(1192)

Baldwin Times - 300-11-49

THE STATE OF ALABAMA,
Baldwin County.

Circuit Court, SPRING **Session,** 1950

The Grand Jury of said County charge that before finding this indictment

CALLA MAI TANNER, whose name is to the Grand Jury otherwise unknown, did buy, receive, conceal, or aid in the concealing of one green bed spread of the value of $3.00, one rose colored bed spread of the value of $3.00, one blue and white quilt of the value of $15.00, one oil lamp of the value of $15.00, one oil lamp on metal stand of the value of 15.00, one clear water pitcher of the value of $8.00, one Chine water pitcher with Holland designs of the value of $2.00, one small circular flower tray of the value of $1.50, one dipper of the value of $10.00, one armadillo basket of the value of $5.00, one base of the value of $1.00, one blue glass of the value of $5.00, one minature dinner bell of the value of $2.00, one silver nut bowl of the value of $25.00, one cat-shaped foot scraper of the value of $8.00, one toby jug of the value of 75¢, one minature lamp of the value of $2.50, three ash trays of the value of $1.00, one antique clock of the value of $25.00, one large table with two short benches and two long benches to match of the value of $250.00, one smoking stand of the value of $10.00, one blue chair of the value of $12.00, one lamp of the value of $15.00, three rocking chairs of the value of $18.00, one cushion of the value of $1.00, one basket of the value of $2.00, one brown marble slab of the value of $25.00, one red split hickory chair of the value of $12.00, one round umbrella table of the value of $10.00, one blue urn of the value of $10.00, one bouy flower pot of the value of $5.00, one iron table with marble and glass top of the value of $35.00, two wicker rocker chairs of the value of $15.00, the personal property of Mrs F,M. Jefferies, knowing that it was stolen, and not having the intent to restore it to the owner,

against the peace and dignity of the State of Alabama.

Kenneth Cooper
Solicitor of the Twenty-Eighth Judicial Circuit.

RECORDED

RECORDED

No. .....

THE STATE OF ALABAMA,

BALDWIN COUNTY

Circuit Court

SPRING SESSION 1950 ~~Term, 194X~~

THE STATE

Vs.

CALLA MAI TANNER

INDICTMENT

BUYING, RECEIVING, OR CONCEALING STOLEN PROPERTY.

No Prosecutor.

WITNESSES:

Mrs F.M, Jefferies
Mrs F.J. Cates
Dwight Steele
H.F. Hall
Edleigh Steadham

THE BALDWIN TIMES

GRAND JURY NO. 7

A TRUE BILL

J. D. Tuckey
Foreman Grand Jury.

Filed in open Court and in the presence of the Grand Jury on the 29th day of March 1950, ~~194X~~.

Alice J. Warnock, Clerk.

Presented in open Court to the presiding Judge by the Foreman of the Grand Jury, in the presence of 12 other Grand Jurors.

Alice J. Warnock
Clerk.

Bail fixed $500.00 ~~7X~~

Julian J. Mashburn Jr.
Judge.

We, the jury, find the defendant Guilty, as charged in the indictment, and set the value of the property listed herein at $100.00

Harold McGill
Foreman

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term, 19 52

To the Clerk of the Circuit Court of Baldwin *County, Greeting:*

Whereas, the Record and Proceedings of the Circuit Court of said County, in a certain cause lately pending in said Court between

Calla Mai Tanner, *Appellant*,

and

The State, *Appellee*,

wherein by said Court, at the ..... *Term,* 19....., *it was considered adversely to said appellant*, *were brought before our Court of Appeals, by appeal taken, pursuant to law, on behalf of said appellant*.

Now, it is hereby certified, That it was thereupon considered by our Court of Appeals on the 11th *day of* August 19 53, *that said judgment of said Circuit Court be reversed and annulled, and the cause remanded to said Court for further proceedings therein;* ~~and that it was further considered that the appellee pay~~ on authority of Ex parte Tanner, 1 Div. 535, Supreme Court Ms.

~~the costs accruing on said appeal in this Court and in the Court below~~

Witness Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 11th *day of* August 19 53

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

1192

THE COURT OF APPEALS OF ALABAMA

October Term, 1952

1st Div. No. 620

Calla Mai Tanner

Appellant,

v.

The State

Appellee.

From Baldwin Circuit Court

CERTIFICATE OF REVERSAL

No Opinion

The State of Alabama,
Baldwin County. } Filed

this 12th day of Aug 1953

Clerk

LITHO-SKINNER

STATE OF ALABAMA))

BALDWIN COUNTY))

) IN THE CIRCUIT COURT

KNOW ALL MEN BY THESE PRESENTS that we, Calla Mai Tanner as principal, and Louis Garrett and E. D. Brooks as sureties, are held and firmly bound unto the State of Alabama in the penal sum of One Thousand and No/100 ($1,000.00) Dollars, upon the following conditions- namely, on the 5th day of December, 1950, the said Calla Mai Tanner was convicted in the Circuit Court of Baldwin County, Alabama, for the offense of buying, receiving and concealing stolen property and, upon such conviction, said Defendant was, on the 8th day of December, 1950, sentenced to the penitentiary of the State of Alabama for the period of five years for the said offense, which said sentence was suspended and the Defendant placed upon probation for the term of five years, said probation being conditioned upon the payment by the Defendant of the costs of said case.

That from said conviction the Defendant prayed and obtained an appeal to the Court of Appeals of Alabama.

Now, therefore, if the said Defendant shall appear at the next term of the said Circuit Court, and from term to term thereafter, to abide such judgement as may be rendered on the said appeal, then this obligation to be null and void, otherwise of full force and effect.

And we, and each of us, hereby waive all right of claim of exemptions as to personal property we, or either of us, have now, or may hereafter have, under the Constitution and laws of the State of Alabama; and we hereby severally certify that we have property free from all encumbrance to the full amount of the above bond.

Witness our hands and seals this the 8th day of January, 1951.

Calla Mai Tanner (SEAL)
CALLA MAI TANNER

Amos Garrett (SEAL)

E. L. Brown (SEAL)

Taken and approved this the
8th day of January, 1951.

Taylor Wilkins
Sheriff

Bond

Filed 1-8-57
Dorothy Heuck
Clerk

STATE OF ALABAMA))

BALDWIN COUNTY))

) IN THE CIRCUIT COURT

KNOW ALL MEN BY THESE PRESENTS that we, Calla Mai Tanner as principal, and Lewis Garrett and E. Brown, as sureties, are held and firmly bound unto the State of Alabama, in the sum of Seven Hundred and No/100 ($700.00) Dollars, upon the following conditions-namely, on the 5th day of December, 1950, the said Calla Mai Tanner was convicted in the Circuit Court of Baldwin County, Alabama, for the offense of buying, receiving and concealing stolen property and, upon such conviction, said Defendant was, on the 8th day of December, 1950, sentenced to the penitentiary of the State of Alabama for the period of five years for the said offense, which said sentence was suspended and the Defendant placed upon probation for the term of five years, said probation being conditioned upon the payment by the Defendant of the costs of said case.

That from said conviction the Defendant prayed and obtained an appeal to the Court of Appeals of Alabama.

Now, therefore, if the said Defendant shall appear at the next term of the said Circuit Court, and from term to term thereafter, to abide such judgement as may be rendered on the said appeal, and shall pay the costs of said proceeding in the Circuit Court of Baldwin County, Alabama, then this obligation to be null and void, otherwise of full force and effect.

And we, and each of us, hereby waive all right of claim of exemptions as to personal property we, or either of us, have now, or may hereafter have, under the Constitution and laws of the State of Alabama; and we hereby severally certify that we have property free from all

encumbrance to the full amount of the above bond.

Witness our hands and seals this the 8th day of January, 1951.

Calla Mai Tanner (SEAL)
CALLA MAI TANNER

Lemo Garrett (SEAL)

E S Brown (SEAL)

Taken and approved this the
8th day of January, 1951.

Chas. F. Neuck
~~Sheriff~~ Clerk

appeal Bond

Filed. 1-8-51
Ericfuerck
Clerk

CAPIAS BT-300-4-48

THE STATE OF ALABAMA,
Baldwin County

TO ANY SHERIFF OF THE STATE OF ALABAMA:
An indictment having been found against

Callie Mae Sanders

at the Spring Term, 1920, of the Circuit Court of Baldwin County, for the offense of

Concealing Stolen Property

you are, therefore, commanded forthwith to arrest the said Defendant and commit her

to jail, unless she give bail to answer said indictment, and that you return this Writ according to law.

Dated this 30th day of March, 1920

Rene J. Lewis
Clerk Circuit Court of Baldwin County.

THE STATE OF ALABAMA,
Baldwin County

We, _____, as principal and

the other undersigned as sureties, agree to pay the State of Alabama _____

Dollars, unless the said _____ appears

at the _____ Term of the Circuit Court of Baldwin County, and from Term to

Term thereafter until discharged by law, to answer a criminal prosecution for the offense of _____

_____

In signing the above bond we and each of us hereby waive all legal rights of exemptions allowed us by the Constitution and Laws of Alabama.

Witness our hands and seals this _____ day of _____, 194____.

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

_____ (L. S.)

Taken and approved _____ day of _____, 194____.

_____
Sheriff of Baldwin County.

RECORDED

CAPIAS

No. 1

THE STATE

vs.

Calla Mai Tanner

Bail Fixed in This Case in Open Court at

$500.00

By Delfair J. Marshburn, Judge Presiding.

Attest: Alice J. Herrick, Clerk.

Executed this 6 day of April, 1952

By arresting the within

named Defendant

and placing him on Bond

Taylor Wilbur, Sheriff

L. F. Hall, Deputy Sheriff

LAW OFFICES
HOLBERG, TULLY AND ALDRIDGE
SUITE 631-636 - FIRST NATIONAL BANK BLDG.
P. O. BOX 47
MOBILE 1, ALABAMA

RALPH G. HOLBERG, JR.
ALBERT J. TULLY
HENRI M. ALDRIDGE

JACK W. SPRINKLE

January 30, 1951

Mrs. Alice J. Duck
Clerk of the Circuit Court
Baldwin County Court House
Bay Minette, Alabama

Re: State of Alabama
Vs: Calla Mai Tanner
No: 1192

Dear Mrs. Duck:

In accordance with our conversation, I am handing to you herewith a written, formal notice of appeal in the above entitled case. You will note that this notice is dated January 6, 1951, since it was my understanding with Judge Mashburn that notice of appeal was to have been entered on the record on that date following his order denying our motion for a new trial.

With kindest personal regards, I remain

Very sincerely yours,

Albert J. Tully

AJT:lp

Callie Mae Farmer

JURY LIST

Fall Term, November 27th, 1950

NO.	NAME	OCCUPATION	ADDRESS
1	John J. Gallagher,	hotel,	Fairhope
~~2~~	~~Charles W. Barnhill,~~	~~farmer,~~	~~Robertsdale~~
3	Harold McGill,	merchant,	Perdido
~~4~~	~~Mack Vines,~~	~~State employee,~~	~~Bay Minette~~
5	Harry Decker,	electrician,	Bon Secour
6	Elmer Kinsey, Jr.,	mechanic,	Foley
~~7~~	~~Louie Leon Hill,~~	~~farmer,~~	~~Bay Minette~~
~~8~~	~~Leon W. Avera,~~	~~farmer,~~	~~Summerdale~~
~~9~~	~~Howard Hall,~~	~~parts clerk,~~	~~Bay Minette~~
10	William Schriber,	carpenter,	Foley
~~11~~	~~Roy Davis,~~	~~barber,~~	~~Bay Minette~~
~~12~~	~~Dan W. Rhodes,~~	~~farmer,~~	~~Foley~~
~~13~~	~~Cecil L. Gebhart,~~	~~defense,~~	~~Foley~~
~~14~~	~~Robert H. Breedlove,~~	~~restaurant,~~	~~Foley~~
~~15~~	~~Lawrence Dukes,~~	~~pool room,~~	~~Foley~~
~~16~~	~~C. O. Votova,~~	~~farmer,~~	~~Robertsdale~~
17	J. B. Humphrey,	farmer,	Daphne
~~18~~	~~Floyd Boone,~~	~~farmer,~~	~~Gateswood~~
~~19~~	~~Mack Moore,~~	~~merchant,~~	~~Magnolia Springs~~
~~20~~	~~B. J. Cooper,~~	~~farmer,~~	~~Robertsdale Rt.~~
~~21~~	~~Maiben Phillips,~~	~~farmer,~~	~~Little River~~
~~22~~	~~Aaron Bishop,~~	~~farmer,~~	~~Fairhope R. F. D.~~
~~23~~	~~Albert T. Flowers,~~	~~farmer,~~	~~Foley~~
~~24~~	~~Harry Still,~~	~~Dealer,~~	~~Bay Minette~~
~~25~~	~~Ort H. Ertzinger,~~	~~real estate,~~	~~Bay Minette~~
~~26~~	~~Louie Boehn,~~	~~farmer,~~	~~Summerdale~~
~~27~~	~~James R. Harding,~~	~~manufacturer,~~	~~Foley~~
~~28~~	~~Raymond McMillan,~~	~~farmer,~~	~~Stockton~~
~~29~~	~~J. C. Wynn,~~	~~farmer,~~	~~Summerdale~~

~~31 Fred Greogory, mechanic, Daphne~~

~~32 William M. Caupbell, farmer, Robertsdale~~

33 Johnnie Morland, nursery business, Daphne

34 John A. Ebert, clerk, Foley

35 William E. Boykin, laborer, Robertsdale

~~36 Joe Lazerri, farmer, Daphne~~

~~37 Jim Baggett, farmer, Holman~~

~~38 Ferdinand A. Corte, farmer, Loxley~~ 51

39 Bennie E. Eastburn, farmer and fertilizer, Foley

~~40 Henry N. Long, farmer, Foley~~

41 William E. Hare, carpenter, Gateswood

~~42 Paul Bounell, farmer, Fairhope~~ 54

43 W. M. Hodgson, Jr., furniture, Bay Minette

~~44 Vernon W. Gebhart, defense, Foley~~

~~45 William Reimer, farmer, Elberta~~

~~46 Charlie Younce, mechanic, Foley~~

~~47 Randel Bauer, telephone oper., Daphne~~ 52

~~48 Floyd Marshall, farmer, Robertsdale~~ 53

~~49 Charles L. Mathews, F. C. A., Robertsdale~~

~~50 Rufus M. Black, farmer, Loxley~~ 54

5 ++++ ++ 5 6 nd.

20 HHHHH 10 HH

$$\begin{array}{r|l} 2 & 14 \\ \hline 3 & 7 \\ \hline 2 & 2 \\ \hline & 1 \end{array}$$

$$\begin{array}{r|l} 3 & 28 \\ \hline 2 & 2 \\ \hline & 1 \end{array}$$

CITATION OF APPEAL — Baldwin Times - 100-5-47

THE STATE OF ALABAMA
Baldwin County - Circuit Court

TO ANY SHERIFF OF THE STATE OF ALABAMA — GREETING:

Whereas, at a Term of the Circuit Court of Baldwin County, held on the 4th Monday in November, 1950, in a certain cause in said Court wherein STATE OF ALABAMA Plaintiff, and CALLA MAI TANNER Defendant, a judgment was rendered against said CALLA MAI TANNER to reverse which Judgment, the said CALLA MAI TANNER applied for and obtained from this office an APPEAL, returnable to the Next Term of our COURT OF APPEALS Court of the State of Alabama, to be held at Montgomery, on the ..... day of ....., 194..... next, and the necessary bond having been given by the said CALLA MAI TANNER with Amos Garrett and E. D. Brown, sureties,

Now, You Are Hereby Commanded, without delay, to cite the said Kenneth Cooper or ....., attorney, to appear at the Next Term of our said Supreme Court, to defend against the said Appeal, if he think proper.

Witness, ALICE J. DUCK, Clerk of the Circuit Court of said County, this 10th day of January, A. D., 1951.

Attest:

Alice J. Duck, Clerk.

No. 1192

CIRCUIT COURT
Baldwin County, Alabama

STATE OF ALABAMA

Vs. } Citation in Appeal

CALLA MAI TANNER

Issued 10th day of January, 1951

Executed Jan 24 1957 by serving a copy of the within on C. Denson Thompson attorney of record for Calla Mai Tanner

Joe Wilkins - Sheriff

Jail 10—10,000—9-48

THE STATE OF ALABAMA
~~Mobile County~~
BALDWIN COUNTY

We Calla Mai Tanner ;
J. A. Callaway and R. J. Lauder

agree to pay the State of Alabama Five Hundred and no/100---------- Dollars

unless the said Calla Mai Tanner appear before
CIRCUIT COURT OF BALDWIN COUNTY
the Judge of the ~~Inferior Criminal Court of Mobile County~~ on the _____ day

of _____, 19 50, at the hour of _____ A. M., and from day to day thereafter until

discharged by law, to answer to a criminal prosecution for the offense of receiving or concealing stolen goods

AND WE HEREBY WAIVE ALL RIGHT OF EXEMPTION ALLOWED US UNDER THE CONSTITUTION AND LAWS OF THE STATE OF ALABAMA AS TO THE COLLECTION OF THIS BOND IF FORFEITED.

Approved:

The 6 day of April, 1950

Taylor Wilkins Sheriff

H. F. Hall Deputy

Mrs. Calla Mai Tanner (L. S.)

J. A. Callaway (L. S.)

R. J. Lauder (L. S.)

RECORDED

No.....

THE STATE

VS.

CALLA MAI TANNER

APPEARANCE BOND

Filed day of 194

THE STATE OF ALABAMA
County of Mobile

Personally appeared before me,_____, Sheriff of Mobile County

who, being duly sworn, doth depose and say that_____is a resident of the State of Alabama, County of Mobile, a householder and freeholder therein and that_____is worth, exclusive of property exempt from execution, and also over and above all just debts and liabilities, the amount expressed in this undertaking.

Subscribed and sworn to before me, this_____

day of_____, 194__

Sheriff of Mobile County.

ORIGINAL—STATE SUBPOENA

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT

Sub No. _____

Case No. 1192 Term Spring 1945

To Any Sheriff of the State of Alabama:

You are hereby commanded to Summon Mrs. Frances Cates

Mrs. J. M. Jefferies - 2915 Clairmont

Bay Minette, Ala.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 11th day of April, 1945, at ~~8:30~~ 9:00 a. m., and from day to day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Collie Mae Lamar

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 1st day of April A. D. 1945 R. S. DUCK, Clerk.

Received in office ..... 194....

Executed this 4-6 ....., 1950

By Dan Moore D.S.

Sheriff

ORIGINAL

For .....

No. ..... Page .....

The State of Alabama,
Baldwin County.

CIRCUIT COURT

THE STATE
Vs.

Callie Mae Jones

STATE SUBPOENA

Issued this ..... day of

..... , 194....

Clerk.

ORIGINAL—STATE SUBPOENA

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT

Sub No. _____

Case No. 1192 Term Spring, 1950

To Any Sheriff of the State of Alabama:

You are hereby commanded to Summon E. A. Petty

Citronelle, Ala.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 11th day of April, 1950, at ~~8:30~~ 9:00 a. m., and from day to day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Willie Mae Thomas

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 1st day of April A. D. 1950 Mrs. R. S. DUCK, Clerk.

Received in office _____, 194____

Executed this 7th day of _____, 194 40

By E. O. Pathon D.S.

Sheriff

ORIGINAL

For _____

No. 1192 Page _____

The State of Alabama,
Baldwin County.

CIRCUIT COURT

THE STATE
Vs.

Carlie Mae Lanier

STATE SUBPOENA

Issued this _____ day of

_____, 194____

Clerk.

E. A. Petry.

ORIGINAL—STATE SUBPOENA

Moore Printing Co., Bay Minette, Ala.

THE STATE OF ALABAMA,

BALDWIN COUNTY

CIRCUIT COURT

Sub No. _____

Case No. 1192 Term Spring, 1952

To Any Sheriff of the State of Alabama:

You are hereby commanded to Summon E. B. Redding

Foulkmville Ala.

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 11 day of April, 1952, at 8:30 a. m., and from day to day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Calla Mae Tanner

_____ Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 1st day of April A. D. 1952 R. S. DUCK, Clerk.

710 R 361

Received in office ..... ,194....

Executed this ..... ,194....

By .....

RECEIVED 4-2-50

RETURNED 4-11-50

Not found in my County after diligent search and inquiry.

W. H. HOLCOMBE, Sheriff

By ..... D.S.

..... Sheriff

ORIGINAL

For .....

No. 1192 Page .....

The State of Alabama,
Baldwin County.

CIRCUIT COURT

THE STATE
Vs.

Callie Mae Tanner

STATE SUBPOENA

Issued this ..... day of

..... ,194....

..... Clerk.

3601

STATE OF ALABAMA,
Baldwin County

CIRCUIT COURT

N.F.

Sub No. _____

Case No. 1192 Term Spring, 1952

To Any Sheriff of the State of Alabama:

You are hereby commanded to Summon

L. B. Redding
Foulmaille

personally to be and appear before the Circuit Court, to be holden for Baldwin County, at the Court House thereof, in Bay Minette, on the 11th day of April, 1952, at ~~8:30~~ 9:00 a. m., and from day to day of said term, and from term to term thereafter until discharged, to give evidence and the truth to speak in behalf of THE STATE in a prosecution now pending in said Court, wherein the State of Alabama is Plaintiff and Calla Mae Tanner

Defendant, and have you then and there this Writ, with your endorsement thereon.

Witness my hand this 1st day of April A. D. 1952 ALICE J. DUCK, Clerk.

_____Div. No._____ CERTIFICATE OF APPEAL. (Criminal Cases.)

No. 1192

Baldwin County, Circuit Court

CALLA MAI TANNER, Appellant

VS.

The State of Alabama, Appellee

The State of Alabama,

BALDWIN County, The Circuit Court of BALDWIN County.

I, Alice J. Duck, Clerk of the Circuit Court of BALDWIN County in and for said County and State, do hereby certify that in the above stated case, which was tried and determined in this Court on the 5th day of December 1950, and the defendant convicted by a Jury of the offense of Grand Larceny, and that on the 8th day of December 1950, said defendant was sentenced to a term of Five years, which said sentence was suspended pending an appeal to the COURT OF APPEALS Court of Alabama.

I further certify that on this the 8th day of January 1951, the defendant gave notice in writing of an appeal to the COURT OF APPEALS Court of Alabama.

Witness my hand and the seal of this Court, this the 8th day of January 1951.

_____

Clerk of Circuit Court of

BALDWIN County, Alabama,

copy for file

1ST DIV.

CALLA MAI TANNER, APPELLANT

Vs.

STATE OF ALABAMA, APPELLEE

IN THE COURT OF APPEALS OF ALABAMA

APPEALED FROM THE CIRCUIT COURT OF BALDWIN COUNTY

APPLICATION FOR WRIT OF CERTIORARI SEEKING COMPLETION OF RECORD

TO THE HONORABLE JUDGES OF THE COURT OF APPEALS OF ALABAMA:

Comes the State of Alabama, appellee in the above-styled cause, by and through its Attorney General, Si Garrett, and applies to this court for a writ of certiorari, directed to Mrs. Alice J. Duck, Clerk of the Circuit Court of Baldwin County, Alabama, directing the said clerk to complete the record in the above-styled cause, as set forth below:

The judgment entry of said court, which is reproduced on page 325 of the transcript fails to relate that defendant, after verdict and before sentencing, was asked by the court whether said defendant had anything to say why the judgment of the court and sentence of law should not be pronounced against him.

WHEREFORE, the State of Alabama hereby applies for a writ of certiorari directing the Clerk of said Circuit Court to complete the record in the above-styled cause by adding the above matter in the proper place in said record, so as to make said record accord with the records on file in the office of said clerk of the Circuit Court of Baldwin County, and so as to make said record true and correct for purposes of review by this court.

Respectfully submitted,

Si Garrett
SI GARRETT
ATTORNEY GENERAL

A. A. Carmichael
A. A. CARMICHAEL
ASSISTANT ATTORNEY GENERAL

ATTORNEYS FOR APPELLEE

I hereby certify that I have served a copy of the foregoing application for writ of certiorari seeking completion of the record upon Honorable Albert J. Tully, of the firm of Wolberg, Tully and Aldridge, attorney for the appellant, whose proper post office address is Mobile, Alabama, by placing a copy hereof in the United States mail, postage prepaid, on this 26 day of November, 1951.

A. A. Carmichael
A. A. CARMICHAEL
ASSISTANT ATTORNEY GENERAL

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term 19 52

To the Clerk of the Circuit *Court*

of Baldwin *County—Greeting:*

Whereas, in the matter of

Calla Mae Tanner *Appellant*,

vs.

Heritage, *Appellee*,

recently pending in the Court of Appeals of Alabama, on appeal from the said

Court of *County,*

our Court of Appeals did on the 2 *day of* Dec, 19 52

render a judgment of affirmance

in said cause; and,

Whereas, a certificate of such action of the Court of Appeals was duly issued to you, and thereafter an application for a rehearing of said cause was filed in this Court on the 16 *day of* Dec, 19 52;

Now, it is hereby certified, that our Court of Appeals, or one of the Justices thereof, did, on the 16 *day of* Dec, 19 52, *order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.*

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 16 *day of* Dec, 19 52

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

October Term, 19 52

1st *Div.,* No. 620

Ella Mae Tanner
Appellant,

The State
Appellee,

From Baldwin Circuit *Court.*

CERTIFICATE OF RECALL

On Application for Rehearing.

THE STATE OF ALABAMA,
Baldwin County.

Filed this 17th day of
Dec 19 52

Alice J. Jenkins
Clerk

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

STATE OF ALABAMA
VS.
CALLA MAI TANNER

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA.
December 1,1950

COURT'S ORAL CHARGE TO THE JURY

Gentlemen, it is the Court's duty to charge you as to the law to be used by you in connection with your consideration of the evidence in this case and in that connection the Court charges you first of all, you are the sole judges of all the evidence in the case.

The Court charges you that if there is a conflict in the testimony of the witnesses offered by the State and those offered by the defendant the Jury must determine which witness they will believe, determining what weight they will attach to the testimony of that particular witness.

The Court charges you that you may look to the manner of such witness on the stand and to his interest and feeling, if any, in the case, and as to whether or not he has been contradicted by another witness in the case, or by his own previous statements.

The Court charges you that you may, and in fact, it is your duty, to consider the demeanor of the witness on the stand, to consider their actual knowledge of the facts to which they testified, their prejudices or lack of prejudice, to consider their whole actions on the stand and the reasonableness of their statements and to give to the testimony of each witness such weight as you think proper.

The Court charges you further that on the part of both the State and the Defense, there has been evidence tending to impeach witnesses for both the State and the Defense and in that connection the Court charges the Jury that no witness may be impeached on immaterial issue but if the Jury believe that any witness has knowingly sworn falsely as to any material fact in the case, then the Jury may disregard all of the testimony of that witness if the Jury sees fit.

The Court charges you that if you believe any witness in this case has deliberately and knowingly sworn falsely as to any material fact in the case, that you may disregard all of that witness' testimony.

Now, the Court charges you further that the burden of proof is on the State, and it is the duty of the State, to show beyond all reasonable doubt and to the exclusion of every reasonable hypothesis every circumstance necessary to show that the defendant is guilty; and unless the State has done that in this case it is your duty, Gentlemen of the Jury, to render a verdict of not guilty.

The Court charges you that the burden is on the State to convince you of defendant's guilt to the exclusion of every reasonable doubt, and by evidence that overcomes the presumption of fact, that the law surrounds the defendant with, that he is innocent of the crime.

The Court charges the Jury that this defendant, as every other defendant in this State, entered into the trial of this cause with the legal presumption of her innocence and that presumption of innocence is a fact in the case to be considered by the Jury along with the other evidence of the case, and that until the State has satisfied each and every one of you, by the evidence, beyond all reasonable doubt and to a moral certainty of the defendant's guilt, then that presumption of innocence would entitle her to a verdict of not guilty at your hands.

Now, the defendant has testified in this case, as she has a right to do, and the Court charges the Jury that the defendant is authorized under the statute, to testify in her own behalf and the Jury has the right to give full credit to her statements.

The Court charges you further that in weighing the testimony of the defendant, you have the right to consider the fact that she is the defendant in the case and, if convicted, suffers the penalty.

The Court charges the Jury that you should weigh the evidence and reconcile it if possible but if there be irreconcilable conflict in the evidence they ought to take that evidence which they think worthy of credit and give it just such weight as they think it entitled to.

The defendant in this case is charged with buying, receiving, concealing or aiding in the concealing of certain named articles of personal property, the personal property of Mrs. F. M. Jefferies, knowing that it was stolen and not having the intent to restore it to the owner.

The Court charges you that before you can find this defendant guilty, you, and each one of you, must be satisfied from the evidence beyond all reasonable doubt and to a moral certainty that this defendant did buy, receive, or conceal, or aid in the concealing of personal property that had been stolen from Mrs. Jefferies, with no intention of returning it to Mrs. Jefferies.

The Court charges the Jury further that if you do not believe, from the evidence, beyond all reasonable doubt and to a moral certainty, that the defendant did buy, receive or conceal or aid in concealing this property or any part of it, knowing that it was stolen or having reason to believe it was stolen, and with no intention to return it to its owner, then it would be your duty to bring in a verdict of not guilty.

The Court charges the Jury that under this indictment it is not necessary for you to believe that every article named in the indictment was stolen from Mrs. Jefferies, but if you believe beyond all reasonable doubt and to a moral certainty from the evidence that any one of the articles was stolen from Mrs. Jefferies and the defendant here bought, or received, or concealed or aided in concealing that property, knowing it had been stolen or having reasonable grounds for believing it had been stolen, and further that she had no intention of returning it to Mrs. Jefferies, then it would be your duty to bring in a verdict of guilty as charged in the indictment.

The Court charges the Jury further that knowledge does not have to be proved under the law. It may be inferred by the Jury from all circumstances and all the evidence in the case.

The Court charges the Jury that if you believe beyond all reasonable doubt and to a moral certainty that the defendant had reasonable grounds for believing that this property had been stolen, then, that would be sufficient for the Jury to find her guilty if the other points that the Court charged you on were proved by the evidence beyond all reasonable doubt and to a moral certainty.

Now the Court charges you further that the value of this property has a bearing on the offense and it would be the Jury's duty, if they find the defendant is guilty as charged in the indictment of having

bought, received or concealed any of this property, knowing it was stolen, or having reasonable grounds to believe it was stolen, and with no intention of returning it to its owner, then it would be your duty to fix a value on that property and the form of your verdict would be: "We, the Jury, find the defendant guilty as charged in the indictment and we fix the value of the property at such and such amount, whatever you believe to be the value of the property that you found her guilty of having bought, received or concealed or aided in the concealing".

I charge you further, Gentlemen of the Jury, that as a matter of law, the possession of goods recently stolen would place on the defendant, or person having possession if it, the burden of explaining that possession, but in the end, as I charged you in the beginning, the burden is on the State to convince everyone of you beyond all reasonable doubt and to a moral certainty of the guilt of the defendant and if any one of you is not convinced from the evidence beyond all doubt and to a moral certainty of the guilt of the defendant, then it would be your duty to bring in a verdict of not guilty.

If, after considering the evidence you and each of you are satisfied of the defendant's guilt, then the form of your verdict would be: "We the Jury find the defendant guilty as charged in the indictment and we fix the value of the property at such and such amount, whatever you believe has been proved.

If, after considering all the testimony you, or any one of you are not convinced beyond all reasonable doubt and to a moral certainty of the guilt of the defendant, then the form of your verdict would be: "We, the Jury find the defendant not guilty." In either case write that verdict on the indictment which will be carried with you and let one of your number sign it as foreman.

THE COURT: Are there any objections?

MR. TULLY: In the opening part of the oral charge, the Court charges the Jury that there has been evidence tending to impeach witnesses for both the State and the Defense. I should like to except. It is

inclined to give undue prominence to the testimony, hearsay, and it has the effect of charging the Jury that the evidence goes toward impeachment rather than to say it is intended. Next is, that the Court charges the Jury in substance and to the effect that if they find the defendant had the personal property of Mrs. Jefferies, knowing it was stolen and not having the intent to restore it to the owner. I don't recall any part of the particular charge which outlined the fact that the property had been stolen. In other words it had to be stolen or she had to know it had to be the property of Mrs. Jefferies and not to have had the intent to restore it.

THE COURT: If I didn't charge them the property had to be stolen I intended to, I wanted to.

MR. TULLY: I think you did, I don't recall. That part where you said the property had to be stolen-

THE COURT: It was my understanding and what I meant to say if you found this defendant was in possession of any personal property of Mrs. Jefferies, knowing it was stolen.

MR. TULLY: I think that is what you intended to say. You first said if you find the property was stolen, and I want to except to that. Then, immediately following that portion of the charge with respect to elements of offense, the Court referred to this property or any part of it. I want to except to that.

THE COURT: That's the same part. No need going into that. I disagree.

MR. TULLY: Then, the Court charges the Jury next, in substance, and to the effect that if the Jury believe that the articles ; I didn't catch all of that, quite a long part runs through the part where the Court said "believe as to any one of the articles, then it would be your duty to bring in a verdict of guilty".

THE COURT: Same proposition.

MR. TULLY: I don't remember that portion of the charge which involved all elements of the offense. Following that the Court added one charge there about knowledge. I really would like to find this. The Court

stated with the charge to the effect that knowledge may be inferred from something. I would like to except to that and ask that it be marked in the transcript. A little ways down from that the Court charges that if the Jury found the defendant had reasonable grounds for believing the property was stolen, then the Jury could find her guilty providing other points were proved. I want to except to that.

Now, following that the Court charged the Jury concerning the value of any article in the indictment and further charged that if they found the defendant guilty the form of the verdict would be, "We find the defendant guilty as charged in the indictment and fix the value of the property at such and such amount." We want to except to that.

The next part is that the Court charged the Jury to the effect that the possession of goods recently stolen would place on the defendant the burden of explaining that possession. I want to except to that. If it please the Court we don't think that a complete statement of the law. The possession must have been not only of property recently stolen, but- - - I don't think it applicable to the case here.

The Jury was excluded while points of law were discussed.

MR. TULLY: And the last part. I want to except to that.

The Jury re-entered the Jury Box.

THE COURT: Gentlemen, there is one or two points I may have inadvertently overlooked. I want to charge you again on certain elements of this offense.

The Court charges you under this indictment the elements that must be proved beyond all reasonable doubt and to a moral certainty to each and everyone of you are, first, that the defendant did buy, receive or conceal, or aid in concealing personal property, knowing that it had been stolen, or having reasonable grounds for believing that it had been stolen, and not having the intent to restore it to the owner. Those are the elements necessary and you must believe from the evidence presented to you here, beyond all reasonable doubt and to a moral certainty, that those elements were present before you can find this

defendant guilty under the charge in the indictment here.

The Court charges you that if you do not believe that the defendant actually knew that these goods had been stolen, but do believe beyond all reasonable doubt and to a moral certainty, from the evidence, that she had reasonable grounds for believing that the personal property here had been stolen and that she bought, or received, or concealed or aided in concealing that personal property or any part of it with no intention of returning it to its owner, then that would be sufficient to justify you in bringing in a verdict of guilty as charged in the indictment.

MR. TULLY: We want to except to that entire charge.

THE COURT: Now, the Court charges you that if you, and each of you believe, from the evidence, beyond all reasonable doubt and to a moral certainty, that the defendant had possession of the goods, the personal property which had been recently stolen, then the burden would be on the defendant to explain her possession of those goods and if she failed to make a reasonable explanation, a presumption of guilt would arise which would support the Jury in finding her guilty.

MR. TULLY: We want to except to that.

THE COURT: I have certain written charges here, Gentlemen, which have been requested by the defendant, which are given to you by the Court as correct statements of the law, to be used by you in connection with the oral charge that has already been given you.

The Court reads written charges to the Jury.

THE COURT: I want to go back to the oral charge. There is one thing I forgot. In connection with punishment, the Court charges you that the only duty you have is to decide whether or not the defendant is guilty. If you find the defendant guilty and find the value of the property at more than Twenty-five Dollars, the Court will fix the punishment. If you find the value of the property less than Twenty-five Dollars the Court will fix the punishment, except the law provides

that the Jury may, if it so desires, fix a fine of not more than Five Hundred Dollars. You understand, that if you find the defendant guilty as charged and fix the value at more than Twenty-five Dollars, all you need to do is to fix the value of the property. If you fix the value of the property at less than Twenty-five Dollars, then you may, if you so desire, fix a punishment of a fine of not more than Five Hundred Dollars. The other part of the punishment is the duty of the Court.

Gentlemen, there is certain evidence you will carry out with you. I am going to let the Sheriff let you go and eat, and as soon as you have eaten, come back and go in the jury room. You will have the indictment and the requested charges and the other exhibits are all for your consideration while you are deliberating on this case. You will carry that with you into the Jury room. I will hold it here until you have had your supper.

The Jury was carried to supper.

THE COURT: Here are the written charges you are supposed to carry with you, and the indictment. These other exhibits in the case, and the furniture, all those things are already in there for you all that are considering the case.

- - - - - - -

I, Ora S. Nelson, Court Reporter, hereby certify that the above and foregoing is a true and correct copy of the Court's Oral Charge to the Jury in the above styled cause.

Dated this 8th day of January, 1951.

Ora S. Nelson
Court Reporter

1192

Receive of Alice J. Buck, Clerk, the furniture belonging to Mrs. Jefferies by a Court order dated October 4, 1952. In the case of State of Alabama Vs Callie Mae Tanner, Case no. 1192.

Dwight Slade

1192

STATE OF ALABAMA	()	IN THE CIRCUIT COURT OF
	()	BALDWIN COUNTY, ALABAMA
VS	()	[redacted].
	()	NO. 1192
CALLA MAI TANNER	()	

Comes now the defendant, Calla Mai Tanner, and gives notice of appeal from the verdict and sentence heretofore rendered in said cause.

Dated this the Sixth day of January, 1951.

CALLA MAI TANNER
Defendant

Holberg, Tully & Aldridge
Attorneys for Defendant

BY _____
Member Appearing

STATE OF ALABAMA	)	IN THE CIRCUIT COURT
VS	)	OF BALDWIN COUNTY,
CALLA MAI TANNER	)	ALABAMA,
	)	NO. 1192

Comes now the Defendant in the above entitled cause and presents her objections to the certified transcript of the evidence and proceedings in said cause:-

1. The objection, ruling and exception shown on top of Page Four should be shown as following the last question on Page Three and preceding the answer.

2. On Page Seven, the objection and ruling as to Exhibits Two, Three, Four and Five should show an exception by the Defendant.

3. On Page Seven, the objections stated by the Defendant to Exhibit One should include following the word "matter" and before the word "so", the following:-"or any of the elements of the offense charged".

4. On Page Eight, Line 11, the Defendant made a motion to strike the answer, which does not appear in the transcript.

5. On Page Eleven, Line 23, the witness testified that she paid $19.00 or $20.00 for two chairs.

6. On Page 13, Line 6, the objection stated by Counsel for the Defendant was as follows:-"May it please the court, I want to make the same objection offered as to Exhibit One and I also want to point out that this is obviously not the chair which she claimed to have lost and which she stated, as I recall, was exactly like the other chair except that it did not have the head rest. This chair obviously does not meet that description."

7. On Page Fourteen, Line 15, the request by the Solicitor is improperly shown. Exhibit Thirteen is a red and green

chair, Exhibit Fourteen is a green chair and Exhibit Fifteen is a red chair.

8. On Page Seventeen, the transcript improperly fails to show that the same objection, ruling and exception was made as to Exhibit Seventeen as had been made to Exhibit One.

9. On Page Twenty, Line 23, the objection made by the Defendant was as follows:-"I not only make the same objection offered as to Exhibit One but I would like to point out that this isn't at all the article described in the indictment as one small circular flower tray nor is it a round wooden tray as described by the witness."

10. On Page Twenty-Two, Line 12, the transcript fails to show that the witness described the lamp as having had flowers on it.

11. On Page Twenty-Three, the objection made to the Solicitor's leading the witness, the ruling and exception, occurred before and not after the answer of the witness.

12. On Page Twenty-Four, Line 13, the concluding statement of the objection made by Defendant should read as follows:-"This pitcher has nothing to do with any article described in the indictment."

13. On Page Twenty-Four, the objection made by the Defendant to Exhibit Twenty-Eight was on the same grounds as offered to Exhibit One.

14. On Page Twenty-Eight, Line 26, the answer of the witness also described the article as "cheap".

15. On Page Twenty-Seven, the objection to Exhibit Thirty-Two was on the same grounds as offered to Exhibit One.

16. On Page Twenty-Seven, the objection at the bottom of the page to the Solicitor's leading the witness, the ruling and the exception were all made before the answer of the witness.

17. On Page Thirty-Two, the objection to Exhibit Forty-One was upon the same grounds offered to Exhibit One.

18. On Page Thirty-Two, the objection to Exhibit Forty-two was on the same grounds offered to Exhibit One.

19. On Pages Thirty-Three, Thirty-Four and Thirty-Five, the objections made as to all questions as to the value of the several Exhibits, were all made upon the same grounds stated as to Exhibit Thirty-One and each objection, ruling and exception was made before the answer of the witness.

20. On Page Thirty-Five, Line 22, the objection shown, ruling and exception, occurred before the answer of the witness.

21. On Pages Thirty-Six, Thirty-Seven and Thirty-Eight, the objections, ruling and exception as to each question concerning value were all made before the answer of the witness.

22. On Page Forty-Five, Line 8, there was obviously some objection made by the Defendant and over-ruled by the Court which does not appear in the transcript. The statement shown to have been made by Counsel for the Defendant is inaccurate and was not made as stated in the transcript.

23. On Page Fifty-Two, Lines 32.37, the transcript inaccurately reports the questions addressed to and the answers made by the witness.

24. On Page Fifty-Three, Line 7, the question should have concluded with the word "each".

25. On Page Fifty-Three, Line 11, the answer was:-"He was talking pretty fast. . . . . ."

26. On Pages Sixty-Six, Sixty-Seven, Sixty-Eight, Ninety-Two, and Three Hundred Three, the name "Reading" should read "Redding".

27. On Page Sixty-Nine, Line 19, quotation marks should enclose that portion of the question reading "it had a dark wooden handle on it, it was kind of loose on the handle?"

28. On Page Seventy, Line 16, the question concluded with the word "hook".

29. On Page Seventy-One, Lines 18-28 failed to show the entire proceedings. It was at this point that the witness undertook to look at and refresh her recollection from a paper taken from her purse. Counsel for the Defendant inquired of the witness as to what the paper was and requested the witness to exhibit the paper to Counsel, to which request the witness stated a verbal denial and refusal. The Court stated that it did not think that this Counsel had a right to see the paper and that the witness could examine the paper without exhibiting it to Counsel.

30. On Page Seventy-One, the 9th question should read:- "How do you identify it as being yours?" and the 10th question should read "How do you identify it as being yours?"

31. On Page One Hundred Twenty-Eight, 3rd line from the bottom, the answer should be:-"I was down there and sat in that one (pointing to Exhibit Eight) when I used to go down there in 1947."

32. On Page One Hundred Twenty-Nine, Line 1, the question should read:-"You say you sat in that rocker there?"

33. On Page One Hundred Fifty-Three, the objection made by Counsel for Defendant was as follows:-"May it please the Court, the Solicitor is very generous. There are certain parts of this transcript that we are particularly interested in. I think it would be in error to admit the entire transcript in evidence, since there are many parts which are immaterial to the issues in this case. If the State wants to offer the entire transcript, we have no objection."

34. On Page Two Hundred Forty-Eight, the 11th answer, the witness testified that the old timey butter dish was purchased at the same time that she bought the silver nut bowl, and that she still had it in one of the cottages.

35. On Page Twenty-Eight, the last answer incorrectly shows the statement made by the witness.

36. On Page Two Hundred Forty-Nine, Lines 6-12, inclusive, the transcript fails to fully report the proceedings in which Counsel exhibited to the witness another black, iron cat which was then identified by the witness as belonging to her and as having been kept by her at her house together with the black cat introduced in evidence as Exhibit Thirty-Five.

37. On Page Two Hundred Forty-Nine, the 3rd answer from the bottom was that the witness got it in New Orleans from Tony's Trash and Treasures.

38. On Page Two Hundred Fifty-One, 8th line from the bottom, the transcript reports a comment by the Court on the effect of evidence which either was not made by the Court or was made in the course of some discussion between the Court and Counsel which is otherwise unreported.

39. On Page Two Hundred Fifty-One, 3rd answer from the top, the witness testified that "My son bought some".

40. On Page Two Hundred Fifty-Two, the transcript fails to reveal questions propounded by Counsel and answers made by the witness concerning the fact that the Clock in question was the Veneer not solid wood, and that it was an alarm clock.

41. On Page Two Hundred Fifty-Eight, the 5th answer from the top is not reported as made by the witness.

42. On Page Two Hundred Sixty-One, the 3rd answer from the top incorrectly reports the witness as having testified that she had the large urn sitting on a table.

43. On Page Two Hundred Sixty-One, the 12th question from the top incorrectly reports Counsel as having referred to "Three times".

44. On Page Two Hundred Sixty-One, the 13th question and answer incorrectly show the witness as having testified that she had not painted the articles in question.

45. On Page Two Hundred Seventy, the 3rd answer from the bottom was as follows:-"No, sir, If I had thought that I had anything that was stolen I would have delivered it to

the owner."

46. On Page Two Hundred Seventy-One, the last reported objection, exception and the preceding question, are not fully reported and fail to show the actual proceedings.

47. On Page Two Hundred Fifty-Eight, the transcript fails to report any of the questions and answers dealing with the fact that the marble slab given to her by Tony came off a wash stand or dresser, which testimony was subsequently referred to by the Solicitor, on cross examination, as appears on Page Two Hundred Seventy-Four, the 8th question from the top.

48. On Page Two Hundred Seventy-Nine, the objection made by Counsel for the Defendant concluded as follows:-"I don't think he has the right to predicate a question upon a purported statement of a witness which was never made and which is not in the record."

49. On Page Two Hundred Eighty-Four, the transcript reports the following as a statement by Counsel for the Defendant:- "I object. No proper ground." No such statement was made by Counsel for the Defendant and if the last quoted portion of the transcript is intended as a comment on the objections stated, it has no proper place in this record. Furthermore, the transcript fails to report an exception taken by Counsel for Defendant.

50. On Page Two Hundred Eighty-Four, the 7th question and answer are improperly reported and do not show the proceedings as they occurred.

51. On Page Two Hundred Eighty-Four, the objection, ruling and exception to the 8th question occured before the answer.

52. On Page Two Hundred Eighty-Five, the statement made by the Court and the exception taken by the Counsel for the Defendant were as follows:-

> "The Court:-Mrs. Tanner, I want you to quit spraying out answers after the Solicitor asks the questions.
>
> Mr. Tully:-Now, if it please the Court,

I want to except to the Court's statement that this witness has been spraying out answers. This witness has answered the questions as best she could and the statement made by the Court was neither proper nor fair. I ask the Court to instruct the Jury to disregard the statement made by the Court.

The Court:-I will give you an exception. (To the witness) I want to suggest that you confine your answers to the question and quit talking so much.

Mr. Tully:-I do except."

53. On Page Two Hundred Eighty-Eight, 8th line should read:-"I except. . . ." instead of "I object. . . ."

54. On Page Two Hundred Ninty-Two, the 3rd question referred to the Defendant and not to Counsel.

55. On Page Two Hundred Ninty-Three, the transcript fails to report objection made by the Defendant's Counsel on the ground that the document in question did not even have the dignity of an affidavit, and that said document, and any questions addressed to the witness relative thereto, were all irrelevant, immaterial and incompetant, and were hearsay, all which objections were repeated at the time the document itself was offered in evidence (Page 294).

56. On Page Two Hundred Ninty-Five, the record fails to report fully the objection made by Counsel for the Defendant as to State's Exhibit 45.

57. On Page Three Hundred Ten, the transcript fails to show following the 6th line an exception which was taken by the Defendant to the immediately preceding ruling of the Court.

58. On Page Three Hundred Ten, the objection, ruling and exception as to the 3rd question from the top all occurred before the answer.

59. On Page Three Hundred Eleven, the 8th answer from the top should read "Then and before."

60. Following the discharge of the witnesses as shown on Page Three Hundred Eleven and before the Court's oral charge to the Jury beginning on Page Three Hundred Twelve and during the arguments to the Jury substantially the following proceedings occurred, and are unreported

and unrecorded in the transcript:-

> "Mr. Cooper: I object to the argument which Mr. Tully is making.
>
> The Court: What is that?
>
> Mr. Cooper: I object to Mr. Tully's argument to the Jury as to the State 's failure to put on the witness stand Mr. L. B. Redding.
>
> The Court: Objection sustained. Mr. Tully, you have no right to argue to the Jury concerning the absence of any witness and, furthermore, I don't want you trying to make any such argument to the Jury.
>
> Mr. Tully: May it please the Court, may I not only except to the Court's ruling, but may I say, also, that I particularly except to the implication of the remarks made by the Court. During the four or five days that we have tried this case, there have been many rulings by the Court which I personally, as a lawyer, felt were not sustained by the law, but nevertheless, in every instance, I have abided by the rulings made by the Court. I therefore deeply resent the implication by the Court that I would, in spite of this ruling, attempt to disobey the Court's ruling even though I may consider it erroneous. I except to the Court's remarks and I ask that the Court instruct the Jury to disregard the remarks by the Court to me in the presence of the Jury.
>
> The Court: Proceed with your argument.
>
> Mr. Tully: I except"

61. On Page Three Hundred Fifteen, the objections stated by the Counsel for the Defendant, beginning at line 14, was as follows:-" in the opening part of the charge, the Court charges the Jury that there has been evidence tending to impeach witness for both the State and the Defense. I should like to except to that portion of the charge. It is inclined to give undue prominence to portions of the testimony and it has the effect of charging the Jury that the evidence goes toward impeachment rather than to say it is intended to do so. The next point is that the Court charges the Jury, concerning the elements of the offense in substance and to the effect, that if they find that the Defendant had possession of the personal

property of Mrs. Jefferies, knowing that it was stolen and not having the intent to restore it to the owner, etc. I don't believe any part of that particular charge required a finding by the Jury that the property had been stolen. In other words, the elements of the offense charged, are first, that the property has to be stolen, second, that the Defendant had to know that it was stolen or have reasonable grounds to believe that it was, third, that it has to be the property of Mrs. Jefferies, and, fourth, that the Defendant not have had the intent to restore it to the owner."

62. The statement made by Counsel for the Defendant on Page Three Hundred Fifteen, Line 28, was as follows:- "I don't think you did, although I don't recall exactly. That part of the charge where you said the property had to be stolen did not require a finding by the Jury that the property had been stolen."

63. The statement made by Counsel for the Defendant on Page Three Hundred Fifteen, beginning at Line 33, was as follows:-"I think that is what you intended to say and did say, but you never required a finding by the Jury that the property had been stolen and not embezzled. You also said something to the effect that "if you find the property or any part of it, was stolen" and I want to except to that. Immediately following that portion of the charge with respect to the elements of the offense, the Court referred to, "this property or any part of it". I want to except to that.

64. On Page Three Hundred Sixteen, beginning at Line 8, in connection with the objection made by Counsel for the Defendant, Counsel requested that the reporter read that portion of the charge, which was done. Following this, Counsel then again stated that he excepted to that portion

of the oral charge.

65. On Page Three Hundred Sixteen, the last portion of the objection stated by the Counsel for the Defendant, beginning at Line 27, should read as follows:-"The possession must have been not only of property recently stolen, but must have been a recent possession in point of time to the theft of the property, if any. The longer the period of time between the theft of the property and the possession of the Defendant, the less becomes the burden of the Defendant to explain that possession. We have here a situation where, according to the evidence, taken at its best, the Defendant is charged with the possession of property claimed to have been stolen many months before. I therefore do not think that the charge given by the Court is applicable to the case here."

66. On Page Three Hundred Sixteen, Line 29, the reporter states that the Jury was excluded while points of law were discussed. It is our recollection that the Jury was excluded immediately following the inquiry by the Court, reported on Page Three Hundred Fifteen, as to whether there were any objections to the Court's charge.

67. The objection offered by Counsel for the Defendant, on Page Three Hundred Sixteen, Line 30, should read as follows:-"And the last part of the Court's charge, again charging as to the form of the verdict. I want to except to that."

68. On Page Three Hundred Twenty-Five, the transcript improperly shows that the verdict of the jury and the sentence imposed by the Court all occurred on December 5, 1950, whereas, in truth and in fact, the jury verdict was entered December 5, 1950, and sentence was imposed by the Court on December 8, 1950.

HOLBERG, TULLY & ALDRIDGE
Attorneys for the Defendant

Albert J. Tully
Member Appearing

To Honorable Kenneth Cooper
Circuit Solicitor

Please take notice that the foregoing will be called up for hearing before Honorable T. J. Mashburn, Judge of the Circuit Court, at Ten A. M. Thursday, March 29, 1951.

Albert J. Tully
Attorney for Defendant

11 921

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT

THE COURT OF APPEALS OF ALABAMA

October Term 19 52

To the Clerk of the Circuit *Court*

of Baldwin *County—Greeting:*

Whereas, in the matter of

Della Mae Tanner *Appellant*,

vs.

Christie, *Appellee*,

recently pending in the Court of Appeals of Alabama, on appeal from the said

Court of *County,*

our Court of Appeals did on the 2 *day of* Dec, 19 52

render a judgment of affirmance

in said cause; and,

Whereas, a certificate of such action of the Court of Appeals was duly issued to you, and thereafter an application for a rehearing of said cause was filed in this Court on the 16 *day of* Dec, 19 52; and overruled.

Now, it is hereby certified, that our Supreme *Court ~~of Appeals~~, or one of the Justices thereof, did, on the* 20 *day of* Jan, 19 53, *order that the said certificate be recalled. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.*

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 20 *day of* Jan, 19 53

Charles Bricken Jr.

Clerk of the Court of Appeals of Alabama.

THE COURT OF APPEALS OF ALABAMA

October Term, 19 52

1st *Div.,* No. 620

Carla Mae Tanner
Appellant,

Lestate
Appellee,

From Baldwin Circuit *Court.*

CERTIFICATE OF RECALL

On Application for Rehearing.

Certiorari

THE STATE OF ALABAMA,
Baldwin County.

Filed this 21st day of
Jan 19 53

Eric J. Heinrich

BROWN PRINTING CO., MONTGOMERY, ALA., 1934

STATE OF ALABAMA	)	IN THE CIRCUIT COURT
Vs	)	OF
CALLA MAI TANNER	)	BALDWIN COUNTY, ALABAMA
	)	NO. 1192

This cause coming on to be heard on this day on the objections of the Defendant to the certified transcript of the evidence and proceedings in said cause; and

The Court being of the opinion that, unless the Court Reporter's notes show error in the transcript or unless the Court itself has some independent and accurate recollection of the matters complained of by the Defendant, the Court cannot properly order a correction or revision of said transcript;

It is, therefore, now ordered, adjudged and decreed as follows with respect to each of the several respective objections presented by the Defendant:-

1. Objection denied and over-ruled.
2. This objection is granted and the transcript corrected accordingly.
3. This objection is over-ruled and denied.
4. This objection is over-ruled and denied.
5. This objection is over-ruled and denied.
6. This objection is over-ruled and denied.
7. This objection is over-ruled and denied.
8. This objection is granted and the transcript corrected accordingly.
9. This objection is over-ruled and denied.
10. This objection is over-ruled and denied.
11. This objection is granted and the transcript corrected accordingly.
12. On Page 24, Line 13, the concluding statement of the objection made by the Defendant shall be corrected so as to read as follows:-"This pitcher has nothing to do with anything in the indictment."
13. This objection is granted and the transcript corrected accordingly.
14. It being made known to the Court that this objection

should have referred to Page 26, instead of Page 28, the objection is over-ruled and denied.

15. This objection is granted and the transcript corrected accordingly.

16. This objection is over-ruled and denied.

17. This objection is granted and the transcript corrected accordingly.

18. This objection is granted and the transcript corrected accordingly.

19. This objection is granted and the transcript corrected accordingly.

20. This objection is over-ruled and denied.

21. This objection is granted and the transcript corrected accordingly.

22. This objection is over-ruled and denied.

23. Although the Court Reporter's notes show that something more was said than appears in the transcript, the Reporter was unable to record the entire proceedings. Since the Court has no independent recollection of this portion of the proceedings, this objection is over-ruled and denied.

24. This objection is over-ruled and denied.

25. This objection is over-ruled and denied.

26. This objection is granted and the transcript corrected accordingly.

27. This objection is granted and the transcript corrected accordingly.

28. Although the records of the Court Reporter show that something was said which the Reporter was unable to record, and although the Court recalls generally that there was questioning or testimony concerning a "hook", the Court has no independent recollection as to this particular question and the objection is, therefore, over-ruled and denied.

29. Although the Court recalls generally the incident referred to in this objection, the Court has no independent and specific recollection of what was said and this objection is, therefore, over-ruled and denied.

30. It being made known to the Court that the objection should have referred to Page 79, instead of Page 71, the objection is over-ruled and denied.

31. This objection is granted and the transcription corrected accordingly.

32. This objection is granted and the transcript corrected accordingly.

33. This objection is over-ruled and denied.

34. Although the records of the Court Reporter show that there was testimony which the reporter was unable to record, the Court has no independent recollection of that testimony and the objection is therefore over-ruled and denied.

35. It being made known to the Court that this objection should have referred to Page 248 instead of Page 28, this objection is over-ruled and denied.

36. This objection is over-ruled and denied.

37. This objection is over-ruled and denied.

38. This objection is over-ruled and denied.

39. This objection is over-ruled and denied.

40. This objection is over-ruled and denied.

41. On Page 258, Line 10, the transcript is corrected so that the answer shall read as follows:-"People all over the county make these baskets, I rode with him and saw the basket. Mine is just like I bought it for a dollar and a quarter."

42. Although the Court Reporter's record shows that the Reporter was unable to record the testimony as given by the witness, the court has no independent recollection of the testimony and this objection is, therefore, over-ruled and denied.

43. This objection is over-ruled and denied.

44. This objection is over-ruled and denied.

45. This objection is over-ruled and denied.

46. This objection is over-ruled and denied.

47. This objection is over-ruled and denied.

48. This objection is over-ruled and denied.

49. Although the Court Reporter's record shows that the Reporter was not able to record the entire statement made,

and although the Court has a general recollection of the objection and argument made by Counsel for the Defendant, the Court does not specifically recall this incident and the objection is therefore over-ruled.

50. This objection is over-ruled and denied.

51. This objection is over-ruled and denied.

52. On Page 285, beginning at line 5, the transcript is corrected to read as follows:-

"Mr. Tully:-Now, if it please the Court, I want to except to the Court's statement that this witness has been spraying out answers. The statement made by the Court was neither proper nor fair. I ask the Court to instruct the Jury to disregard the statement made by the Court.

The Court:-I will give you an exception. (To the witness) I want to suggest that you confine your answers to the question and quit talking so much.

Mr. Tully:-I do except."

53. This objection is granted and the transcript corrected accordingly.

54. This objection is over-ruled and denied.

55. On Page 293, the objection shown at the top of the page is corrected to show that Counsel for the Defendant objected to the matter in question upon the further grounds that said matter was irrelevant, incompetent and immaterial.

56. This objection is over-ruled and denied.

57. Although the Court recalls that practically every adverse ruling suffered by Counsel for the Defendant was followed by the taking of an exception, the Court does not specifically recall an exception to the ruling here involved, and the objection is, therefore, over-ruled and denied.

58. This objection is over-ruled and denied.

59. This objection is over-ruled and denied.

60. Following the discharge of the witnesses as shown on Page 311 and before the Court's oral charge to the Jury beginning on Page 312, the transcript is corrected so as to show the following proceedings which occurred during argument

to the Jury by Counsel for the Defendant:-

"Mr. Cooper:- I object to the argument which Mr. Tully is making.

The Court:- What is that?

Mr. Cooper:- I object to Mr. Tully's argument to the Jury as to the State's failure to put on the witness stand Mr. L. B. Redding.

The Court:- Objection sustained. Mr. Tully, you have no right to argue to the Jury concerning the absence of any witness, and furthermore, I don't want you trying to make any such argument to the Jury.

Mr. Tully:- May it please the Court, may I not only except to the Court's ruling, but may I say, also, that I particularly except to the implication of the remarks made by the Court. During the four or five days that we have tried this case, there have been many rulings by the Court which I personally, as a lawyer, felt were not sustained by the law, but nevertheless, in every instance, I have abided by the rulings made by the Court. I therefore deeply resent the implication by the Court that I would, in spite of this ruling, attempt to disobey the Court's ruling even though I may consider it erroneous. I except to the Court's remarks and I ask that the Court instruct the Jury to disregard the remarks by the Court to me in the presence of the Jury.

The Court:- If the Court's demeanor toward Mr. Tully is out of order, I will instruct you to disregard it. I instruct you that Counsel for the Defendant has no right to argue on the State's failure to put on any witness.

Mr. Tully:- I except."

61. On Page 315, the transcript is corrected so that the sentence beginning at Line 22 shall read as follows:-

"I don't recall any part or particular charge which outlined the fact that the property had to be stolen."

62. This objection is over-ruled and denied.

63. This objection is granted and the transcript corrected accordingly.

64. This objection is granted and the transcript corrected accordingly.

65. On Page 316, beginning at Line 27, the transcript is corrected so as to read as follows:-

"The possession must have been not only of property recently stolen, but must have been a recent possession in point of time to the theft of the property, if any. The longer the period of time between the theft of the property and the possession of the Defendant, the less becomes the burden of the Defendant to explain that possession. I don't think it applicable to the case here."

66. This objection is granted and the transcript corrected accordingly.

67. This objection is over-ruled and denied.

68. This objection is over-ruled and denied, subject, however, to the amendment of the record upon motion by Counsel for the Defendant, if the judgment has been recorded, upon motion of the Court if the judgment has not been recorded.

Done this the 29th day of March, 1951.

Telfair J. Mashburn, Jr.
JUDGE

1192

Filed 3-29-57
Anna J. Wenck
Clerk

STATE OF ALABAMA	)	IN THE CIRCUIT COURT
	)	OF
VS.	)	BALDWIN COUNTY,
CALLA MAI TANNER	)	ALABAMA
	)	NO. 1192

Comes the Defendant in the above entitled cause and moves the Court to set aside the verdict of the jury rendered heretofore and on, to-wit, the 5th day of December, 1950, and the judgment rendered thereon on, to-wit, the 8th day of December, 1950, and to grant to the Defendant a new trial; and as grounds of said motion the Defendant sets down and assigns, separately and severally, the following:-

1. The verdict of the jury is contrary to the evidence in the case.

2. The verdict of the jury is contrary to the law in the case.

3. The verdict of the jury is contrary to the evidence and the law in the case.

4. The verdict of the jury was contrary to the great preponderance of the evidence in the case.

5. The verdict of the jury was contrary to the weight of the evidence in the case.

6. For that the Court erred in refusing to grant the Defendant's motion to exclude all the evidence in the case.

7. For that the Court erred in refusing to permit the Defendant to cross-examine the witness Jeffries concerning other articles of property alleged to have been missing, in addition to the articles described in the indictment.

8. For that the Court erred in refusing to permit the Defendant to cross-examine the witness Jeffries concerning her report to the Deputy Sheriff of articles alleged to have been missing.

9. For that the Court erred in admitting in evidence the statement in writing alleged to have been made by A. A. Janney

and dated October, 1949.

10. For that the Court erred in refusing the Defendant's motion to exclude the testimony of the witness E. G. Lowe.

11. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one green bedspread of the value of $3.00, but there was no evidence in the case of the value of said article.

12. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one rose colored bedspread of the value of $3.00, but there was no evidence in the case of the value of said article.

13. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one china water pitcher with Holland designs of the value of $2.00 and there was offered in evidence in support of said allegation only a china milk pitcher.

14. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one dipper of the value of $10.00, but there was no evidence in the case of the value of said article.

15. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one vase of the value of $1.00, but there was no evidence in the case of the value of said article.

16. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one blue glass of the value of $5.00, but there was no evidence in the case of the value of said article.

17. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one silver nut bowl of the value of $25.00 and there was offered in evidence in support of said allegation one

silver plated bowl.

18. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one cat-shaped foot scraper of the value of $8.00 and there was offered in evidence one-cat shaped door stop of the value of $5.00.

19. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one blue chair of the value of $12.00 and there was offered in evidence in support of said allegation one blue and white chair.

20. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one lamp of the value of $15.00 and there was no evidence of the value of said lamp.

21. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one red split hickory chair of the value of $12.00 and the evidence affirmatively showed that the witness, Mrs. F. M. Jeffries, had never owned and had never lost one red split hickory chair.

22. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one blue urn of the value of $10.00 and there was no evidence of the value of said article and the evidence affirmatively showed that the witness, Mrs. F. M. Jeffries, had never owned and never lost one blue urn.

23. Because there was a variance between the averments of the indictment and the evidence in the case in that the indictment described one bouy flower pot of the value of $5.00 and there was no evidence of the value of said article.

24. For that the Court erred in refusing to permit counsel for the Defendant to argue to the jury as to the absence of the witness, L. B. Redding, or any other witness.

25. For that the Court erred to the Defendant's prejudice in

stating to the Defendant, in substance and effect, and in the presence of the jury, that the Defendant was to stop spraying out answers to questions.

26. For that the Court erred to the Defendant's prejudice in stating to Defendant's counsel, in the presence of the jury, in substance and effect, that Defendant's counsel was warned against attempting to make any further argument concerning the absence of witnesses.

27. For that the Court erred in permitting separate and individual jurors to examine the separate and several articles and exhibits introduced in evidence and during the trial of this cause and before the submission of the cause to the jury for its consideration.

28. For that the Court erred, after conclusion of the evidence and arguments of counsel and the Court's charge to the jury, in permitting the jury to separate pending their deliberations upon the issues in the case.

29. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "1. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one green bedspread of the value of $3.00."

30. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "2. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one rose colored bedspread of the value of $3.00."

31. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "3. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one blue and white quilt of the value of $15.00."

32. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "4. The Court charges you that, if youbelieve the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one oil lamp of the value of $15.00."

33. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "5. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one oil lamp on metal stand of the value of $15.00."

34. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "7. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one china water pitcher with Holland designs of the value of $2.00."

35. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "8. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one small circular flower tray of the value of $1.50."

36. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "9. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one dipper of the value of $10.00."

37. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "10. The Court charges you that, if

you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one armadillo basket of the value of $5.00."

38. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "11. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one vase of the value of $1.00."

39. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "12. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one blue glass of the value of $5.00."

40. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "13. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one minature dinner bell of the value of $2.00."

41. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "14. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one silver nut bowl of the value of $25.00."

42. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "15. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one cat-shaped foot scraper of the value of $8.00."

43. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "16. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one toby jug of the value of $.75."

44. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "17. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one minature (lamp) of the value of $2.50."

~~45. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired: "18. The Court charges you that, if you believe the evidence in this case, you cannot find the Defendant guilty as to the articles described in the indictment as three ash trays of the value of $1.00."~~

46. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "18. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one antique clock of the value of $25.00."

47. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "19. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the articles described in the indictment as one large table with two short benches and two long benches to match of the value of $250.00."

48. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "20. The Court charges you that,

if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one smoking stand of the value of $10.00."

49. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "22. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one blue chair of the value of $12.00."

50. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "23. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one lamp of the value of $15.00."

51. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "23. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the articles described in the indictment as three rocking chairs of the value of $18.00."

52. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "24. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one cushion of the value of $1.00."

53. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "25. The Court charges you that, if you believe the evidence ~~in this case,~~ you cannot find the Defendant guilty as to the article described in the indictment as one basket of the value of $2.00."

54. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "26. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one brown marble slab of the value of $25.00."

55. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "27. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one red split hickory chair of the value of $12.00."

56. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "28. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one round umbrella table of the value of $10.00."

57. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "29. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one blue urn of the value of $10.00."

58. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "30. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one bouy flower pot of the value of $5.00."

59. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant

before the jury retired:- "31. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one iron table with marble and glass top of the value of $35.00."

60. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "32. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the articles described in the indictment as two wicker rocker chairs of the value of $15.00."

61. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "42. The Court charges the jury that unless you are reasonably satisfied from all the evidence that there was a felonious taking and carrying away; of all the property as charged in the state's indictment with an intent to deprive Mrs. Jeffries of said property, then you cannot find the Defendant guilty of receiving stolen property."

62. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "43. The Court charges the jury that before you can find the Defendant guilty, you must believe from all the evidence beyond all reasonable doubt that there was a felonious taking and carrying away of all the property as alleged in the state's indictment, with an intent to deprive Mrs. Jeffries of all of said property with knowledge that the same was stolen property and that she had no intention of returning it to Mrs. Jeffries."

63. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "44. The Court charges the jury that if any one of you believe from all the evidence that some of

the property listed in the indictment and found in the possession of the defendant was not stolen from Mrs. Jeffries then you, gentlemen of the jury, must acquit the Defendant."

64. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "45. The Court charges the jury that before you can find the defendant guilty as charged in the indictment you must believe beyond a reasonable doubt that she did buy, receive or conceal all of the property, as listed in the indictment, with a guilty knowledge that the same had been stolen."

65. For that the Court erred inrefusing to give to the jury the following charge requested in writing by the defendant before the jury retired:- "47. The Court charges the jury, that if you or any one of you are not satisfied beyond all reasonable doubt that the state has proven that all of the property as contained in the indictment was stolen from Mrs. Jeffries then you cannot convict the Defendant of receiving, buying, or concealing stolen property."

66. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "50. The Court charges the jury that, before you can convict the Defendant under the indictment, you must not only believe beyond a reasonable doubt that the Defendant did buy or receive or conceal or aid in concealing the property of Mrs. Jeffries, but you must further believe beyond a reasonable doubt that she did so actually knowing that it had been stolen."

67. For that the Court erred in refusing to give to the jury the following charge requested inwriting by the Defendant before the jury retired:- "51. The Court charges the jury that if you believe that any of the property found in the possession of the Defendant was not stolen then you, gentlemen of the jury, must acquit the Defendant."

68. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "52. The Court charges the jury that if any of the articles found in the possession of the Defendant and listed in the indictment are not proven by the state to have been stolen from Mrs. Jeffries, then you must acquit the Defendant."

69. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "53. The Court charges the jury that, before you can convict the Defendant under the indictment, you must not only believe beyond a reasonable doubt that the Defendant did buy or receive the stolen articles of furniture, but you must further believe beyond a reasonable doubt that she bought or received them actually knowing that they had been stolen, and having such knowledge had no intention of returning them to the rightful owner."

70. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "54. The Court charges the jury that, in order to convict the Defendant, you must believe beyond a reasonable doubt that the goods were stolen, that the Defendant bought or received them, with knowledge that they were stolen, or concealed or aided in concealing them, and without the intent of restoring them to the rightful owner."

71. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "55. The Court charges the jury that if, upon a consideration of all the evidence, the minds of the jury or any member of the jury is left in a state of reasonable doubt and uncertainty, by the evidence or any part of the evidence, then you cannot convict the Defendant."

72. For thatthe Court erred in refusing to give to the jury the following charge requested in writing by the Defendant

before the jury retired:- "56. The Court charges the jury that if you do not believe from the evidence beyond all reasonable doubt and to a moral certainty that all the property alleged in the indictment was stolen from Mrs. Jeffries then you cannot find the Defendant guilty."

73. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "57. The Court charges the jury that unless you believe the evidence beyond all reasonable doubt and to a moral certainty that all the property set forth in the indictment was stolen from Mrs. Jeffries, then you cannot find the Defendant guilty."

74. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "58. The Court charges the jury that unless you believe from all the evidence beyond all reasonable doubt and to a moral certainty that the Defendant did buy, receive, conceal, or aided in concealing all the property set forth in the indictment, knowing that all of such property had been stolen and did not have any intention to restore such property to its rightful owner, then you cannot find the Defendant guilty."

75. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "59. The Court charges the jury that, in order to convict the Defendant you must believe beyond a reasonable doubt that the goods were stolen, that the Defendant bought or received all of them with actual knowledge that they were stolen and that she concealed or aided in concealing them without any intention of restoring them to the rightful owner."

76. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "60. The Court charges the jury that, unless you believe from the evidence beyond all reason-

able doubt and to a moral certainty that all the property set forth in the indictment was stolen from Mrs. Jeffries, then you cannot find the Defendant guilty."

77. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "61. The Court charges you, gentlemen of the jury, that if you believe the evidence, then you must find the defendant not guilty."

78. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "63. The Court charges you, gentlemen of the jury, then you must find the Defendant not guilty."

79. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "The Court charges you further that on the part of both the State and the Defense that has been evidence tending to impeach witnesses for both the State and the Defense . . . . . .", to which charge the Defendant then and there, and before the jury retired, duly and legally excepted.

80. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "The Court charges you that before you can find this defendant guilty, you, and each of you, must be satisfied from the evidence beyond all reasonable doubt and to a moral certainty that this defendant did buy, receive, or conceal, or aid in the concealing of personal property that had been stolen from Mrs. Jeffries, with no intention of returning it to Mrs. Jeffries.", to which charge the Defendant then and there, and before the jury retired, duly and legally excepted.

81. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "The Court charges the jury further that if you do not believe, from the evidence, beyond all reasonable doubt and to a moral certainty, that the defendant did buy, receive or conceal or aid in concealing this

property or any part of it, knowing that it was stolen, or having reason to believe it was stolen, and with no intention to return it to its owner, then it would be your duty to bring in a verdict of not guilty.", to which charge the Defendant then and there, and before the jury retired, duly and legally excepted.

82. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "The Court charges the Jury that under this indictment it is not necessary for you to believe that every article named in the indictment was stolen from Mrs. Jeffries, but if you believe beyond all reasonable doubt and to a moral certainty from the evidence that any one of the articles was stolen from Mrs. Jeffries and the defendant here bought, or received, or concealed or aided in concealing that property, knowing it had been stolen or having reasonable grounds for believing it had been stolen, and further that she had no intention of returning it to Mrs. Jeffries, then it would be your duty to bring in a verdict of guilty as charged in the indictment.", to which charge the Defendant then and there, and before the jury retired, duly and legally excepted.

83. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "The Court charges the jury that knowledge does not have to be proved under the law. It may be inferred by the Jury from all circumstances and all the evidence in the case.", to which charge the Defendant then and there, and before the jury retired, duly and legally excepted.

84. The Court erred to Defendant's prejudice in instructing the Jury in its oral charge as follows:- "The Court charges the Jury that if you believe beyond all reasonable doubt and to a moral certainty that the defendant had reasonable grounds for believing that this property had been stolen, then, that would be sufficient for the Jury to find her guilty if the other points that the Court charged you on were proved by the evidence beyond all reasonable doubt and to a moral certainty.",

to which charge the Defendant, then and there, and before the jury retired, duly and legally excepted.

85. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "Now the Court charges you further that the value of this property has a bearing on the offense and it would be the Jury's duty, if they find the defendant is guilty as charged in the indictment of having bought, received or concealed any of this property, knowing it was stolen, and with no intention of returning it to its owner, then it would be your duty to fix a value on that property and the form of your verdict would be: 'We, the Jury, find the defendant guilty as charged in the indictment and we fix the value of the property at such and such amount,' whatever you believe to be the value of the property that you found her guilty of having bought, received or concealed or aided in concealing.", to which charge the Defendant then and there, and before the jury retired, duly and legally excepted.

86. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "I charge you further, Gentlemen of the Jury, that as a matter of law, the possession of goods recently stolen would place on the Defendant, or person having possession of it, the burden of explaining that possession . . . . . ", to which charge the Defendant then and there, and before the Jury retired, duly and legally excepted.

87. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "If, after considering the evidence you and each of you are satisfied of the defendant's guilt, then the form of your verdict would be: 'We the jury find the defendant guilty as charged in the indictment and we fix the value of the property at such and such amount', whatever you believe has been proved.", to which charge the Defendant then and there, and before the Jury retired, duly and legally excepted.

88. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "The Court charges you under this indictment the elements that must be proved beyond all reasonable doubt and to a moral certainty to each and everyone of you are, first, that the defendant did buy, receive or conceal, or aid in concealing personal property, knowing that it had been stolen, or having reasonable grounds for believing that it had been stolen, and not having the intent to restore it to the owner. Those are the elements necessary and you must believe from the evidence presented to you here, beyond all reasonable doubt and to a moral certainty, that those elements were present before you can find this defendant guilty under the charge in the indictment here. The Court charges you that if you do not believe that the defendant actually knew that these goods had been stolen, but do believe beyond all reasonable doubt and to a moral certainty, from the evidence, that she had reasonable grounds for believing that the personal property here had been stolen and that she bought, or received, or concealed or aided in concealing that personal property or any part of it with no intention of returning it to its owner, then that would be sufficient to justify you in bringing in a verdict of guilty as charged in the indictment.", to which charge the Defendant then and there, and before the Jury retired, duly and legally excepted.

89. The Court erred to Defendant's prejudice in instructing the jury in its oral charge as follows:- "Now, the Court charges you that if you, and each of you believe, from the evidence, beyond all reasonable doubt, and to a moral certainty, that the defendant had possession of the goods, the personal property which had been recently stolen, then the burden would be on the defendant to explain her possession of those goods and if she failed to make a reasonable explanation, a presumption of guilt would arise which would support the Jury in find-

ing her guilty.", to which charge the Defendant then and there, and before the Jury retired, duly and legally excepted.

90. For that the Court erred in refusing to give to the jury the following charge requested in writing by the Defendant before the jury retired:- "6. The Court charges you that, if you believe the evidence ~~in this case~~, you cannot find the Defendant guilty as to the article described in the indictment as one clear water pitcher of the value of $8.00."

HOLBERG, TULLY & ALDRIDGE
Attorneys for Defendant

By _____
Member Appearing

This motion being presented to me and filed this day it is hereby set down for hearing on January 6, 1951 at 10:00 A.M.
Done this 4th day of January, 1951.

Telfair J. Mashburn, Jr.
Circuit Judge

motion for new trial overruled.
Done this 6th Day of January, 1951.

Telfair J. Mashburn, Jr.
Circuit Judge.

RECORDED

Filed 1-4-51
Arie J. Veenk
Clerk.

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