

9 And it should scare you, ladies and gentlemen, that
10 somebody's life, liberty and pursuit of happiness can be on
11 the line based upon such a sloppy police investigation.
12 Now, ladies and gentlemen, you heard Mr. Mitchell's version
13 of what happened there that day. You've had
14 the opportunity to observe his demeanor here in the
15 courtroom. He's been sitting over there with me during
16 this whole trial. And you've heard his recorded version of
17 what happened, a statement that he gave some hour after he
18 was arrested. You even heard detective Crisp say my client
19 is very polite. He was cooperative. My client's the one
20 that's provided these scrap tickets. He went down to the
21 police department voluntarily not thinking that a crime had
22 been committed. He had his child with him, I believe,
23 detective Crisp said. You know, who on earth is going out
24 there in the middle of the broad daylight, not under the
25 cover of darkness, with their child to run a criminal

1 enterprise? Just think about that ladies and gentlemen.
2 You heard my client say on his statement he thought the
3 property was abandoned. The fences were open, not locked.
4 There were no business signs, no private property signs
5 that he saw, no no trespassing signs that he saw. And it
6 seems to be that there was -- my client did say that he
7 tried to call a real estate company and didn't get an
8 answer. You heard that on the statement. And it appears
9 from listening to Detective Crisp that any sign that was
10 out there didn't even belong to this property, it was on
11 another piece of property. And, again, ladies and
12 gentlemen, I would submit that the evidence of what my
13 client said to Mr. Crisp and what Detective Crisp said to
14 my client is that recorded statement. And I would submit
15 to you that anything else allegedly said ought to be taken
16 with a grain of salt because it wasn't recorded.

17 Now, ladies and gentlemen, if Stan Gaines thinks he's
18 out something, feels he's out something along these lines,
19 he could easily bring a civil lawsuit against Mr. Mitchell.
20 He could sue him for money, try to recover his money. He
21 could do that. And, to the best of my knowledge, he hasn't
22 done that. It looks like Mr. Gaines is trying to use the
23 criminal justice system to be his collection his agency,
24 when I'm not even sure the government has proven beyond all
25 and any reasonable doubt that Mr. Gaines even owns the

1 stuff that allegedly got taken. I want you to keep all of
2 that in mind while you're back there deliberating.

3 And I have reason to believe that his Honor is going
4 to charge you on the law of mistake of fact. And I think
5 that's going to be in his instructions. Now, you've heard
6 Mr. Mitchell's version of events that happened out there on
7 March 24th and of the several days beforehand, and that you
8 heard the defendant thought and had reason to believe that
9 this property was abandoned.

10 Now, ladies and gentlemen, if you find that the
11 defendant made a good faith mistake and had a good faith
12 belief that the property was abandoned, I will submit to
13 you it is your duty to find Mr. Mitchell not guilty. And I
14 will submit to you that if you find that Mr. Mitchell acted
15 in ignorance or made an honest mistake then you must find
16 him not guilty of the crime of grand larceny. Unless the
17 government convinces each and every one of you beyond all
18 and any reasonable doubt that Mr. Mitchell didn't make a
19 mistake and intended to commit this crime you must find him
20 not guilty. Remember, my client has no burden of proof.
21 All the burdens of proof, which are high burdens of proof,
22 fall on the government. Ladies and gentlemen, I submit to
23 you that there's a lot of reasonable doubt in this case.
24 And I've never been involved in a larceny case where it's
25 so unclear about what may or may have not been taken. You

1 know, I mean, it astounds me, ladies and gentlemen. Go
2 back there and deliberate. You know what to do. Go back
3 there and do it. Thank you.

4 THE COURT: Thank you, Mr. Henderson. Mr. Foreman and
5 ladies and gentlemen of the jury it's time now for me
6 to charge you on the law in this case. And I remind you
7 that during this trial, and I've told you this before, you
8 and I have certain duties to perform. As a trial judge,
9 it's my responsibility to preside over the trial of this
10 case, and I also have the duty to rule on the admissibility
11 of evidence offered during this trial.

12 You are to consider only the competent evidence before
13 you. And even though I don't think this applies, if there
14 was any testimony ordered stricken from the record in this
15 case, you are to disregard that testimony or evidence.
16 And, again, I don't believe that is the case here. You are
17 to consider only the testimony which has been presented
18 from the witness stand, any exhibits which have been made a
19 part of the record in this case and any stipulations
20 between the attorneys.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge, I'm the
23 sole judge of the law of this case. And it is your duty as
24 jurors to accept and apply the law as I now state it
25 to you. And I've told you that at the beginning of this

1 case. If you already have any idea as to what the law is
2 or what the law ought to be and it does not agree with what
3 I now tell you the law is, you must abandon this idea
4 because you are sworn to accept the law and apply the law
5 exactly as I state it to you. In every case tried in this
6 court before a jury, the jury becomes the sole and
7 exclusive judge of the facts in the case.

8 A trial judge cannot intimate, state, comment on, or
9 make any statement to a trial jury about the facts in the
10 case. Since you the jury are the sole judges of the facts
11 in the case, you are not to infer from what I have said
12 during the progress of this trial in ruling upon the
13 admissibility of evidence or otherwise or anything that I
14 say now during the course of this instruction to you that I
15 have any opinion about the facts in this case. I do not.
16 The law does not allow me to have an opinion about the
17 facts in this case. This is a matter solely for you, the
18 jury, to determine. As jurors, it is your duty to
19 determine the affect, value, weight and truth of the
20 evidence presented during this trial.

21 Now, the indictment charges the defendant with grand
22 larceny. I remind you, and I told you this at the
23 beginning of this trial, that the defendant was arrested,
24 charged and indicted in this case. That fact is not
25 evidence in this case and cannot be considered by you as

1 evidence for guilt in this case, nor does it create any
2 presumption or inference of guilt. The indictment is
3 merely the formal written instrument which contains the
4 charge made against the defendant. It is the formal
5 document by which this case is brought into this court.
6 Now, the defendant has pled not guilty to this indictment.
7 And that plea puts the burden on the state to prove the
8 defendant guilty. A person charged with committing a
9 criminal offense in South Carolina is never required to
10 prove himself innocent. I charge you that it is an
11 important rule of the law that the defendant in a criminal
12 trial, no matter what the seriousness of the charge may be,
13 will always be presumed to be innocent of the crime for
14 which the indictment was issued unless guilty has been
15 proven by evidence satisfying you of that guilt beyond a
16 reasonable doubt. This presumption of innocence does not
17 end when you begin your deliberations, but it accompanies
18 the defendant throughout the trial unless you reach a
19 verdict of guilt based on evidence satisfying you of that
20 guilt beyond a reasonable doubt. The presumption of
21 innocence is like a robe of righteousness placed about the
22 shoulders of the defendant which remains with the defendant
23 until it has been stripped from the defendant by evidence
24 satisfying you of the defendant's guilt beyond a reasonable
25 doubt. Presumption of innocence is not merely a theory.

1 It is not just a legal phrase. It is a substantial right
2 to which every defendant is entitled unless you, the jury,
3 are satisfied from the evidence of the defendant's guilt
4 beyond a reasonable doubt.

5 And, as we have stated, the state has this burden of
6 proving the defendant guilty beyond a reasonable doubt.
7 Some of you may have served as jurors in civil cases where
8 you were told that it is only necessary to prove that a
9 fact is more likely true than not true such as by the
10 greater weight or preponderance of the evidence. In
11 criminal cases the state's proof must be more powerful than
12 that. It must be beyond a reasonable doubt. Proof beyond
13 a reasonable doubt is proof that leaves you firmly
14 convinced of the defendant's guilt.

15 Now, there are very few things in this world that we know
16 with absolute certainty. And in criminal cases the law
17 does not require proof that overcomes every possible doubt.
18 If, based on your consideration of the evidence, you are
19 firmly convinced that the defendant is guilty of the crime
20 charged, you must find the defendant guilty. If, on the
21 other hand, you think there is real possibility that the
22 defendant is not guilty, you must give the defendant the
23 benefit of the doubt and find him not guilty.

24 Now, Mr. Foreman and ladies and gentlemen of the jury,
25 there are two types of evidence which are generally

1 presented during a trial. That being direct evidence and
2 circumstantial evidence. Direct evidence directly proves
3 the existence of a fact and does not require deduction.
4 Circumstantial evidence is proof of a chain of facts and
5 circumstances indicating the existence of a fact. Crimes
6 may be proven by circumstantial evidence. The law makes no
7 distinction between the weight or value to be given to
8 either direct or circumstantial evidence. However, to the
9 extent the state relies on circumstantial evidence, all of
10 the circumstances must be consistent with each other and
11 when taken together point conclusively to the guilt of the
12 accused beyond a reasonable doubt. If these circumstances
13 merely portray the defendant's as suspicious, the proof has
14 failed. The state has the burden of proving the defendant
15 guilty beyond a reasonable doubt. This burden rests with
16 the state regardless of whether the state relies on direct
17 evidence, circumstantial evidence or a combination of the
18 two.

19 Now, Mr. Foreman, ladies and gentlemen of the jury,
20 necessarily you must determine the credibility of witnesses
21 who have testified from this witness stand in this case.
22 Credibility simply means believability. It becomes your
23 duty as jurors to analysis and to evaluate the evidence and
24 determine which evidence convinces you of its truth. And
25 determining the believability of witnesses who have

1 testified in this case, you may believe one witness over
2 several witnesses or several witnesses over one witness.
3 You may believe a part of the testimony of a witness and
4 reject the remaining part of the testimony of that same
5 witness. You may believe the testimony of a witness in its
6 entirety or reject the testimony of a witness in its
7 entirety. You may consider whether any witness has
8 exhibited to you any interest, bias, prejudice or other
9 motive in this case. You may also consider the appearance
10 and manner of a witness while on the witness stand.

11 Now, Mr. Foreman, ladies and gentlemen of the jury, I
12 instruct and emphasize with you the fact the defendant did
13 not testify is not a factor to be considered by you in any
14 way in your deliberation and in your consideration on the
15 question of the guilt or the innocence of the defendant.
16 It must not be considered by you in any manner whatsoever.
17 A defendant has the constitutional right to remain silent.
18 And the assertion of this right must not be considered by
19 you and your deliberations. I repeat under your oath you
20 are to draw no conclusion whatsoever from the fact that the
21 defendant in this case did not testify. The fact that this
22 defendant did not testify should not even be discussed
23 while in the jury room. The burden of proof, as I have
24 stated to you, is on the state. The defendant is not
25 required to prove his innocence. The burden of proof

1 remains on the state to prove guilt beyond a reasonable
2 doubt.

3 Now, Mr. Foreman and ladies and gentlemen of the jury,
4 in order to establish criminal liability criminal intent is
5 required. For example, the mental state required to be
6 proven by the state for a particular crime might be
7 purpose, intent, knowledge or criminal negligence.
8 Criminal intent must be proven by the state beyond a
9 reasonable doubt. Criminal intent is always a matter that
10 must be determined by you the jury from the circumstances
11 surrounding the situation. There's no way to prove intent
12 to a mathematical certainty. There's no way medical
13 science can dissect a person's brain and determine what the
14 person had in mind. So the law says that criminal intent
15 may be inferred from the circumstances shown to have
16 existed. This is how you make a determination of whether
17 or not the element requiring intent was present. It is not
18 necessary to establish intent by direct or positive
19 evidence, but intent may be established by inference in the
20 same way as any other fact by taking into consideration the
21 acts of the parties and all the facts and circumstances of
22 the case. Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you to determine what the
24 defendant intended to do based on the circumstances shown
25 to have existed. Criminal intent can arise from action

1 or a failure to act. It may arise from criminal negligence
2 or an indifference to duty or to consequences that is
3 considered by the law to be the equivalent of criminal
4 intent.

5 Now, the defendant is charged with grand larceny. The
6 State must prove beyond a reasonable doubt the defendant
7 took and carried away property of another against the will
8 or without the consent of another. The slightest removal
9 of the property or the complete possession of the property,
10 even for an instance, by the defendant is not enough to
11 show a taking and carrying away of the property. The state
12 must also prove beyond a reasonable doubt that the
13 defendant intended to permanently deprive the owner of the
14 property. The State must prove that the value of the thing
15 taken was \$5,000 or more. If you find that the state has
16 failed to prove beyond a reasonable doubt that the value of
17 the thing taken was \$5,000 or more then you must consider
18 whether the state has proven that the thing taken has a
19 value of at least \$1,000 but less than \$5,000.

20 Finally, if you the jury find that the State has
21 failed to prove beyond a reasonable doubt that the value of
22 the thing taken is not at least \$1,000 you must consider if
23 the value of the thing taken was less than \$1,000.

24 Now, Mr. Foreman, ladies and gentlemen of the jury,
25 the defendant has raised the defense of mistake of fact.

1 The State must prove beyond a reasonable doubt that the
2 defendant intended to commit grand larceny. However, where
3 a person, in ignorance or honest mistake as to a fact,
4 commits an act which but for the mistake would be a crime
5 there is no criminal intent and the person cannot be found
6 guilty of the crime. As a stipulation, and a stipulation
7 was made between the parties in this case concerning the
8 statement made to police by the defendant, a stipulation is
9 an agreement, admission or concession made in a judicial
10 proceeding by the parties thereto or their attorneys. The
11 statement made by the defendant has been in admitted into
12 evidence by way of the CD. The parties have
13 stipulated that the defendant did, in fact, make the
14 statement and that this statement was freely and
15 voluntarily by the defendant.

16 Now, Mr. Foreman and ladies and gentlemen of the jury,
17 there are six possible verdicts which I'm going to explain
18 to you. I'm going to come down to the front in just a
19 moment. There are six possible verdicts which you may
20 find in this case. Now, there's no significance whatsoever
21 in the order in which I state these possible verdicts.
22 It's simply you got to state one before another. And let
23 me remind you that your verdict in this case must be
24 unanimous among the twelve of you. And the process that we
25 do is after I have concluded this closing charge you'll be

1 sent back to the jury room. You will be instructed not to
2 start your deliberations until the exhibits are brought
3 back to you. Now, I'm going to come down to the front and
4 I'm going to show the verdict form, maybe try to explain a
5 little bit better on how this works. This is a verdict
6 form. And the first line says as to the charge of grand
7 larceny in the amount greater than \$5,000 we, the jury,
8 find the defendant guilty or not guilty. And, again, the
9 fact that the word guilty is put first and not guilty
10 second has no significance whatsoever. And this says if
11 the verdict is guilty then you stop. Mr. Foreman, you sign
12 the verdict form on the second page. And it's already
13 dated for you and you notify the bailiff of your verdict.
14 If, on the other hand, you do not find the defendant guilty
15 of number one then you go down to number two. The same
16 process works. If you do not find the defendant guilty on
17 number two, grand larceny in the amount of at least \$1,000
18 to \$5,000 then you will go down to number three. And
19 that's how the process works. Now, again, I will send you
20 back to your jury room. Do not start your deliberations
21 until the bailiff brings you all of the evidence in the
22 case, the indictment and this verdict form. At that
23 time you can begin your deliberations. I will need the
24 alternate juror, at that same time, to come out to the
25 courtroom and you certainly welcome to remain with us or

1 you would be entitled to leave the courtroom.

2 So I'm going to take up some matters -- brief matters
3 with the lawyers and so at this time I would instruct you
4 to go to your jury room. Do not begin your deliberations
5 until the exhibits are brought to you.

6 (Whereupon, jury exited the courtroom at 10:13 a.m.)

7 THE COURT: Okay. Any objections or exceptions by the
8 state to the court's final charge?

9 MS. ODOM: No, sir, Your Honor.

10 THE COURT: Thank you very much. And from the defense?

11 MR. HENDERSON: Your Honor, just renewing my previous
12 exceptions about that full mistake of fact charge and the
13 court instructing the jury that under any circumstance
14 they have to find the defendant guilty.

15 THE COURT: Okay. So noted. Thank you very much.

16 MR. HENDERSON: But other than that, no problems
17 whatsoever.

18 THE COURT: Okay. Thank you very much. All right.
19 Make sure -- I want the lawyers to come up and make sure
20 that we have all the exhibits. And I meant to instruct
21 them, and I did not, that if they want to, they don't have
22 to, but if they want to listen to the CD we can make
23 arrangements for them. I think what we'll do is let me
24 bring them back out. We can give them the exhibits and let
25 me just explain to them that if they want to listen to the

1 CD then they just need to notify the bailiffs and we can
2 make arrangements for that to be done.

3 MR. HENDERSON: But that would be done out here in open
4 court?

5 THE COURT: Well, I think we'd probably -- the
6 easiest thing is just to use the -- what y'all used when it
7 was played during the trial of the case. Okay. Can you
8 bring the jury out? Do we have all the exhibits together?
9 I want the lawyers to make sure that we have everything
10 together.

11 (Whereupon, the jury entered the courtroom at 10:11
12 p.m.)

13 THE COURT: Let the record reflect the jury is back out
14 in the courtroom. I know what you're thinking. Well, wait
15 a minute, the judge said he's going to bring the exhibits
16 to us back in the jury room. I failed to mention one thing
17 to you. If you decided, and certainly you don't have to,
18 it's whatever you want to do, but if you decide that you
19 want to listen to the CD which has the statement made by
20 the defendant to the police, if you decide that you want to
21 listen to that, just let the bailiffs know and we'll bring
22 you out and we'll get the lawyers to set it up to play it.
23 That's only if you decide you want to listen to it. Okay.
24 Now, with that said, I'm going to hand to the foreman the
25 exhibits, the verdict form and the indictment. Now you are

1 free to begin your deliberations. The alternate needs to
2 remain with us.

3 (Whereupon, the jury exited the courtroom at 10:13 to
4 begin deliberations.)

5 (Off the Record)

6 THE COURT: I've been instructed by the bailiff that we
7 do have a verdict. Anything we need to take up before we
8 bring the jury out to receive the verdict?

9 MS. ODOM: No, sir.

10 THE COURT: Nothing from the State. From the defense?

11 MR. HENDERSON: Nothing, sir.

12 THE COURT: What we will do is I'll ask the foreman to
13 hand the verdict form to the bailiff. The bailiff will
14 hand it to me just to look at, and then I'll hand it to the
15 clerk to publish the verdict. After that is done, after
16 she goes through her colloquy, then if the jury needs to be
17 polled at the request of either side then we can do that.
18 After that's done I will go down there and thank them for
19 their service, give them a little talk about being
20 discharged, and we'll go from there. Bring the jury out,
21 please.

22 (Whereupon, the jury entered the courtroom at 10:49
23 a.m.)

24 THE COURT: Let the record reflect that the jury is
25 back in the courtroom. I just ask that the defendant

1 remain standing. Mr. Foreman, have you reached a verdict?

2 MR. FOREMAN: Yes, we have.

3 THE COURT: Was that verdict unanimous among the twelve
4 of you?

5 MR. FOREMAN: Yes.

6 THE COURT: Thank you, sir. If you'll hand the verdict
7 form to the bailiff he'll hand it to me to read. I'm going
8 to hand it to the clerk to publish. Madame Clerk?

9 MADAME CLERK: The State of South Carolina, the County
10 of Greenwood, in the Court of General Sessions Eighth
11 Judicial Circuit, indictment 2013-GS-24-1568, the *State of*
12 *South Carolina v. Jovan A. Mitchell*. As to the charge of
13 grand larceny in an amount greater than \$5,000, we the jury
14 find the defendant not guilty. As to the charge of grand
15 larceny in the amount of \$1,000 to \$5,000, we the jury find
16 the defendant guilty.

17 THE COURT: Does either side wish for the jury to be
18 polled? From the State?

19 MS. ODOM: No, sir, Your Honor.

20 THE COURT: From the defense?

21 MR. HENDERSON: Yes, sir. I would, Your Honor.

22 THE COURT: Madame Clerk?

23 MADAME CLERK: Ladies and gentlemen, the verdict that I
24 have just published was the verdict that you reached in the
25 jury room. I ask you was this your verdict then and is

1 this your verdict now. As I call your name, just answer
2 yes or no. Mr. Foreman, was that your verdict?

3 MR. FOREMAN: Yes.

4 MADAME CLERK: Is it still your verdict?

5 MR. FOREMAN: Yes.

6 MADAME CLERK: Mr. Dubose?

7 MR. DUBOSE: Yes.

8 MADAME CLERK: Ms. Moses?

9 MS. MOSES: Yes.

10 MADAME CLERK: Ms. Thomas?

11 MS. THOMAS: Yes.

12 MADAME CLERK: Mr. Deery?

13 MR. DEERY: Yes.

14 MADAME CLERK: Mr. Rexrode?

15 MR. REXRODE: Yes.

16 MADAME CLERK: Mr. Wardlaw?

17 MR. WARDLAW: Yes.

18 MADAME CLERK: Mr. Carwise?

19 MR. CARWISE: Yes.

20 MADAME CLERK: Ms. Barr?

21 MS. BARR: Yes.

22 MADAME CLERK: Mr. Jones?

23 MR. JONES: Yes.

24 MADAME CLERK: Ms. Bussey?

25 MS. BUSSEY: Yes.

1 MADAME CLERK: Ms. White?

2 MS. WHITE: Yes.

3 THE COURT: Thank you, Madame Clerk. Mr. Foreman,
4 ladies and gentlemen of the jury, I just want to take this
5 opportunity to once again thank you for your jury service.
6 I told you at the beginning that -- and I think I've told
7 you this several times, but I think it is extremely
8 important to recognize that service on a jury is the second
9 highest civic responsibility that we all have, second only
10 to serving in the military. Serving on a jury is extremely
11 important. I hope that your time on this jury has been
12 educational for you and has been a good experience,
13 regardless of the outcome of this case. I would mention to
14 you as well that now you are free to talk about this case
15 with anyone, but you don't have to. If anyone comes up to
16 you and wants to ask you about the case and why you decided
17 as you did, if you want to talk with them feel free to talk
18 to them. On the other hand, if you don't want to talk with
19 them then you don't have to. I don't think this is going
20 to happen, but if anybody just continues to press you for
21 information about this case and you don't want to talk to
22 them, what you need to do is contact the Clerk of Court and
23 they would notify me. I'll take care of that. Again, I
24 don't think that's going to happen, but if it does then we
25 want to protect you, the jury. Again, I thank you very

1 much. I want to shake your hand as you come out. I know
2 that many of you would like to keep the nifty little juror
3 buttons, but you have to turn those in. The best news of
4 all, maybe for some of you, maybe not for all of you, you
5 are excused for the remainder of the week. We have no
6 further jury business. We're going to be working. They
7 have a lot of work for me to do for the rest of the week,
8 but at least jury business we don't have any of that. So
9 you will not need to come back for the remainder of the
10 week. Thank you very much. It's been great being with
11 y'all.

12 (Whereupon, the jury is dismissed.)

13 THE COURT: Let's take just a few minutes before we
14 proceed in the sentencing phase.

15 (OFF THE RECORD BRIEFLY)

16 THE COURT: We're back on the record in the matter of
17 *State of South Carolina v. Jovan Alexander Mitchell*. The
18 jury having come back with a verdict of guilty as to grand
19 larceny value of \$1,000 to 5,000. I'll first hear from the
20 State and then I'll hear from the defense relating to
21 sentencing. Solicitor.

22 MR. HENDERSON: Your Honor, before we get to
23 sentencing, I would make a motion either for new trial or
24 judgement of acquittal, because what happened is what I was
25 scared was going to happen as we discussed, Your Honor.

1 The state put forth evidence over \$5,000. The other
2 evidence in the record was under \$1,000. And that was my
3 objection to the middle ground being charged.

4 THE COURT: Okay.

5 MR. HENDERSON: Assuming that the jury reaches some
6 compromise on something that's not in the record.

7 THE COURT: Well, now, I don't recall, Mr. Henderson,
8 there being any objection to charging, and y'all can
9 refresh my memory. I don't remember there being any
10 objection to charging each of the three levels of larceny,
11 in addition to no objection being made to verdict form.
12 And, if I'm stating something incorrect, then I'll hear
13 from you.

14 MR. HENDERSON: Your Honor, that was in the
15 chambers yesterday. And you said that's what you were
16 going to do.

17 THE COURT: Right.

18 MR. HENDERSON: And this was my exact fear that the
19 compromise would be on something that's not in the record.

20 THE COURT: Right. Right. All I'm saying is that I
21 don't recall there being objection, notwithstanding my
22 indication in chambers, that that's what I had planned to
23 do. Notwithstanding that, I don't remember there being an
24 objection on the record or an exception, either before or
25 after the charge, concerning charging all three levels and

1 the verdict form containing all three levels.

2 MR. HENDERSON: Even without the exception, the
3 evidence presented to the jury does not support this
4 verdict. The evidence presented to the jury was greater
5 than or five or under the one. And the jury has come back
6 between the two.

7 THE COURT: Well, you know, it would seem like to me
8 the jury has every right to look at values and determine,
9 well, we don't think it was worth 800 bucks, but we
10 don't think it was worth, you know, \$22,000 and determine
11 on their own a value. I think they have every right to do
12 that. But, again, I think because of no exception being
13 made to the charge I don't think I can consider either a
14 motion for new trial or a motion for judgement not
15 withstanding the verdict. I'll be glad to hear any
16 additional grounds that you would like to put on the
17 record, Mr. Henderson.

18 MR. HENDERSON: And, Your Honor, it would just be that
19 the testimony did not support the verdict.

20 THE COURT: I understand. Anything you want to state
21 on the record, Solicitor, on that before we get into
22 sentencing?

23 MR. MORROW: No, sir, Your Honor.

24 MS. ODOM: Your Honor, if I may, before we go --

25 THE COURT: Hold that thought a moment. I'm writing

1 some notes. Yes, Solicitor?

2 MS. ODOM: Your Honor, the state would contend that,
3 just as you said, that the jury heard from various
4 witnesses. They could discount some testimony, believe
5 some testimony, that there is evidence there to support the
6 verdict of one to 5,000. But, in addition to that, Mr.
7 Mitchell does have -- the only things on his criminal
8 history are two prior property offenses. So it would be
9 the State's position that this sentence is subject to
10 enhancement anyway, so it would carry a ten-year sentence
11 if your Honor decided to subject it to that enhancement.

12 THE COURT: Okay. All right. But, and help me with
13 this, since we're on the old statute, the old 2010 statute,
14 was the enhancement features in effect at that time?

15 MS. ODOM: Yes, sir, Your Honor, I believe they were.

16 THE COURT: The current enhancement features?

17 MS. ODOM: Yeah. The enhancement law I don't think
18 changed when the law changed in 2010.

19 THE COURT: Okay. It did not change?

20 MS. ODOM: No. It's the same before as it is now.

21 MR. HENDERSON: Your Honor, they haven't put us on
22 notice of any enhancement, for one thing. And looking at
23 his record it's only got one arguably possible property
24 conviction on it.

25 THE COURT: Okay. Well, --

1 MS. ODOM: And, Your Honor, I don't believe we have to
2 put him on notice. It's part of sentencing. And I do have
3 his criminal history that was provided Mr. Henderson shows
4 one conviction, but, just to be safe, I went to the
5 magistrate court, made sure it was a conviction, have a
6 certified copy of it. Then went to the city court and
7 got a certified copy from Judge Miller that shows both of
8 these were convictions.

9 THE COURT: Okay.

10 MS. ODOM: One's a malicious injury and one's a
11 shoplifting, both from 2005.

12 THE COURT: Show both those to Mr. Henderson before
13 handing them up to the court.

14 MR. HENDERSON: And, again, Your Honor, just looking at
15 those, under the for-what-it's-worth record, there's
16 nothing on there to indicate that he was notified of right
17 to counsel, whether or not he was represented by counsel,
18 whether or not he caught any incarceration. You've got all
19 sorts of enhancement issues on there.

20 THE COURT: Well, now, you know, I don't have a problem
21 with, for a brief period of time, delay sentencing. And if
22 you want to get into that a little bit further I'll be glad
23 for you to do that. Of course, we'll take the client into
24 custody, naturally. But if you need some time and say we
25 can do the sentencing tomorrow.

1 MS. ODOM: And, Your Honor, for the record, it's the
2 State's contention that once we've proven a prior
3 conviction that the burden passes to the defendant to prove
4 that it's defective.

5 THE COURT: Right. And that's why I'm giving him some
6 time to investigate this a little bit further. I want to
7 give every opportunity to do so, if he wants to take that
8 opportunity. And you're exactly correct. The burden does
9 shift to the defense to prove that. So, do you need some
10 time to look into this, Mr. Henderson?

11 MR. HENDERSON: Your Honor, I would be remiss if I
12 didn't. I mean, I've got -- I don't know if you're going
13 to go under this enhancement theory or not, because I think
14 the most this carries is five years.

15 THE COURT: Well, I mean, certainly I need to consider
16 it. I'm not necessarily saying at this point that I will
17 follow that, because, certainly, I was unaware that there
18 are any prior property convictions. All I'm stating now is
19 that if you need -- I mean, I'm going to be here until
20 Friday, as I understand it. I want to give you every
21 opportunity to look into these two prior convictions. And
22 if you need some time, then we'll delay sentencing.

23 MR. HENDERSON: Your Honor, I would be remiss if I did
24 not, because I've got to figure out what the sentence was,
25 whether or not he had notice about counsel, whether or not

1 he had counsel.

2 THE COURT: All right. What we will do, then, if you
3 will make, Solicitor, a copy of both of these for Mr.
4 Henderson's use, or, Madame Clerk. And what we will do is
5 we will delay sentencing. And I think I'm
6 asking Solicitor's office and Mr. Henderson, y'all
7 communicate with each other to determine when sentencing
8 will take place. And so we'll just --

9 MR. HENDERSON: Your Honor, it should be a pretty quick
10 process.

11 THE COURT: Well, I mean, I don't know how much time
12 you need. I know you're a smart fellow, but I don't know
13 if you need an hour, a day, two days. I don't know.

14 MR. HENDERSON: I mean, I should be able to go down to
15 the court, to the city court, and take a look at the files.
16 I'm not sure why the Solicitor didn't provide that stuff,
17 so, if they're raising that as an issue.

18 THE COURT: Well, we're just going to delay it.
19 Officer Douglas and Officer Reynolds, if you'll take Mr.
20 Mitchell into custody.

21 MR. HENDERSON: Can we do it later today? Because, I
22 mean, I feel like -- I would hope he has a good chance of
23 walking out of the courtroom so I hate to see him dragged
24 across all over town to the jail, Your Honor.

25 MS. ODOM: We can certainly bring him back

1 this afternoon.

2 THE COURT: I guess I'm going to be here this
3 afternoon. You got some work for me to do this afternoon?

4 MS. ODOM: Yes, sir, we do.

5 THE COURT: Okay. Yeah. We'll be here this afternoon.
6 If you feel like you've gotten all your ducks in a row and
7 want to proceed, that's fine.

8 MR. HENDERSON: Let me talk with my client one minute.

9 THE COURT: Okay.

10 MR. HENDERSON: Your Honor, I would like to reconvene
11 at two o'clock. Because, as it told my client, I would be
12 remiss not to.

13 THE COURT: Well, we can reconvene this afternoon. I
14 don't want to necessarily say two o'clock, because I don't
15 know what other matters that we have to deal with. But we
16 can agree that sometime this afternoon we can deal with it.
17 Fair enough?

18 MR. HENDERSON: Correct. I mean, I told my client I
19 would be remiss not looking into this.

20 THE COURT: And I agree with you. I agree with. So,
21 yeah, if you'll go ahead and take Mr. Mitchell into
22 custody.

23 (Off the record until 2:15 p.m.)

24 THE COURT: We're back on the record in the *State v.*
25 *Jovan Alexander Mitchell*. We took a recess in the matter

1 to give Mr. Henderson an opportunity to look into these
2 prior two property convictions. State taking the
3 position that they wanted to invoke some enhanced
4 penalties. And so, Mr. Henderson, I'll be glad to hear
5 from you.

6 MR. HENDERSON: Your Honor, let me revert back to my
7 motion that I made prior to us breaking that you denied for
8 a new trial or to set aside the verdict.

9 THE COURT: Okay.

10 MR. HENDERSON: I was thinking over this. Mr. Powers
11 and I and Mr. Garrett, we were talking at lunch at lunch
12 about this. And, again, one of these things that something
13 doesn't feel right until I sit down and maybe get me
14 something in my stomach. But, Your Honor, as the
15 thirteenth juror, this jury has come back with a verdict
16 between one and \$5,000. And the only competent evidence
17 in this matter was over \$5,000, coming out of Mr. Gaines'
18 mouth, or under \$1,000, around \$900 based on those tickets.
19 And, keep in mind, the only evidence that was presented to
20 the jury was the weight of the items, whatever they were,
21 that were brought down by Mr. Mitchell to Harvley's. And,
22 again, the only evidence in the record about that value was
23 those tickets, which is some \$900.

24 The jury obviously did not believe Mr. Gaines'
25 testimony about value because my client was acquitted of

1 that. And the only other evidence there was under the
2 \$1,000 based upon weight at Harvley's. And, Your Honor,
3 that kind of ties into my next motion or that by not
4 objecting to the jury verdict form, I know I complained
5 about it in the conference yesterday, but by not putting
6 that on the record, I feel that my representation of Mr.
7 Mitchell was deficient and it did not meet the standards
8 that I hold myself to, or any other criminal defense lawyer
9 should have held himself to or herself to, and that I
10 should have objected to that and did not. And because of
11 that my client has been severely prejudiced by my falling
12 asleep I guess by not putting that on the record. And,
13 Your Honor, I'm just looking ahead. That's probably going
14 to be a PCR issue, so I might as well just call myself out
15 right now.

16 But between that combination and the fact of that the
17 only evidence in the record is the weight tonnage, which
18 corresponded with an amount of less than \$1,000, Your
19 Honor, and if the jury compromised, I mean, it's probably
20 obvious what they did, but there was no evidence to support
21 the one to \$5,000. If I had objected to that and you kept
22 that out, I feel certain that the compromise would have
23 been petty larceny, which that's a big difference on my
24 client's record between a 30-day misdemeanor and up to ten
25 years in the penitentiary for grand larceny. So, I mean,

1 to a certain degree, I've let my client down on that. And,
2 you know, I think that's further motion to set aside that
3 verdict and in support in a new trial.

4 THE COURT: Well, no, I don't think -- and we're not
5 going to get into all that for purposes of sentencing. I
6 don't think you did anything wrong. It's always, I think
7 from a defense standpoint, in effect what we did, we gave
8 to the jury actually two lesser included offenses. And I
9 know technically they were not lesser included defenses.
10 But we gave to the jury, in essence, what was two
11 lesser included offenses. And I think from a
12 defense standpoint you always want to have the jury have an
13 option going with something other than the most serious
14 offense. And I think that's what was done here.

15 I don't see anything deficient in any failure to
16 object or whatever position that you took concerning this.
17 I don't see that at all. And if, in fact, and, again, I
18 don't believe this to be the case whatsoever, but if, in
19 fact, you were deficient in some basis that would not be a
20 ground for new trial or the court setting aside the
21 verdict. But, again, I don't think you did anything wrong
22 or improper in your representation of Mr. Mitchell. In
23 fact, I think you did an excellent job. And this could
24 very well have been a situation that if you didn't have the
25 middle on in there that they could have gone with the more

1 serious, but --

2 MR. HENDERSON: You would have had the middle in there,
3 petty larceny, because there is evidence in the record of
4 those scrap tickets and the tonnage that it was under
5 \$1,000. And, again, we're under the old grand larceny law.

6 THE COURT: Right.

7 MR. HENDERSON: But by not objecting to the higher
8 lesser included, I think I severely prejudiced my client.
9 And I think that was a deficient undertaking on my part.

10 THE COURT: Okay. All right.

11 MR. MORROW: Your Honor, I think there was evidence
12 presented in the record as to the value of the goods. And
13 I believe the jury has a right to believe any part of that
14 testimony. They can take it and weigh it and decide what
15 kind of weight they're going to give to the value of that
16 testimony. And, obviously, the jury found it was somewhere
17 in between the value Mr. Gaines gave on the stand and what
18 the Harvley's tickets said.

19 THE COURT: Right.

20 MR. HENDERSON: And, Your Honor, just to followup on
21 that, thinking for purpose of this restitution. Now,
22 obviously, the highest amount of restitution my client
23 could be made to pay is \$5,000 based upon what he was
24 convicted of. But there is nothing in the record that
25 would support my client having to pay restitution from

1 anywhere from 1,000 to \$5,000, not in the record. Mr.
2 Gaines' testimony it was all \$22,000. The jury has
3 acquitted my client of that, did not believe that
4 testimony. The only other evidence in the record that you
5 can base restitution on is the tonnage on these slips which
6 is \$900 which, again, goes back to petty larceny. I mean,
7 as you can see you'll never be able to figure out a proper
8 amount of restitution between 1,000 and \$5,000. It's not
9 in the record.

10 THE COURT: Okay. What else you want to tell me?

11 MR. HENDERSON: And, Your Honor, that would be as it
12 relates to motions for new trial and to set aside the
13 verdict. But, Your Honor, we went and did some digging.
14 And if I may make this a court's exhibit.

15 (Whereupon, magistrate court case history was marked
16 as Court's Exhibit Number 4.)

17 And, Your Honor, what this is, this is on warrant
18 number HO74135. This is what the Solicitor's office is
19 saying is my client's shoplifting conviction. Your Honor
20 has got the certified copy from the magistrate's court.
21 And, again, they've got the name as Trevon Alexander
22 Mitchell. But from talking to my client, Your Honor, I
23 have reason to believe that this is him. I don't think he
24 necessarily understood what was going on, and I'm not going
25 to mislead the court. I've got reason to believe that this

1 was him. So, I mean, I think if you look through file
2 there you can see that he has been informed of his right to
3 counsel. You can see what he's done there, Your Honor.

4 THE COURT: Anything further, Mr. Henderson?

5 MR. HENDERSON: Yes, sir, Your Honor. And I'd like to
6 get this marked as the court's exhibit, as well, please.

7 (Whereupon, City of Greenwood record was marked as
8 Court's Exhibit Number 5 for identification.)

9 THE COURT: Yes, sir.

10 MR. HENDERSON: And, Your Honor, I'd call Mr. Powers as
11 a witness.

12 THE COURT: All right. For what purpose?

13 MR. HENDERSON: Your Honor, to confirm that that is the
14 complete clerk's file on this matter that it looks to be
15 ticket number C66850CU, maybe. I think that's right.

16 THE COURT: I mean, the document indicates he was found
17 guilty, malicious injury to personal property, value less
18 than \$1,000. I mean, why would we need to have testimony
19 concerning this being the complete file?

20 MR. HENDERSON: Your Honor, because I think it's
21 very crucial for enhancement purposes. And I'd like to
22 preserve my record.

23 THE COURT: I understand. Let me see the lawyers back
24 in chambers. Let's go off of the record for just a minute.

25

1 (Off the Record)

2 THE COURT: Okay. We're back on the record. And I had
3 a conference with the lawyers in chambers. I think maybe
4 we've maybe resolved some of the issues and concerns. Mr.
5 Henderson, I'll be glad to hear from you further.

6 MR. HENDERSON: Your Honor, I had handed up another
7 court's exhibit, but I think based on our conversation we
8 don't need to go into that.

9 THE COURT: All right. Very good. They'll still
10 remained marked because they've been marked. That's four
11 and five, okay. All right. Anything further from the
12 defense? I'll be glad to hear from your client if he'd
13 like to tell me anything.

14 MR. HENDERSON: As it relates to punishment or?

15 THE COURT: Right.

16 MR. HENDERSON: Okay. Yeah, let me move on to that,
17 Your Honor. Jovan is 26 years old. He is married. He has
18 four children, if I'm not mistaken, and one on the way.
19 His wife works at Hardee's down by the Walmart, kind of
20 going out toward Abbeville, Your Honor. He's got his CNA
21 license and he's got desires to go through the EMT
22 training. Has done construction work in the past.
23 Actually helps out at GLEAMNS, helps out with the children
24 a good bit there trying to be a mentor. Jovan is very,
25 very involved in his community, Your Honor. And I think

1 his wife is. And they're loving parents, because I stay in
2 close contact with him. And, Your Honor, you've seen he's
3 been at court on time everyday. I mean, if I tell him to
4 do something, he does it. Since this day on March 24,
5 2010, Your Honor, number one, Mr. Mitchell hasn't been
6 doing anymore scrapping at all. Right, wrong, or
7 indifferent he said scrapping caused me problems; I'm not
8 going to do it anymore. And I said that's probably a good
9 resolution. And since that day on March 24, 2010 has not
10 been arrested, hasn't been in any trouble at all, Your
11 Honor. I mean, he's actually lives a fairly model
12 lifestyle, as best I can tell. And that's what he's always
13 presented to me as being a real likeable young man.

14 Your Honor, I know they need him at the house to help
15 support these children. And I know his wife needs him.
16 They have a hard enough time making it with both of them,
17 so I'd like to keep both of them out of -- like to keep my
18 client out. Your Honor, I think my client would be a
19 wonderful client for probation. He's never been arrested
20 before in general sessions court at all. These prior
21 convictions were from some seven or eight years ago, truly
22 when he was 18 or 19 years old. And, Your Honor, I
23 mentioned back in chambers on this matter when my client
24 was arrested he was PR bonded out. He never spent a night
25 in jail. Literally the day he was arrested on March 24,

1 '10 he was released that day. Subsequently down the line,
2 just for the court's knowledge and edification, Ms.
3 Flannery, who represented my client, had him sent to be
4 evaluated in Columbia for around a period of 60 days. And,
5 actually, he was deemed incompetent at that time, but
6 subsequently cured, so to speak. And I can tell the court,
7 as an officer of the court with my dealings with Mr.
8 Mitchell, he understands right from wrong and he's assisted
9 me greatly in his defense. I mean, he's given us the world
10 of information in how to prepare for this defense. From
11 that standpoint, he's highly competent to stand trial.
12 But, Your Honor, taking all that into account, I know
13 there's going to be some restitution to be paid. But we
14 would ask that Mr. Mitchell be allowed -- I think a
15 probationary sentence would be an appropriate sentence.
16 Let him stay out so he can work and pay back this money and
17 prove to you and prove to the probation department that
18 he's not a menace to the community. Because what happened
19 on March 24, 2010 I think is just outside his character.
20 From talking to him, I think he had a
21 legitimate understanding mistake of fact. And, again,
22 would I have had that mistake of fact? Probably not.
23 Would his Honor? Probably not. Would the Solicitor's
24 office? Probably not. But Mr. Mitchell, how he perceives
25 the world, I think he had a legitimate mistake of fact.

1 And I'd ask that you take all that into account and put him
2 on probation and let him pay this restitution and prove
3 that he can continue to be a contributing member to
4 society.

5 THE COURT: Thank you very much, Mr. Henderson.
6 Anything from the State?

7 MR. MORROW: Your Honor, the State believes that the
8 defendant has two prior convictions as well as he's been
9 found guilty by a jury of his peers. I believe that he
10 deserves some appropriate amount of time for this offense
11 as well as an appropriate amount of restitution.

12 THE COURT: Thank you very much. Mr. Mitchell, is
13 there anything that you would like to tell me, sir?

14 DEFENDANT: I'm truly sorry, Your Honor. I'm a good
15 person. I've changed from scrap metal to just being a
16 community provider, teaching kids how to know the law
17 before they get adults and have an opportunity out here to
18 make Greenwood better. For somebody to go to prison or
19 jail time for a crime that they don't do anymore is --
20 I don't know what to say. You know, because I was shocked.
21 You know, I actually thought we were going to win, but it
22 didn't happen like that. And hopefully that, you know,
23 whatever it is you give me, sir, I hope that you see that
24 I'm a good person and don't need to be away from my kids.
25 Like right now I don't have nobody to pick up my kids

1 from the school bus right now and they get off at three.
2 And I try to contact my wife. I try to contact everybody.
3 I have no family. I'm from Cleveland, Ohio. To come down
4 here it's just like, oh, you did a crime, you deserve the
5 time. And it's like, now what am I supposed to do, you
6 know. I try real hard to do whatever I can. And it's like
7 there's nobody there to vouch for me. Everybody got
8 somebody to vouch for them. I don't have nobody. I have
9 my wife and my kids. I've been there every morning. This
10 right here take me away from them. I don't know what to
11 say. I can't -- It's hard. It's hard. It's hard for me
12 this crying right here. I've been told -- they told --
13 they told everybody not to hire me, and I don't know what
14 to do. I've been sitting in a mental hospital because of
15 my train of thought. They tried to say that I was crazy
16 because I said that everything is not owned. And
17 they said, oh, yeah, everything is owned and you break in
18 my house. And you know, I don't know. I lived through
19 that mistake and I moved forward. And I said, hey, if they
20 can get me like this let me go out there and try to provide
21 something for these kids that is young right now. That's
22 why I work at GLEAMNS right now. It's called Horizon
23 Program. And what we do out there is we help young
24 children become better -- you know, better people, like
25 substance abuse, sexual abuse and so on. And we take these

1 kids so they can understand that life is more valuable than
2 not just working in an ordinary plant, you know.
3 Innovation is what this country is built on. And I try to
4 teach kids innovation so they can be their own bosses one
5 day.

6 MR. HENDERSON: And, Your Honor, I think you heard Mr.
7 Mitchell mention a couple things I'd like to hone in on.
8 One of the problems he's had been getting a job is seeing
9 this grand larceny pending on his record for three-and-a-
10 half years. Because as his Honor knows, people go running
11 rap sheets on about everybody now. McDonald's runs rap
12 sheets now. And that grand larceny pending has really hurt
13 him.

14 And, Your Honor, you heard Mr. Mitchell talk about
15 encouraging kids to stay off drugs. Now, you've done
16 enough court already in your short tenure to know that most
17 scrapping cases are drug related cases. I mean, people are
18 stealing for meth or God knows what. But, again, no
19 allegations of drugs here. I mean, this is a atypical
20 bizarre set of facts. And we just ask, and I think Mr.
21 Mitchell would ask, that whatever leniency the court would
22 give him would be greatly appreciated.

23 THE DEFENDANT: I hope you see mercy. That's all I
24 think I ask for is mercy. I mean, I never had my life
25 depending on twelve people before. The only thing I was

1 told when I was little as a foster child was, hey, the Lord
2 is everything and he has everything in his power. That's
3 what I believe in. I've been believing that since I was
4 twelve years old. And to be punished in front of man. Man
5 makes mistakes their self. And I made mistakes before, but
6 I'm not a continuous criminal. And I believe people that
7 does crime continuously should be in prison or in jail.
8 But somebody's that changed their life for the basis of the
9 community and for their family, I feel like they shouldn't
10 do jail time. I'm being an honest person. You can ask
11 anybody out here. Ask some of these CO's. I'm well aware
12 of, like, the Alliance people. Partnership Alliance. They
13 tell you. I brought ideas to the city to make it more
14 money. And I'm going to run for county council, but I
15 can't now because I got this charge on me. I mean,
16 punishment is enough. I mean, how much more must I have to
17 suffer, sir?

18 THE COURT: Thank you, sir. Anything further from the
19 State?

20 MS. ODOM: Your Honor, we've prepared a restitution
21 order and just left the amount blank.

22 THE COURT: All right. Mr. Mitchell, what my job is,
23 and it's not an easy job, my job is to do two things. One
24 is to make sure that justice is done and secondly to be
25 fair. If I allow myself to get emotionally wrapped up into

1 a particular person's particular situation then I wouldn't
2 be fulfilling my responsibility to see that justice is
3 done. I can certainly sympathize with you, Mr. Mitchell,
4 that you've got a situation, you've got four kids at home,
5 here you've got -- need somebody even to pick them up at
6 the three o'clock and whatever else that may be involved in
7 your family situation. I can sympathize with that, but I
8 can't allow sympathy, nor do we ever allow juries to
9 invoke sympathy in their reaching of a verdict. So, if a
10 jury can't do it, a judge can't do it. And I can't do it,
11 even though I certainly can recognize it, I can't allow
12 sympathy to factor in whatsoever with my decision in the
13 case.

14 Now, I have taken several things into consideration,
15 some of which you may agree to, some of which you may not
16 agree to. I've taken into consideration that you've got a
17 relatively small prior record. You do have two property
18 offense, but they're all in lower court, no general
19 sessions court involvement. That certainly plays into your
20 favor. But I've also taken into account the facts of this
21 case, not only a jury deciding that you committed larceny,
22 which is a crime, and I realize there's been some issue and
23 dispute raised by your lawyer, who, by the way, has done an
24 excellent on your behalf. And whatever the outcome, the
25 fact that you were found guilty and whatever your sentence

1 may be is not his fault, okay. The State has done
2 equally an excellent job in their representation of the
3 state in this case.

4 But I just I find it hard to believe that someone
5 would think that, you know, over 7,000 pounds of metal is
6 there for the taking by anybody who happens to come by.
7 And I think maybe the weight is even more. I'd have to go
8 back through my notes. But 7,000 pounds is sticking out in
9 my mind. That is a lot. And I'm sure that it took you, by
10 yourself, a whole long time to load that onto your
11 trailer over the period of days that you were taking this
12 stuff. But I just find it hard to believe that anyone
13 would believe that it's fair game, there for anybody's
14 taking, whoever -- you know, whoever came upon it first,
15 first come first serve take it. I just find that hard to
16 believe. So I've taken that into consideration.
17 Certainly, I'd take into consideration that since this
18 incident you hadn't been in any further trouble.
19 Apparently you're doing some good things: working for
20 GLEAMNS and that sort of thing. GLEAMNS is an excellent
21 organization, provides a lot of help and assistance to
22 under privileged families and kids, and I think they do a
23 good job. And I commend you for being a part of all that.
24 But I have to not forget the fact that a jury found you
25 guilty of a serious charge. And I've got to impose some

1 punishment. And it's got to be more than probation.

2 So the sentence of the court is that you'll be
3 confined to the State Department of Corrections for a
4 period of five years. However, I'll suspend that upon your
5 service of eighteen months and put you on probation for a
6 period of two years. In addition, while on probation
7 you'll be required to make restitution to Mr. Gaines in
8 this case in the amount of \$1,000, which is the least
9 amount that I could order based upon how the jury ruled in
10 this case on your verdict. I wish things can -- will work
11 out for you. I will ask that if he can have some phone
12 access, at least make contact with somebody. I hate that
13 these children are going to be three o'clock and nobody
14 there to pick them up. So if -- Mr. Henderson, if you
15 could provide some assistance. However, he's going to be
16 in custody, but I would ask that Officer Douglas and
17 Officer Reynolds maybe could allow him to remain here
18 somewhere in the courthouse until some phone contact can be
19 done, at least arrangements to be made for the children
20 today.

21 MR. HENDERSON: And I think the public defender would
22 allow us to use their office, Your Honor.

23 THE COURT: Okay. If that's suitable with the
24 officers. So they'll need to take him into custody. But
25 good luck to you, sir. I hope everything works out for

1 you.

2 MR. HENDERSON: Thank you, Your Honor.

3 MR. MORROW: Thank you, Your Honor.

4 (Hearing ended at 2:34 p.m.)

5 (End of requested transcript of record)

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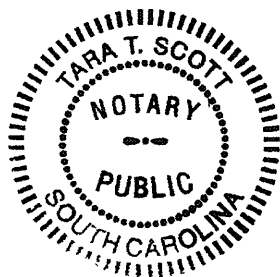
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1 Certificate of Reporter

2 I, the undersigned, Tara T. Scott, CVR, Official Court
3 Reporter for the Eighth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal, in
8 the Circuit Court for Greenwood County, South Carolina, on
9 the 1st and 2nd day of October, 2013.

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

12 January 23, 2014



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24

A handwritten signature of Tara T. Scott, written in black ink, positioned above a horizontal line.

Tara T. Scott, CVR

Circuit Court Reporter

A stamp consisting of a small square icon followed by the word "ORIGINAL" in a bold, sans-serif font.

FORM 5

STATE OF SOUTH CAROLINA)

County of Greenwood)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2016-CP-24 01893

APPLICATION FOR

POST-CONVICTION RELIEF

2016 DEC 12 PM 4:55

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention out of detention but on probation
2. Name and location of Court which imposed sentence Gwd, Greenwood, SC
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 G-52401568
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Oct 2, 2013 5 yrs, Sus, to 18 months, and
- (b) two yrs probation
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty was made for the middle charge
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- Yes, the appellate court of Defense
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. appellate court of South Carolina
- ii. eighth district court of
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied, lack of attorney help with the case
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 12, 12, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: insufficient conviction

(a) Never received a fair trial was told not to defend myself
 (b) My lawyer never help my case he told the Judge he was
 (c) State never prove there facts, and there were

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) All my evidence was destroyed by public defender, and she quit then
 (b) (Carson Henderson) told them I took something when I didn't He never
 (c) The State never prove there evidence went to prison on Hensay.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Appellate Court
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

i. on evidence of the State.
 ii. on the charge there was a middle charge which my there was.
 iii. and the conviction of the Sentence

iv. _____

- (b) the name and location of the Court in which each was filed:

i. Greenwood
 ii. Appellate Court of Defense
 iii. _____

iv. _____

(c) the disposition thereof:

- i. denied, judge denied the direct appeal
- ii. denied, cause attorney never objected the middle charge
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 19 Oct 2, 2013
- ii. 12 Dec 12, 2015
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. appeal court ruled in favor of State on the
- ii. middle charge, cause my lawyer never objected
- iii. to charge of any evidence thereof
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Just South Carolina

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. to file a federal appeal
- ii. or file a p.c.R.
- iii. _____

(b) the proceedings in which each ground was raised:

- i. appeal court attorney
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) I was never given a fair trial at all
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Carson Henderson, public defender
 (c) your sentencing? Carson Henderson
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Carmen Gasinani
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. public defender Megan Flannery sent me to Psychic Home and quit
 ii. Gwd then gave me Carson Henderson as appointed attorney
 iii. appeal left court of defense gave assigned to Carmen Gasinani on my appeal

- (b) the proceedings at which each such attorney represented you:

i. I don't know what Megan Flannery did for me
she told me she got it but never let me come to court to talk
 ii. Carson Henderson trick me like he cared and was going to help
but, when the trial started he never help me to win
 iii. Carmen Gasinani helped me understand the law and told me that my lawyer help me to win my case and told to go back on my PCR.

to deny court dates

19. State clearly the relief you seek in filing this application:

To have a fair trial and prove my
innocence

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Jovan Alexander Mitchell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this December
day of Nov., 2016.

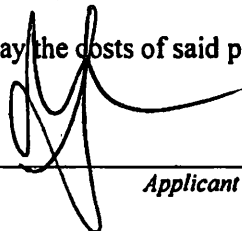
[Signature] 2016
(L.S.)
Notary Public

My Commission Expires: 3-24-2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Jovan A. Mitchell, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

12 day of December, 2016.

Rutha B. Lewis
Notary Public

My Commission Expires: 3-21-2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	2016-CP-24-1893
Jovan Mitchell,	)	
	)	
Applicant,	)	RETURN
	)	
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed December 12, 2016, would respectfully show this Court

I.

Applicant was indicted at the September 2013 term of the Greenwood County Grand Jury for grand larceny (2013-GS-24-1568). Carson Henderson, Esquire, represented him. Cam Morrow, Esquire, represented the State. On October 2, 2013, Applicant proceeded to a trial before the Honorable Donald B. Hocker, after which he was found guilty. Applicant was sentenced to imprisonment for five years provided that upon the service of eighteen months the balance is suspended with two years' probation.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by briefing by Carmen Ganjehsani, Esquire. After oral argument, the South Carolina Court of Appeals affirmed Applicant's conviction by an unpublished opinion. State v. Jovan Mitchell, Op. No 2015-UP-543 (Ct. App. Filed Nov. 25, 2015). The remittitur was sent December 21, 2015.

II.

In his current application for post-conviction relief, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective assistance of counsel

- a. "Never received a fair trial was told not to defend myself, my lawyer never help my case he told the judge how sleep and still convicted"
- b. State never prove there facts and there were no evidence"
- c. "All evidence was destroyed by public defender, and she quit then Carson Henderson told them I took something when I didn't"
- d. "He never objected to none of the case"
- e. "The State never prove there evidence went to prison on hearsay"

Attached herewith and incorporated herein by reference are the Greenwood County Clerk of Court records regarding the subject convictions, Applicant's appellate records, Applicant's records from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Id. 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in

the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

[Signature block on following page]

V.

WHEREFORE, Respondent requests an evidentiary hearing for the purpose of determining whether the Applicant's counsel was ineffective.

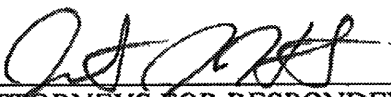
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

April 10, 2017

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

JOVAN MITCHELL,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2016-CP-24-1893

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan, Esquire
 Mac | Vance Attorneys, LLC
 PO Box 5501
 West Columbia, SC 29169

DATED this 10th day of April, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENWOOD)

COURT OF COMMON PLEAS
 FOR THE 8th JUDICIAL CIRCUIT
 Case No.: 2016-CP-24-01893

Jovan Mitchell,)

Applicant,)

v.)

State of South Carolina.)

AMENDED POST-CONVICTION
 RELIEF APPLICATION

FILED
 8TH JUDICIAL CIRCUIT
 GREENWOOD, S.C.

7 SEP 15 2:55

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on December 12, 2016, to add the following allegations:

1. Ineffective Assistance of Counsel as to Megan J. Flannery, Esquire:

a. Counsel never discussed with the Applicant who would be called as witnesses at trial, nor did she attempt to talk to those potential witnesses.

b. Counsel had multiple mental health evaluations done on the Applicant resulting in the Applicant being sent to the facility on Farrow Road in Columbia for almost 21 days, all in her attempt to get an insanity defense for the Applicant.

c. Counsel told the Applicant that he could not attend his preliminary hearing.

2. Ineffective Assistance of Counsel as to Carson M. Henderson, Esquire

a. Counsel failed to argue prosecutorial vindictiveness. Only after the Applicant decided to run for County Council did the Solicitor decide to try to dispose of the Applicant's case. There is a reasonable likelihood that the Solicitor tried the Applicant on the charges only after he announced he was running for County Council. *See i.e. State v. Odom*, 412 SC 253 (2015). In this case, Applicant was not indicted for three years, and then finally was indicted late in September 2013, and tried in October 2013.

b. Trial Counsel did not attempt to mitigate the Applicant's sentence by using the mental health evaluations and other information that Ms. Flannery had obtained. Furthermore, Trial Counsel did not even have a copy of Ms. Flannery's file.

ATTEST A TRUE COPY
Chastity Copeland
 CHASTITY COPELAND
 CCCP AND GS
 GREENWOOD COUNTY
 S. C.

c. Trial Counsel failed to call two witnesses on Applicant's behalf: Henry Fuller and Felicia LaGroom.

d. Trial Counsel told the Applicant that he couldn't testify because he would go to jail if he did.

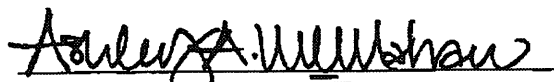
e. Trial Counsel did not bring up the conflict of interest Ms. Odom had in trying this case because she used to be an employee of Mr. Henderson's.

f. Trial Counsel failed to request voir dire asking if anyone knew the Applicant. Had he done so he would have stricken juror 137, Patia Thomas, who used to work with the Applicant at Chic-Fil-A and did not care for Applicant.

g. Trial Counsel failed to timely raise an objection to the court charging the three levels of larceny at the trial. Had counsel done so, the issue would have been preserved for trial and Applicant would have been successful on appeal in having a judgment of acquittal on the larceny \$1,000-\$5,000 charge.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application and this Amended Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE
 MAC | VANCE ATTORNEYS, LLC
 PO Box 5501
 West Columbia, SC 29171
 803-219-1110
 ashley@macvance.com
 SC Bar No. 71676
 ATTORNEY FOR APPLICANT

September 13, 2017

CERTIFICATE OF SERVICE

I certify that I have served this document via US Mail to:

Justin J. Hunter
Assistant Attorney General
PO Box 11549
Columbia, SC 29211-1549

This 13th Day of September, 2017.


ASHLEY A. McMAHAN, ESQUIRE
Attorney for Applicant

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

IN THE COURT OF COMMON PLEAS

JOVAN MITCHELL ,)
)
 PLAINTIFF,)
)
)
)
 -VS-)
)
STATE OF SOUTH CAROLINA,)
)
 DEFENDANT.)

)

CASE NO.: 2016-CP-24-1893

TRANSCRIPT OF RECORD

FEBRUARY 26, 2018
LAURENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. MARK HAYES, JUDGE

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

ATTORNEY FOR PLAINTIFF:

ASHLEY MCMAHAN, ESQUIRE

ATTORNEY FOR DEFENDANT:

JUSTIN HUNTER, ASSISTANT ATTORNEY GENERAL

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

Defendant's No. 1: Affidavit of Christopher Morrow

Jovan Mitchell-Direct Examination

4

1 MR. HUNTER: The next case is *Jovan Mitchell vs the*
2 *State of South Carolina*. It's 2016-CP-24-1893. Your Honor,
3 he was indicted in September of 2013 in Greenwood County for
4 grand larceny. He was initially represented by Ms. Megan
5 Flannery, but then ultimately represented by Mr. Carson
6 Henderson. On October 2nd of 2013, he proceeded to a jury
7 trial before Judge Hocker, after which he was found guilty,
8 and he was found guilty of the lesser included of grand
9 larceny, \$1,000 to \$5,000. He was sentenced to five years,
10 suspended upon the service of 18 months, the balance to be
11 suspended with two years, probation to follow. He filed a
12 notice of appeal after oral argument. The Court of Appeals
13 affirmed his conviction November 25th of 2015, a remittitur
14 was sent December 21st of 2015. He filed his current action
15 in December 12th of 2016. He's present today represented by
16 Ms. Ashley McMahan.

17 MS. MCMAHAN: Yes, Your Honor. The applicant would
18 call Mr. Mitchell to the stand.

19 JOVAN MITCHELL, having first been
20 duly sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MS. MCMAHAN:

23 Q Will you state your name for the record?

24 A Jovan Mitchell.

25 Q And did you file this PCR application?

1 A Yes.

2 Q Okay. So in your application, you have, you know,
3 several allegations and you have an amended application, as
4 well. And I believe you have copies in front of you. So
5 let's just start at the beginning of your issues with your
6 PCR.

7 A Okay.

8 Q So, I believe, if we're starting in the application,
9 you have that -- you have insufficient counsel because you
10 never received a fair trial, never helped your case, and the
11 State never proved the facts that you were convicted on. So
12 explain that to everybody here today.

13 A Okay. First, there was a lot of errors in testimony.
14 As I got the transcripts, I got to read the transcripts and
15 a lot of the prosecutor's way of trying to prove me guilty
16 never really proved me guilty. They actually never even
17 said if I really took the metal or if I ever kept the metal
18 with me. So, therefore, you know it's like, how can a jury
19 sit up here and say if I'm guilty if they never proved that
20 I actually took the metal?

21 And second problem was, I believe I was given
22 insufficient counsel. What's the prosecutor's name?

23 (Whereupon, Defendant speaks with his attorney off the
24 record.)

25 Yeah. Ms. Shannon Odom. After being convicted, I did

Jovan Mitchell-Direct Examination

6

1 an investigation on myself and began to look at the facts
2 that would -- why I was here in the first place. And Ms.
3 Shannon Odom used to work for my former attorney, Carson
4 Henderson, at the Garrett office, and then decided to run
5 against me for her first conviction.

6 Q Okay. So let's just clarify. You had two attorneys.
7 You had Ms. Flannery first?

8 A Yes.

9 Q And then, you had Mr. Henderson?

10 A Yes.

11 Q Since the issue that we're talking about right now --

12 A Ms. Flannery, she never even -- she had evidence. I
13 gave her evidence, showed her pictures and I don't know what
14 was up with the case, but it felt like more she was working
15 the prosecutors. They ain't working for me. And I never
16 really talked to Ms. Flannery and she sent me to mental
17 hospitals for unknown reasons.

18 Q Okay. So let's back up just a second there. So you
19 said that you had given her some evidence?

20 A Yes.

21 Q What evidence was it?

22 A They were pictures of the site at the time that this
23 occurred. I even took a picture of the fence that was open.
24 In the testimony against me, the police said I cut the fence
25 and backed my trailer in when the fence was already open.

Jovan Mitchell-Direct Examination

7

1 Q Okay. So the pictures were of the fence open?

2 A Yes.

3 Q Okay. And then, in the second half you said Ms.

4 Flannery sent you to some mental hospitals. So let's get
5 into that a little bit, then.

6 A Okay.

7 Q Tell me about that.

8 A After telling Ms. Flannery about my childhood life, she
9 then decided that my childhood life was so severe that I
10 should be determined to see a counselor for help, and
11 because of that I seen the counselor, talked to them. And
12 then, I said one thing and she said -- the counselor asked
13 me, she said how do you feel today. I told her -- she said,
14 how do you feel about this crime and how do you feel about
15 this. I told her, simply, I just wish it was over with.
16 She then decided to determine that I said I wanted to kill
17 myself, which then she put me on a 72 hour hold for that,
18 which I told Ms. Flannery, for my lawyer, you was supposed
19 to protect me from them trying to put me in a mental
20 hospital. Nothing I said in that room that day should have
21 put me in the mental hospital, nor should they had kept me
22 in a mental hospital presence. When I was laying in the bed
23 handcuffed, on the bed. I was unable to move. If I had to
24 use the bathroom, I had to tell the guard I had to use the
25 bathroom. I was humiliated, basically.

Jovan Mitchell-Direct Examination

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1 Q So you felt like Ms. Flannery, then -- and I'm not
2 trying to put words in your mouth. So if this is not a
3 correct thought, let me know. That Ms. Flannery, once you
4 got the hold put on you, she should have done something to
5 try to get the hold off to get you out?

6 A Yeah. Like nothing I said in there -- she was sitting
7 right there and nobody -- how can you determine by me
8 saying, I wish it was over with, that I wanted to kill
9 myself?

10 Q And then, what happened after that? After the 72
11 hours.

12 A After the 72 hours, I then get a call about a month
13 later -- I believe it was from Patrick B. Harris, that, I
14 think, there was a bed open for me at another mental
15 hospital, and after the doctors determined that there was
16 nothing wrong with me they even made a whole -- I don't know
17 if you have that or not in my file, the discovery. But they
18 had a list of stuff that they said, you know, that I said,
19 but they said that they -- this is -- this was the
20 scientific reason of me being mentally ill.

21 Q So how long were you in the other hospital?

22 A Twenty-one days, but the judge sentenced me to 60 days,
23 which I never talked to a judge nor was I able to go to my
24 hearing for my -- for this crime hearing.

25 Q So the judge that sent you there for 60 days, that was

Jovan Mitchell-Direct Examination

9

1 a probate judge that sent you there for 60 days?

2 A I'm not sure what judge it was. I was just told --

3 Q A judge had ordered you to stay in the hospital for 60
4 days?

5 A Yeah.

6 Q But you ultimately did 21 in the mental hospital?

7 A Yes. I only stayed 21 days, because when I was there
8 the doctors determined that -- they told me that all black
9 males at the age of 20 turn mentally ill.

10 Q Okay.

11 A And -- which I asked them, is -- what did -- where did
12 you get that from? You know, why are you sitting up here
13 saying that all black males, at the age of 20, turn mentally
14 ill? And then I felt like, if they're doing me like this,
15 how many other people are they doing like this?

16 Q Okay. Let's continue with Ms. Flannery. One of your
17 issues is that she told you that you couldn't attend your
18 preliminary hearing?

19 A I had never even had the opportunity to. Nobody told
20 me what date it was. I was just left out in the dark.

21 Q So you never heard about when it was scheduled or
22 anything like that?

23 A No. Now, anything with courts, I never even heard of.
24 I never heard anything going on with the court system. The
25 only thing, I kept asking Ms. Flannery what was going on.

Jovan Mitchell-Direct Examination

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1 She was telling me she's handling it and every time she said
2 that something bad happened to me with the court system.
3 Either they were coming to get me to take me somewhere or -
4 then after I left the mental hospital, she just finally just
5 said that she doesn't know how to defend this case. So she
6 just going to court.

7 Q Okay. So had she -- had you asked for a preliminary
8 hearing?

9 A Yeah. I wanted to go.

10 Q Okay.

11 A I wanted to proceed with the evidence they had against
12 me, because I currently didn't know what metal they said I
13 took. It took them four months to even say what metal I
14 took. This man saying this is a warehouse. How can this be
15 a warehouse when you've got an inventory sheet and it takes
16 you four months to say that, hey, oh, he took this from me.
17 If you have an inventory sheet, you should be able to say
18 what I took that day if I took something.

19 Q Also, with Ms. Flannery, you had an issue on here that
20 you never sat with her to discuss possible witnesses to call
21 at trial or talked about possible witnesses?

22 A Correct.

23 Q So will you expand on that a little bit more?

24 A There were witnesses in the car with me that day the
25 police got involved. The guy said that we were putting

1 metal on a trailer when we were there, which he lied in
2 court and said that, and the testimony from the police. So
3 I guess, they corroborated together and said the same thing,
4 that there was metal in the car when there was no metal even
5 there because we never even got out of the car. Only time I
6 got out the car was to talk to the man that was on the
7 property at the day.

8 Q Mr. Gaines?

9 A Mr. Gaines. Stan Gaines.

10 Q So you had just -- all you had done was just pull into
11 the property? You actually had not put anything onto your
12 vehicle?

13 A We never got out the vehicle until we seen Mr. Gaines.
14 First, we seen a Mexican picking up stuff and we was just
15 looking at him and seeing what he was doing, because, just
16 like I said, we had been coming back onto the property for
17 like the third day. This is the fourth day we was on the
18 property, and we ain't been taking nothing, because
19 everything's three feet in the ground. The metal, it came
20 from the factory and what they did was just put it to the
21 side instead just getting rid of it.

22 Q Okay.

23 A And Mr. Stan Gaines end up buying the property that had
24 the metal on it --

25 Q Okay.

Jovan Mitchell-Direct Examination

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1 A -- but he -- in the section that we were in, you
2 couldn't get to his property from the back, because the
3 metal was blocking the entrance to his side.

4 Q Yeah.

5 A It's like if you put up an imaginary wall --

6 Q Yeah.

7 A -- by blocking like that. But you couldn't get onto
8 his property. Not according to GSI (sic) map. If you look
9 on GSI map, you can actually tell that his property line --
10 it's actually with the property line as he bought it from
11 the county.

12 Q Do you mean on GIS indicated that?

13 A Yeah. GIS, I'm sorry. Which is what I was telling my
14 lawyers, say, hey, we didn't take nothing from his property
15 at all.

16 Q Okay. And you told Ms. Flannery this.

17 A Yeah. I told her. The only thing that was on the
18 ground was -- this was in CEP property, which has nothing to
19 do with this case at all. So I'm not even going against
20 CEP.

21 Q So, also, in your application, you have that you
22 evidence was destroyed by the public defender.

23 A Yes.

24 Q So could you explain that?

25 A Basically, everything that I have told Ms. Flannery,

1 any evidence that we had brought up to her, never got to
2 Carson. So when I got my new lawyer, it was just like, oh,
3 everything you said doesn't matter no more because it's been
4 wiped away. And it's like, wow, you know, she didn't give
5 you nothing. Carson said, no, he didn't get nothing from
6 her.

7 Q Okay. So anything else, specifically with Ms. Flannery
8 you wanted to talk about today?

9 A I just want to know why she railroaded me like that.
10 Nobody deserves that. If I'm -- if I'm guilty, if the court
11 -- the -- the judicial system says you're innocent until
12 you're proven guilty. I felt more that I was guilty before
13 I was proven innocent.

14 Q Okay. All right. So moving on to Mr. Henderson. When
15 did Mr. Henderson get appointed to represent you?

16 A Right after I got off with Ms. Flannery.

17 Q Okay. How far into that -- your case pending, was
18 that?

19 A I would say about -- just about the second year.

20 Q So the second year pending, you get Mr. Henderson?

21 A Yes.

22 Q How many times did you guys meet? Do you remember?

23 A We met quite a few times here and again. He was very
24 understanding and he wanted to help me out as much as he
25 could.

Jovan Mitchell-Direct Examination

14

1 Q Okay. So your relationship with Mr. Henderson was
2 better or worse than your relationship with Ms. Flannery?

3 A It was way better, because I was able to talk and he
4 was able to tell me things that I can't do and can do and --
5 because of the court system and I actually learned more
6 about my case with Mr. Henderson than Ms. Flannery.

7 Q Okay. Do you recall if there were ever any plea offers
8 or anything he had discussed with you?

9 A Yes. There were some plea offers. He did tell me if I
10 plead guilty, for five years probation. 20,000 -- I'd have
11 to pay back \$20,000.

12 Q Okay. So that was the offer was --

13 A Yeah.

14 Q -- a suspended sentence to five years probation?

15 A Yeah. It would be five years probation, 20,000 -- I'd
16 have to pay back \$20,000 in restitution, but I just didn't
17 see why I had to pay back so much money if I didn't do this.

18 Q So -- and there was some issue about the money and
19 about the worth of the items in the trial, wasn't there?

20 A Yes.

21 Q And -- well, we can get into that -- well, we'll get
22 into that now. What was the issues with the money that --
23 let me back up and rephrase that.

24 A Okay.

25 Q What was the issue with the worth of the items that

1 they alleged that you took?

2 A We -- actually, like I said, he didn't find out what we
3 took until the date of trial and --

4 Q You mean, like the worth of -- like how much the person
5 was alleging it was worth?

6 A Yeah. At the time, this is when the prices had started
7 going down from the metal center. But this one particular
8 metal that he was saying was non-resistant, type one iron
9 and -- which is alloy. We looked it up. Me and Carson
10 looked it up at halftime during the trial and it's
11 non-magnetic, you know. And so, it's like -- okay. Well,
12 if it's non-magnetic, you know, that would have been to a
13 special pile down at Harley's Scrap Metal Yard.

14 Q Yeah.

15 A Which, Harvey's did say he'd never seen anything from
16 my being seen as came from he's property.

17 Q Yeah.

18 A When we brought the stuff down there to the scrap metal
19 yard to show Harvey what it was, Harvey then decided to say,
20 no, nothing came from this young man. So if he said nothing
21 came down here from his property down here, then why would
22 you even need to go against me in the court? Which I then
23 pictured that they wanted to have a picture boy, which, in
24 my terms is they needed somebody to say that they're
25 covering up -- the police used this as a matter of covering

Jovan Mitchell-Direct Examination

16

1 up crimes. This is been dated back in the 1920s. Since the
2 1920s they've been doing this in the South Carolina court
3 systems. They'll want to say that they've got a handle on
4 things. They'll say mostly either a black male or Hispanic
5 have done this.

6 Q Okay. But there was some issue when you were in trial,
7 about what you could have been convicted of. And so, there
8 was an issue about what the ultimate value was.

9 A Yes.

10 Q And do you remember what you were ultimately convicted
11 of?

12 A First it was \$100,000 grand larceny. Then it went down
13 in court -- when I went to court, to 20,000, grand larceny.

14 Q What were you -- what was the verdict that the jury
15 came back with? Do you remember?

16 A The jury came -- after the jury said I was not guilty
17 of the \$10,000, they then came -- the judge stopped them and
18 told them to go back in and don't think about the worth --
19 they -- he wanted them to go out the worth of the metal
20 instead of me saying I took the metal. Which they then went
21 back in, came back with another verdict, and then said we
22 want to plead him guilty to five under one, grand larceny.

23 Q So ultimately, the jury came back with a verdict of
24 grand larceny, 1 to 5,000?

25 A Of -- under 5,000, over 1,000.

Jovan Mitchell-Direct Examination

17

1 Q Yeah. Yes.

2 A Yes.

3 Q Okay. And but the issue -- and I we'll -- I can get
4 into this with Mr. Henderson later. But the issue was, was
5 there -- do you recall the Solicitor presenting evidence
6 that the material was worth one to \$5,000?

7 A No. After talking to my appellate lawyer, Ms. Carmen
8 Garisone (Phonetic), she then told me -- explained to me
9 that my lawyer never had actually came up with an argument
10 or -- what do you call it, a motion for that -- the value of
11 under five and over one. Which he did, but he went into
12 chambers to do it. And since he didn't do it in front of
13 the jury, they couldn't dismiss my case because of that.

14 Q So because he didn't object to that lesser included,
15 the one to five --

16 A In front of jury.

17 Q Yeah.

18 A He said it in front of the judge, but --

19 Q It wasn't preserved is what you're trying to translate?

20 A Yeah.

21 Q Okay.

22 A Yes, ma'am.

23 Q So the issue is, in your case, the Solicitor either
24 presented evidence of it being worth less than 1,000 or
25 worth more than five, but had never presented any evidence

Jovan Mitchell-Direct Examination

18

1 between the one to 5,000?

2 A The prosecutor made it, in court, over 10,000.

3 Q Okay.

4 A They were trying to get the max for this and this was

5 --

6 Q So they had presented evidence that it was either well

7 over 10,000, or there was evidence presented based on the

8 weight receipts said it was worth less than 1,000?

9 A Well, they made it seem like it was more than 10,000.

10 They just said Harvey didn't know what -- how to run his

11 scrap yard over there.

12 Q Okay.

13 A They're trying to make it seem like this man had been

14 in business for so long that he's just trying to get over on

15 people.

16 Q Okay. And then -- so, also, with Mr. Henderson, what

17 was the issue with prosecutorial vindictiveness?

18 A Could you explain that, please?

19 Q You said that the prosecutor was vindictive because

20 they only tried to try you after you decided to run for

21 County Council?

22 A Yes. During the time, like I had said, I was just

23 going back to the Solicitor's Office and talking to Carson

24 about when was this case going to be overhead, because they

25 kept saying -- every time we talk to them they'll say, well,

1 we're not going to do nothing with Mr. Mitchell's case right
2 now. The guy's not working with us. They kept saying that
3 the victim wasn't working with them and kept giving them
4 different amounts, and they're trying to come up with a
5 case, basically. If they have a good case to take you to
6 court. And that's why they -- I guess, it took so long for
7 them to take me to court. But when I actually decided to --
8 to run for Edith Childs' seat in seat one in Greenwood, I
9 then began to -- I filed all the paperwork, and after I
10 filed all the paperwork, I did all the necessary stuff to
11 talk to the Democratic party down in Sumter, South Carolina.
12 I was getting ready to go a meeting to talk in front of
13 them. She wanted me to come down there and talk in front of
14 them. She felt like my young voice and my powderiness (sic)
15 that I had with the community can help out a little bit.
16 And after that -- like 30 days after that, they then --
17 Carson called me and said, Jovan Mitchell, get ready to go
18 to trial in 30 days.

19 Q Okay.

20 A This was like September 1st, I want to say, and that it
21 would move on to court October 1st. That's what he told me.

22 Q Okay. So 30 days after you had signed up to run is
23 when you got notice that your case was going to be called
24 for trial?

25 A Yes.

Jovan Mitchell-Direct Examination

20

- 1 Q Okay. You also have that Mr. Henderson didn't try to
2 mitigate your sentence by using those mental health
3 evaluations that Ms. Flannery had gotten for you?
- 4 A Yes.
- 5 Q Could you explain that a little bit more?
- 6 A I felt like if he told them that -- because when I was
7 in prison for this, that if he had told them about my mental
8 -- the mental -- the mental part of them putting me into
9 prison, that'll shorten the sentence.
- 10 Q Okay.
- 11 A Which, you know, they would have said, okay, we've got
12 a lot of time and under this right here, they would have
13 kept cutting down my sentence from --
- 14 Q I got you.
- 15 A -- that time right there.
- 16 Q And what was this total sentence that you ended up
17 getting?
- 18 A I did nine months in prison, five different yards.
- 19 Q Are you still on probation right now or on parole?
- 20 A No. I'm currently paying my restitution.
- 21 Q Okay. So -- but you're still being supervised?
- 22 A No.
- 23 Q Okay. Just having to pay the restitution?
- 24 A Yes.
- 25 Q What was the amount of restitution ordered that you had

1 to pay?

2 A It was 1,200, but I ended up paying 2,000 because of
3 police --

4 Q Yeah. The --

5 A -- the jury and all that stuff of that day.

6 Q The court costs?

7 A Yeah.

8 Q Yeah. Okay. Also, so you have --

9 A Which I also -- also they were -- I want to say that
10 with Carson, I felt like he wanted to help me out as much as
11 he could, but he wanted me to go -- and go back on and get
12 him for fraud. Because the way the case was is that I'm the
13 Defendant of the case and Stan Gaines is the victim, and the
14 only way he can be going to court is if -- for the things he
15 done if I get convicted. Because Carson even said in the
16 testimony -- if you read the testimony, it says clearly
17 that, Your Honor, I felt like I never helped my client in my
18 best capable abilities. I felt like I was asleep. That
19 right there told me that he was trying to help me out in a
20 way that I could come back on a PCR. He even mentioned in
21 the transcripts to the judge that this will be a PCR matter.

22 Q Yes. Okay. So the next one was Mr. Henderson didn't
23 call Henry Fuller and Felicia Lagroon?

24 A No.

25 Q And did you ask him to?

Jovan Mitchell-Direct Examination

22

1 A Yes. Also, Mr. Henderson -- also, I also told him that
2 I never took anything from the property. He also did state
3 -- he said, Your Honor, it's no doubt that my client took
4 something from this property, but we're not trying to say
5 that he took something. What we're trying to say is the
6 value.

7 Q Okay.

8 A There wasn't --

9 Q So you had told Mr. Henderson that you never took
10 anything off the property, but he was arguing in court we're
11 not going to dispute that he took something, but it was just
12 really the value of what was taken?

13 A Yeah. This is after Judge Hocker had came up with the
14 State vs -- what's his name? Not Gaines, but what was the
15 case that the judge brought up? I'm not --

16 Q I'm not sure.

17 A Anyway, it went down as they were arguing about the
18 warehouse name. The Defendant had said that it was going on
19 for a directed verdict -- direct verdict for -- to get this
20 case dismissed.

21 Q Yeah.

22 A And the guy ended up saying warehouse and warehouse man
23 instead of just saying the name of the warehouse, which they
24 then came back and said, well, hey, you know, he -- since he
25 did say warehouse man, we can then wipe it away and just say

1 what the name of the warehouse, and they then replaced
2 everything they said about warehouse man as the name of the
3 warehouse.

4 Q Okay. And you've sort of alluded to this already --
5 well, actually, let me skip back. What was the issue with
6 you testifying and about him -- and Mr. Henderson talking to
7 you about testifying?

8 A Well, at the time, I didn't know it was my right to
9 testify on my behalf. The judge then said, do you have
10 anything to say. Carson then shouted out in front of the
11 court, don't say this or they'll put you in -- I forgot the
12 word he used, but he was referring to the prison.

13 Q So Mr. Henderson specifically told you not to testify
14 because he felt like you would end up with major jail time
15 if you did?

16 A Yeah. And then I end up getting jail time anyway.

17 Q And then when you brought up Ms. Odom having a conflict
18 of interest earlier for working -- because she had worked
19 for Mr. Henderson.

20 A Right before my trial. You know, when I found out that
21 half of the people that's trying to be prosecutors end up
22 working for a firm in Greenwood somewhere, whether it was
23 with them or anywhere. That's how they get their startup,
24 and they don't care who they throw in prison or anything.
25 They just trying to get their wins. That's all that counts.

Jovan Mitchell-Direct Examination

24

1 Q Okay. So that was with the conflict of Ms. Odom?

2 A Yeah.

3 Q Okay. So then you also have some issue with Mr.

4 Henderson not asking voir dire, if anyone knew you, about

5 Petia Thomas?

6 A Yes. Ms. Petia Thomas, we worked together and we went

7 to school together, too, and we had a -- we was basically

8 good friends. And then something happened with her and her

9 sister and they -- she just stopped talking to me. Like she
10 had a vendetta against me or something. I ain't never know

11 what it was, because I'd never talked to her since then.

12 Then all of a sudden I have trial and she's one of the

13 witnesses.

14 Q You mean one of the jurors?

15 A Jurors. Yeah, I'm sorry.

16 Q Was she on your jury?

17 A Yes. She was a juror. I even told Mr. Henderson I

18 know her. I had used to know that guy, too. I think his

19 name start with James. Yeah. It was something that I had

20 -- I had dated his daughter and he didn't --

21 Q Okay.

22 A -- like me. So he was also on the jury, too. Which --

23 and he asked if anybody knew this young man, please let them

24 know, and he basically looked at me and --

25 Q They never stood up and indicated that they knew you?

1 A Exactly.

2 Q Okay. And then Ms. Thomas was seated on your jury?

3 A Yes.

4 Q Okay.

5 A And the stepdad was, too.

6 Q And then you have an issue -- and we already brought
7 this up, unless you want to get into it a little bit further
8 about how Mr. Henderson failed to raise an objection to the
9 larceny level of 1,500 to 5,000.

10 A Yeah.

11 Q Remember we did touch base on that. Is there anything
12 else you wanted to talk about on that?

13 A Yeah. There was no evidence from the prosecutor at all
14 that even determined that anything was less than the amount
15 that they said that I was there for. Anything they said I
16 took was non-resistant type one iron, which is an alloy that
17 you put on missiles.

18 Q Yeah.

19 A Which you're not going to have in no outside sitting
20 around, so somebody could come take it. That's what people
21 get killed over, for this type of iron.

22 Q Okay. So we've gone over everything in your
23 applications. Is there anything else you want to tell the
24 Court today, that you want the Judge to know?

25 A Yes. My whole time being in this system of the

Jovan Mitchell-Direct Examination

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1 judicial system has just been -- I don't feel like there was
2 even any way possible that this could even help me be human
3 being. I've felt less of a human being, being part of your
4 judicial system. I was going to get a job. Before I even
5 found guilty of this crime, I was told by bosses that the
6 detective that was working for the Greenwood Police
7 Department went around telling them not to hire me because
8 I'm a thief. Now, I ain't never been to court for this at
9 all, nor been to jail for this, and to put that in there,
10 and then tell the paper to put me in the paper as \$10,000,
11 grand larceny. What it should have been was change of
12 venue, because I was already looked at as a thief among the
13 Greenwood citizens. For them not to say that they didn't
14 know nothing about this case -- any juror to say they didn't
15 know nothing about the case, would be a termed lie.
16 Greenwood is nothing but 60,000 citizens. So word spreads
17 around fast, excluding businesses. I was even looked upon,
18 walking into a business with everything I have is receipts.
19 Never stole anything from anybody.

20 MS. MCMAHAN: Okay. Well, answer any questions Mr.
21 Hunter asks.

22 THE WITNESS: Yes, ma'am.

23 MR. HUNTER: No questions for this witness.

24 THE COURT: Thank you, sir. You may step down. Watch
25 your step as you're stepping down.

1 (Whereupon, the witness stepped down from the witness
2 stand.)

3 MS. MCMAHAN: Your Honor, the applicant calls Ms.
4 Flannery.

5 MEGAN FLANNERY, having first been
6 duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MS. MCMAHAN:

9 Q Would you state your name for the record, please?

10 A Megan Flannery.

11 Q And did you represent Mr. Mitchell during this case?

12 A Well, before trial, but yes. I did represent him for
13 these charges.

14 Q And what can you tell me about your representation of
15 Mr. Mitchell?

16 A A lot. Do want me to start from the beginning? Okay.
17 I have some notes here I need to refer to. I first saw Mr.
18 Mitchell around May of 2010. He came in for an initial
19 appointment with me and told me -- what I do -- or what I
20 did. I'm no longer a public defender. What I would usually
21 do is just say, you know, what are you charged with and what
22 happened. So we had a conversation, from his point of view,
23 of what happened, and as we were talking I noticed there
24 were a lot of issues about property rights and I didn't feel
25 like he was really understanding property rights correctly.

Megan Flannery-Direct Examination

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1 So we had a big -- so we had a lot of talk about how you
2 could own something, whether something could be owned, and
3 he kept telling that he couldn't be charged for anything
4 because none of this property was owned by anything. I
5 said, you know, well, everything's owned by somebody. And
6 then we talked about -- he said, no, there are a lot of
7 places that aren't owned by things. The city of Atlantis
8 isn't owned by anybody, the city of gold isn't owned by
9 anybody. So I started having some concerns right off the
10 bat. But we didn't have discovery yet, so we just kind of
11 said our -- said our goodbyes, talked -- we talked about how
12 he could contact me at any point if he wanted to and moved
13 along.

14 When he did tell me that he would send me some pictures
15 of the property, he said he was going to go out and take the
16 pictures and I explained that he -- not to trespass, but
17 that he could gladly do that, but that the issue would be
18 about what the property looked like at the time that the
19 crime happened instead of now. We did talk again. I
20 received the discovery and an offer, which Mr. Mitchell was
21 right that it was probation. At that time, the restitution
22 was to be determined. We had a few more conversations that
23 had -- I had a lot of concerns about. He talked about -- at
24 one point in our conversation, he did say something along
25 the lines of maybe I should have just gone through with it

1 last year and I said, well, what's -- what are you talking
2 about it, and he mentioned that he had tried to commit
3 suicide the year before. And I said, you know, have you
4 ever done that before and he told me about a few times that
5 he had. And, at that point, I was really concerned because
6 he's telling me things that are -- being suicidal, combined
7 with things such as the city of gold situation. He also
8 made some comments about other property rights issues. He
9 actually started crying in my office and this time, and when
10 I was trying to cheer him up and said, you know, you really
11 need to be positive, there's so many good things we have
12 going on. I said, I think everybody can tell Mr. Mitchell
13 is very nice and saying you're nice. You know, what are
14 some good things that you do that no one else does, and he
15 started telling me about how he could control the weather
16 with his breath and that he could predict the future. So,
17 at that point, I did have some -- a lot of concerns and I
18 felt that I was not someone who could make decisions about
19 his competency or criminal responsibilities. So Mr.
20 Mitchell is correct that I did have an order drawn up and
21 read in front of the judge in August of 2010 asking for an
22 evaluation. That's kind where our relationship took a bit
23 of a turn. He did go down and get his evaluation and I went
24 with him and, as he said, I was sitting next to him when he
25 said something that the doctor pointed out was suicidal. I

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1 don't have any authority at that point to do anything, I'm
2 really just there to observe. So they did take him into
3 custody. He did try to call me and say that I should get
4 him out. There's nothing I can do when he's been put on a
5 hold and I tried to explain that, but it didn't really go
6 that well. He came back, we had a few more conversations
7 about things and -- and he did tell me about some witnesses.
8 I talked to one. I'm sorry, I don't remember the woman's
9 name, but it was the woman who was involved in this
10 situation. He got in some -- he got another charge in
11 Magistrate Court that was unrelated, but we had a lot of
12 back and forth there, where he felt that I wasn't doing
13 enough to prevent further charges for him and that people
14 were following him and that it was my job to make them stop.
15 And I explained that I couldn't keep charges from coming,
16 but I could represent him and I'll do whatever I could.

17 After a while, the evaluation came back and they decided
18 that he was competent -- not competent, but likely to
19 restore. So they were going to want to take him into
20 custody for a 60 day hold. At that point, the judge -- we
21 went in front of Judge Addy about it. We had a conference
22 and Judge Addy advised me that I needed to call the client
23 and have him come to court so that they could pick him up
24 because there was -- there had been some problems regarding
25 that. So he did come to court, they picked him up. As he

1 said -- I don't know the exact amount of time he said. Mr.
2 Mitchell said it was 21 days. It might have been. I know
3 that he called me several times and told me that he wanted
4 to get out. He told me I should get the ACLU to get him out
5 and I explained that he was there by order of a judge and
6 that I couldn't do anything to get him out. At some point,
7 a nurse called me and told me that he had recanted all of
8 his -- all of his information, so they decided that he
9 wasn't going to received mental health treatment anymore. I
10 guess, when the 21 days -- that is what happened. So when
11 Mr. Mitchell finally came back, we had a very candid
12 conversation. I think, he was -- I know he was there. I
13 can't remember if some of his family was there or not. And
14 we discussed that he might not feel comfortable with me as
15 an attorney anymore and I could understand that because we'd
16 been through a lot together, but he said that he trusted me
17 and he wanted me to go forward. I said I would be glad to,
18 that I never didn't want to represent him, but I want him to
19 feel comfortable. At that point, he said he really wanted
20 to plea, so I started working with the Solicitor to figure
21 out what the restitution was going to be. They came back
22 with 22,000, which I thought was very excessive. I asked if
23 they could follow up with law enforcement, if there was
24 reference in the file about it being scrapped and finding
25 out how much the scrap -- scrap value might have been. At

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1 the time, I was dealing with a solicitor who was very
2 forceful in his opinions, I guess would be a good way to say
3 it. So he didn't really have a lot to say, other than, you
4 don't like what I have to say, try it, and didn't really do
5 a lot, so -- and wouldn't do a lot of negotiation. So I
6 discussed that with Mr. Mitchell about how we were kind of
7 in a situation where we would either have to go to trial on
8 a \$22,000 grand larceny or we'd have to plea to a \$22,000
9 grand larceny, and then we wouldn't be able to negotiate for
10 less, most likely. I said that I feel good about that
11 because he had told me this whole time there is no way that
12 there's \$22,000 and that -- that the day of questioning, he
13 didn't take anything, but, previously, he had. And that was
14 the concern, because there was a timeframe in the
15 indictment. So we kept moving forward. We met a few more
16 times. Mr. Mitchell kept telling me, I want to plea, I want
17 to plea. But then, at the same time, would tell me that the
18 whole thing was made up, that there was an illegal search,
19 that they didn't give him a Miranda and I -- the whole time,
20 I kept telling him those are all trial issues. I can't deal
21 with those in a plea. If you want to plea, then you can't
22 say those to the judge. You can't tell the judge, I didn't
23 do this, but I'm pleading, because the judge wasn't -- at
24 the time, the judge that was there wasn't going to take a
25 nolo and we went back through this again. On my last

1 conversation -- one of my last conversations with him, he
2 started talking to me about stuff about if someone's
3 breaking into his house, could he kill them as -- for force
4 if necessary. He talked about people were following him. I
5 think, kind of my concern, that he might have been paranoid.
6 I actually brought one of my -- my boss in to talk to him
7 because he had previously talked to me -- called my boss and
8 complained and my boss and I talked about it and decided
9 that even though the eval came back -- or that, you know, he
10 had come back as competent, that we were really concerned
11 and that I wanted to give Donna Schwarz-Watts involved to do
12 another private one. So I was very concerned that Mr.
13 Mitchell didn't know what was going on and I didn't want him
14 to get railroaded into a situation in which he was pleading
15 to something he didn't understand or being in a trial that
16 he didn't understand. We decided we were going to do that,
17 but then within a month or two, it became very -- as I was
18 working with him and Donna, it became very clear that Mr.
19 Mitchell and I just didn't have a relationship of trust
20 anymore. Very similar to what he expressed today. He just
21 told me he didn't trust me, he didn't think I was giving him
22 apt information about the case, he didn't feel confident
23 that I wasn't working with the Solicitor's Office or working
24 with the hospital to get him to go back to the hospital.
25 And so, I -- and in March of 2012, we went in front of Judge

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1 Addy and I explained, in a far more condensed version of
2 this rambling, that I felt that Mr. Mitchell would be better
3 served by an attorney that he could trust more, and that I
4 had no problems representing him, but I understood where he
5 was coming from and I wanted him to be represented in a way
6 that he was the most comfortable with. And Judge Addy did
7 decide that given the MH involvement and all of those other
8 things, that it would be best for him to have another
9 attorney.

10 Q And then, at that point, you were relieved and --

11 A Yes. At that point, I was relieved, and later found
12 out -- I'm not sure how much later. But later found out
13 that Carson was appointed.

14 Q Okay. And did Mr. Mitchell ever indicate to you that
15 he had taken anything off of the property that day?

16 A No. He never indicated -- from my notes, this is --
17 yeah, about eight years ago. But I don't believe he ever
18 said he took anything from that day. However, I believe,
19 the warrant was a -- I believe, that was a timeframe of
20 about two weeks.

21 Q Okay.

22 A And my notes indicate that he said he might have taken
23 some before the day he was arrested, but that's just my
24 notes. I don't remember the conversation specifically.

25 Q Okay. So the conversation could have been a little bit

1 different?

2 A It could have been. This is based on my notes.

3 MS. MCMAHAN: And then -- Your Honor, at this point,
4 we'll -- we rest. Answer any questions Mr. Hunter may have.

5 MR. HUNTER: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. HUNTER:

8 Q So during your representation, I guess, would you just
9 tell me about where -- how far along were you all into a
10 trial posture versus a plea posture?

11 A We were not very far at all. For a good portion of my
12 representation we were in the process -- we were getting him
13 evaluated or he had been evaluated and there was some
14 competency issues. The Solicitor's Office was aware of me
15 -- the evaluation had been requested. We did receive a plea
16 offer and there was some conversations about the restitution
17 amount if we were to plea, but it was pretty much a
18 non-starter. But to my recollection, we were never even put
19 on the large like 100 list trial docket. We -- I know for a
20 fact, we never made it to the -- anywhere near being called
21 level.

22 Q Okay. And as far as your conversations with him --
23 like you said, he gave you some pictures. Did he give you a
24 list of witnesses or anything like that that might help?

25 A My notes are fairly -- are fairly slight, but I will

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1 say that I remember when he spoke about a man and a women as
2 he did today. I know I spoke to the woman -- and, I'm
3 sorry. I don't remember her name, but I know I spoke to
4 her. She was telling me specifically about that day and
5 what had happened and how they pretty much got there and
6 were -- the owner came and held them at gunpoint, and then
7 law enforcement came. So she was adamant that nothing
8 happened that day, but she couldn't tell me about anything
9 that happened at any other of the days, including for the
10 indictment. And I'm sorry. I don't remember whether I
11 spoke to the male or not. I believe I tried to, but I
12 couldn't find him.

13 Q And what can you tell me about the preliminary hearing?

14 A I don't have a specific note on it, so I would say that
15 unless I have specific notes, that it would have been -- it
16 would have been waived. It was our office policy, at that
17 time, to waive a preliminary hearing unless our client had
18 specifically requested it.

19 Q So because it was waived, would you have included that
20 he did not request one?

21 A That would be my conclusion. Although, it would be
22 speculative because I don't have a note on it.

23 MR. HUNTER: Okay. That's all I have for this witness.

24 THE COURT: Any redirect on what he went into?

25 MS. MCMAHAN: Nothing, Your Honor.

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1 THE COURT: Thank you, ma'am. You may step down.

2 THE WITNESS: Thank you.

3 (Whereupon, the witness stepped down from the witness
4 stand.)

5 THE COURT: Any reason why the witness cannot be
6 excused?

7 MS. MCMAHAN: No.

8 THE COURT: Thank you, ma'am. You may be excused as
9 well.

10 MS. MCMAHAN: Your Honor, the applicant calls Carson
11 Henderson.

12 CARSON HENDERSON, having first been
13 duly sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MS. MCMAHAN:

16 Q Mr. Henderson, you were appointed to represent Mr.
17 Mitchell?

18 A I was.

19 Q And how long did you represent him?

20 A I'm thinking, over a year.

21 Q Okay. And did you -- how many times did you meet with
22 him? Was it pretty frequently? Was it --

23 A Absolutely. We met multiple times, we talked a good
24 bit on the telephone. I don't think my office was that far
25 from where he was living at. So, I mean, we kept very good

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1 open lines of communication.

2 Q And what were the main issues that you saw in this
3 case?

4 A Once I demanded extensive discovery, got extensive
5 discovery. I also subpoenaed a lot of stuff from Mr.
6 Gaines, the alleged victim, got stuff from Harvey's Junk
7 Yard. I mean, I've got mountains of stuff. The issues were
8 kind of twofold. Number one, was this stuff actually owned
9 by Mr. Gaines. And, again, I don't think there was any
10 dispute that Jovan actually -- and I'm using quotes, took
11 stuff. I don't think that was in dispute. But the issue
12 was did Mr. Gaines own it, and if he did own it, is he
13 fudging about what he said was taken.

14 Q And by fudging, you mean, like the value of it?

15 A Absolutely. Mr. Gaines was using this as a kind of --
16 he was using Jovan as a cash cow. No doubt about that.

17 Q And what was the issue of the values presented at court
18 of the material?

19 A I'm thinking that the Solicitor had finally sent me
20 discovery in the \$20,000 plus range. The stuff I subpoenaed
21 from Mr. Gaines, he sent me a whole lot of stuff that wasn't
22 produced in discovery, per se, and I'm thinking it was close
23 to \$27,000. And he just went through a whole litany of
24 stuff that was allegedly taken. I mean, good stuff that --
25 and he runs a warehouse on the other side of town. But he

1 was asserting that all of this good stuff was laying out
2 here in a field that Jovan took and I just -- I no more
3 believe that today than I did then.

4 Q And so, that was the alloy that Mr. Mitchell had
5 alluded to earlier?

6 A Absolutely.

7 Q And so, was there an issue between -- at trial, what
8 the actual value was that was presented?

9 A Absolutely. The State put up evidence from Mr. Gaines
10 -- and, again, I'm thinking -- and it's all in the
11 transcript. I've read it. I just don't recall the exact
12 amount. I'm thinking between 22 and \$27,000 of good alloy
13 stuff. Basically, no junk.

14 Q Yeah.

15 A And when we put up a very, very vigorous defense and we
16 put up evidence that suggested that all that was taken was
17 like \$800 and that was based on scrap receipts that I
18 obtained from Harvley's Scrap Yard. Actually, the manager
19 of Harvley's Scrap Yard came to testify.

20 Q So Mr. Gaines was alleging that the total value of
21 everything taken was somewhere, let's say, 25 just to split
22 the difference?

23 A In that paper, absolutely.

24 Q But you guys -- you had subpoenaed and gotten, I guess,
25 the receipts from the scrap yard when you're going and

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1 you're getting your stuff weighed, and then you come back
2 out. Did the total of those receipts add it up to \$800?

3 A It added it up to under \$1,000. No doubt about it.

4 Q And wasn't there an issue about the scrap yard guy
5 testifying that if he had seen some -- how the magnet goes
6 across and all that kind of stuff?

7 A Absolutely. If he had seen this stuff, he would have
8 noted it. And I know these scrap yard people. I've known
9 them for years. Straight up people. If this stuff had come
10 through them, he would have noted it and, also, Jovan was
11 very clear that this was the only place he took any material
12 to. So there was no need to look any place else.

13 Q So the scrap yard guy said, if it had been some amazing
14 alloy, I would have known about it, I would have seen it?

15 A Absolutely. They would have noted it and would have
16 paid him accordingly, so...

17 Q Okay. Which -- but he didn't because he got \$800?

18 A Got \$800 and it was pure T scrap, so...

19 Q And so, ultimately though, he was convicted of an issue
20 between one and 5,000. How did that come about?

21 A Well, we had a conference in chambers dealing with
22 charges, you know, dealing with intent charges and, also,
23 about the evaluation that needed to be charged. And I
24 complained of that saying, you don't need to charge between
25 one and five. And, again, this is under the old grand

1 larceny statute, the three tier one. I said, you don't need
2 to charge under the middle section. Again, there is no
3 evidence that's been presented. And, again, this isn't a
4 civil case where you kind of fudge on evaluations. This is
5 based upon what's been -- evidence that's been presented to
6 the courtroom. And needless to say, the judge kind of
7 overruled me and I dropped the ball and didn't object to it.
8 And, again, there was no evidence of the one to five
9 presented at all.

10 Q And so, at some point during the trial -- this is on
11 page 227, you stated, "But by not objecting to the higher
12 lesser included, I think I've severely prejudiced my client
13 and that was a deficient undertaking on my part."?

14 A Absolutely. No ifs, ands, or buts. You know, after
15 the conviction, I immediately -- basically, on the spot,
16 asked for a judgement of acquittal because there has been no
17 evidence presented of this middle range at all. And, again,
18 it had to have been -- I think a lot of that was the jury.
19 I don't think they liked Mr. Gaines and I think they saw
20 that Mr. Gaines was trying to pad his pocketbook. And,
21 again, there's a big spread between 5,000 and, say, 25,000.
22 So, clearly, the jury did not believe Mr. Gaines. But Jovan
23 had admitted to taking some stuff and I just -- I can't get
24 around that. And so, the issue was, again, was it Mr.
25 Gaines' stuff and, if it was, what's the evaluation.

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1 Q So you'd had a conference about it in the back? You
2 never actually had a formal objection on the record to
3 having that go back to the jury?

4 A That is correct. That is correct. And, again, after
5 -- again, after the verdict, you know, immediately, on the
6 spot, moved for the -- for a judgement of acquitment. And
7 then -- because, basically, there is no evidence of the
8 record at all. There never be any evidence of the record
9 that supports one to 5,000.

10 Q And that was an issue that came up in appeals court?

11 A Correct.

12 Q Did Mr. -- what was the issue with Ms. Odom having
13 worked with you?

14 A Well, when Shannon was in law school, I believe, she
15 actually worked for Billy Garrett, who I rent a space from,
16 and have always rented a space from. Shannon primarily
17 helped out in real estate matters. She worked for Anne
18 Seymour in our office. And, again, this was kind of
19 pre-recession, for want of better term, and we had a very
20 wide open real estate business. So, basically, Shannon was
21 helping Ms. Seymour out as one of her assistants. As I
22 recollect, everything Shannon did was real estate oriented.
23 And, again, I know I sat in on some closings, but, again,
24 I've never done real estate work, so...

25 Q Okay. What -- at sentencing, did you present anything

1 to Judge Hocker about the mental issues that had been coming
2 up to try to mitigate the sentence?

3 A No. I did not. Jovan, you know, I knew he'd been
4 evaluated, I knew he -- I'd seen all the reports, and then,
5 obviously, we had some entertaining conversations. I'll be
6 the first to admit that. And then I think we've heard some
7 entertaining testimony today. But, no. Jovan clearly
8 understood right from wrong and he very much assisted me in
9 his defense. So, no. I don't think -- I mean, I don't see
10 how his mental issues -- and I don't really classify it as
11 mental issues, more so that he's just got a unique
12 perspective some stuff in the universe.

13 Q Okay. What was the issue with Felicia Lagroon?

14 A And --

15 Q And her being a possible witness?

16 A Well, I remember talking about Felicia and, actually, I
17 sent my investigator out to talk with her and, actually, I
18 gave you a copy of this before this morning. I hadn't been
19 able to find it in my file and it turned out it was on the
20 computer. It had not been printed. And my investigator had
21 a very thorough interview with Felicia and her version of
22 events just did not match up with Jovan's version of events.
23 And keep in mind, Jovan, long before I was ever involved
24 with this, gave a statement to law enforcement, a recorded
25 statement, a phenomenal statement. Extremely -- I mean, I

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1 guess, all of the phenomenal statements are self-serving.
2 And then, assuming this one was self-serving, the government
3 put it into evidence at trial and, of course, I'm not going
4 to object to that. But, Ms. Lagroon, what her version of
5 events, to my client -- to my investigator, did not match up
6 with what Jovan said and they didn't match in a -- in a
7 worse way. I mean, actually, if she had testified, she
8 definitely would have got him convicted. No ifs, ands or
9 buts about that. Assuming that she would have testified how
10 she told my investigator, and I don't have any reason to
11 believe that she wouldn't. So, no. I did not think it was
12 in his best interest for me to call her as a witness at all.

13 Q Well, just by looking over your report, I believe, at
14 one point, it says, "Felicia stated they had gotten a load
15 from the same location the day before.". Would that have
16 been detrimental?

17 A No. Not at all. Actually, Jovan admitted -- I mean,
18 that's where all this prior stuff had come from was from
19 this location.

20 Q What, specifically, in her statement to the
21 investigator would have detrimental?

22 A Looking on the first page of this report. Basically,
23 the third sentence, she further stated that Jovan Mitchell
24 had told her that he had spoken to the owner of the mill and
25 he wanted Jovan to haul off the metal and clean up the

1 place. I have seen no evidence that was ever the case.

2 Q Okay.

3 A And that she had went with Jovan to help him. And,
4 again, I don't know what Jovan may have told her, but I
5 don't want stuff like that coming out for trial because our
6 theory of the case was this was just an old, abandoned piece
7 of property. So, no. I didn't feel that was beneficial at
8 all.

9 Q Okay.

10 A And then in another place, I think, Jovan's statement
11 was that the gates were open and she's saying that they had
12 to open the gates to get inside the fence. And then, again,
13 I just think that was -- that wasn't to his benefit for me
14 to put her on the stand.

15 Q Okay. And what -- did you ever discuss with him like
16 the timing of the case being called for trial in regards to
17 him running for office?

18 A I'll tell you. The first time I ever knew he was
19 running for County Council was when I got your amended PCR
20 application.

21 Q Okay.

22 A I mean, that's truly the first time. I've looked back
23 through my notes. I don't see anything about that in my
24 notes, and if Jovan had ever told me that -- I mean, it
25 didn't register if it's not in my notes. But, again, that

1 just kind of caught me off guard when I was reading your
2 petition. I said, hey, that's news to me.

3 Q Was the timeframe of the case being pending at all
4 concerning to you? How long it had been pending before it
5 got called for trial?

6 A That -- I mean, back at that point in time, this was
7 under Solicitor Peace, I mean, the docket was in shambles
8 over there and it was taking years for anything to come to
9 trial. Just kind of an unorganized Solicitor's Office.
10 And, again, in the pecking order, this was a very, very
11 unimportant case. Actually, I'm kind of surprised it ever
12 got called for trial. But, no. The timeframe didn't --
13 doesn't bother me at all.

14 Q Did you -- well, you said you never viewed the mental
15 evaluations that Ms. Flannery had --

16 A Right.

17 Q What was the issue with -- were you able to get any
18 evidence from Ms. Flannery when you took over?

19 A It seems like I got portions of their file, but I
20 always serve my own discovery requests and I actively use
21 the subpoena process, too. So, I mean, I got a bunch of
22 stuff. I mean, I got -- I got much more stuff than what was
23 ever provided to me either by Megan or the Solicitor's
24 Office in discovery responses.

25 Q And did you talk to him about testifying at the trial?

1 A Yes. And I always tell every client they have a right
2 to testify and, as you've seen today, Jovan can have some
3 real entertaining testimony at times and I can tell you, we
4 talked extensively and all the times the conversations got
5 into the interesting realm. But this, say, 15 or 20 minute
6 recorded statement he had given law enforcement, it was
7 straight as an arrow. I said, why on earth would you want
8 to subject yourself to cross-examination, because if you get
9 -- I mean, if you start getting on the stand and start
10 rambling, a good prosecutor's going to cram that down your
11 throat. It's just -- so it was -- it was my advice for him
12 not to testify.

13 Q And ultimately, the decision whether or not to testify
14 was left to Mr. Mitchell or was it at your behest or --

15 A Well, I mean, it's always the client's decision. I
16 mean, I think the clients get to make two calls. Whether or
17 not they testify or whether or not they want to plead guilty
18 or not, and then everything else is my decision. But, yeah.
19 He decided that it probably wasn't in his best interest, and
20 I know good and well if my investigator talked to him, too,
21 he would probably say, no, son, it's not in your best
22 interest to testify.

23 Q And what the issue with the juror, Petia Thomas?

24 A And, again, the first time I saw this was when I saw
25 your petition. And I went back and looked at the transcript

1 and I saw that Judge Hocker asked everybody on page five,
2 you know, do they know the Defendant and nobody stood up.
3 Ms. Thomas didn't. It seems like Jovan may have said he
4 knew her, but I never -- after she was already on the jury
5 -- actually, once she was called up in force and the State
6 put her on. And then, I always ask the client, and I'm sure
7 my investigator was there, too, and we had a huddle with
8 every potential juror that comes up that didn't see a
9 problem putting her on. I just don't -- nothing stands out
10 about that.

11 Q You would have exercised a strike had you saw a problem
12 with that?

13 A Absolutely. Absolutely. But, no. I just didn't see a
14 problem with her at all.

15 Q Now, is there anything else you want to tell anybody
16 today about your representation of Mr. Mitchell?

17 A You know, I dropped the ball on not objecting on the
18 record. I mean, I clearly did that, and I'm still stunned
19 -- I still am stunned, and I told him this, too, that I'm
20 surprised he was ever sent to prison. I mean, this was
21 clearly not a prison case. I mean, the judge heard the same
22 evidence we did and I got on Mr. Gaines' behind. And,
23 clearly, he was fudging. The jury, I think, saw that he was
24 fudging. And, again, it shocked me when Jovan led out of
25 the courtroom in cuffs, period, so...

1 Q Did you ever make it -- Mr. Mitchell, I believe,
2 alluded earlier that you said you made a comment on the
3 record about being asleep. Do you recall what that was?

4 A No. I mean, that's news to me. I mean, clearly, I
5 wasn't asleep at all. I may have said something that was --
6 maybe I said something, asleep at the wheel --

7 Q Okay.

8 A -- or something along those lines. But no, no. I can
9 guarantee you I'm not asleep in the courtroom at all.

10 MS. MCMAHAN: Court's indulgence, Your Honor.

11 A There is one thing I would like to point out. And,
12 again, it just popped into my brain. I think Jovan actually
13 gave some inaccurate testimony about the restitution. The
14 restitution amount was \$1,000, which was ordered and which
15 was the lowest amount between the 1,000 and 5,000. But,
16 realistically, if Judge Hocker had believed Mr. Gaines'
17 testimony, he would've ordered 5,000. Which, again, was all
18 the further proof of my support for my motion for judgement
19 of acquittal. And, again, it should have been -- \$1,000 was
20 high, but, again, I mean, that is further support that I
21 think I need some headway with my motion. It just was
22 denied, so...

23 Q So were you prepared, at any point during the trial, if
24 needed, to call some of these witnesses to the stand if you
25 were going to present a defense?

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1 A We presented a defense.

2 Q Yeah.

3 A But, no. I wasn't going to put up Ms. Lagroon at all.
4 And looking at your pleadings -- I'm looking Henry Fuller,
5 and looking back through my notes -- and, again, I can't say
6 Jovan never mentioned him. But I don't see that name in my
7 notes, number one, and number two, I don't think he was on
8 the scene this day that he was arrested. I think the only
9 people there were Jovan, Ms. Lagroon and their children.

10 Q And did Mr. Mitchell ever indicate to you that there
11 were -- some of the material he had, he'd gotten permission
12 to take from other parts of the community and that's why he
13 had it? Like he had picked them up from other peoples'
14 yards and --

15 A Yeah. I think Jovan went out and did a lot of
16 scrapping and asked, so absolutely. But I don't think he
17 asked -- had asked anybody here because, number one, I mean,
18 I'm well familiar with this property and it looks abandoned.
19 I mean, fence is open. I mean, it looks abandoned. No, no
20 trespassing signs. I mean, it just looks like people are in
21 and out of there constantly. I mean, I know exactly where
22 it's at. Not that far from my office. So, no. I mean --
23 so I see where he was getting his idea that I can go on the
24 property and take this stuff. I mean, it probably wasn't
25 the best decision to make, don't get me wrong, but I

1 understand his logic behind it, so...

2 Q Okay. And you discussed the GIS map and who owned the
3 property and all that?

4 A Absolutely. And I'm not convinced that where this
5 stuff was taken -- the stuff that was taken, was actually on
6 Mr. Gaines' property.

7 Q Okay.

8 A I mean, I full well agree with that. I mean, we
9 attacked that as part of our defense. Absolutely.

10 MS. MCMAHAN: Okay. All right. Nothing further at
11 this time, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. HUNTER:

14 Q Just a few things. First, Ms. Odom. I guess, just the
15 fact that she used to work for Mr. Garret, did that affect
16 your representation at all?

17 A Lord, no. I mean, I get along fine. I mean, I like to
18 feel like I get along fine with all the prosecutors over
19 there. But they know when we come to fight, we come to
20 fight, so...

21 Q Okay. And so, I just want to talk about the
22 evaluation. Essentially, we have the victim saying he took
23 -- the is valued, I think, 20 -- let's just say 25,000. So
24 he's given that number. And then is it correct that that's
25 the number that -- that's the amount that he paid for when

1 he bought it?

2 A I believe so. Because, again, I got more discovery
3 directly from a subpoena of Mr. Gaines than I did from the
4 State. And, actually, I shared all of that stuff with the
5 State just because -- I think it was just to let them know,
6 I mean, this is a bunch of nonsense. Because, I mean, he's
7 listing out good, good stuff on this receipt and this stuff
8 that Jovan took was -- I don't know, an old, rundown field.
9 I mean, he would not be leaving his good alloy material out
10 in a field. At least, I hope he wouldn't, so...

11 Q Okay. So, essentially, he's -- you have Mr. Gaines
12 giving this high number, and then the other numbers are from
13 these scrap receipts; am I correct?

14 A Correct.

15 Q And the scrap receipts -- correct me if I'm wrong, but
16 they -- the scrap yard does everything based off weight;
17 isn't that correct?

18 A Correct. As far as I know, yes.

19 Q So -- and, I guess, there were several receipts that
20 totaled up -- I guess, the ones that were presented totaled
21 up to about, you know, less than 1,000.

22 A Right. I'm thinking eight, 850 somewhere.

23 Q And, again, those are just simply based on weight?

24 A Correct.

25 Q I mean, does this -- if you know, does that scrap yard

1 go in and test each metal and determine it's exact value at
2 that point?

3 A I think they run some sort of scan over it to see if
4 they can pick up like the good stuff. And I say the good
5 stuff. This alloy material. And, again, I'm thinking that
6 -- based upon the scrap yard looking at these receipts, that
7 all of the stuff that Jovan brought was pure junk. I mean,
8 just junk.

9 Q And do you know what -- everything -- I guess,
10 everything that he took, were all of those evidenced in a
11 scrap receipt?

12 A As far as I know. He told me, again, that everything
13 he took from this property -- that he took it down to
14 Harvley's Scrap Yard. And, again, that's why I worked -- I
15 had them go dig -- you know, dig out all of their scrap
16 receipts. I mean, stuff Jovan didn't have. The State
17 hadn't bothered to try to go get this stuff. So, yeah. I
18 tracked down all of this and they assured me this was all
19 there was.

20 Q Okay. And so, again, you all discussed this in
21 chambers with the judge?

22 A Correct.

23 Q And, although you didn't make the motion when you
24 should have, I suppose, do you recall what the judge said
25 when you made your motion for a new trial?

Carson Henderson-Cross examination

54

1 A I'm thinking the judge just -- he, basically, used a
2 civil or common pleas analysis that the jury might have
3 figured, hey, it wasn't -- it wasn't over 10,000, but it
4 might have more than 1,000. It's just kind of compromising,
5 cutting the baby, so to speak. But, again, that's a --
6 civil juries do that all of the time. I mean, that's -- I
7 guess, that's how you value car wreck cases. But, again, it
8 goes back to I'm not sure in a criminal setting that the
9 jury should be allowed to speculate about something that the
10 government hasn't put up any evidence of because, otherwise,
11 you're letting them come to a conclusion that's for sure not
12 beyond a reasonable doubt, so...

13 Q Was there -- was there any evidence that these
14 materials, leaving them out, would cause them to depreciate?

15 A That -- I don't recollect that. But, again, I'm
16 thinking that the stuff that Jovan took was actually
17 dilapidated anyway. I mean, that -- this facility, this
18 property has been abandoned for years. I mean, I think it's
19 out in a field. I mean, I'm surprised -- he probably did
20 more than \$800 worth of work trying to get \$800 worth of
21 scrap, so...

22 Q But either way, I guess, as far as the values that the
23 jury was given, you have the purchase price, and then you
24 have the scrap price; is that correct?

25 A It is, but I'm thinking that it's on two separate --

1 I'm thinking the stuff that he's claiming -- Mr. Gaines is
2 claiming that was actually stolen, he's using the purchase
3 price.

4 Q Right.

5 A But, again, I just don't think there was any way that
6 that was stolen. I just -- I mean, I wouldn't say it, but
7 today, I'd look Mr. Gaines in the face and call him a liar.
8 I mean, there's just no way that happened.

9 Q And, I guess, that was also made a question for the
10 jury, right?

11 A Well, I guess, the jury -- in my mind's eye, the jury
12 determined he was lying, because the highest they could have
13 come back under their verdict was 5,000 and I'm thinking he
14 was asking, let's say, 25,000. So they cut him, you know,
15 \$20,000 at the benefit. But if they believe it was \$1,000,
16 then they cut him by like \$24,000, so...

17 Q Okay. So -- and, I guess, if you recall -- and correct
18 me if I'm wrong. He's testifying that he purchased this in
19 2008, and then it was stolen in 2010, is that when the
20 incident date was?

21 A I'm thinking that's right.

22 Q Okay.

23 A In that neck of the woods.

24 MR. HUNTER: Okay. Beg the Court's indulgence. That's
25 all I have. Thank you.

1 THE COURT: Any recross -- I mean, redirect?

2 MS. MCMAHAN: Court's indulgence, please.

3 REDIRECT EXAMINATION

4 BY MS. MCMAHAN:

5 Q Were other people convicted of stealing from Mr.
6 Gaines?

7 A As far -- not with Jovan they weren't. No. No. If
8 other people have been convicted, I -- I don't know.

9 Q Okay.

10 A I don't have a clue.

11 MS. MCMAHAN: Nothing further, Your Honor.

12 THE COURT: Thank you, sir. You may step down.

13 (Whereupon, the witness stepped down from the witness
14 stand.)

15 THE COURT: Any reason why the witness cannot be
16 excused?

17 MR. HUNTER: No, Your Honor.

18 MS. MCMAHAN: No objection.

19 THE COURT: Yes, ma'am.

20 MS. MCMAHAN: Yes, Your Honor. We would rest at this
21 point.

22 MR. HUNTER: Your Honor, the State does not intend to
23 call any witnesses. However, I do have an affidavit -- a
24 notarized affidavit from Mr. Christopher Morrow, who was the
25 prosecutor in this case. Mr. Morrow now works in the

1 sexually violent predator division of the Attorney General's
2 Office. I spoke with him and showed him the amended
3 application. Specifically, the prosecutorial vindictiveness
4 claim. He has written an affidavit. If I may mark this and
5 submit it to the Court.

6 MS. MCMAHAN: Your Honor, I have no objection. I would
7 just request a copy of it.

8 MR. HUNTER: Your Honor, we'll get a copy of this
9 before we leave.

10 THE COURT: All right.

11 (Whereupon, Defendant's Exhibit No. 1 was marked for
12 identification.)

13 MR. HUNTER: Your Honor, that's all that the State has.
14 If Your Honor does wish, I'll prepare to make an argument.
15 I'll leave it up to your desecration.

16 THE COURT: Well, if the State has presented the
17 affidavit, do you got any reply testimony?

18 MS. MCMAHAN: No, Your Honor.

19 THE COURT: All right. Mr. Mitchell, I just need --
20 this is a PCR hearing, a post-conviction relief hearing, and
21 if the Court -- if I find that you have met your burden of
22 proof in regards to the allegations that are made in your
23 application, the sole remedy that I can do is to have you go
24 back and start over. Now, my understanding is that you are
25 no longer incarcerated. And so, what that would mean is

1 that the State would have the ability to try you again, and
2 the sentence imposed by the judge -- let's say things did
3 not go well for you at the re-trial and you were found
4 guilty or if, in fact, you decide to plead guilty, that the
5 judge can actually sentence you to a greater sentence than
6 what you've already received. Do you understand that?

7 MR. MITCHELL: Yes, sir.

8 THE COURT: And you still wish to proceed with your
9 application?

10 MR. MITCHELL: Yes, sir.

11 THE COURT: All right. Okay. All right. Do you --
12 does the State wish to prepare -- I mean, wish to make an
13 argument?

14 MR. HUNTER: If I could just speak one issue, Judge,
15 this evaluation issue. I know you have all of the materials
16 up there. Turn your attention to page 218. Essentially, at
17 that point is where Mr. Henderson made a motion for a new
18 trial based on, essentially, what Mr. Mitchell alleges he
19 should have objected to. That middle value. And I just
20 wanted to point out what the judge says there, because I
21 believe that if the objection was made, that this is what he
22 would have -- how he would have ruled. As far as the
23 standard right now, in a failure to object, I would argue
24 that there is no prejudice because we know what the judge
25 would have said. He would have said exactly here, page 218,

1 start at line seven, "It would seem to me -- it would seem
2 like, to me, the jury has every right to look at the values
3 and determine, well, we don't think it was worth \$800, but
4 we don't think it was worth, you know, \$22,000 and determine
5 their own value. I think they have every right to do
6 that."

7 Your Honor, in this case, you have a victim claiming
8 his purchase price, and then we have a scrap price and the
9 scrap is based off the tickets they could get from the scrap
10 yard. And, Your Honor, I would just argue it's essentially
11 the same as if you bought a car for a certain amount, and
12 then a couple years later, pieces of the parts were scraped.
13 You're not exactly dealing with the fair market value and,
14 although this isn't a civil case, I would still argue that
15 it's up to the jury to decide whether or not they believe
16 some testimony over the other. I think the judge says again
17 on -- he discusses it again on page 226, but here you have -
18 - you essentially have a case where the jury can believe
19 some testimony, discount others, believe some pieces of
20 evidence, discount others, and they have every right to make
21 their own determination and, especially, as far as value is
22 concerned. You know, I wouldn't argue that this is simply a
23 compromised verdict. I simply believe that they don't
24 believe it was worth what he paid for it, but they don't
25 believe it was worth the weight. The scrap value is simply

1 weight. It's not based on exactly what that metal contains,
2 Your Honor. So I would argue that, again, even though he
3 failed to object, we know what the judge would have ruled
4 because he made that apparent throughout the hearing.

5 THE COURT: Thank you, sir.

6 MS. MCMAHAN: Yes, Your Honor. I believe the situation
7 would rise to ineffective assistance of counsel and the
8 outcome would have been different, which would have been
9 that the one to five wouldn't have actually been presented
10 to the jury at all. It would have been the less than one
11 with a greater than 10 -- or the five to 10 and, therefore,
12 Mr. Mitchell would not have been found guilty of one to five
13 because there was actually no evidence presented at all that
14 the value was between 1,000 and 5,000.

15 THE COURT: All right. And any reply?

16 MR. HUNTER: No, Your Honor. Well, I will mention that
17 -- the fact the judge did give that value. I would infer
18 that the judge would not have given that value if he didn't
19 believe that there was some evidence presented to support
20 the jury charge.

21 THE COURT: Well, let me ask you. On appeal -- now, I
22 have not looked at anything that's a part of the record.
23 But on appeal, did the appellate court throw out that
24 argument as not being preserved?

25 MR. HUNTER: Yes, Your Honor. They did not reach that

1 because the objection was not made on the record. And it
2 seems from the transcript -- and, I believe, Mr. Henderson
3 also said that there was some sort of discussion, an
4 objection made in chambers. But as far as being on the
5 record, objecting that charge being given, that was not
6 known.

7 MS. MCMAHAN: Yes, Your Honor. It's in the opinion as
8 to whether Mitchell was entitled to a judgment of acquittal
9 on the charge of grand larceny between one and five and the
10 court found that he waived the right to argue this issue on
11 appeal because it wasn't properly raised.

12 THE COURT: All right. I'll take a look at it and let
13 you know.

14 MR. HUNTER: Thank you.

15 - - - END OF REQUESTED TRANSCRIPT OF RECORD - - -
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Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Laurens County, South Carolina, on the 26th day of February, 2018.

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

Tara T. Scott
Tara T. Scott, CVR
Circuit Court Reporter
August 21, 2018

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENWOOD)

Jovan Mitchell,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
 OF THE EIGHTH JUDICIAL CIRCUIT

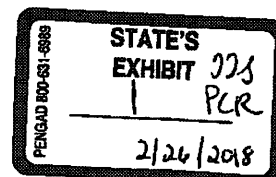
2016-CP-24-1893

AFFIDAVIT OF CHRISTOPHER A. MORROW

Applicant claims ineffective assistance of Counsel for failure to argue prosecutor vindictiveness. Applicant claims that only after the Applicant decided to run for County Council did the Solicitor decide to try to dispose of Applicant's case. Applicant argues that there is a reasonable likelihood that the Solicitor tried Applicant on charges only after announced he was running for County Council. The State would submit the following in opposition to that argument:

1. The Assistant Solicitor assigned to this case at the time of the trial was Christopher A. Morrow, Esquire.
2. I, Christopher A. Morrow, Esquire, was admitted to the practice of law in the State of South Carolina on November 13, 2012.
3. I am originally from Duncan, South Carolina a small town located in Spartanburg County, South Carolina. I resided in Spartanburg County for 18 years.
4. I enrolled at the University of South Carolina graduating in May 2007. I took a year off from school and worked in retail until I enrolled at Charleston School of law in 2008.
5. I lived in Charleston, SC for four years between 2008 and May of 2012. I graduated from Charleston School of Law on May 12, 2012. After graduation I returned to Duncan, South Carolina until January of 2013.

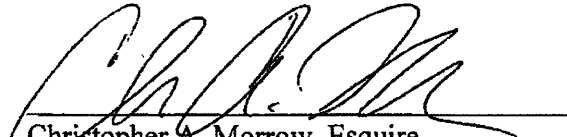
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6. In January 2013, I was hired by the Eighth Circuit Solicitor's Office to work for the newly elected solicitor David Stumbo. I was assigned a case load of approximately one thousand cases. I then proceeded to try and handle the oldest cases on my docket first. Many of those case were significantly older that Mr. Mitchell's.
7. Jovan Mitchell was charged on March 1, 2010 with Grand Larceny more than five thousand dollars (\$5,000.00).
8. Mr. Mitchell declined the State's offer of a plea deal in September 2013. I set this case on the trial roster at that time. As I was preparing this case for trial I noticed that Mr. Mitchell had not been indicted by the Greenwood County Grand Jury. I drafted an indictment and it was submitted to the Greenwood County Grand Jury for the September 2013 term and the Grand Jury returned a true bill.
9. Mr. Mitchell's case was then placed on the trial roster for the week of September 29, 2013 as a back up to several more serious cases. On Monday Mr. Mitchell's case was the only case on the trial roster left and so we began his trial.
10. Prior to January 2013, I did not live in Greenwood, SC. The only local election I ever had any involvement in was David Stumbo's campaign for Solicitor.
11. I was unaware that Jovan Mitchell had ever expressed any interest or intention to run for County Council. Further I was unaware of any candidate running for County Council the entire time I lived in Greenwood, South Carolina. I indicted Mr. Mitchell because his case was old and I noticed his case had not yet been presented to the Greenwood County Grand Jury. I put his case on the trial roster in October 2013 because he was next up on my docket and had rejected a plea offer.
12. Mr. Mitchell's argument that his Counsel was ineffective because he failed to argue prosecutor vindictiveness has no basis in reality. His counsel would have been aware that I was not from Greenwood, South Carolina, that I was a brand new lawyer, and that I was not involved in any way in the politics of Greenwood County Council.
13. To be clear, at no time during my employment at the Eighth Circuit Solicitor's Office did I have any knowledge that Jovan Mitchell was in any way running for Greenwood County Council. No one at the Solicitor's Office instructed me on which cases to place

on the trial docket. Mr. Mitchell's case was added to the trial roster in October of 2013 because he had rejected a plea offer and he was one of the oldest cases on my docket.

14. The first time I became aware of Mr. Mitchell's interest in running for Greenwood County Council was on September 22, 2017 when I was contacted by the Assistant Attorney General in charge of Applicant's PCR.



Christopher A. Morrow, Esquire
Assistant Attorney General

Subscribed and sworn to before me
This 22nd day of February 2018



Notary Public for South Carolina
My Commission Expires: 3/8/2022

FILED COMMON PLEAS
8TH JUDICIAL CIRCUIT
GREENWOOD, S.C.

2018 APR 25 PM 3: 52

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENWOOD	)	OF THE EIGHTH JUDICIAL CIRCUIT
Jovan Mitchell,	)	
	)	2016-CP-24-1893
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 12, 2016. Respondent made its Return on April 10, 2017. Applicant filed an amended PCR application dated September 13, 2017. An evidentiary hearing into the matter was convened on Tuesday, February 27, 2018, at the Laurens County Courthouse in Laurens County, South Carolina. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Carson Henderson, Esquire, and his former trial counsel Megan Flannery, Esquire testified. This Court had before it a copy of Applicant's records from the Greenwood County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application and Amendment, the exhibits introduced at the PCR hearing, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant was indicted at the September 2013 term of the Greenwood County Grand Jury for grand larceny (2013-GS-24-1568). Carson Henderson, Esquire, represented him. Cam Morrow, Esquire, represented the State. On October 2, 2013, Applicant proceeded to a trial



before the Honorable Donald B. Hocker, after which he was found guilty. Applicant was sentenced to imprisonment for five years provided that upon the service of eighteen months the balance is suspended with two years' probation.

A Notice of Appeal was timely filed on Applicant behalf and an appeal was perfected by Appellate Defender Carmen Ganjehsani. Ms. Ganjehsani raised the following issues on appeal:

1. Appellant is entitled to a directed verdict on the indicted charge of grand larceny where the State did not prove the allegations set forth in the indictment; the State alleged that Appellant took and carried away the "personal goods of Stan Gaines," but the evidence at trial established that the goods were not personally owned by Gaines but by a corporation named Synehi Castings, Inc.
2. Appellant is entitled to a directed verdict on the jury's finding of guilty on the charge on grand larceny in an amount between \$1,000.00 and \$5,000.00 where after the jury rejected the property's valuation of over \$22,000.00 by finding Appellant not guilty of grand larceny in an amount greater than \$5,000.00, the only evidence remaining showed that the value of the property was worth under \$1,000.00.
3. The Trial Court erred in failing to give Appellant's requested full charge on the law of mistake of fact and good faith and erred in particular by failing to explain to the jury that any belief by Appellant that the property was abandoned did not have to be objectively reasonable to preclude a conviction for grand larceny.

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by an unpublished opinion. State v. Jovan Mitchell, Op. No 2015-UP-543 (Ct. App. Filed Nov. 25, 2015). The Court of Appeals ruled the circuit court properly submitted the case to the jury. The Court also found the second issue was not preserved for appeal as Mr. Henderson did not make a timely objection. The Court further found the circuit court did not err in declining to give Applicant's full requested jury charges because the court's instructions sufficiently charged the jury on the law of mistake of fact. The remittitur was sent December 21, 2015.

PCR Application

In his application for post-conviction relief, Applicant alleged grounds of ineffective assistance of counsel. On September 15, 2017, Applicant filed an Amended PCR Application,

alleging the following grounds of relief:

1. Ineffective Assistance of Counsel of Megan J. Flannery, Esquire:

- a. Counsel never discussed with the Applicant who would be called as witnesses at trial, nor did she attempt to talk to those potential witnesses.
- b. Counsel had multiple mental health evaluations done on the Applicant resulting in the Applicant being sent to the facility on Farrow Road in Columbia for almost 21 days, all in her attempt to get an insanity defense for the Applicant.
- c. Counsel told the Applicant that he could not attend his preliminary hearing

2. Ineffective Assistance of Counsel of Carson Henderson, Esquire:

- a. Counsel failed to argue prosecutorial vindictiveness. Only after the Applicant decided to run for County Council did the Solicitor decide to try to dispose of the Applicant's case. There is a reasonable likelihood that the Solicitor tried the Applicant on the charges only after he announced he was running for County Council. See i.e. State v. Odom, 412 SC 253 (2015). In this case, Applicant was not indicted for three years, and then finally was indicted late in September 2013, and tried in October 2013.
- b. Trial Counsel did not attempt to mitigate the Applicant's sentence by using the mental health evaluations and other information that Ms. Flannery had obtained. Furthermore, Trial Counsel did not even have a copy of Ms. Flannery's file.
- c. Trial Counsel failed to call two witnesses on Applicant's behalf: Henry Fuller and Felicia LaGroom.
- d. Trial Counsel told the Applicant that he couldn't testify because he would go to jail if he did.
- e. Trial Counsel did not bring up the conflict of interest Ms. Odom had in trying this case because she used to be an employee of Mr. Henderson's.
- f. Trial Counsel failed to request voir dire asking if anyone knew the Applicant. Had he done so he would have stricken juror 137, Patia Thomas, who used to work with the Applicant at Chic-Fil-A and did not care for Applicant.
- g. Trial Counsel failed to timely raise an objection to the court charging the three levels of larceny at the trial. Had counsel done so, the issue would have been preserved for trial and Applicant would have been successful on appeal in having a judgment of acquittal on the larceny \$1,000-\$5,000 charge.



II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject



convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, the exhibits received at the PCR hearing, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel as to Megan Flannery, Esquire

Ms. Flannery never discussed with Applicant who would be called as witnesses at trial, nor did she attempt to talk to those potential witnesses

Applicant alleged Ms. Flannery was ineffective for failing to discuss with Applicant who would be called as witnesses at trial and talk to those potential witnesses. Applicant testified he showed Ms. Flannery pictures and evidence to investigate. Ms. Flannery testified she met with Applicant for the first time in May 2010 and got his side of the story. She testified Applicant had a lot of issues with property rights and said nothing can be owned. She testified she received pictures Applicant took of the site, but needed to know what the property looked like at the time of the crime. Ms. Flannery testified she was not far along as far as a trial posture is concerned. She testified Applicant spoke about potential witnesses, and she spoke to a woman who only knew information concerning the date of the arrest and not the full date range that the misconduct occurred.

This Court finds Applicant has failed to meet his burden of proving Ms. Flannery was deficient for failing to discuss and investigate potential witnesses. This Court finds Ms. Flannery did speak to one of the witnesses Applicant provided her. This Court further finds Applicant has failed to show what witnesses Ms. Flannery should have investigated and what these witnesses would have said that would impact the outcome of his trial. Furthermore, this Court finds Ms. Flannery was not deficient for failing to discuss the trial witnesses, when her testimony revealed



they were not in trial preparation posture during the extent of her representation. This Court finds Applicant has failed to meet his burden of proving Ms. Flannery was deficient and that the outcome of his trial would have otherwise been different, and this allegation must be dismissed.

Ms. Flannery had multiple mental health evaluations done on Applicant resulting in the Applicant being sent to the facility on Farrow Road in Columbia for almost 21 days, all in her attempt to get an insanity defense for the Applicant

Applicant alleged Ms. Flannery was ineffective for having mental evaluations done on Applicant that resulted in a twenty-one stay at a mental facility. Applicant testified Ms. Flannery sent him to a mental hospital and got a seventy-two hour hold on him. He testified he was in another hospital for twenty-one days, but a judge sentenced him to sixty more days.

Ms. Flannery testified she had "concerning" conversations with Applicant that caused her to be concerned about his mental health. She testified Applicant said he wanted to just "go on through with it" which raised a concern when he also said he tried to commit suicide before. She testified Applicant talked about how he could find the city of gold, control the weather, and predict the future. Ms. Flannery testified all of this caused her to get an order to have him mentally evaluated and she went with him to the evaluation. She said once he was being evaluated there was not much she could do until his evaluation was complete. She testified Applicant was found to be competent. Ms. Flannery testified the hold on Applicant was by order of a judge. She testified the nurse said he recanted so they stopped giving him treatment. She testified Applicant ultimately said he did not trust her and moved for her to be relieved.

This Court finds Applicant has failed to meet his burden of proving Ms. Flannery was deficient for having him evaluated and for not releasing the hold on Applicant. This Court finds Ms. Flannery's testimony credible that she had concerns about Applicant's mental health and it was not unreasonable for Ms. Flannery to use her judgment and seek an evaluation. This Court finds both Ms. Flannery and Applicant testified that the hold was put on Applicant by order of a

judge, and this Court finds it was not unreasonable for Ms. Flannery to fail to remove the hold when Applicant was ordered for further mental treatment. This Court finds Applicant has failed to meet his burden of proving Ms. Flannery's performance was deficient regarding his mental evaluation. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial would have been different had Ms. Flannery not sought an evaluation. As Applicant has failed to meet his burden, this allegation must be dismissed.

Ms. Flannery told the Applicant that he could not attend his preliminary hearing

Applicant alleged Ms. Flannery was ineffective for telling him he could not attend his preliminary hearing. He testified he never knew when the hearing was scheduled. Ms. Flannery testified her office's policy concerning preliminary hearings was that they waived the hearings unless a defendant specifically requested one.

This Court finds Applicant has failed to meet his burden of proving Ms. Flannery was deficient for failing to advise Applicant about his preliminary hearing and for telling him that he could not attend the preliminary hearing. This Court finds, given Ms. Flannery's testimony, that it is likely she waived the preliminary hearing because Applicant did not specifically request one. This Court finds Applicant has failed to meet his burden of proving he was prejudiced by Ms. Flannery's actions in this regard. This Court finds Applicant has failed to show a preliminary would have resulted in the dismissal of his charges as there appears to be sufficient probable cause to support the charge as Applicant was found at the scene with the stolen material and gave a statement to law enforcement admitting to taking material from the property over several days. Applicant was ultimately true-bill indicted on the charge and he has failed to show a likelihood that the result of the proceeding would have been different had he attended a preliminary hearing. Accordingly, this allegation must be dismissed.



Ineffective Assistance of Counsel as to Carson Henderson, Esquire**Counsel failed to argue prosecutorial vindictiveness**

Applicant alleged Mr. Henderson was ineffective for failing to argue prosecutorial vindictiveness. He alleged the solicitor only decided to try Applicant after he decided to run for Greenwood County Council as he was not indicted for three years, and then finally was indicted late in September 2013, and tried in October 2013 – thirty days after he decided to run for Council. Respondent provided this Court with a notarized affidavit of Christopher A. Morrow, Esquire, the assistant solicitor who tried Applicant's case. Mr. Morrow asserted he was hired by the Eighth Circuit Solicitor's Office in January 2013 and was assigned a caseload of approximately one thousand cases. He asserted he proceeded to try and handle the oldest cases on his docket first. He asserted Mr. Mitchell declined the State's offer of a plea deal in September 2013 so he drafted an indictment and placed it on the trial roster. Mr. Morrow further asserted he was unaware that Applicant had ever expressed any interest or intention to run for County Council, as he was unaware of any candidate running for County Council the entire time he lived in Greenwood, South Carolina. He further indicated he indicted Applicant because his case was old and had not yet been presented to the Greenwood County Grand Jury. Lastly, Mr. Morrow indicated he first became aware of Applicant's intention to run for County Council when Applicant filed this PCR application. Mr. Henderson testified at the PCR hearing he was never aware that Applicant was running for County Council until the filing of this PCR application.

This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was ineffective for failing to argue prosecutorial vindictiveness. This Court finds there is no credible evidence that the prosecuting solicitor knew of Applicant's intention to run for County Council

or that any knowledge affected his decision to proceed with Applicant's case. This Court finds Applicant's case was outstanding for some time after his arrest, and finds the prosecuting solicitor submitted the case to the Grand Jury and placed it on the trial docket after Applicant decided not to plead guilty. This Court finds Applicant has failed to meet his burden of proving prosecutorial misconduct and failed to show Mr. Henderson was deficient for not raising the issue. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial would have been different had Mr. Henderson raised this issue. Accordingly, this allegation must be dismissed.

Mr. Henderson did not attempt to mitigate Applicant's sentence by using the mental health evaluations and other information that Ms. Flannery had obtained and did not have a copy of Ms. Flannery's file

Applicant alleged Mr. Henderson did not attempt to mitigate Applicant's sentence by using the mental health evaluations and other information that Ms. Flannery had obtained and did not have a copy of Ms. Flannery's file.

Mr. Henderson testified he reviewed the mental evaluation reports but did not use them, for mitigation because there were not really mental issues present but simply Applicant's unique perspective. Mr. Henderson testified he got portions of Ms. Flannery's file but received much more information through subpoenas and the discovery process.

This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was ineffective for not having a copy of Ms. Flannery's file. This Court finds Mr. Henderson received part of Ms. Flannery's file but received full discovery from the State and through subpoenas. This Court finds Ms. Flannery testified she had not received discovery during her representation. Applicant has failed to meet his burden of proving there were essential documents in Ms. Flannery's file that Mr. Henderson did not receive, and has failed to prove the outcome of his trial would have been different had Mr. Henderson received Ms. Flannery's

complete file.

This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was ineffective for failing to use the mental evaluation during mitigation. This Court finds Mr. Henderson reviewed the mental evaluation reports and did not find use them in mitigation because there were no competency issues reported. This Court finds Ms. Flannery testified the report came back that Applicant was competent after he recanted his concerning statements. Applicant has provided no evidence to show that any competency issues existed or that the mental evaluations contained statements that would have been helpful to him in mitigation. As Applicant has failed to meet his burden, this Court will not speculate as to how Mr. Henderson's mitigation would have been different had he used the evaluation reports. This Court finds Mr. Henderson was not deficient and Applicant has failed to show that the outcome of his trial would have been different had Mr. Henderson used the mental evaluation during mitigation, and this allegation must be dismissed.

Mr. Henderson failed to call two witnesses on Applicant's behalf: Henry Fuller
and Felicia LaGroom

Applicant alleged Mr. Henderson was ineffective for failing to call witnesses Henry Fuller and Felicia LaGroom.

Mr. Henderson testified he does not have the name Henry Fuller in his case file notes. Mr. Henderson testified he had an investigator thoroughly interview Ms. LaGroom. He testified Ms. LaGroom's version of events did not match Applicant's or Applicant's statement to police. He testified Ms. LaGroom would have convicted Applicant with her testimony had she testified at trial.

This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was ineffective for failing to call Mr. Henry Fuller as a witness. This Court finds Mr. Henderson had

nothing in his file to indicate he had ever received information about this witness. Furthermore, Applicant has failed to provide this Court with any information about what Mr. Fuller would testify to at trial. Our Supreme Court has held, "a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). Bannister further held, the "applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. Here, Applicant has failed to show what Mr. Fuller's testimony would have been at trial and this Court will not speculate as to its contents. As Applicant has failed to meet his burden, this allegation must be dismissed.

This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was ineffective for failing to call Mr. Felicia LaGroom as a witness. This Court finds Mr. Henderson had his private investigator interview Ms. LaGroom and her story did not match up with Applicant's. This Court finds it was not unreasonable for Mr. Henderson to abstain from calling Ms. LaGroom as a witness when he believed her testimony would not have aided Applicant and would have actually hurt his case. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding counsel was not ineffective where he had a valid reason for not calling a potential witness to testify as he found the witness had credibility issues and its testimony would not have aided the applicant's case).

Furthermore, Applicant has failed to provide this Court with any information about what Ms. LaGroom would testify to at trial. Our Supreme Court has held, "a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure

to testify at trial." Bannister, 333 S.C. at 303. The "applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Id. Here, Applicant has failed to show what Mr. LaGroom's testimony would have been at trial and this Court will not speculate as to its contents. As Applicant has failed to meet his burden, this allegation must be dismissed.

Mr. Henderson told Applicant that he couldn't testify because he would go to jail if he testified

Applicant alleged Mr. Henderson was ineffective for telling Applicant he could not testify at trial because he would go to jail if he did testify. Applicant testified he did not testify at trial and did not know he had the right to testify.

Mr. Henderson testified he discussed with Applicant the right to testify and advised him not to risk testifying because of the statement he made to law enforcement.

This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was ineffective for telling Applicant he could not testify. This Court finds Mr. Henderson advised Applicant against testifying, but discussed these rights with him. Furthermore, the trial record reflects the trial judge undertook a thorough colloquy advising Applicant of his right to testify and Applicant responded that he understood the judge's advice and did not have any questions. Tr. 173-175. The trial judge then asked Applicant if he needed more time to discuss his right to testify with Mr. Henderson, and the two conferred for a moment. Tr. 175. After his discussion with Mr. Henderson, Applicant informed the court he would not testify. Tr. 175. This Court finds Mr. Henderson did not give deficient advice, and Applicant was not prejudiced as he was also thoroughly informed of his right to testify by the trial judge. Furthermore, this Court finds Applicant has failed to meet his burden of proving the outcome of his trial would have been different had he testified at trial or had Mr. Henderson given different advice. As Applicant has

failed to meet his burden of proving Mr. Henderson was ineffective in this regard, this allegation must be dismissed.

Mr. Henderson did not raise the conflict of interest Assistant Solicitor Shannon Odom had in trying the case

Applicant alleged Mr. Henderson was deficient for failing to raise to the trial court a conflict of interest issue with Assistant Solicitor Shannon Odom as she used to be an employee of Mr. Henderson's.

Mr. Henderson testified Ms. Odom worked for attorney Billy Garrett while she was in law school. He testified he shares an office with Mr. Garrett. He testified Mr. Garrett primarily does real estate work and Ms. Odom worked exclusively in Mr. Garrett's real estate law department. Mr. Henderson further testified he does not do any real estate work.

Applicant has failed to meet his burden of proving a conflict of interest existed and that Mr. Henderson should have raised this to the trial judge. This Court finds the testimony presented does not show that any conflict of interest existed that would preclude Ms. Odom from prosecuting Applicant. The testimony shows Ms. Odom worked for another attorney in a real estate section and had no shared work with Mr. Henderson while she clerked for Mr. Garrett in law school. Furthermore, the South Carolina judicial directory website indicates Ms. Odom graduated from law school in 2009 and Applicant's alleged grand larceny did not occur until 2010. There is no indication that either Mr. Henderson or Ms. Odom had a conflict of interest in this matter, and Applicant has failed to show the outcome of his trial would have been different had another prosecutor worked on his case. Accordingly, this allegation must be dismissed.

Mr. Henderson failed to request voir dire asking if anyone knew Applicant, and failed to strike Juror 137

Applicant alleged Mr. Henderson was ineffective for failing to request voir dire asking if anyone knew Applicant. He alleged if Mr. Henderson had done so, Juror 137, Patia Thomas,

would have been stricken from the jury because she knew Applicant from previous employment at Chick-Fil-A and did not care for Applicant.

Mr. Henderson testified he never knew about Applicant's prior working relationship with Ms. Thomas. He testified the trial judge asked all members of the jury pool if they knew Applicant and no one stood up. Mr. Henderson testified he always consults his clients on every juror presented during jury selection and Applicant did not indicate there was an issue with Ms. Thomas.

Applicant has failed to meet his burden of proving Mr. Henderson was deficient for failing to request voir dire asking if anyone knew Applicant. The record reflects the trial judge asked the appropriate questions. The trial judge had Applicant stand up, named Applicant by name, and asked the jury pool if anyone was related to Applicant and asked if anyone had close personal or social relationship and no one responded. Tr. 5. The trial judge asked if anyone had any bias toward Applicant and no one responded. Tr. 7. The trial judge asked if anyone could not be fair and impartial and no one responded. Tr. 8. Given the judge's questions, Mr. Henderson was not deficient for failing to ask if any potential juror knew Applicant. Further, it is clear the trial judge asked if any potential juror could not be fair or impartial and had bias against Applicant, indicating that if Ms. Thomas did not care for Applicant enough to affect the outcome of the trial, she would have so indicated. Furthermore, Applicant's apparent silence to Mr. Henderson when Ms. Thomas was presented as a juror casts doubt to his argument that Ms. Thomas would have been stricken from the jury had Mr. Henderson acted differently. This Court finds Applicant has failed to meet his burden of proving Mr. Henderson was deficient where the judge did ask the appropriate voir dire, and there is no evidence to support Applicant's assertion that Ms. Thomas held bias against Applicant. Accordingly, this allegation must be dismissed.



Page 14 of 17

Mr. Henderson failed to timely raise an objection to the court charging the three levels of larceny at the trial. Had counsel done so, the issue would have been preserved for appeal and Applicant would have been successful on appeal in having a judgment of acquittal on the larceny \$1,000-\$5,000 charge

Applicant alleged Mr. Henderson was ineffective for failing to raise a timely objection to the trial court charging the jury with three levels of larceny (less than \$1,000; \$1,000 to \$5,000; more than \$5,000). He alleged Mr. Henderson's failure to do so prevented the issue from being preserved for appeal. Applicant testified there was no evidence the items stolen were worth between \$1,000 and \$5,000.

Mr. Henderson testified the State alleged the items' worth totaled \$20,000 based on the victim's valuation. He testified the items were scrapped by Applicant and the scrap receipts totaled \$8000. Mr. Henderson testified the values presented were essentially the \$20,000 purchase price of several pieces of metal, and the \$800 scrap price the scrapyard paid Applicant for the metal. He testified the victim's valuation was questionable as he claimed valuable items were simply lying in his field. Mr. Henderson testified they had a conference in the judge's chambers concerning the jury charges, and he forgot to object on the record.

This Court finds Mr. Henderson was deficient for failing to timely object to the jury charge of grand larceny \$1,000 to \$5,000. This Court finds the Court of Appeals ruled this issue was not preserved because of Mr. Henderson's failure to object.

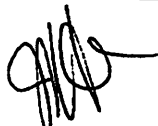
This Court finds, however, Applicant was not prejudiced by Mr. Henderson's failure in this regard. This Court finds the trial judge's jury charge was correct and his reasoning for giving the charge was also correct. After the charges were given, Mr. Henderson untimely objected to the middle larceny amount arguing there was no evidence to support a valuation between those amounts. Tr. 216-217. The trial judge stated the valuation amount is a question for the jury and the jury can determine they do not believe the items' worth to be \$800 as the defense argued, but

they also do not believe the items to be worth \$20,000 as the State argued. Tr. 218. While Mr. Henderson made a strong argument that his trial strategy was to discredit the victim by showing he was grossly padding the value of restitution by including metal that clearly could not have been taken by the applicant (a strategy that was clearly successful given the jury's decision and the amount of restitution awarded by the judge), the trial judge was still correct in charging the grand larceny \$1,000 to \$5,000 amount as the value remained a question of fact for the jury. Thus, Mr. Henderson's failure to object was not prejudicial to the applicant because the trial judge was going to overrule the objection. Additionally, even if the record of Mr. Henderson's objection had been properly made so that it could have been addressed on appeal, the argument would not have been successful on appeal. Applicant has failed to meet his burden of proving Mr. Henderson's failure to object affected the outcome of his case, and thus he has failed to prove he was prejudiced. As Mr. Henderson's conduct did not result in prejudice to Applicant, he was not ineffective and this allegation must be dismissed.

IV. CONCLUSION

Based on the foregoing facts, the Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Applicant failed to demonstrate that his counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d

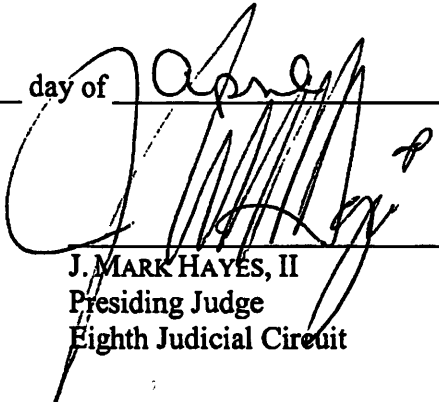


395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 17 day of April, 2018.


J. MARK HAYES, II
Presiding Judge
Eighth Judicial Circuit

Greenwood, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Greenwood

VS.

Jovan Alexander Mitchell

AKA:

Race: B Sex: M Age: 26

DOB: SS#:

Address:

City, State, Zip: Greenwood, SC 29646

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Grand Larceny, Value More than \$1000 but Less than \$5000

INDICTMENT/CASE#: 13GS24-1568

A/W#: 2013D2400100074

Date of Offense: 3/1/2010 - 3/24/2010

S.C. Code §: 16-13-0030(B)(2)

CDR Code #: 0479

SENTENCE SHEET

in violation of § 16-1-57, 16-13-0030 of the S.C. Code of Laws, bearing CDR Code #

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

ATTEST:

Morrow, Christopher A.

100703
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 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 18 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2

18 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.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 1,000 plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS PAID, K StanRecipient: See Under.

*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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>890</u>
TOTAL	\$	\$ <u>648.90</u>

PTUP

_____ 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: _____

☐ Appointed PD or appointed other counsel
 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Angela Woodhurst Presiding JudgeCourt Reporter: Dora Scott Judge Code: 2167

SCCA/217 (03/2011)

Sentence Date: 10/2/13FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2013 OCT 2 PM 1 53

Attest: _____
 ANGELA WOODHURST
 CLERK OF COURT
 GREENWOOD COUNTY
 S.C.

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

GRAND LARCENY
16-13-0030(B)(2)

At a Court of General Sessions, convened on the 27th day of September 2013, the Grand Jurors of Greenwood County present upon their oath:

20

That Jovan Alexander Mitchell, in Greenwood County, between March 4, 2010 and March 24, 2010, feloniously take and carry away the personal goods of Stan Gaines of the value of more than ten thousand and NO/100 (\$10,000.00) dollars described as follows: a quantity of metal, with intent to deprive the owner permanently of such goods, in violation of Section 16-13-30 of the South Carolina Code of Laws, 1976, as amended.

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


Assistant Solicitor

WITNESSES

Mitch McAllister
Greenwood Police Department

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

September Term, 2013

Indictment # 13GS24-1568

WARRANT NUMBER

2013D2400100074

DIRECT INDICTMENT

THE STATE

vs.

Jovan Alexander Mitchell

Tow Ball

J. H. H.
Foreman

Foreman of the Grand Jury

Date: 9/17/13

VERDICT

Anthony K. Stahl
Foreman

Foreman

INDICTMENT FOR

GRAND LARCENY

16-13-0030(B)(2)

CDR: 3421

ATTESIAIRUE LUY
 1/2/1971
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