

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

R. Keith Kelly, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

THOMAS RAYNES MARETT,

APPELLANT

APPELLATE CASE NO. 2013-002017

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2013-GS-42-02017

The State of South Carolina

-VS-

Thomas Raynes Marett,

Defendant.

TRANSCRIPT OF RECORD

September 10 & 11, 2013
 Spartanburg, South Carolina

Ordered: October 3, 2013

Delivered: January 19, 2014

B E F O R E:

The Honorable R. Keith Kelly, Presiding Judge.

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

Ms. Brittany Scott, Esquire
 Assistant Solicitor for the State

Ms. Mary-Stuart Lyles, Esquire
 Public Defender for the Defendant

Pamela Faucette
 Circuit Court Reporter

September 10, 2013

2:20 P.M.

(Off-the-Record Comments)

Voir Dire

(Whereupon, a bench conference was had with both attorneys present.)

(The jury entered the courtroom at 2:15 p.m.)

(Off-the-Record Comments)

THE COURT: Good afternoon, ladies and gentlemen. We're about to pick another jury in this matter. We're going to wait on — here she comes right now.

(Ms. Scott entered courtroom.)

THE COURT: She was going to get a file right quick.

(Brief Pause)

(Off-The-Record Comments)

(Brief pause while Ms. Scott stepped out of the courtroom.)

THE COURT: Have you got the indictments?

(Documents handed up to the Court.)

(Off-the-Record Discussion)

THE COURT: All right. Again, good afternoon, ladies and gentlemen. I remind you — I'll tell you again — I've only seen some of you one day or one time, but I'm Keith Kelly. I'm a Circuit Court Judge here with you these — this week and next week too as a matter of fact. And I'm — I'm one of yours. I live here in Spartanburg County.

We're about to begin a trial here. And from time-to-time, I'm going to tell you that — that during the — during the trial of this case, that you will see

1 me leave this chair and stand while I'm here at the bench. And I ask you to
2 place no significance on that fact that I stand while one witness testifies and
3 sit while another witness testifies. I simply do not like to sit for any length of
4 time.

5 And I assure you that my standing or sitting during any witness'
6 testimony has no bearing whatsoever on the believability on credibility of that
7 witness or of that testimony.

8 Again, I simply ask that you pay no — that you disregard the fact that I
9 sit or stand whether one witness is testifying or not testifying. Quite honestly,
10 to be straight up with you; it hurts my back to sit in this chair all day long. I
11 just can't do it. So you'll see me stand a fair amount.

12 Again, we're about to begin the trial in the case of *The State of South*
13 *Carolina vs. Thomas Marett*, M-a-r-e double t, the Defendant in this matter.

14 The Defendant in this matter is charged by an indictment filed in this
15 Court with the crime of obtaining signature or property by false pretense.

16 Now the elements of that will be explained to you later, but the
17 indictment alleges that, "On or about July 14 of 2011, in the County of
18 Spartanburg, State of South Carolina, that by false pretense or representation
19 and with the intent of cheating or — or defrauding Refrigeration Services
20 obtained a signature of a person to a written instrument or did obtain from a
21 person a chattel, money, valuable security, or other property. All in violation
22 of the laws of the State of South Carolina.

23 Now the indictment is simply the charge by which brings the case into
24 this Court. And it is not in any sense evidence of any of the allegations it
25 contains.

1 The Defendant has pled not guilty to the indictment. The State,
2 therefore, has the burden of proving each of the elements of the indictment
3 beyond a reasonable doubt.

4 Before we select a jury, there are several questions which I must ask
5 you. And I remind you that you were previously sworn and that you remain
6 under oath. You all remember that from yesterday, correct?

7 **(Jurors respond affirmatively.)**

8 **THE COURT:** Now, these questions I must ask. And — and I'm
9 just going to read them right off the list here. Has anyone ever been related
10 by blood or marriage to Thomas Marett? If so, please, stand.

11 Mr. Marett, please, stand so the jury can take a look at you, sir.

12 **(Defendant complied with request.)**

13 **THE COURT:** Thank you. Is anybody related by blood or
14 marriage to Mr. Marett or ever been?

15 **(No Response)**

16 **THE COURT:** No response. Has anyone ever had a close,
17 personal, or social relationship with Mr. Marett or Refrigeration Services? If
18 so, please, stand.

19 **(No Response)**

20 **THE COURT:** No response. The following are a possible list of
21 witnesses I have been provided; a Randall Rainey, Kimberly Ballenger, Sheila
22 Henderson, and Dawn Hurley. Has anyone had a close, personal, or social
23 relationship with any of those people that I've listed? And do you have a list
24 as well?

25 **MS. LYLES:** Yes, Your Honor.

1 that. But I'm just saying the case is now called and your bond is revoked.
2 But I'm — I'm allowing you to stay out because your lawyer has assured me
3 that she has absolutely no problem getting in touch with you and getting you
4 here; is that right?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Okay. All right. Well, I'm going to let — I'm going
7 to let your lawyer be in charge of you during this time.

8 **(Off-the-Record Comments)**

9 **(A plea was taken before the pre-trial motions began.)**

10 **(An afternoon recess was taken from 3:11 p.m. until 3:28 p.m.)**

11 **(Off-The-Record Comments)**

12 **(Brief pause while Ms. Lyles is summoned into the courtroom.)**

13 **Pre-Trial Motions**

3:29 p.m.

14 **THE COURT:** Okay. What do we have this afternoon?

15 **(No Response)**

16 **THE COURT:** Yes, ma'am?

17 **MS. LYLES:** Yes, Your Honor, we are here with the case of
18 Thomas Marett. We just selected a jury and we do have some motions this
19 afternoon.

20 **THE COURT:** All right.

21 **MS. LYLES:** If you would like me to start — I don't if Ms Scott
22 has any motions ----

23 **THE COURT:** Well, Ms. Scott, do you have a motion?

24 **MS. SCOTT:** No, Your Honor, I do not have a motion.

25 **THE COURT:** Okay. I didn't think the State had any ----

1 **MS. LYLES:** Okay.

2 **THE COURT:** — so you have one, two, three?

3 **MS. LYLES:** I would start with the motions to dismiss/squash
4 the indictments in this case.

5 And if — there are still two indictments in this case that we're here for
6 today. One is a fraudulent check and one is obtaining property by false
7 pretenses.

8 **THE COURT:** No, they only have obtaining property by false
9 pretense before the Court.

10 **MS. LYLES:** Correct. I don't know if you would like to hear —
11 they have not dismissed the other one; I don't know if you would like me to
12 make arguments on both of the indictments. They are included in the — this
13 actual case.

14 **THE COURT:** All right. Well ---

15 **MS. LYLES:** Or, if you would, like me to just go forward towards
16 the obtaining property.

17 **THE COURT:** Well, I'm not pressing you, Ms. Scott, but do you
18 know what you're going to do on the other one or...?

19 **MS. SCOTT:** Yes, Your Honor. We will dismiss that case once
20 we start the obtaining property because it's a direct indictment on the same
21 one.

22 **THE COURT:** Okay.

23 **MS. LYLES:** Okay. Then, I'll just go — speak towards the
24 obtaining property.

25 **THE COURT:** All right. Thank you.

1 **MS. LYLES:** I have case law that I'll hand both the Solicitor and
2 Your Honor so, as I'm speaking about these cases, you all can review them.

3 **(Documents handed to Ms. Scott and up to the Court.)**

4 **THE COURT:** All right. Thank you.

5 **MS. LYLES:** Your Honor, I previously — when this case was
6 up, I did notice the Solicitor of my intent to file to squash and dismiss the
7 indictment. And we have spoken about this. So I will go a little bit into it with
8 Your Honor, but none of this is news to the Solicitor.

9 Originally, Mr. Marett was charged with a fraudulent check. He — this
10 goes under — he wrote a check. He got services from RSI, Refrigeration
11 Services, Inc.

12 They came in and installed a heat pump at his house and a check was
13 written. This is done on 7/14/ 2011. And a check was written at that time.

14 Now the check was written clearly on the check for 8/14/2011, which
15 under the law, is considered a post-dated check. If the check's date is written
16 any date after the date it's given, it's under the law a post-dated check.

17 If Your Honor would like to see the check at issue, I can approach with
18 that check.

19 **THE COURT:** Please.

20 **(Document handed up to the Court.)**

21 **THE COURT:** Okay.

22 **MS. LYLES:** So the date on the check is 8/14/11. And the date
23 of service and the date that the check was given to this company was
24 7/14/11. And none of these facts are in dispute. And, if they are, Ms. Scott
25 can stand and dispute them.

1 After that date, the actual date that RSI deposited the check, was
2 7/18/11, well before the date — of the date on the check.

3 How this can happen, if a person such as myself walks into a bank with
4 a post-dated check, the clerk inspects that check. They look to make sure an
5 address is on it. They make sure look to that it's signed.

6 They make sure that the correct date is on it. And they look for your ID
7 and things of that nature. They will not accept a post-dated check because
8 it's not legal tender. All a post-dated check is, is a promise to pay.

9 However, when a — a company is doing checks, they stamp it on the
10 back. As you can see, it's not an actual person signing the check. And you
11 can also see the date they cashed the check.

12 It's not an actual person signing that check; it's just a company
13 stamping a bunch of their checks.

14 They put it in an envelope with the cash they've received. They take it
15 to the company — they take it to the bank and put it in their night drop,
16 however they do. And it's processed through the bank in a faster process.
17 It's not done by a clerk.

18 And this is how Bank of America says things like this slide through their
19 account because they're not as closely scrutinized. And, then, it's between
20 the payee and the payor; that it's their fault. It's not the bank's fault.

21 Now, under Statute 34-11-60 (phonetic) which is the fraudulent check
22 statute in South Carolina, checks cannot be prosecuted where the payee
23 knows or has reason to know that the check is not good. Such checks
24 include those that are post-dated. Post-dated checks cannot equal fraudulent
25 checks in South Carolina.

1 I know we're not talking about the specific fraudulent check case, but
2 you have to have a background where this is going.

3 Since post-dated checks cannot equal fraudulent checks in the State of
4 South Carolina, the State decided not to go forward on this case as a
5 fraudulent check case.

6 I made them aware of the case law on this issue, which the main case
7 on point in South Carolina is *The State v. Winter* (phonetic). That 's included
8 in your packet.

9 It's not only statutory in South Carolina that post-dated checks cannot
10 be used as prosecution of a fraudulent check, but there's also case law. In
11 *State v. Winter*, it states that, "Post-dated checks are a promise to pay and
12 cannot be used as a basis for prosecuting a fraudulent check."

13 Now, I'm going to take that a state — a step further. And the case
14 that's most important in our case at hand is *State v. McCutchen* (phonetic).
15 This was heard on January 23rd, 1985 and decided March 4th, 1985. And it
16 takes some of these other cases that I have given to Your Honor and to the
17 Solicitor into account.

18 It states that, "A promise to do something in the future is not
19 representation of present or past fact and cannot constitute a basis of
20 prosecution for obtaining goods under false pretenses."

21 It further states that, "A post-dated check is a promise to pay at a
22 future can and thus cannot be a basis for prosecution for obtaining goods
23 under false pretenses."

24 Further down it says, "A false pretense is such a fraudulent
25 representation of an existing or past fact by one who knows it not to be true;

1 as adapted to induce a person to whom it was made to part with something of
2 value.

3 "A promise to do something in the future cannot constitute the basis of
4 a prosecution for obtaining goods under false pretenses. A post-dated check
5 is a promise to pay at a future time."

6 And that comes from *State v. Winter*. So that case clearly states
7 piggybacking on the fact that post-dated checks cannot be used for
8 prosecution for a fraudulent check, it takes that a step further and states that
9 they can't be used for a prosecution for obtaining goods by false pretenses
10 either.

11 It's not in dispute that this case is a post-dated check. It's clearly a
12 post-dated check by — not by a day, not by two days; it's by an entire month.

13 Notice is given in these cases for things like address to comply with the
14 statute for things like giving notice for the person to pay. Notice is by taking
15 the address off the check. They don't have to go any further.

16 In fact, in this case, Mr. Marett didn't live at that address. And the
17 company had his address in all of their documents, but on the notice that was
18 required to be given to Mr. Marett, was taking that address off his check.

19 Well, all a notice is required to — for a post-dated check, is looking
20 down at the check. There's less than five things written on that check. And it
21 is clearly written 8/14/11.

22 The bank would not have accepted this check if it had been taken to
23 them and handed to them. The fact that it was slid in, with a bunch of other
24 things is, you know, an issue, but it's not a valid check. And a post-dated
25 check cannot be used for prosecution of either of the crimes that he is alleged

1 to have committed at this point.

2 Another case that I gave you states that, "An unlawful presentation to a
3 bank of one of these checks can be considered negligence on the part of the
4 bank and negligence on the part of the payee." It states that, "If a payee
5 negligently caused premature presentation of a post-dated check resulting in
6 dishonor, the law would presume substantial damage to the drawer," and this
7 was held proper in the case of *St. Charles Mercantile Company v. Armour*
8 *and Coe* (phonetic).

9 Now, the facts in that case are a bit different because I believe it goes
10 further than negligence in that case because they actually changed the date
11 on the check. And I think that's much further than negligence.

12 But I believe it was negligence on this case, on the part of the bank, to
13 honor this check, which this case would presume that my client is entitled to
14 damages in this case.

15 (Brief Pause)

16 MS. LYLES: I did also hand up another case of *State v. Jenkins*
17 which does give some information that says that it — that it is error not to let
18 the juror know — jury know that, if a case such as this, if there's a post-dated
19 check and they find it is a post-dated check, that they have to be instructed to
20 that fact. And that, if they find it is a post-dated check, then, the client is not
21 guilty of the charge.

22 That obviously would become a later issue in the case if it did make it
23 to the jury, but that's the issue I have at this point.

24 I also have an issue with the fact, although we're not at the warrant
25 stage because we're dealing with an indictment, but to get this case to where

1 it is right now, Your Honor, the affidavit for arrest warrant was sworn out by
2 Terry Davis (phonetic). I believe he's an employee with the solicitor's office.

3 There were false allegations in the affidavit for arrest warrant. It
4 actually states that, "...the above named individual signed the check,
5 indicated in the payee's presence in Spartanburg County, and the check set
6 out above was given in return for money, services, credit, or property. And it
7 was not post dated."

8 So I have a huge issue with that; that a member of the solicitor's office
9 presented this affidavit for arrest warrant, which was signed by a judge, within
10 — which, then, got us to this — then got them to the ability to even indict this
11 case, which was based on fraud from the beginning.

12 (Brief Pause)

13 THE COURT: Anything else?

14 MS. LYLES: No, Your Honor.

15 THE COURT: Ms. Scott?

16 MS. SCOTT: Thank you, Judge. On the morning — on the
17 obtaining property under false pretenses mainly, Your Honor ----

18 THE COURT: Yes?

19 MS. SCOTT: — it does not ----

20 THE COURT: Yes, please?

21 MS. SCOTT: Yes, sir. Not only was the check — and we'll talk
22 about the post-dating in a moment — it was actually written on a closed
23 account.

24 Much of what Defense has mentioned is a promise to pay in the future.
25 This check would never have been able to be cashed because it was written

1 on a closed account. And Mr. Marett was aware at the time that it was closed
2 when he wrote such a check.

3 He essentially received a service, a actual air conditioning unit,
4 installed in his home and presented a check, along with an invoice, that was
5 presented to him, and a work order and received those services.

6 They were installed in his home. And, at the time, when it was
7 presented, they got their money.

8 The check account -- do you have that check stub with you or did she
9 take it back?

10 **THE COURT:** I do not.

11 **MS. SCOTT:** Okay.

12 **(Document handed up.)**

13 **MS. SCOTT:** The checking account at issue is a Bank of
14 America account, Account Number 00784200443. Is that what you have up
15 there, Judge?

16 **THE COURT:** Yes, ma'am.

17 **MS. SCOTT:** Mr. Marrett — Marett — I apologize — wrote
18 checks on this account, pled guilty in Magistrate Court for writing checks on
19 this account in 2010. I've got 1, 2, 3, 4, 5, 6, 7 guilty pleas on writing checks
20 on this same account after it being closed.

21 And, again, the people that were given this check, thinking that these
22 were valid checks, all these checks were returned because of — of a closed
23 account.

24 There was no promise for him to pay in the future; didn't intend for that
25 check to even go through, Your Honor.

1 We do not have this — at this stage, when we did our motions this
2 earlier date, we do not have the actual person who took the check. He'll be
3 present tomorrow. And I cannot offer testimony on his behalf.

4 I do have his statement that was written on that affidavit of service.
5 Based off of the information that they had with Mister — his name is Mr.
6 Rainey (phonetic), he believed the check to be good; did not notice this post
7 dated check.

8 It's interesting, Your Honor, that's it's just a number away from being a
9 valid check. I'm not stating that they weren't careless in making sure that
10 someone that had just installed a refrigeration services looked at the face of
11 that check and really questioned every bit and piece of it.

12 They will represent they had no idea that he had post-dated that check.
13 They thought that check was going through. And that's why they presented it
14 within a timely manner.

15 Also, it doesn't apply here mainly because of the way he double
16 frauded them. I cannot prove that Mr. Marett intentionally put that number
17 change, but I can prove that he did so knowing that check would never, ever
18 be cashed.

19 When you write a check of that nature, we're not talking about ten
20 dollars (\$10). He actually got a service; the one amount is for a very good
21 reason: They're small; they're petty. This is twenty-five (\$2,500), twenty-six
22 hundred dollars (\$2,600). And you write a check and you know it's not going
23 through. And you get to keep your refrigeration services for the entire time.

24 The case law that Defense is relying upon talks about a promise to
25 pay. I think in each case law here, there are just issues about the actual

1 account and insufficient funding.

2 However, this account, there's absolutely no way it could ever have
3 been fulfilled. I cannot stress that enough, Your Honor, as far as what the
4 difference of the issues here are.

5 Also, in — in addition to the statement or the affidavit that was signed
6 — I got to bring that up again — if we go back tracking on to what the
7 fraudulent check statute states, Your Honor, I'm not here to argue about the
8 post-dating matter.

9 However, even within the actual statute, 34-11-80, it talks about where
10 the payee or the — or the holder, that being Refrigeration Services, that they
11 know or have good sufficient reason to believe that Tom Maret's check did
12 not have sufficient funds at that time.

13 (Brief Pause)

14 **MS. SCOTT:** I don't believe that they would have taken the
15 check knowingly that it was on a closed account. At that point, you've just
16 taken — basically taken a sheet of paper and left your work — your work
17 product, your actual company's product, and left it in the home and taken a
18 piece of paper and just thought that, that was it.

19 There's wasn't no agreement here; it doesn't even show there's an
20 agreement that they thought that they could get the check cashed later on.

21 That's just our argument, Your Honor. We don't believe the post-dated
22 part applies in this incidence; this promise to pay was never a promise that
23 could have been fulfilled. Thank you.

24 **THE COURT:** Tell me about the — Ms. Scott, tell me about the
25 warrant.

1 **MS. SCOTT:** Your Honor, yeah. This was originally a fraudulent
2 check case. What happened was, Refrigeration Services had to go to the
3 worthless check unit and present a form, which that form is not present here.

4 There is an affidavit that the actual person who comes up to the
5 solicitor's office has to fill and they have to do a question and answer.

6 Unfortunately, the affidavit for an arrest warrant is a — a standard form.
7 What we have here is we'll have — either Ms. Sheila Henderson or Ms. Lib
8 Jackson — I call her Lib; I don't recall her by her name — will fill in the blanks
9 at this point, the part where you see underlined things.

10 The last paragraph is a boilerplate template there talking of — talking
11 — talking of, "The check above was given in return for money, services, or
12 property and it was not post-dated for a pre-existing debt." That is just
13 standard boilerplate language, Your Honor.

14 **THE COURT:** All right.

15 **MS. SCOTT:** I do believe that was in error on the form part did
16 not have the position where you take into account or you have an issue where
17 someone wrote a check on an account being closed and having that actually
18 be a portion to fill in as opposed to it already being presented there.

19 **THE COURT:** Anything else, Ms. Scott?

20 **MS. SCOTT:** No, sir.

21 **THE COURT:** Ms. Lyles, anything else?

22 **MS. LYLES:** Your Honor, I would just add that nowhere does it
23 say that there has to be an agreement that the check is post-dated. It just
24 says that post-dated checks are not a basis for a prosecution. It says that this
25 is a civil issue.

1 I've said it numerous times, they should have put a mechanic's lien,
2 come and gotten it. He would have given it up at any time. You know, we
3 have issues with the fact that they didn't put in the right equipment any way.

4 He's been trying to get them to take it back for a long time any way.
5 So the fact that they feel that, you know, he wouldn't give it back; come get it.
6 I mean, he was willing to give it back.

7 So there's — there does not have to be an agreement. I mean, it's just
8 the fact that a post-dated check, which this is, is not a basis for a prosecution
9 of either one of these charges.

10 And, you know, as for this being a form, I — you know, you supposed
11 to read what you sign. And you can't say that, when you take something to a
12 judge just because you didn't read it, I mean, I believe that's a — a huge issue
13 that someone presented something to a judge to sign saying that, that was
14 the truth. And it certainly is not in this case.

15 **THE COURT:** Let me ask you this, Ms. Lyles. I've got a couple
16 of questions.

17 **MS. LYLES:** Okay.

18 **THE COURT:** If — well, I'll just use an example that I know of.
19 There are some young people that several years ago, when laser printers first
20 came out — and actually they were some children of some very nice people,
21 and — and some of them worked in some law firms in Spartanburg.

22 They came home from school one afternoon — they were 17 or so.
23 They took this laser printer and — and they created what appeared to be
24 some money, okay? That's a federal offense of course.

25 Now was that money that they created?

1 (Brief Pause)

2 MS. LYLES: It's forged money.

3 THE COURT: Yeah, but was it money?

4 MS. LYLES: Yes.

5 THE COURT: You think so?

6 MS. LYLES: It's forged money.

7 THE COURT: It's forged money, but is it money or is it just a —
8 or is it a piece of paper that looks like money? And only the government can
9 create money, right?

10 MS. LYLES: Correct.

11 THE COURT: Okay. So was it money or was it — or was it a
12 fake, a forgery?

13 MS. LYLES: It's a forgery.

14 THE COURT: Okay. It's not the real thing, right?

15 MS. LYLES: Correct.

16 THE COURT: Okay. Well what's the difference, then, if there's
17 an account that's closed?

18 Now, I'll agree with you that a post-dated check — and — and I thought
19 you were heading in a really good direction there, but I don't need the case
20 law; I know what a post-dated check is. A post-dated check is a promise to
21 pay.

22 MS. LYLES: Correct.

23 THE COURT: And I agree with you about the damages; I'm
24 familiar with that. Because a check, as I understand the banking laws — and
25 commercial paper was one of my favorite courses — but under — under the

1 commercial code, or under the banking code, it's my understanding that a
2 post-dated check is a -- a check period is an order to pay.

3 When I write you a check, that's an order for the bank to pay you from
4 my account, right?

5 **MS. LYLES:** Correct.

6 **THE COURT:** All right. Well, if I write -- well, if anybody -- if
7 anybody writes what appears to be a check, on a piece of paper, and there is
8 no underlying account, it could never be a post-dated check because it could
9 never be a promise to pay from anything; it's -- it's a piece -- it's a writing or
10 instrument, but it's not a check.

11 It might look like a check, but it's not a check. But kids with a computer
12 can create that, right?

13 **MS. LYLES:** Well, I have two things to say to that.

14 **THE COURT:** Okay.

15 **MS. LYLES:** The first would be that a post-dated check is -- the
16 definition of it is a promise to pay.

17 **THE COURT:** Yes, ma'am.

18 **MS. LYLES:** And this check was written thirty (30) days out.

19 **THE COURT:** I agree.

20 **MS. LYLES:** So I give you a promise to pay ----

21 **THE COURT:** Yes, ma'am.

22 **MS. LYLES:** ---- in the form of a check.

23 **THE COURT:** I agree.

24 **MS. LYLES:** So that's just a piece of paper that is basically
25 promising you I will pay you twenty-six hundred dollars (\$2,600).

1 **THE COURT:** I'm agreeing with you. Go ahead.

2 **MS. LYLES:** So any time in that next 30 days I can come to you
3 with twenty-six hundred dollars (\$2,600) in cash ----

4 **THE COURT:** Yes, ma'am.

5 **MS. LYLES:** — and we can change the cash for the check.

6 **THE COURT:** Sure can.

7 **MS. LYLES:** So it doesn't matter if I wrote a scribbly piece of
8 paper that says, "I promise to pay you \$2,600," sign it Mary Stuart Lyles,
9 notarized, we both sign it ----

10 **THE COURT:** Sure.

11 **MS. LYLES:** — that's the same as this check is.

12 **THE COURT:** It's a promissory note?

13 **MS. LYLES:** It's a promise to pay. So ----

14 **THE COURT:** Yes, ma'am. It's a promissory note?

15 **MS. LYLES:** That's all this was, was a promise to pay. I don't
16 — it's a piece of paper that says, "I promise to pay you this amount."

17 And also the fact is, is that, if they had waited until that date to find out
18 if it was good or if it was not good, we would be sitting here in court with no
19 defense.

20 And he was not given the chance to make his promise to pay good.
21 They turned around and four days later cashed a check that is not legal in the
22 State of South Carolina. That piece of paper is a promise to pay, as everyone
23 agrees in this courtroom.

24 That piece of paper, whether it was a closed account, whether it was a
25 open account, whether he had a million dollars in it or not, was a non-legal

1 piece of paper.

2 So, if he had a million dollars in that account and they cashed it and it
3 went through well, then, we would still have an issue because he did not
4 agree, by posting dating it, to let them cash it.

5 **THE COURT:** Until the 30th?

6 **MS. LYLES:** Until the 30th. So all of that they're bringing up, the
7 fact that it was a closed account, that's — I understand they're upset about
8 that, but this is a civil issue.

9 Until that 30th day came, they can't say whether or not that — that
10 money would have come through or not. They can't say whether or not he
11 would have walked in with cash; whether he would have walked in with a
12 certified check, whether he would have walked in and said, "Oh, I wrote this
13 on the wrong check. I'm sorry, here you go. Here's the actual check that it
14 was supposed to be."

15 We don't know any of that because this company jumped the gun and
16 cashed a check when they should not have. And it's not legal. That's —
17 that's where we are.

18 **THE COURT:** All right. Well, have — Ms. Scott, let me ask you,
19 did they redeposit the check?

20 **MS. SCOTT:** Did they redeposit this check?

21 **THE COURT:** They didn't cash it, right?

22 **MS. SCOTT:** They could not cash it, it was —

23 **THE COURT:** Right. Did they try — did they try to negotiate it
24 after August 30th?

25 **MS. SCOTT:** Did they try to negotiate with Mister ----

1 **THE COURT:** No, the bank? Did they try to cash the check after
2 August 30th?

3 **MS. SCOTT:** No, sir. Once the bank lets you — once the bank
4 let's you know that the account is closed — and actually, Mr Marett didn't
5 have any other account with Bank of America other than one he closed. He
6 had no other accounts. They could not, then, negotiate that check with Bank
7 of America.

8 **THE COURT:** Right. But I'm — yeah, I understand.

9 **MS. SCOTT:** Yes, sir.

10 **THE COURT:** But did they attempt to a second time over — after
11 the 30th of August re-nego — did they attempt to negotiate the check if that 's
12 what it's called?

13 **MS. SCOTT:** No, sir, not with the Bank of -- not to my
14 knowledge. I don't believe they went — returned to that bank and tried to
15 negotiate that check again.

16 **THE COURT:** Okay.

17 **MS. SCOTT:** Is it my turn or ----

18 **THE COURT:** Yes, ma'am. I'll be happy to hear from you.

19 **MS. SCOTT:** Thank you, Judge. There was made mention that
20 they could take the refrigeration or take the unit back. Notice was given to
21 Mr. Marett on the address of the check by the solicitor's office.

22 Also, the company itself, once the check wasn't valid, was obviously
23 appalled. There's been no record of him attempting to return the actual
24 refrigerating service until this hearing ---

25 **THE COURT:** They don't want it back. They don't want it back;

1 it's a used unit now.

2 **MS. LYLES:** While she says this, their attempt, I'd like you to
3 see it was "return to sender." So he did not have notice from the solicitor's
4 office.

5 **(Documents handed up.)**

6 **MS. SCOTT:** The actual statute says that we are to give service
7 to the actual address that's posted — that's on the check. And just as the
8 account isn't real, the address isn't real.

9 That 's not what the statute commands is for the solicitor's office to,
10 then — to, then, find out where he's currently residing. This is the check that
11 he proposed to be representative of him.

12 Going back, Your Honor, to the promise to pay, this piece of paper, if
13 we were to state that it was enough, Judge, at this point we, then, have to
14 decide if there needs to be an agreement at this point if it's just a piece of
15 paper and that he in a sense planned on paying in 30 days. And this was his
16 promise to pay in that regard and he followed the way his counsel is stating at
17 this point.

18 Judge, the Refrigeration Services has no collateral on that part.
19 They've taken a piece of paper that really at this point is a piece of paper.

20 Usually, when you go somewhere and you left something — you leave
21 your car keys, you leave something for someone to be able to know they're
22 coming back for this.

23 But, if we are to state that — forgetting that the — the check was
24 written on a closed account, this was some sort of promissory note, it's on his
25 favorable light at this point because I am arguing that this is just a piece of

1 paper.

2 But, if this was a promissory note, he had every intention, within 30
3 days of doing so, that would have needed to have been actually — a
4 conversation like that would have needed to be had between him and
5 Refrigeration Services.

6 It's clear that wasn't the case because they went ahead and they
7 cashed it. It's also clear because, if it meant nothing, they've actually left a
8 whole unit and in good faith and walk away from that.

9 This — this company will testify they are a small company. This is not
10 a Home Depot. There's no line of credit that they're doing with him
11 unilaterally to take something from him. All they do have is the — the lien at
12 that point.

13 Judge, this really hangs on this promise that was never going to be
14 fulfilled. A check that they will still testify did not know was post-dated; a
15 service that they went out and provided for Mr. Marett, have still not received
16 any money for.

17 Mr. Marett has been given notice about this, even beyond the solicitor's
18 office attempt to have him settle up this debt before the arrest was made, in
19 addition to actually the arrest to the charge, and up until 2013 where we're
20 still talking about a 2011 refrigeration unit still in the home. At this point, as
21 you stated before, but obviously, at this point, two years later, they do not
22 want it back.

23 As far as the arrest and warrant, Your Honor, the direct indictment has
24 corrected that. I say that it was based off the warrant, but I don't believe I put
25 the numbers — I don't think I can once it's indicted. It's just a direct

1 indictment based on the facts.

2 (Brief Pause)

3 THE COURT: Anything further?

4 MS. SCOTT: No, sir.

5 (Brief Pause)

6 THE COURT: All right. This other matter will take about — a few
7 minutes; it won't take long. We're going to confer right behind the door here
8 for a minute.

9 We'll be right — we'll be back with you as quick as we can.

10 (Off-the-Record Comments)

11 THE COURT: Okay. You all just stand at ease. Is that — is that
12 the only two motions we have?

13 MS. LYLES: Yes, Your Honor.

14 THE COURT: Okay.

15 (Brief pause while the Court and law clerk stepped out.)

16 (Off-the-Record Comments)

17 (Pause in pre-trial while the verdict in another case was taken.)

18 (Off-the-Record Comments)

19 THE COURT: Okay. We've — we've done a little bit of research
20 and we would call everybody's attention to South Carolina jurisprudence as
21 well, which supports the decision — or I think supports the decision of the
22 Court at this point in time.

23 Ms. Lyles, we're going to — the Court now denies both of your
24 motions. First of all, as to the closed account, the Court finds that, that is a
25 closed account. And it was a closed account at the time that he wrote the

1 writing. I'm not referring to it as a check because the Court is going to find
2 that it's not a check.

3 It was a — it was a mere piece of paper. It was a false representation
4 of a check for it. And the Court is well aware of what the law is on a post-
5 dated check.

6 If it's a post-dated check, on a valid account, then, it is an order to pay
7 in the future. And I agree that a post-dated check is a — at that point in time,
8 is a contract to pay in the future; however, what is before the Court is a false
9 writing.

10 It appears to be a check; it is not a check. It could not be a check
11 because there was no — no account for it to be a check on, that account
12 having been previously closed at some point in time. And I don't know when
13 that was, but it was previously closed.

14 Therefore, it is not a check. It is a writing or an instrument that
15 purports to be a check. Therefore, it is not a post-dated check.

16 And that also addresses the issue about the warrant when the
17 solicitor's office personnel signed the affidavit that said that it was not a post-
18 dated check. The Court finds it wasn't a post-dated check and, therefore,
19 there is no problem with the affidavit that was given to the Magistrate.

20 That's number one. Number two, of course, as the prosecutor has
21 pointed out, there was a direct indictment in this particular case. So whether
22 or not this is an obtaining goods by false pretenses, it's a jury issue and
23 they're going to get to decide that tomorrow I'm sure. We're going to start at
24 9:00 a.m.

25 But, at this point in time, that's what the Court finds; that this was a

1 false representation of a check.

2 As to whether or not, even if it were a closed account and the check
3 constituted a promissory note, well, the Court finds that, at that point in time,
4 the elements of contract law kick in.

5 And, to be a perfect example of that, I wrote to myself a note on a little
6 piece of paper right here, and I said, "I promise to pay," and I asked myself:
7 "Is that a contract?" "Is it a promise to pay?"

8 It is. But I doubt seriously whether or not that Refrigeration Services
9 Company would have taken that as payment on that particular date. So there
10 was no meeting of the minds.

11 There is absolutely nothing before the Court that they agreed to take a
12 promissory note. And the Court finds there was no such agreement at this
13 point in time. Therefore, your motions are denied.

14 Anything else?

15 **MS. SCOTT:** Nothing from the State.

16 **THE COURT:** Yes, ma'am?

17 **MS. LYLES:** Your Honor, you've made these rulings in regards
18 to what you — that you feel this was not a check at all.

19 **THE COURT:** That's right.

20 **MS. LYLES:** So, you know, in these cases, it allows for a jury
21 instruction to be issued at the end if the jury finds that it's a post-dated check,
22 then, they can find my client not guilty.

23 Is that going to be something that I'm allowed to argue throughout the
24 trial and entitled to an instruction? Or are you, at this time, finding that this is
25 not a check; that, that cannot be an issue in our case at all whether or not it's

1 post-dated?

2 **THE COURT:** Well, let me ask you this: In those cases, was
3 there an underlying account that was open?

4 **MS. LYLES:** Well, that's not brought up in the case law. It
5 doesn't say ----

6 **THE COURT:** Okay.

7 **MS. LYLES:** ----- whether -- because they don't get to the point of
8 whether or not it was satisfactorily, you know, taken care of.

9 **THE COURT:** Right.

10 **MS. LYLES:** They don't ever get to that point.

11 All these cases talk about is it was a post-dated check.

12 **THE COURT:** Okay. At this point, the Court is making a finding;
13 a clear, bright line rule that, if that's what you need -- and I know it is, that's
14 what you need, Ms. Lyles, that it is not a check period.

15 **MS. LYLES:** Okay.

16 **THE COURT:** Okay?

17 **MS. LYLES:** Thank you.

18 **THE COURT:** All right.

19 **(Brief Pause)**

20 **THE COURT:** Anything further?

21 **MS. LYLES:** No, Your Honor.

22 **THE COURT:** Okay. It's about 4:26. We -- is there anything
23 else that we have that we can do till 5:30 or so, 6 o'clock?

24 **MS. SCOTT:** Ah ----

25 **THE COURT:** I'm kidding. I'm kidding.

1 **MS. SCOTT:** Okay.

2 **(Off-the-Record Comments)**

3 **THE COURT:** Ms. Scott, you and Ms. Lyles have done more
4 than enough today.

5 **(Laughter)**

6 **THE COURT:** Let's be in recess until 9 o'clock tomorrow
7 morning. Again, for the lawyers, I will be here before 8 o'clock or very, very
8 close to 8:00 a.m. if you need either of us, Mr. Odom (phonetic) and I are
9 usually here by then.

10 They have some really good coffee around here. So, if you need us,
11 we'll be happy to talk with you. Otherwise, about 8:50 or thereabouts we'll be
12 planning on getting ready to coming on into the courtroom. Okay?

13 **MS. SCOTT:** Thank you.

14 **MS. LYLES:** Thank you, Your Honor.

15 **(Whereupon, court was adjourned at 4:27 p.m.)**

16 **(Court reconvened at 9:06 a.m.)**

17 **(Whereupon, State's Exhibit Numbers 1 through 4 were marked**
18 **for identification.)**

19 **(Off-the-record comments regarding missing one juror.)**

20 **(Brief Pause)**

21 **THE COURT:** Okay. Anything before we bring the jury in?

22 **MS. SCOTT:** Well, we have — the Defendant have — the
23 Defendant needs to be arraigned on these charges on the direct — the direct
24 indictment of obtaining property by false pretenses.

25 **THE COURT:** I'm sorry?

1 **MS. SCOTT:** The Defendant needs to be arraigned on the direct
2 indictment, Your Honor.

3 **THE COURT:** You want to be arraigned or do you waive
4 arraignment?

5 **MS. LYLES:** We waive arraignment on the direct indictment.

6 **MS. SCOTT:** Okay.

7 **THE COURT:** Is that sufficient?

8 **MS. SCOTT:** Yes, sir.

9 **THE COURT:** He can -- can waive it, right?

10 **MS. SCOTT:** He can waive it, Judge. And I think that, yes, sir,
11 and Ms. Lyles can speak for him.

12 **THE COURT:** Yes, ma'am. Do you want me to read it to him?

13 **(Off-the-Record Discussion)**

14 **MS. LYLES:** No.

15 **THE COURT:** You don't want to be arraigned?

16 **THE DEFENDANT:** No, sir.

17 **THE COURT:** Okay. You waive arraignment?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. On the record, he waives arraignment. All
20 right. Any matter before we...?

21 **(No Response)**

22 **THE COURT:** Does anybody need to put anything on the record
23 before we bring the jury? We've got to swear them, correct? I mean, I know
24 we haven't.

25 **MADAM CLERK:** (Nods affirmatively.)

1 **THE COURT:** No other matters? Okay.

2 **MS. SCOTT:** May we approach, Judge?

3 **THE COURT:** Sure.

4 **MS. SCOTT:** Okay.

5 **(Whereupon, a bench conference was had with both attorneys**
6 **present.)**

7 **THE COURT:** All right. Let's have our jury.

8 **(The jury was summoned and entered the courtroom at 9:09 a.m.)**

9 **(Off-the-Record Comments)**

10 **THE COURT:** Good morning, Mr. Foreman and ladies and
11 gentlemen of the jury. Thank you for being here this morning. We're ready to
12 go in the trial of this case.

13 Madam Clerk, would you swear our jurors?

14 **MADAM CLERK:** Yes, sir.

15 **(Jury impaneled at 9:11 a.m.)**

16 **PRELIMINARY INSTRUCTIONS**

17 **THE COURT:** Now, ladies and gentlemen of the jury, the case
18 we are about to try is the case of *The State of South Carolina vs. Thomas*
19 *Marett*, the Defendant in this matter.

20 And, before we begin this trial, I want to tell you that this trial will
21 probably be different from what you might expect. Many people do not have
22 a chance to attend actual court session, as you're doing now, and may think,
23 from watching television or movies or even books, that trials are always full of
24 high drama, intense action, and riveting circumstances.

25 While all of these may be true at times, this trial is not for

1 entertainment. It's a fundamental part of our democracy; a search for the
2 truth in an effort to make sure that justice is done between the parties before
3 the Court.

4 Now searching for truth and making sure that justice is done is often
5 slow, deliberate, repetitive; the opposite of what you may see on television or
6 movies or read in books.

7 This courtroom is a place of honor dedicated to the protection and
8 preservation of citizens' rights through what many have called the greatest
9 justice system ever created.

10 The attorneys appearing before you are advocates for the parties that
11 they represent, but first and foremost, they are officers of this Court, sworn to
12 uphold the integrity and fairness of our judicial system and to help you in the
13 search for the truth.

14 You should expect them to be professional, competent, courteous, and
15 ethical in the representation of their clients' interest. You're also expected to
16 be professional, reasonable, and ethical. We thank you for accepting this
17 responsibility to serve as jurors with us today.

18 Now, what I say now is intended to serve as an introduction to the trial
19 of this case. My remarks are not a charge on the law in this case. I'll instruct
20 you on the law applicable to this case at the end of the trial before you retire
21 to your -- consider your verdict. This is merely an explanation of the
22 procedure that we will follow in the trial of this case so that you may better
23 understand what may be happening.

24 You are not to take any notes during the trial. As I previously told you,
25 the Defendant was charged by an indictment filed with the Court for the crime

1 of obtaining property by false pretenses, the elements of made — which will
2 be explained to you later.

3 The indictment itself, this piece of paper (indicating), is simply the
4 charge by which the case is brought into the court and is not in any sense
5 evidence of any of the allegations it contains.

6 The Defendant in this case has pled not guilty to the indictment. The
7 State, therefore, has the burden of proving each of the elements of the
8 indictment beyond a reasonable doubt. And it will be your duty, ladies and
9 gentlemen, to decide whether the State has met that burden.

10 Your purpose as jurors is to find and determine the facts. You are the
11 sole judges of the facts. If at any time that I make any comment regarding the
12 facts, you must disregard it.

13 You are to determine the facts from the testimony you hear and the
14 other evidence introduced in court. It is up to you to determine the inferences
15 which you feel may properly be drawn from the evidence.

16 It is especially important that you perform your duty of determining the
17 facts diligently and conscientiously because ordinarily there is no way to
18 correct an erroneous determination of the facts by a jury.

19 On the other hand, and with equal emphasis, the same law that makes
20 you the judge of the facts makes me the judge of the law. The law as given
21 by the Court is the only law you may consider. You must accept it and follow
22 if even if you — even if you disagree with it.

23 I cannot tell you what the facts are and you cannot disagree with me
24 about what the law is or should be. Your job is to take the law, as I give it to
25 you, and apply it to the facts as you find them from the testimony of the

1 witnesses and other evidence that is introduced.

2 After doing that, you will render a verdict, a verdict under the solemn
3 oath that you just took as jurors. Until I tell you that you may begin to
4 deliberate, you must not discuss the case with anyone, including your fellow
5 jurors, friends, family members, and anyone involved in this case.

6 The attorneys and the parties in this case have been advised by me
7 that they are not to talk to you at all. So, if you see anyone involved in the
8 case and they don't speak to you, they're not being unfriendly; they're just
9 following my instructions.

10 You must decide this case based solely on the evidence presented
11 here in this courtroom. This means that, during the trial, you must not
12 conduct any independent research about this case, the facts of the case, the
13 evidence presented in the case, or the people or organizations involved in
14 any way in the case.

15 Please do not try to learn information from any source outside this
16 courtroom. In other words, you must not look at dictionaries or reference
17 materials, search the internet, websites, or blogs, or use any other electronic
18 tools to get information about this case or to help you decide the case.

19 You may not use computers, telephones, cell phones, smart phones,
20 tablets, the Internet, or other tools of technology with communication
21 capabilities at any time while you are in the courtroom or during your
22 deliberations.

23 During your breaks for meals or overnight, if necessary, you may use
24 these devices; however, you must not use these devices to communicate with
25 anyone about the case until the case is over.

1 This means you must not use phone calls, emails, text messages,
2 instant messages, Twitter, or any other blog, chatroom, or web site, including
3 Facebook, Google Plus (phonetic), My Space, Link In (phonetic), U-Tube, or
4 any social media web sites to send or receive information about this case.

5 This includes information about a party, a witness, an attorney, or an
6 officer of the Court, news accounts about the case, research on any topics
7 raised, any topics you may think would be helpful in deciding the case, or any
8 testimony presented by any witness.

9 During the trial, do not read, listen to, or watch any news reports about
10 the case. This includes anything that may be in newspapers or on the
11 Internet, radio, or television.

12 You must not consider anything you may have read or heard about the
13 case outside the courtroom whether before or during the trial. Information on
14 television, radio, Internet or from other sources might be wrong or incomplete.

15 In our judicial system, it is important that you are not influenced by
16 anything or anyone outside this courtroom.

17 If you become aware of another juror's violation of my instruction,
18 please, inform me immediately. It is important that you keep an open mind
19 and not decide any issue in this case until all of the evidence has been
20 presented, the parties have made their closing arguments, and I have
21 instructed you on the law in this case.

22 It is your solemn responsibility to determine the guilt or innocence of
23 the Defendant and your verdict must be based solely on the evidence as it is
24 presented to you in this trial in this courtroom and on the law as I instruct you
25 during and at the close of the trial.

1 In just a moment, the Solicitor will make what is called an opening
2 statement, in which the Solicitor will explain to you the issues in this case, or
3 at least what the Solicitor thinks the issues are in this case.

4 The attorney for the Defendant may also make an opening statement,
5 although she is not required to do so. What the attorneys tell you during their
6 opening statements is not evidence in the case; it is only their contention as
7 to what the issues are.

8 The evidence in this case will be presented to you by the testimony of
9 sworn witnesses from that witness stand and/or exhibits that may be
10 introduced into evidence.

11 From time-to-time during this trial, you may hear one of the lawyers
12 say, "Your Honor, I believe we have a question of law or a matter of law to
13 discuss with you," or "Your Honor, may we approach the bench," or
14 sometimes I might find it by my – I myself might find it necessary to excuse
15 you from the courtroom for a short while so the attorneys and I can discuss a
16 matter of law.

17 The reason for this is because you are the judges of the facts in this
18 case and sometimes, when I am discussing a matter of law with the
19 attorneys, it may be necessary for me to make some comment as to the facts
20 in connection with ruling whether or not a particular law applies.

21 I am not supposed to tell you about what any of the facts are, so when
22 I — so I will excuse you from the courtroom while these discussions take
23 place so that in no way will you be influenced by anything that I might say or
24 do in connection with the facts.

25 In determining what the true facts are in this case, you must decide

1 whether or not the testimony of the witnesses is believable. It will be my
2 responsibility to rule, as a matter of law, as to whether certain testimony is
3 admissible or not at all. But, once the testimony is admitted, whether or not
4 you believe it is solely up for you to determine.

5 In deciding whether to believe a witness, you have the right to consider
6 the interest of any witness, the bias of any witness, the prejudice of any
7 witness, the opportunity for the witness to have seen the matter and things
8 about which the witness may testify, and the way the witness acts on the
9 witness stand.

10 You have a right to consider anything that is in the record that will help
11 you evaluate the testimony of the witness. That means that it is your duty to
12 pay close attention to the witness, to observe the witness, to listen to the
13 witness, and to pay close attention to the attorneys and to the Court.

14 Please, don't let your thoughts wander, but give strict attention to the
15 testimony in this case. So, at the end of all the testimony, and after the
16 arguments of counsel, and the charge on the law by the Court, you'll be in a
17 position to determine what the true facts are and to apply the law to those
18 facts and render a verdict.

19 Again, we ask you to, please, be prompt in your jury service. And, if
20 we ask you to be here at a certain time, please, do so.

21 Now, Mr. Foreman, it is your duty to preside in the jury room and to be
22 the jury spokesperson here in court. It is also your duty to write the verdict,
23 but I will give you further instructions about that at the conclusion of the case.

24 I ask you that you and the alternate juror to seat -- to continue to sit in
25 the seats that has been assigned by our bailiffs but everybody else, as I told

1 you yesterday, is free to move around. But we just simply ask that the two of
2 you sit in the seats that are assigned. But, again, everybody else can move
3 around and are free to do so.

4 Now, Mr. Foreman, I know we're getting ready to start this case. And,
5 as I just told you, there are certain matters of law that have to be taken up
6 outside of your presence.

7 And as I promised you, we were here before 8 o'clock this morning and
8 I am advised that I have one matter of law that needs to be taken up. So I
9 know we just brought you in, but we had to bring you in and administer the
10 oath and welcome you here this morning.

11 We will be very brief, but at this point, we're going to ask you, Mr.
12 Foreman, to follow our bailiff here and return to your jury room just for a few
13 moments.

14 You might have time to get a drink of water or something but we won't
15 be long at all, okay?

16 **(The jury exited the courtroom at 9:21 a.m.)**

17 **THE COURT:** Ms. Scott, I think you had a matter about adding a
18 witness; is that correct?

19 **MS. SCOTT:** Yes, Your Honor.

20 **THE COURT:** Okay. And the name of that witness you want to
21 add?

22 **MS. SCOTT:** Jeff Ballenger (phonetic).

23 **THE COURT:** All right. And Mr. Ballenger is in the courtroom?

24 **MS. SCOTT:** Yes, sir.

25 **THE COURT:** Okay. Is there – is there any objection to adding

1 Mr. Ballenger to the witness list?

2 **MS. LYLES:** No, Your Honor.

3 **THE COURT:** Okay. All right. He is so added to your witness list
4 and will be allowed to testify. Anything else from the State?

5 **MS. SCOTT:** No, Your Honor.

6 **THE COURT:** Okay. Defense?

7 **MS. LYLES:** Yes, Your Honor. At this time, I would renew my
8 motion from yesterday; my motion to dismiss the indictment in this case.

9 At this time, I feel, based on your ruling, that it was a closed account. I
10 feel that, that's an unnecessary element in our argument.

11 I feel that for the post-dated check to get that far you would have to
12 have gotten to that date to know it was a closed account. And I don't feel
13 that, that was an element discussed in any of the cases. So I would renew –
14 renew my motion to dismiss at this time.

15 **THE COURT:** Yes, ma'am. And it's proper for you to do so.
16 And at this time I — I choose to — I'm following my ruling of yesterday; I'm not
17 changing my ruling.

18 And, furthermore, the Court finds that the writing is — is not a check. A
19 check is an order to pay funds from an account at a financial institution.

20 In the incident case, when the writing was made, there was no account
21 at any financial institution that could possibly recognize the writing as a check.
22 The writing was a forgery that purposed to be a check. And the fact that the
23 writing had the appearance of a check, and was in a check-like form, did not
24 make it a check.

25 A check is only a check when there is an underlying account from

1 which funds could be drawn, whether or not sufficient funds were on deposit
2 by the account holder. That's the ruling of the Court.

3 **MS. LYLES:** Okay, Your Honor. And I do want to clarify one
4 ruling from yesterday just to make sure that I understand it and that it is an
5 actual order of the Court; that I am not to argue to the jury the post-dated
6 check issue?

7 **THE COURT:** That's — that's correct.

8 **MS. LYLES:** Okay.

9 **THE COURT:** It's a — it's a post-dated writing. You can argue
10 that; it's a post-dated writing. I will allow you to argue that it is — that it may
11 be a promissory note.

12 **MS. LYLES:** Okay.

13 **THE COURT:** All right? And the jury — it'll be up to the jury to
14 find — to find whether or not it is a promissory note, but that goes into
15 contract law as we discussed yesterday.

16 And I'm sure that — that the State will flush out whether or not there
17 was an intended contract entered into by the victim or the alleged victim in
18 this case — I don't know at this point — and the Defendant as to whether or
19 not.

20 But I'll allow you to argue that it is a — that the writing is a promissory
21 note or that your client may have thought so or whatever. But it's not a check.

22 **MS. LYLES:** Okay.

23 **THE COURT:** Okay?

24 **MS. LYLES:** For purposes — and I don't mean to be ----

25 **THE COURT:** You're not.

1 **MS. LYLES:** --- difficult ---

2 **THE COURT:** You're not.

3 **MS. LYLES:** — but I want this flushed out before we start the
4 trial. Obviously, the people involved, they're going to be calling this a check.
5 Is it proper for us to call it a check? Or should the State called it a promissory
6 note and should we call it a promissory note?

7 **THE COURT:** Well, I'm calling it a writing.

8 **MS. LYLES:** Okay. Should the State call it ---

9 **THE COURT:** I'm — I am referring to it as a writing.

10 **MS. LYLES:** Should the State and their witnesses call it a
11 writing and should we call it a writing or...?

12 **THE COURT:** That's what I'm going to refer to it as, Ms. Scott.

13 **MS. SCOTT:** Your Honor, I was going to call it a false
14 representation of a check.

15 **THE COURT:** A false representation of a check, a writing.

16 **MS. SCOTT:** A writing.

17 **THE COURT:** Yeah.

18 **MS. LYLES:** Okay.

19 **THE COURT:** But I've — I've ruled it's not a check.

20 **MS. LYLES:** Okay. And, furthermore, you've also ruled that
21 you will not give that jury instruction for the posted-dated check issue?

22 **THE COURT:** We'll have a charge conference. We'll see how
23 the testimony flushes out and we'll discussed that at the charge conference.

24 **MS. LYLES:** But it's clear that wouldn't make sense; if it's not a
25 check, that will not be given?

1 **THE COURT:** At this point, that's right, yeah.

2 **MS. LYLES:** Okay. Thank you, Your Honor.

3 **THE COURT:** Now, let me ask you this: Have you gone over —
4 have you gone over all of this? I don't want to get into the attorney/client
5 privilege, but have you discussed what — what the effect of the ruling means
6 to your client?

7 **MS. LYLES:** I have, Your Honor. After the motion hearing
8 yesterday, we did spend a significant amount of time across the hall.

9 **THE COURT:** Okay.

10 **MS. LYLES:** And I let my client know what the effect of your
11 ruling was on this case. And ----

12 **THE COURT:** Okay. Again, I don't want to get into the
13 attorney/client, but I just want to make sure — I know you have; I mean, I
14 know how thorough you are, but I just wanted to make sure that your client —
15 you discussed that with your client and he understands that fully?

16 **MS. LYLES:** He does understand that fully.

17 **THE COURT:** Mr. Marett, I'm going to ask you: Do you under—
18 have you had sufficient time to talk with your lawyer?

19 **THE DEFENDANT:** No, Your Honor.

20 **THE COURT:** You're not?

21 **THE DEFENDANT:** No, sir. I felt like yesterday that she
22 touched on it, but she didn't go into the depth.

23 **THE COURT:** That doesn't matter. We're not going to talk about
24 that. I've already made a ruling, okay? It's not a check. Now, do — do you
25 need time to talk to her about the — the fact that a defense — the potential

1 defense that you thought you had, you don't have; do you understand that?
2 Do you need to talk to her about that?

3 **THE DEFENDANT:** Well, I -- I don't understand why I would
4 not. I -- I -- I understand, if they prosecute, we have the right to defend, Your
5 Honor.

6 **THE COURT:** Yes, sir, you have a right to defend. I -- I
7 guarantee you do.

8 **THE DEFENDANT:** And so, for that reason, I'm confused. I
9 don't understand why we're restricted if they're not restricted.

10 **THE COURT:** Okay. But the ruling of the Court stands, Mr.
11 Marett, so do you need about five minutes or four minutes because I'm not
12 holding my jury up. But do you need a couple of minutes?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** You got a very good lawyer sitting there.

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** Do you need a few minutes to talk to her?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** All right. We're going to take a few minutes. Ms.
19 Lyles ----

20 **MS. LYLES:** Okay.

21 **THE COURT:** ---- why don't you talk to him a few minutes and
22 we'll stand at ease.

23 **MS. LYLES:** I'll -- I'll take him to Judge Couch's for a little bit.

24 **THE COURT:** Okay. Very good.

25 **MS. LYLES:** Thank you, Your Honor.

1 **THE COURT:** You got an idea — I know you don't know, but you
2 want about ten minutes with him?

3 **MS. LYLES:** That would be great. Thank you.

4 **THE COURT:** All right. We're going to give you — we're going to
5 give you 15 minutes; how about that?

6 **MS. LYLES:** Okay, great. Thank you.

7 **THE COURT:** We'll be in recess.

8 **(Whereupon, a recess was taken from 9:27 a.m. till 9:32 a.m. to**
9 **allow Ms. Lyles to speak to her client.)**

10 **THE COURT:** Yes, ma'am?

11 **MS. LYLES:** Your Honor, we had discussed it fully yesterday.

12 **THE COURT:** You discussed it fully yesterday?

13 **MS. LYLES:** Yes, Your Honor.

14 **THE COURT:** Okay. All right. And we're — and we're going
15 forward?

16 **MS. LYLES:** We're going forward.

17 **THE COURT:** Absolutely. Anything from the State?

18 **MS. SCOTT:** No, sir.

19 **THE COURT:** All right. Get our jury, please.

20 **(The jury was summoned and entered the courtroom at 9:33 a.m.)**

21 **MS. LYLES:** Your Honor, actually, at this time, I would invoke
22 the rule of sequestration for their witnesses.

23 **THE COURT:** Okay. Ms. Scott, do you have any objection to
24 that?

25 **MS. SCOTT:** That's fine.

1 **THE COURT:** Okay. If you'll take care of that, please.

2 **(The State's witnesses exited the courtroom.)**

3 **THE COURT:** Mr. Foreman, everybody good with the jury?

4 **FOREMAN:** Yes, sir.

5 **THE COURT:** Are you ready to go?

6 **FOREMAN:** Yes, sir.

7 **THE COURT:** Okay. Very good. At this time, we're going to
8 begin the trial of this case. We're going to have the opening statements. Ms.
9 Scott?

10 **MS. SCOTT:** Thank you, Judge, opposing Counsel?

11 **(Ms. Scott's opening statement began at 9:35 a.m.)**

12 **MS. SCOTT:** Members of the jury, good morning. Thank you
13 for coming today. We're here on a case of obtaining property under false
14 pretenses.

15 Now, what does that mean? I've got something and I sort of tricked
16 you and that's how I got it.

17 In this particular case, the victim in this case is Refrigeration Services.
18 And you'll hear from the owners of the company, the -- I guess we'd call it a
19 mom and pop; they've been around since the '90's. And they've been
20 installing units in peoples' homes.

21 And they have ways for you to pay for these units; send people out, put
22 the unit in, and they ask for their payment. In this particular case, what they
23 thought was a payment was not.

24 They will testify to you that what they thought to be a check was
25 actually a false misrepresentation or a misrepresentation -- excuse me -- of

1 the check — of a check.

2 They'll tell you that, when they received that check back from the bank,
3 it was on a closed account. This check was over two thousand dollars
4 (\$2,000). They got a unit installed and there's no money that's been paid.
5 That's what this case evolves around, obtaining this property under false
6 pretenses.

7 Now, before you will have, again, like I told you, people that represent
8 the company, the ones who are taking the note, the ones who were sending
9 people out to install, the ones who are collecting the money.

10 We'll also have some people from our office who attempted to contact
11 the Defendant requesting this money.

12 Now, people who take the stand, you can believe none of what they
13 say, some of what they say, half of what they say; however much you want to
14 believe.

15 That's something that you as a jury can do. You can look at people's
16 body languages. You can listen to their — their voice, how the tone of it
17 changes to determine whether you believe a witness is credible or not.

18 I ask you to pay close attention to this case. Sometimes money bores
19 people. Sometimes home improvement bore people. We'll try to make it as
20 interesting as possible. It is very important case, particularly for Refrigeration
21 Services.

22 I ask for your close attention today. And I will ask, at the end of the
23 evidence being presented, that you find Mr. Tom Marett guilty of obtaining
24 property under false pretenses.

25 **THE COURT:** Thank you. Ms. Lyles?

1 (Ms. Lyles opening statement began at 9:37 a.m.)

2 MS. LYLES: Thank you, Your Honor.

3 (Brief Pause)

4 MS. LYLES: Fraud, false pretenses, these are just a few of the
5 words that you're going to hear multiple times today. But whose? We
6 certainly contend that it is not on the part of Mr. Marett, the man that I have
7 the privilege of representing today.

8 Again, thank you for coming here today; we really appreciate your
9 service.

10 Ms. Scott told you how important this case was for Refrigeration
11 Services. But, of course, how important is this case for Mr. Marett? He sits
12 here today wanting you to fully hear his case.

13 It is very important that you listen to everything, take in all the
14 evidence, because the evidence that you hear today is what you have to
15 consider and ultimately decide Mr. Marett's fate in this courtroom today.

16 As you listen, I want you to understand one thing: The burden of proof
17 is on the State. As Mr. Marett sits here today, he is innocent.

18 The burden of proof rests solely on the State to prove, beyond a
19 reasonable doubt, that Mr. Marett did obtain property under false pretenses.

20 You are going to hear that Refrigeration Services came out to Mr.
21 Marett's house. And that they entered into a contract for a heat pump.
22 However, our views on what happened and the witnesses that you're going to
23 hear, witnesses on both sides, differ on what happened in that contract.

24 And we're going to ask, once you hear all that evidence, that you will
25 find that there is reasonable doubt that Mr. Marett did do anything that was

1 fraudulent, false representation.

2 And you can get that from the evidence, the lack of evidence, conflict
3 in evidence. And at the end of the day, once you've heard all of the
4 evidence, you've taken into account all of the witnesses, we would ask that
5 you find Mr. Marett not guilty. Thank you.

6 **THE COURT:** Thank you, Ms. Lyles. Yes, ma'am, Ms. Scott?

7 **(Brief Pause)**

8 **(Off-the-Record Discussion)**

9 **THE COURT:** Call your first witness, Ms. Scott.

10 **MS. SCOTT:** Ms. Kim Ballenger.

11 **THE COURT:** Yes, ma'am. Ma'am, come forward and be sworn.

12 **(The witness stepped forward to be sworn.)**

13 (Whereupon,

14 **KIM BALLENGER**

15 having been first duly sworn, testified as follows:)

16 **(Off-the-Record Comments)**

17 **THE COURT:** Yes, ma'am?

18 **DIRECT EXAMINATION by Ms. Scott:**

9:40 a.m.

19 **Q.** Would you state your name for the record?

20 **A.** Kim Ballenger.

21 **Q.** And, Ms. Ballenger, where do you work?

22 **A.** Refrigeration Services, Incorporated.

23 **Q.** What's — tell us about that company. What you do?

24 **A.** What do I do?

25 **Q.** Well, what does is the company do first?

1 A. We do commercial and residential heating and air conditioning,
2 refrigeration.

3 Q. All right.

4 A. Electrical.

5 Q. Who owns this company?

6 A. My husband.

7 Q. And what's his name?

8 A. Greg Ballenger.

9 Q. Do you work within his company?

10 A. I do.

11 Q. And what do you do there?

12 A. I am human resource manager and accounts receivable.

13 Q. All right. Have you had an account open with Mr. Tom Marett?

14 A. Have I had — I'm sorry.

15 Q. Has your company had an account open with Mr. Tom Marett?

16 A. Yes.

17 Q. Did he obtain services from you all?

18 A. Yes, he did.

19 Q. What type of services?

20 A. He was — we were called out to inspect his unit. And we sold
21 him a replacement unit.

22 Q. All right. How do you all advertise?

23 A. Yellow Pages, radio, internet website.

24 Q. All right. And just step the jury through the process of how a
25 customer like me and -- and them, how would we get your services? What

1 would we do?

2 **A.** Okay. You would call the office. And our lady that answers the
3 phone would take your name, your address, your information, the type of
4 problem that you're having with your heating or air conditioning unit.

5 And it would be dispatched to our dispatch board. And, then,
6 our dispatcher would, in turn, give the call to a technician.

7 **Q.** Okay. Now, how many technicians do you have at your
8 company?

9 **A.** We have probably 38, 40.

10 **Q.** Okay. Now, what type of — explain to the jury how payment is
11 rendered once the service is completed.

12 **A.** Payment is rendered at the time of service. We do accept
13 check. We accept credit cards. We accept cash.

14 **Q.** Okay. Let's go with the cash. How is that handed over? What
15 is that — how is that —

16 **A.** Cash would be brought in directly to me and a copy of an
17 invoice where the work was performed. And I would sign off on it that the
18 amount that they're turning in is the amount — the amount that is on the invoice.

19 Then, I would, in turn, deposit it into our receipt book, give the
20 customer a copy of the receipt. And, then, that deposit would be made at the
21 bank.

22 **Q.** Okay. And what about — you mentioned another form of
23 payment being a check. How is that transacted?

24 **A.** A check would be taken, at the time of service as well, for the
25 amount of the job. It would be brought into the company, given to me by the

1 technician. And it would be written in that same receipt book and deposited into
2 the bank.

3 Q. And you also mentioned a credit card.

4 A. We do take credit cards.

5 Q. And how does that work?

6 A. If they choose — if a customer chooses at that time to pay with
7 credit card, they are — the technician would call into the office. I would take the
8 information from the customer; the credit card number, billing address, such and
9 such, and run the credit card for the amount of purchase; and, then, would email
10 that customer a receipt. And, then, that — that information would be shredded at
11 that time, not kept on hand.

12 Q. And does your company allow for owner financing?

13 A. We do financing; yes, we do. We do it through Wells Fargo.

14 Q. And explain to the jury how that would happen.

15 A. The technician would have the customer complete an
16 application. And the information from the application would be called in to Wells
17 Fargo.

18 And, at that time — it usually takes about 15 minutes. Then, we
19 tell the technician, at that time, whether or not the customer was approved or
20 denied.

21 Q. All right. Do you accept any other form of payment?

22 A. No.

23 Q. All right.

24 (Brief pause while documents are retrieved.)

25 Q. (By Ms. Scott) I'm going to hand you what's been previously

1 marked has State's Exhibit 4.

2 (Document handed to the witness.)

3 A. Uh-huh (affirmative).

4 (Brief Pause)

5 Q. Does your company have paperwork to actually document what
6 services are completed at an appropriate time?

7 A. Yes.

8 Q. Do you keep those records yourself?

9 A. Yes, I do.

10 Q. And where do you store them?

11 A. They're stored numerically by invoice number in a filing cabinet.

12 Q. All right. And is that filing cabinet within your possession and
13 control?

14 A. Yes.

15 Q. Are you custodian of the records?

16 A. Yes.

17 Q. Now, do you recognize the form that I've handed to you there?

18 A. Uh-huh (affirmative), I do.

19 Q. And could you tell the jury what that form is?

20 A. This is a refrigerant use status report, which our company is
21 required by law or EP — EPA regulations. We have to document every time
22 refrigerant is taken from an unit whether it's recovered or whether it's put into a
23 unit. And this is — this is what this is. It shows how many pounds and we were
24 the purchaser of the refrigerant that went into the unit.

25 Q. And why do you — what do you do with a customer with this

1 report?

2 A. (No Response)

3 Q. Do you have a customer sign or provide any information on this
4 report? Or is it just what your company puts out?

5 A. There is a place for the signature of the customer and also the
6 technician.

7 Q. All right.

8 MS. SCOTT: At this time, the State would like to admit
9 this into evidence, Your Honor, as State's — I was going out of order;
10 I apologize — as State's Exhibit: 4 is what it's been previously marked.

11 THE COURT: Please show it to Ms. Lyles.

12 (Document shown to opposing Counsel.)

13 MS. LYLES: No objection.

14 THE COURT: No objection, so, admitted without
15 objection.

16 (Whereupon, State's Exhibit Number 4 was admitted
17 without objection.)

18 (Exhibit handed to the witness.)

19 Q. (By Ms. Scott) Ms. Ballenger, when a customer receives a
20 service, do you all present invoices?

21 A. Yes, we do.

22 Q. What type of invoice would you present to the customer?

23 A. We would have -- the technician would write up a description of
24 the work and any parts used onto the work order invoice. And, then, this would
25 be turned into our office and it would be manually typed into our computer

1 system for billing. And, then, he would get a printed invoice.

2 Q. All right. Do you recognize the document I just handed you?

3 A. Yes.

4 Q. And that is the sort of records — do you keep this document in
5 your office and under your control?

6 A. Yes, I do.

7 Q. Now, this particular work order, what type of information do you
8 ask of the customer?

9 A. Their name, address, telephone number, the date of the — the
10 work, the model — well, the technician would fill out the model number, serial
11 number and all that. But, then, we — we'd have the customers sign it once the
12 job was completed that he's satisfied with the work.

13 Q. Okay. What order is this a —

14 MS. SCOTT: Well, this particular work order, at this time,
15 the State would like to admit this into evidence.

16 THE COURT: Ms. Lyles?

17 MS. LYLES: No objection.

18 THE COURT: It's admitted without objection.

19 MS. SCOTT: Okay. It's State's Exhibit 1.

20 THE COURT: State's Exhibit 1.

21 (Whereupon, State's Exhibit Number 1 was admitted
22 without objection.)

23 Q. (By Ms. Scott) Ms. Ballenger, is there a place on the work order
24 for a customer to sign?

25 A. Yes, there is.

1 Q. And where is that located?

2 A. It's at the bottom of the invoice.

3 Q. Now, there's a portion of the invoice off to the right hand, a little
4 box talking about work time and day time and mileage. What's that — what's that
5 about?

6 A. The technician would put in his travel time in. That would be
7 when he starts the job, when he's en route to the job, any breaks that he takes
8 for lunch or what have you would be taken out. And, then, this in time, work time
9 out would be when the job is complete.

10 (Exhibit handed to the witness.)

11 Q. Ms. Ballenger, do you recognize what I just handed you?

12 A. Yes, ma'am.

13 Q. What is that?

14 A. This is the actual invoice that's typed out and it's mailed to the
15 customer.

16 Q. And you are the custodian of this type of invoice?

17 A. Yes, ma'am.

18 MS. SCOTT: At this time, the State would like to admit
19 this into evidence, Your Honor.

20 THE COURT: Ms. Lyles?

21 MS. LYLES: No objection.

22 THE COURT: Admitted without objection.

23 MS. SCOTT: It is State's Exhibit 2.

24 (Whereupon, State's Exhibit Number 2 was admitted
25 without objection.)

1 Q. (By Ms. Scott) Now, with a typed invoice, what particular
2 information do you submit on this invoice?

3 A. Information that would be gather from the hand — the
4 handwritten work ticket that the technician would have turned in.

5 Q. All right.

6 A. It would have model number, serial number, amount of the
7 invoice.

8 Q. And this is taken directly from the work order invoice?

9 A. Uh-huh (affirmative).

10 Q. Now, what do you do to get this invoice to the customer?

11 A. It's mailed.

12 Q. And where is it mailed to?

13 A. To the bill to address.

14 Q. Okay. Now, for work order invoices you suggested earlier, is it
15 something that's done in person, the work order invoice that was already
16 marked?

17 **(Ms. Scott retrieves exhibit.)**

18 A. Yes.

19 Q. Is it something that the customer would receive on site?

20 A. It's a — yeah, he could have. I mean, it's a three-part copy. We
21 have a white, pink, and yellow.

22 Q. Okay. On the work order job invoice that you have that's typed,
23 all right, there is made mention of a payment that was made under the work
24 description.

25 A. Yes.

1 Q. And what does that state?

2 A. "Paid with check number 177."

3 Q. And why would your company write it in that particular manner?

4 A. Just for record keeping. She would go in there and just type
5 that because sometimes, by the time I get the check, she may be typing this in
6 her office. You know, what I'm saying, it's just a process that we do.

7 Q. All right.

8 (Brief Pause)

9 Q. As someone in accounts receivable, do you deposit checks and
10 run credit cards and accept cash?

11 A. Yes.

12 (Document shown to opposing Counsel.)

13 (Exhibit handed to the witness.)

14 Q. Do you recognize what I just showed you?

15 A. Yes, ma'am.

16 Q. Is this a part of the Tom — Thomas Marett — custodian's file?

17 A. Yes, it is.

18 Q. What is it?

19 A. It's a copy of his check that was written to us for the work that
20 we did. And it also states it's on a closed account.

21 Q. How were you in receipt of that particular check?

22 A. (No Response)

23 Q. How did you get that check? Did Mr. Marett give you this — this
24 check the way it's written this way?

25 A. Yes.

1 **Q.** How would you have — did you receive this check from the
2 bank?

3 **A.** I received a copy. Once it attempted to clear our account, we
4 received this notice that it was non-sufficient funds.

5 **MS. SCOTT:** At this time, the State would like to admit
6 that into evidence, Your Honor, as ----

7 **MS. LYLES:** No objection.

8 **MS. SCOTT:** ---- State's Exhibit 3.

9 **THE COURT:** So admitted without objection.

10 **(Whereupon, State's Exhibit Number 3 was admitted**
11 **without objection.)**

12 **Q.** (By Ms. Scott) All right. I want you to look at this.

13 **(Exhibit handed to the witness.)**

14 **Q.** You mentioned that — first of all, how much is this — what
15 you're holding in your hand, this closed account, how much is it written out for?

16 **A.** Two thousand, three hundred and twenty-one dollars and forty
17 cents (\$2,321.40).

18 **Q.** All right. And what does it say on the memo line why this
19 amount of money is to be given to Refrigeration Services?

20 **A.** For service.

21 **Q.** All right. And is there signature there on this check?

22 **A.** There is.

23 **Q.** And you stated that it was — it was given back to you from the
24 bank?

25 **A.** Yes.

1 Q. What particular bank?

2 A. At this time, I think we had -- we were banking with NBSC.

3 Q. From what bank was the check written off of?

4 A. This check was written on Bank of America.

5 Q. All right. At the top you stated that it says something in
6 particular. What does it say at the top of the written paper that you have there?

7 A. "Closed account."

8 Q. When did you present this check to the bank -- your bank for it
9 to be put into the Bank of America?

10 A. On July 18th, 2011.

11 Q. According to the work invoice that's already been marked into
12 evidence as -- as State's Exhibit 1, when was the job completed?

13 A. July 14th 2011.

14 Q. And, then, just for my knowledge, when was the check
15 presented?

16 A. July 18th, 2011.

17 Q. Now, would your company have taken any other form of a
18 payment, of a check or cash or credit or financing?

19 A. No, that's all.

20 Q. If at any point in time, you were made aware that this, indeed,
21 was not a check; that is was a misrepresentation of a check, would you have
22 allowed that be payment for your services?

23 A. No.

24 MS. SCOTT: Answer any questions that Defense
25 Counsel might have for you.

1 **THE COURT:** Ms. Lyles?

2 **MS. LYLES:** Thank you, Your Honor.

3 **CROSS EXAMINATION by MS. LYLES:**

9:55 A.M.

4 **Q.** Ms. Ballenger, you stated that you take many forms of payment.

5 **A.** Uh-huh (affirmative).

6 **Q.** You take ----

7 **THE COURT:** Ma'am, excuse me. You have to speak up.

8 **A.** Okay.

9 **THE COURT:** My — my court reporter ----

10 **A.** I'm sorry. Okay, yes.

11 **THE COURT:** This lady (indicating) is recording. She —

12 **A.** Okay.

13 **THE COURT:** Thank you.

14 **A.** Thank you. I'm sorry. Yeah, we do.

15 **Q.** (By Ms. Lyles) Thank you. You take checks?

16 **A.** Yes.

17 **Q.** Credit cards?

18 **A.** Yes.

19 **Q.** Cash?

20 **A.** Yes.

21 **Q.** And you do financing as well?

22 **A.** We do.

23 **Q.** Okay. And you advertise this financing on the radio?

24 **A.** I'm not sure, at the time, if it was advertised on the radio. We

25 did have a \$49.95 special that was a diagnostic service fee.

1 Q. Okay. So you, at the time, were at least running specials on the
2 radio?

3 A. Yes, for a service call.

4 Q. And you run your advertisements on — for the specials and for
5 financing on your website?

6 A. I'm not sure if the financing is on the website.

7 Q. If I showed you a copy of various pages from your website, do
8 you think that would refresh your recollection?

9 A. Uh-huh (affirmative), yes, it should would.

10 MS. LYLES: Your Honor, may I approach the witness?

11 THE COURT: Yes, ma'am.

12 (Document shown to opposing Counsel.)

13 (Off-the-Record Discussion)

14 MS. LYLES: May I approach the witness?

15 THE COURT: Absolutely.

16 MS. LYLES: Thank you.

17 Q. (By Ms. Lyles) These are from various dates from the past
18 year. These are printouts from your website.

19 (Documents handed to the witness.)

20 A. Uh-huh (affirmative).

21 Q. If you would, like to take a moment to look at that and see if that
22 refreshes your recollection as to whether or not you advertise your financing on
23 your website.

24 (Brief Pause)

25 A. Yes.

1 (Brief Pause)

2 Q. So you advertise various things, from 12-months same as cash
3 financing, no down payment on your website?

4 A. Only if approved through Wells Fargo.

5 Q. Okay. No interest, no down payment financing?

6 A. There, again, with Wells Fargo.

7 Q. And there's multiple different financing available all saying zero
8 down payment, financing for a year, no interest. I mean, you all have run a lot of
9 specials throughout the years that you've been in business?

10 A. Uh-huh (affirmative).

11 Q. And continue — continue to do so — was that a "yes"?

12 A. Yes, it was. Sorry.

13 Q. Thank you. And you continue to do so through today?

14 A. Yes, we still finance with Wells Fargo.

15 Q. Okay. And you said that your workers are supposed to have
16 people fill out applications and get immediate approval?

17 A. That's the only way that we would know whether or not they
18 were approved or denied.

19 Q. Okay. And, if they're unable to get that approval, would taking a
20 check for collateral be something that they could do?

21 A. No.

22 Q. You've never had something like that happen?

23 A. No, we don't take anything for collateral.

24 Q. Okay.

25 (Brief Pause)

1 **MS. LYLES:** May I approach?

2 **THE COURT:** Yes, certainly.

3 **Q.** (By Ms. Lyles) You've been previously shown what's been
4 marked as State's Exhibit Number 3, which is now in evidence, and it was the
5 check given to your company by Mr. Marett.

6 **A.** Yes.

7 **Q.** And that check was written to your company on July 11th; is that
8 correct?

9 **(Brief Pause)**

10 **A.** It's dated August 14th.

11 **Q.** Okay. That would have been my next question.

12 **A.** Okay.

13 **Q.** But the service was done on —

14 **A.** The 14th, 18th, whatever; I don't remember.

15 **Q.** Okay. Well, we'll get the work order invoice for you so we can
16 be sure.

17 **(Exhibit handed to the witness.)**

18 **Q.** The date of the order was July 14th, 2011.

19 **A.** That's correct.

20 **Q.** So is that the date that the check was written?

21 **A.** I would assume so.

22 **Q.** Okay. But what is the date written on that check?

23 **A.** August 14th, 2011.

24 **Q.** Okay. And what is the date that you cashed that check?

25 **A.** It was deposited on the 18th of July.

1 Q. So you deposited that check well before that check was written
2 for?

3 A. We don't take --- we don't take post-dated checks.

4 Q. That wasn't my question. You deposited that check well before
5 the date that the check was written for?

6 A. Yes. (Nods affirmatively.)

7 Q. Okay.

8 THE COURT: Ma'am, again, I'm sorry; you have to
9 answer verbally.

10 A. Okay.

11 Q. Was that a "yes"?

12 A. Yes.

13 (Off-the-Record Discussion)

14 Q. Also, on this work order that has also been entered into
15 evidence, as State's Exhibit 1, this was the work order invoice that your company
16 did. Now you weren't responsible for this invoice, were you?

17 A. No.

18 Q. Okay. But someone from your company was?

19 A. Right, yes, ma'am.

20 Q. And it appears that this was a work order that would have been
21 three-ply or four-ply?

22 A. Yes.

23 Q. So one of the copies would have gone to your company?

24 A. Uh-huh (affirmative), yes, ma'am.

25 Q. And one of the copies would have gone to Mr. Marett?

1 A. Yes.

2 Q. And another copy would have gone to maybe billing, your
3 department?

4 A. Yes.

5 Q. Okay. And it appears that all of the writing on the document is
6 uniform except for — would — would you agree that most of the writing on this
7 document is uniform; the parts that were ordered, the address of Mr. Marett, Mr.
8 Marett's signature?

9 A. Uh-huh (affirmative).

10 Q. What is not uniform on that document?

11 A. The time in, the time out, and "paid with check."

12 Q. Okay. So the "paid with check number" would have been
13 written sometime after that document was prepared?

14 A. Yes, possibly, yes.

15 Q. So after Mr. Marett had signed that document?

16 A. That I can't answer. I don't know.

17 Q. Well, I mean, it clearly was not written — I mean, this is a copy
18 of something and it clearly was not written when Mr. Marett signed it. It's written
19 on pen on top of a copy.

20 A. That can be written sometimes once it comes into our office.

21 Q. Okay. So it was not there when Mr. Marett signed it at the time
22 of the service?

23 A. I don't know. I can't — I don't know how to answer that.

24 Q. Okay. Mr. Marett did not come to the office with you?

25 A. No, he didn't.

1 **Q.** So, if this was written later at your office, Mr. Marett did not sign
2 this where it said, "Paid with Check Number"?

3 **A.** That's -- that's -- we write that on there just for our benefit
4 because of the amount of paperwork that we have to process.

5 **Q.** Okay. So he -- Mr. Marett, by signing this, did not
6 acknowledge he was paying with a check?

7 **A.** He wrote a check. So...

8 **Q.** But by signing this, he did not acknowledge he was paying with
9 the check?

10 **A.** No, his signature is that the work was performed.

11 **Q.** Correct.

12 **A.** Right.

13 **Q.** Okay. Thank you.

14 **(Brief Pause)**

15 **Q.** And you said that your workers came out and performed service
16 for a two and a half ton unit?

17 **A.** That's -- I think -- I mean, I think that is what is on the invoice,
18 yes.

19 **Q.** Okay. And that's what Mr. Marett was supposed to pay you for?

20 **A.** Correct.

21 **MS. LYLES:** Okay. One moment, Your Honor.

22 **THE COURT:** Yes, ma'am.

23 **(Off-the-Record Discussion)**

24 **MS. LYLES:** I don't have any other questions at this
25 time.

1 **THE COURT:** All right. Ms. Scott?

2 **MS. SCOTT:** Just briefly.

3 **(Brief Pause)**

4 **REDIRECT EXAMINATION by MS. SCOTT:** **10:05 A.M.**

5 **Q.** State's Exhibit 3, this document that I'm handing you, that
6 appeared to be a check. Is that something that your company printed out?

7 **(Exhibit handed to the witness.)**

8 **A.** No.

9 **Q.** How did your company receive that piece of paper?

10 **A.** From the bank.

11 **Q.** And actually how did your company receive what appears to be
12 that check? Who gave that to your company?

13 **A.** The original?

14 **Q.** Yes.

15 **A.** Mr. Marett.

16 **(Brief Pause)**

17 **Q.** Does your company allow a customer to — to give a promise to
18 pay?

19 **A.** No.

20 **Q.** Do you have to secure payment upon receipt of the service?

21 **A.** Yes.

22 **Q.** And that's done in what ways again?

23 **A.** Check, cash, credit card, or financing.

24 **Q.** And the financing that you just mentioned and was mentioned
25 on your cross examination that's on your website ----

1 A. Uh-huh (affirmative).

2 Q. — when does your company need to know if someone is
3 receiving financing from Wells Fargo?

4 A. (No Response)

5 Q. When would you need to know?

6 A. At the beginning of the meeting with the technician. We
7 wouldn't — I mean, we wouldn't install it — we wouldn't do the work if — you
8 know, if they weren't approved or didn't have the means of paying for it.

9 MS. SCOTT: All right. Nothing further for that witness.

10 THE COURT: Anything further, Ms. Lyles?

11 MS. LYLES: No, Your Honor.

12 THE COURT: All right. Thank you, ma'am. You may step
13 down. Please, watch your step.

14 (The witness complied with the request.)

15 MS. SCOTT: Mr. Jeff Ballenger [sic].

16 THE WITNESS: Greg Ballenger.

17 THE COURT: Yes, sir. Come forward, sir, and be sworn,
18 please.

19 MS. SCOTT: Greg. I'm sorry.

20

21 THE WITNESS: That's okay.

22 MS. SCOTT: Greg Ballenger.

23 (The witness stepped forward to be sworn.)

24 (Whereupon,

25 GREG BALLENGER

1 having been first duly sworn, testified as follows:)

2 (Off-the-Record Comments)

3 THE COURT: Sir, tell us your name for the record, please.

4 THE WITNESS: My name is Greg Ballenger.

5 THE COURT: All right, sir. Please answer questions from
6 Counsel.

7 DIRECT EXAMINATION by MS. SCOTT: 10:07 A.M.

8 Q. First off, Mr. Ballenger, do you have a son name Jeff Ballenger?

9 A. I do.

10 Q. All right. Now, would you tell the jury what you do?

11 A. I am the president of Refrigeration Services. I run the day-to-
12 day operations of the company. I also teach full-time at Greenville Technical
13 College.

14 Q. What do you teach there?

15 A. I teach heating and air-conditioning and refrigeration.

16 Q. Okay.

17 A. I teach four nights a week.

18 Q. Thank you, sir. Now, how long have you owned the company
19 Refrigeration Services?

20 A. Since 1995.

21

22 Q. Does your wife work at that company with you?

23 A. She does.

24 Q. Now, I want to draw your attention to an account or a customer
25 of yours, Mr. Tom Marett. Did he receive a refrigeration unit or a heat pump with

1 -- with your company?

2 A. We installed a heat pump.

3 Q. All right. And because some people may not -- what is a heat
4 pump?

5 A. It's part of a heating and air-conditioning system.

6 Q. All right. And what is -- what does it do?

7 A. It keeps his house comfortable. It -- it heats it in the winter and
8 cools it in the summer.

9 (Ms. Scott retrieves exhibit.)

10 Q. I'm going to show you what's already been presented into
11 evidence, an invoice, State's 2, a refrigerate use and status report, State's 4, and
12 a work order invoice, State's 1.

13 (Exhibits handed to the witness.)

14 Q. Are you familiar with these documents?

15 A. I am.

16 Q. Are these a part of the way you run your business at
17 Refrigeration Services?

18 A. This is.

19 Q. While we're at it, where are you located?

20 A. We're in -- in Greer, South Carolina.

21 Q. Is that on the Spartanburg County side or the Greenville
22 County ---

23 A. Just right on the Greenville County side.

24 Q. Okay. When you advertise, do you advertise just in the
25 Greenville area?

1 A. No, we — we advertise actually statewide. We have technicians
2 based throughout the entire state of South Carolina.

3 Q. Now, these forms I handed you — well, first, tell the jury how a
4 technician gets out to a — a address.

5 A. (No Response)

6 Q. How would a jur — how would a customer get a technician to
7 come to his home?

8 A. A customer would place a call to our office. The — one of the
9 receptionists there at the office would enter the information; address, name,
10 phone number, and a brief description of the problem that the customer is
11 having.

12 And I think our first call out there — that's how it came in — that
13 the unit was not running and requested service earlier in the morning, wanted
14 someone there 6 o'clock a.m.

15 Q. All right. Did you send somebody out there?

16 A. We did.

17 Q. What date did you send someone out there?

18 A. On 7/14.

19 Q. All right. And tell — tell the jury, when a technician puts in a
20 unit, what do they do?

21 A. Well, the technician arrived there. He assessed the problem
22 with the unit, found, in this particular instance, that the compressor was bad,
23 along with the condenser fan motor. So the unit would not run.

24 Q. All right. Does that require the customer, Mr. Marett in this
25 case, to obtain a new unit?

1 A. That is correct.

2 Q. Did your company supply that unit?

3 A. We did.

4 Q. And what's the actual tonnage — oh, I don't know. What's the
5 weight of this unit?

6 A. Well, it's not --- tonnage is — is — does not mean weight in this
7 — in this instance. Tonnage means capacity.

8 Q. All right. And what's the capacity of this unit?

9 A. His existing unit was rated at two and a half tons, the one that
10 had the bad compressor and condenser fan motor. And so it was replaced with a
11 unit that would supply him two and a half tons of coolant (phonetic).

12 Q. All right. What's the address that you actually did the work on?
13 You did the installation at what address?

14 A. 646 Southern Street (phonetic) in Spartanburg.

15 Q. And that's Spartanburg County?

16 A. That's correct.

17 Q. Now, once a product is installed into a homeowner's home, how
18 do you secure payment?

19 A. We're paid when the job is completed, either cash, check, or
20 credit card.

21 Q. Do you all have available financing?

22 A. We will seek third-party financing for — for customers that are
23 eligible.

24 Q. Is that through Wells Fargo?

25 A. That is correct.

1 **MS. SCOTT:** Answer any questions that Defense
2 Counsel may have for you.

3 | **THE COURT:** Ms. Lyles?

4 MS. LYLES: Thank you, Your Honor.

5 | CROSS EXAMINATION by MS. LYLES: 10:13 A.M.

6 Q. You teach about air-conditioning units and these types of things,
7 so, you're pretty knowledgeable about the units?

8 | A. I would think so, yes.

9 Q. Okay. So tell me about how it's determined what size unit is
10 needed in a home.

11 **A.** There's two ways to do it. Normally, if you're going to start from
12 scratch, you do what's called a Manual J load calculation. And that's where you
13 go in and you size the house based on the insulation, the size of it, windows,
14 doors, this type of stuff.

15 Also, you can size them based on the existing unit if that's what
16 the customer wants to do, to replace the existing unit like for like.

17 Q. Okay. So, in this case, you — someone from your company —
18 it was not yourself, was it?

19 **A.** That's correct.

20 Q. Do you know who it was from your company ----

21	A.	I do.
----	----	-------

22

23 Q. ---- that did the work?

24 | A. I do.

25 | Q. Who was it?

1 A. Well, Justin is who diagnosed the unit as beig bad.

2 Q. Okay.

3 A. And, then, Randall came out. He — he — he is a salesman.

4 And he came out and discussed the unit with the homeowner.

5 Q. Okay. So who actually did the installation?

6 A. Justin.

7 Q. Okay. And they determined in this case that it should be
8 replaced based on the previous unit in the home?

9 A. That is correct.

10 Q. And the previous unit in the home was a two and a half ton unit?

11 A. That is correct.

12 Q. And a two and a half ton unit was sufficient to heat and cool the
13 home?

14 A. That is correct.

15 Q. And that's the purpose of these units, to heat and cool homes?

16 A. That is correct.

17 Q. Which would be very important in the winter and the summer?

18 A. Certainly.

19 Q. Okay. And I guess it would be a waste to have a three ton unit
20 in the home?

21 A. Oftentimes people want to up size their units and we try to
22 discourage them from that. If you up size a unit, and you do not dehumidify, you
23 end up with a very humid, moist, moldy house.

24 Q. So it can cause problems?

25 A. Certainly.

1 Q. And would it cause the same problems if you had a too small
2 unit?

3 A. No.

4 Q. Okay. It wouldn't cause you to waste -- spend more money on
5 heating and cooling issues?

6 A. It wouldn't cause the same problem as far as mold and mildew.

7 Q. Different problems?

8 A. If a unit was undersized, it would not heat or cool properly.

9 Q. Right. So you would be very hot in the summer?

10 A. Could be, yes.

11 Q. And very cold in the winter?

12 A. Yes.

13 Q. And probably spending a lot of money on your electricity?

14 A. Yes.

15 Q. Okay. So different types of problems, but problems still?

16 A. Yes.

17 Q. Okay. So you -- your company came out and replaced this unit
18 with -- you can see in the documents in front of you -- with a two and a half ton
19 unit?

20 A. Well, we replaced to make it still a two and a half ton system.

21 The outdoor unit is actually a two-ton. His indoor is a two and a half.

22 The newer units are much more energy efficiency or have much
23 higher energy efficiency, more capacity into them. So the BTU load calculations
24 on it, in order to maintain a two and a half ton, required a two-ton outdoor unit.

25 And that was clearly placed on these invoices that this is a two-

1 ton outdoor unit in order to give it a two and a half ton capacity. It matched the
2 capacity that he had.

3 The existing system, even though it was rated at two and a half
4 tons because it was quite old, only gave about 26,500 BTUs. With the new
5 outdoor unit, with his exiting indoor, the BTUs still matched.

6 Q. Okay. On the document, though, it says that it's a two and a
7 half ton unit.

8 A. It says that it's a two and a half ton system. And that's what he
9 had. But it — it also — the model numbers are clearly showing a two-ton — it's a
10 two-ton outdoor unit.

11 Q. Okay. You — you say that by —

12 A. And this was explained to him. We — we — we tried to get him
13 to change the entire unit; he didn't want to do that. We told him that, that would
14 be much better to change the indoor and outdoor unit to get a matched system.

15 But most manufacturers give the ability. And that's why they
16 sell what they call a dry R-22 (phonetic) unit to just change the outdoor unit. It's
17 like putting in a motor back in a car that has a bad engine.

18 Would you be better off to buy a new car? Probably it would
19 have been better to buy the whole car, but the customer didn't want to. He said
20 he didn't have the money to buy the whole car; he just wanted to buy the engine.

21 So that's what we sold him, just the engine. And that matched it
22 back up to give the capacity that he had.

23 Q. Okay. You're saying, by these two documents (indicating), that
24 the job invoice, it says, "Sell and installation of two and a half ton heat pump
25 outdoor unit," and then, this one (indicating) that says, "Model PITI3NRO2400G

1 (phonetic), that by those two things ---

2 A. This still made him a two and a half ton system. This is
3 comparable to the BTU size that he had.

4 Q. Okay. But you just said to the Court that PITI3NRO2400G
5 should put someone on notice that they have a two-ton unit?

6 A. He was explained that; that we were going to match his outdoor
7 units to the BTUs that he had.

8 Q. Okay.

9 A. The old unit, because it was much older, it didn't really — even
10 though it was listed as a two and a half ton, it only gave 26,000 and some
11 change on BTUs. This unit matched that fact.

12 And it made his system, the same BTUs , the same two and a
13 half tons, that it always was.

14 Q. So it's a two and a half ton?

15 A. That's right.

16 Q. Not a two-ton system?

17 A. The outdoor unit is a two ton. We've never tried to say anything
18 but it is a two ton. But it gives the BTUs max to his exiting system, which made
19 his system a two and a half ton with the air handler he has.

20 This is quite common where the manufacturers will tell you,
21 "You take this outdoor unit and this indoor unit, this is the BTUs you get."

22 Q. Okay. So by putting a model number but billing it for a two and
23 a half ton system ---

24 A. This is — it is a two and a half ton.

25 Q. But you put in a two ton?

1 A. That is what gives it, with that air handler, two and a half tons.

2 **(Brief Pause)**

3 Q. Okay. Now, you have stated that your company does give
4 financing?

5 A. We seek third-party financing for customers. We don't finance
6 in-house.

7 Q. Okay. And your financing, you all put that on your website?

8 A. That's correct.

9 Q. You do radio advertisements for it?

10 A. That's correct.

11 Q. And you all do different types of financing; you know, twelve
12 months same — same as cash, zero down, multiple different kinds of financing?

13 A. Wells Fargo does multiple different types of financing. And, at
14 different times, they have different offers going on.

15 Q. Okay. But you all advertise that; that your company ---

16 A. No, not really. I mean, we don't really — we don't advertise the
17 financing. We advertise that we're an HVAC company and we do have financing
18 available. But that's not something that we advertise on the radio.

19 Q. Okay. So your company does not advertise on its website that
20 "RSI Carolina makes the whole process stress free by offering easy 12-month
21 same as cash financing with no down payment"?

22 A. Yes, we do on the website.

23 Q. Okay. And you all also advertise on your website no interest, no
24 down payment financing?

25 A. Yes.

1 Q. So, even though it's a third-party, you advertise on your website
2 that it's — it's our offer?

3 A. Yes.

4 Q. Okay. And that financing would be done by the person that
5 installed the unit?

6 A. No, it would be done by the salesman; would get the financing
7 forms filled out. And the customer is told immediately whether or they were
8 accepted for the financing.

9 Q. Okay. But it's not — it was not done by you?

10 A. No.

11 Q. So you don't know in this case what actually happened with Mr.
12 Marett?

13 A. I don't even know if he applied for financing.

14 Q. Okay. And you don't know in this case what happened with the
15 check situation, whether it was a promise to pay for financing because you
16 weren't there at the time?

17 (Brief Pause)

18 A. I'm not really sure I understand the question.

19 Q. Well, you — since you were not there, the salesman was there,
20 you can't say for sure whether — what the deal was made that was struck
21 between Mr. Marett and your company?

22 A. Oh, yeah, I — I know they're — the salesmen are given strict
23 guidelines on exactly what they can do as far as how they can accept payment.
24 And they know that it's payment in full upon completion.

25 Q. I understand that, but you weren't there when that deal was

1 struck, were you?

2 A. No.

3 Q. Okay. So you can't for sure what deal was made with Mr.

4 Marett?

5 A. Yes, I -- I know myself. And they're -- we're consistent on that.

6 We don't change from time to time. So it's always payment in full; check, cash,

7 or credit card.

8 Q. And no person ever makes a mistake?

9 A. Not when it comes to money because our salesmen get paid by

10 that. So they would not make a mistake with their money.

11 Q. But you were not there when this happened?

12 A. I was not.

13 Q. Okay.

14 (Off-the-Record Discussion)

15 Q. (By Ms. Lyles) Are you aware if your son Jeff ever came out to

16 Mr. Marett's house?

17 A. We've only had two visits there according to our -- our

18 documentation. Justin was there to service it at 6:00 a.m. And, then, the

19 following morning he installed it.

20 Q. Does Jeff make house -- house calls?

21 A. Jeff is a commercial technician. I doubt seriously Jeff was ever

22 there.

23 Q. Does he make house calls?

24 A. Not really. I mean ---

25 Q. "Yes" or "no"?

1 (Brief Pause)

2 A. I'll — I'll have to say yes.

3 MS. LYLES: Okay. All right. I don't think I have any
4 other questions at this time.

5 THE COURT: All right. Ms. Scott, anything?

6 MS. SCOTT: Yes, sir.

7 REDIRECT EXAMINATION by MS. SCOTT: 10:27 A.M.

8 Q. Mr. Ballenger, where is that unit that your company installed
9 currently?

10 A. On the outside of — of Mr. Marett's house.

11 Q. At 646 Southern ----

12 A. 646 Southern Street, yes.

13 Q. You don't have it?

14 A. No.

15 Q. When did you put it in there?

16 A. July 14th, 2011.

17 Q. Have you been paid for this unit?

18 A. No, I have not.

19 Q. Partially?

20 A. No.

21 Q. At all?

22 A. No.

23 Q. Okay.

24 (Brief Pause)

25 Q. How long have you been open?

1 A. For business?

2 Q. Yes.

3 A. Since '95.

4 Q. Since '95, have you accepted a promise to pay at some point
5 and actually left a unit in somebody's home?

6 A. No, ma'am.

7 Q. Since '95, how have people paid for units that were installed in
8 their home?

9 A. By check, cash, or credit card upon completion or finance. If
10 they get approved for financing, then, they don't have to pay anything. The
11 finance company pays us.

12 Q. And how soon do you need to know whether they've been
13 approved for financing?

14 A. They're — the salesman will fill out a credit application. And we
15 know immediately, within five minutes, from the time the application is filled out.
16 So, before the job is even sold, we know whether or not the customer has been
17 approved for credit.

18 Q. And just for the jury, why would you need to know ahead of time
19 if someone is going to get financing?

20 A. Well, obviously, so that we can get paid by someone when the
21 job is complete.

22 MS. SCOTT: Okay.

23 THE COURT: Ms. Lyles, anything?

24 MS. LYLES: No, Your Honor.

25 THE COURT: All right. Thank you. Sir, you may step

1 down. Please, watch your step.

2 (The witness complied with the request.)

3 THE COURT: Let's — let's take a few minutes break. Mr.
4 Foreman, ladies and gentlemen of the jury, we've been running now
5 here about an hour and a half almost for most of us here. I know
6 you've been in and out a little bit, but we've been here.

7 So, at this point, let's take a 15-minute break. Let's be back — I
8 tell you what, let's be back at a quarter till; be back at a quarter till
9 11:00.

10 You — I remind you — yeah, quarter till 11:00. I remind you that
11 you're not to discuss this case. You haven't heard all of the evidence
12 in this case. You don't know what's going to be said, so, it would be
13 improper to do that.

14 Also, I'll remind you to place no significance on the fact that I sit
15 or stand up here. I sat for a little bit this morning. I get tired of sitting in
16 that chair. I can't do it.

17 So, please, place no significance on the fact that a witness is
18 testifying or not testifying whether I'm sitting or standing. Mr. Foreman,
19 you may go with our bailiff.

20 (The jury exited at 10:27 a.m.)

21 THE COURT: Anything from the Defense— I'm sorry,
22 anything from the State?

23 MS. SCOTT: Oh, no.

24 THE COURT: Anything from the Defense?

25 MS. LYLES: No, Your Honor.

1 **THE COURT:** All right. We'll be in recess here until 15
2 minutes til.

3 **(Whereupon, a recess was taken from 10:27 a.m. until 10:45**
4 **a.m.)**

5 **(Off-the-Record Comments)**

6 **THE COURT:** Let me address one issue that came to my
7 attention over the break here. Mr. Marett, witnesses, pursuant to your
8 lawyer's request, were sequestered, okay?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** And that means they can't be in the
11 courtroom. And the purpose of that is so that they would not hear any
12 testimony and be able to repeat that testimony.

13 It came to my attention through the State that on the break you
14 may or may not have been talking to witnesses out there.

15 You are not allowed to do that, okay? And don't be talking to
16 any witness you might have or any witness they may have about what
17 happened in here.

18 Now, again, it doesn't have to be that way if you want to bring
19 everybody in. Your lawyer is the one that asked for that, so, if you
20 want me to bring everybody in, I will. Do you want me to bring them
21 in?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Okay. Well, please, please, don't be
24 talking to any witness outside whether it's for the State or for you about
25 what might happen. And that will especially be important on the lunch

1 break here very shortly, okay? Please don't do that, okay?

2 **THE DEFENDANT:** No problem, Your Honor.

3 **THE COURT:** All right. Because, if -- if it happens, then,
4 I'm inclined to -- to figure that you waive your right to have them
5 sequestered. And I'll just open the courtroom and bring everybody in
6 and everybody can listen, okay?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Anything from the State?

9 **MS. SCOTT:** No, sir.

10 **THE COURT:** Anything from the Defense?

11 **MS. LYLES:** No, Your Honor.

12 **THE COURT:** All right. We're ready to bring the jury.

13 **(The jury entered the courtroom at 10:46 a.m.)**

14 **THE COURT:** Thank you, Mr. Foreman, ladies and
15 gentlemen. Any issues from the jury, Mr. Foreman?

16 **MR. FOREMAN:** No, sir.

17 **THE COURT:** All right. Thank you. We're ready to go.

18 Ms. Scott?

19 **MS. SCOTT:** Our witness is coming in, Judge.

20 **THE COURT:** All right. Very good.

21 **MS. SCOTT:** I'm sorry. Sheila Henderson?

22 **(The witness stepped forward to be sworn.)**

23 **(Off-the-Record Comments)**

24 (Whereupon,

25 **SHEILA HENDERSON**

1 having been first duly sworn, testified as follows:)

2 **THE COURT:** Ma'am, if you would, state your name for
3 the record, please?

4 **THE WITNESS:** Sheila Davis Henderson.

5 **THE COURT:** Thank you, Ms. Scott?

6 **DIRECT EXAMINATION by MS. SCOTT:** **10:47 A.M.**

7 **Q.** Ms. Henderson, where do you work?

8 **A.** I work in the solicitor's office.

9 **Q.** And what do you do there?

10 **A.** I'm the program director for the solicitor's worthless check unit.

11 **Q.** Are you familiar with the company Refrigeration Services?

12 **A.** Yes, ma'am, I am.

13 **Q.** How so?

14 **A.** They're one of our victims in a case. They turned a check in to
15 our office.

16 **Q.** All right. I'm going to show you what's been marked as State's
17 Exhibit 3. Do you recognize this document?

18 **(Exhibit handed to the witness.)**

19 **(Brief Pause while the witness examines exhibit.)**

20 **A.** Yes, ma'am, I do.

21 **Q.** Do you have the original of that document?

22 **A.** Yes, I have the original bank copy.

23 **Q.** With you today?

24 **A.** I do.

25 **Q.** May I see it?

1 A. Yes.

2 **(Document handed to Ms. Scott.)**

3 **(Brief pause while document shown to Counsel.)**

4 Q. (By Ms. Scott) Now, this has already been marked into
5 evidence. And what I'm holding in my hand is a yellow back and front image of a
6 check. However, that's not the actual check. Why is that?

7 A. This is what the bank returns to victims since they started a new
8 system. Some years back they destroyed the originals, so, they put them into a
9 vault and they send us this.

10 This is the original bank copy. This is the legal copy that we
11 receive from the bank.

12 Q. Okay. Now, I want you to be clear to check that original copy
13 that you received from the bank with the one that has been in to evidence.

14 **(The witness complied with the request.)**

15 Q. Is it the same?

16 A. Yes, ma'am, it's the same.

17 Q. And for purposes we'll just be using the one that's in to
18 evidence.

19 A. Okay.

20 **(Off-the-Record Comments)**

21 Q. Now, you mentioned a — a victim. Refrigeration Services came
22 up to the solicitor's office worthless check unit?

23 A. That is correct.

24 Q. What are the steps that you all take when someone comes into
25 your office with what they presume to be a check, when that individual — sorry --

1 that they were provided in this case?

2 A. Okay. When an individual receives the check back from the
3 bank, they'll bring it to our office. And, then, they'll fill out a work sheet. And we'll
4 — we receive that work sheet along with the original bank copy.

5 Then, we'll start a process of trying to collect the funds for the victim.
6 And, in the process, we'll send out a first letter. And, if the individual does not
7 respond or does not pay, then, we'll send out a certified letter.

8 And, in the meantime, we try to talk to the individual to have them pay
9 the check. And, if not, at that point, we'll seek a warrant.

10 Q. All right. Now, you mentioned letters that you will have.

11 (Document shown to opposing Counsel.)

12 Q. You mentioned letters that you would send. Can you tell the
13 jury how do you know what address to send the letters to?

14 A. By law, we're required to send a — a letter to the address that is
15 on the check. And, then, in certain other instances that we have other addresses,
16 we will send letters to those address too if we know that the check writer has
17 lived there.

18 Q. And you also stated that you make phone calls to the person
19 who has written the check?

20 A. Yes, if we have a good telephone number for the individual.

21 Q. Okay. Now, were you working at the solicitor's office at the
22 time, July of 2011?

23 A. Yes, ma'am, I was.

24 Q. Are you custodian of a system that documents letters that are
25 sent to potential offenders and victims that come into your office?

1 A. Yes.

2 Q. What kind of system is it? Can you tell the jury?

3 A. Yes. We have a — a program that's written specifically for
4 worthless checks. And that system allows us to track the individual's name, the
5 address, his telephone numbers, driver's license number when we request
6 warrants, when we send letters out. It tracks physically everything that we do in
7 our check program.

8 Q. And this system, is it a computer system?

9 A. Yes, ma'am, that is correct. It is a computer system.

10 Q. All right.

11 **(Documents shown to Counsel and handed to the witness.)**

12 Q. Do you recognize what I just handed you?

13 A. Yes, I do.

14 Q. And how so?

15 A. These are copies of four letters that we sent to Mr. Marett.

16 Q. Now, what's a type of way that you would send those letters
17 out?

18 A. Three of these letters were sent out regular mail. The first one
19 was mailed to Mr. Thomas Marett on July the 27th of 2011. The second one was
20 mailed on the same date to a different address on July the 27th of 2011.

21 This next one was mailed as a first letter, through regular mail —
22 well, I'm sorry — this is a copy of what would sent with the warrant, this letter
23 here.

24 But this one was mailed to him certified mail to 116 Kingsley
25 Park Drive (phonetic), which is the address on the check. That one was mailed

1 on August the 9th of 2011.

2 Q. How many letters do you have up there with you?

3 A. This is four (4) letters. And one letter was sent with a warrant.

4 (Brief Pause)

5 Q. Are those the — are those exact copies of the letters that would
6 have been sent to Mr. Marett back in 2011?

7 A. Yes, ma'am, that is correct.

8 MS. SCOTT: At this time, the State would like to mark
9 these into evidence. I don't even know where we are Judge — on 5,
10 6, 7, and 8.

11 MS. LYLES: I have no objection.

12 THE COURT: Without any objection?

13 MS. LYLES: No, Your Honor.

14 THE COURT: They're admitted without objection.

15 (Whereupon, State's Exhibit 5 through 8 were marked for
16 identification and admitted into evidence without objection.)

17 Q. (By Ms. Scott) Now —

18 THE COURT: All right. Admitted without objection.

19 MS. SCOTT: One moment, Your Honor. I would like to
20 mark these first.

21 (Brief Pause)

22 Q. (By Ms. Scott) Okay. I'm going to hand you a copy of the
23 proposed check, on number — State's Exhibit 3. What is the address that's
24 written on the top of that document?

25 A. The address on this document is 116 Kingsley Park Drive in

1 Moore, South Carolina, 29369, at 8921.

2 Q. All right. And, at the top of that piece of paper or the exhibit,
3 what does it say in bold letters?

4 A. "Closed Account."

5 Q. What does that mean?

6 A. That this account was closed at the time that this check was
7 presented to the bank.

8 Q. Now, the letters that you sent to Mr. Thomas Marett, could you
9 state each of address you sent the letters to?

10 A. Yes, ma'am, I can do that. This letter was mailed to 116
11 Kingsley Park Drive in Moore, South Carolina.

12 Q. And is that the address that was on the check?

13 A. Yes, ma'am, that is correct.

14 Q. All right.

15 A. The next one was mailed to Mr. Thomas R. Marett, 116
16 Kingsley Park Drive, Moore, South Carolina 29369-8921.

17 The next one was ----

18 Q. I'm sorry, is that last one you said was Kingsley as well?

19 A. Yes, ma'am, that was Kingsley Park Drive.

20 Q. And, again, that's the one that was on the check?

21 A. That is ----

22 Q. Okay.

23 A. ---- the address that was on the check.

24 Q. All right. The next one?

25 A. The next one is -- it was mailed to Mr. Thomas R. Marett, 646

1 Southern Street, Spartanburg, South Carolina, 29303.

2 Q. And that address is not the one that is on the check?

3 A. No, ma'am, that's the address I believe that was used for the —
4 where the unit was installed.

5 Q. All right. And, then, any other addresses that you used?

6 A. Yes, ma'am. We have another address for Mr. Marett. This
7 was mailed to Thomas R. Marett, P.O. Box 6505, Spartanburg, South Carolina,
8 29304.

9 Q. And that P.O. Box address, where did that PO Box address
10 come from?

11 A. That was the address that we had on file for Mr. Marett.

12 Q. Okay.

13 A. I — I believe that was one that he had given us in the past.

14 Q. All right. So you have three different addresses that you
15 attempted to locate — or to specifically notify Mr. Marett?

16 A. That is correct.

17 Q. Now, on at least one of them, you had a — well, I shouldn't take
18 these sitting on the table. I also get them messed up. On at least one of them, it
19 was sent certified August 9th, 2011, right?

20 A. Yes.

21 Q. Did you receive ...

22 (Brief Pause)

23 Q. Did you receive notice that he didn't receive that certified mail?

24 A. I'm not sure if that was the March 16th. I think that one did
25 come back not deliverable as addressed.

1 Q. All right. The one that was sent to the Kingsley ----

2 A. Yes, ma'am, that is correct.

3 Q. It is the same address that was on the check?

4 A. Yes.

5 Q. Okay. All right.

6 MS. SCOTT: Your Honor ---- I'm sorry.

7 (Documents handed to the witness.)

8 Q. (By Ms. Scott) Do you recognize what I've just handed you
9 here?

10 A. Yes, that's a copy of the envelope that we mailed to Mr. Marett.

11 Q. And the envelope was returned to your office?

12 A. Yes.

13 Q. All right. And that's a true and accurate copy of the envelope
14 that was returned to your office?

15 A. Yes, ma'am.

16 MS. SCOTT: At this time the State would like to admit that
17 into evidence, Your Honor.

18 THE COURT: Ms. Lyles?

19 MS. LYLES: No objection.

20 THE COURT: Without objection.

21 (Whereupon, State's Exhibit Number 9 was marked for
22 identification and admitted without objection.)

23 Q. (By Ms. Scott) Did the other letters, like the one at the P.O. Box
24 and the address that you had for him; the one to 646 Southern Street, did they --
25 were they returned?

1 A. No, ma'am.

2 Q. Returned to sender of any sort?

3 A. No, ma'am, I have no knowledge of them being returned.

4 Q. What was the purpose of sending that last letter certified?

5 A. By law we're required to send a certified letter to the address on
6 the check.

7 Q. Okay.

8 A. So that's why we sent it to that address.

9 Q. But the other attempt that you made to the other addresses,
10 was that required by law?

11 A. No, ma'am, that was not required by law. We were trying to
12 make sure that we received restitution for our victim because we would rather do
13 that than get a warrant.

14 Q. Now, because these eventually will go back with the jury, the
15 face of this check is \$2,321.40. I'll give you that check so you can verify what I
16 just said.

17 (Exhibit shown to the witness.)

18 Q. Is that right?

19 A. That is correct.

20 Q. Now, the letters that will be given to the jury when they
21 deliberate, they mention a higher amount?

22 A. Yes.

23 Q. Why is that?

24 A. Because we've implemented a program, through the South
25 Carolina State law, that states how much we add per check.

1 Q. How much you add per check?

2 A. Yes, ma'am, that's correct.

3 Q. Is this like a service charge? What do you mean add to a
4 check?

5 A. As outlined in our letter, there's \$150 processing fee. And, then,
6 there's a \$30 fee that goes back to the individual that received the check, plus
7 the amount of the check.

8 Q. Are you aware that banks will charge if a check didn't clear?

9 A. Yes, ma'am, they do. And so that's what that \$30 service
10 charge goes towards, covering any fees that the victim may have incurred due to
11 a bad check.

12 Q. All right. Now you mentioned that the last letter was August 9th
13 — August 29th 2011? Let me get that exhibit for you.

14 **(Exhibit handed to the witness.)**

15 Q. And that would have had the warrant with it?

16 A. We had the company's affidavit and we will request a warrant so
17 when they — this goes out with a warrant to give the check writer another
18 opportunity to pay this before they're actually arrested.

19 Q. And that was what date?

20 A. This one was August 29th.

21 Q. And that's still an arrest warrant or — well an arrest warrant had
22 not be served?

23 A. No. We sent this with the affidavit requesting a warrant. But the
24 warrant office will give this to the check writer in another attempt to have him pay
25 it before they're actually arrested. And some individuals do decide to pay prior to

1 the actual arrest.

2 **MS. SCOTT:** All right. Answer any questions that
3 Defense Counsel may have for you.

4 **THE COURT:** Ms. Lyles?

5 **MS. LYLES:** Thank you, Your Honor.

6 **CROSS EXAMINATION by MS. LYLES:** **11:04 A.M.**

7 **Q.** Ms. Henderson, you told this Court that you sent out a few
8 letters in this case.

9 **A.** Yes, ma'am, that is correct.

10 **Q.** Okay. And the most important letter would be the one that you
11 sent certified?

12 **A.** Yes, ma'am.

13 **Q.** Because you're required by law to send that letter?

14 **A.** Right.

15 **Q.** And why are you required by law to send that letter?

16 **A.** Because we are required to send it to the address that's listed
17 on the check.

18 **Q.** And why are you required to send that?

19 **A.** Because that's the known address for the check writer.

20 **Q.** Okay. And you're required to send that before prosecution
21 begins?

22 **A.** Yes, ma'am, that is correct.

23 **Q.** And South Carolina law is — stated that is a requirement for a
24 worthless check?

25 **A.** Right.

1 Q. So they have decided that sending letters to ask for money is a
2 requirement before proceeding in these cases?

3 A. It requires that we send a letter to ask for restitution for a bad
4 checks, yes, ma'am.

5 Q. Okay. And you sent a letter in this case to 116 Kingsley Park
6 Drive?

7 A. That is correct.

8 Q. And you said you sent a couple of letters to this address, but
9 one of them being certified?

10 A. (No Response)

11 Q. I believe you sent one letter to the address and, then, one with a
12 warrant attached is what you stated?

13 A. Yes. And actually there may have been an additional letter that
14 we mailed to that address also.

15 Q. Okay. But you knew that Mr. Marett did not live there?

16 A. We knew that the air conditioning unit was installed at a different
17 address. And the law requires us to send it to that address. But the law does not
18 require that he has to receive it at that address.

19 Q. Okay. But you knew he was not getting these letters that you
20 sent him because they were being returned to your office?

21 A. That one letter; not the other letters. The other letters were not
22 returned to our office.

23 Q. The letters you that were sending certified, the ones required by
24 law, the 116 Kingsley Park Drive, were being returned to sender?

25 A. That one letter, that one letter did come back to our office.

1 Q. Okay. And it would have been reasonable to assume that he
2 lived where the air-conditioning unit was installed?

3 A. Yes, ma'am, that's correct. That's why we mailed a letter to that
4 address also. And that letter did not come back to our office.

5 Q. Okay. But you didn't send these letters with the warrant or the
6 certified letter to that address?

7 A. No. The first letters we sent, we do that to avoid getting a
8 warrant. We try to work it out. And a lot of times we go above and beyond trying
9 to seek out other addresses and contacts for the check writer so we don't get a
10 warrant or we don't have to get a warrant.

11 Q. Okay. Now, you have a copy of the check. And there's also a
12 copy that's been placed into evidence. Were you made aware, through your
13 investigation with the solicitor's office, what date this check was presented to
14 Refrigeration Services?

15 A. We were made aware that the check was presented on the 14th
16 of July of 2011.

17 Q. Okay. And what is the date written on the check?

18 A. The date written on the check is August the 14th of 2011.

19 Q. Okay. And what is the date that the check was cashed or
20 attempted to be presented to a bank?

21 A. It appears that the first presentation of the check to the bank
22 was on July the 18th of 2011.

23 Q. So the check was presented to the bank prior to the date that
24 was actually on the check?

25 A. Yes, ma'am, it appears that way.

1 Q. Okay. And did that come up in any way in your investigation?

2 A. Yes, ma'am, it did. And we spoke with the individual that
3 received the check and he stated there was no agreement to hold the check.
4 (Coughs) Excuse me.

5 There was no agreement to hold the check. And, at the time,
6 they did not notice that the date was wrong on the check, so, they took the check
7 with no agreement. And we addressed this several times with the individual that
8 there was no agreement to hold.

9 Q. What about with the bank?

10 A. No, ma'am., I did not talk to the bank.

11 Q. Okay. So you did not bring up this issue at any time with the
12 bank; the fact that they cashed a check earlier than it was supposed to be?

13 A. To the individual's knowledge, they deposited it when they were
14 supposed to. So they had no knowledge when they presented it. They were
15 under the impression ---

16 Q. I'm speaking about the bank.

17 A. I can't ---

18 Q. Between you and the bank?

19 A. No.

20 Q. All right.

21 A. No, I didn't talk to the bank.

22 Q. Okay.

23 (Brief Pause)

24 MS. LYLES: One moment, Your Honor.

25 THE COURT: Yes, ma'am.

1 (Off-the-Record Discussion)

2 MS. LYLES: I don't have any further questions of this
3 witness.

4 THE COURT: Ms. Scott?

5 MS. SCOTT: Yes.

6 REDIRECT EXAMINATION by MS. SCOTT:

11:04 A.M.

7 Q. On this letter... Let me —

8 (Counsel retrieves exhibit.)

9 Q. State's Exhibit 8, 6, 7, and 5, what was the date that this letter
10 was sent?

11 A. This letter was mailed to Mr. Marett on July the 27th of 2011.

12 Q. At what address?

13 A. P.O. Box 6505 here in Spartanburg.

14 MS. SCOTT: Permission to publish this to the jury?

15 THE COURT: Yes, ma'am.

16 (Exhibit published to the jury.)

17 Q. (By Ms. Scott) What's the date of this letter?

18 A. This letter was also mailed on July the 27th of 2011. And the
19 address on this letter is 646 Southern Street in Spartanburg, South Carolina.
20 That's the address where the unit was installed.

21 Q. Was this letter returned?

22 A. No, ma'am.

23 MS. SCOTT: Permission to publish this to the jury.

24 THE COURT: You may publish it.

25 (Exhibit published to the jury.)

1 Q. (By Ms. Scott) What's the date of that — that letter?

2 A. The date of this letter is August 9th of 2011. And it was mailed
3 to Mr. Thomas Marett at 116 Kingsley Street — I'm sorry, Kingsley Park Drive in
4 Moore, South Carolina.

5 Q. This letter was sent after the July of 2011 letter?

6 A. That is correct.

7 Q. And it has a special caption at the top. What does it...?

8 A. This is certified mail, the final notice.

9 Q. All right. Is "final notice," bold and underlined?

10 A. Yes, ma'am, it is.

11 MS. SCOTT: All right. Permission to publish this to the
12 jury?

13 THE COURT: You may.

14 (Exhibit published to the jury.)

15 Q. (By Ms. Scott) Now this letter was certified?

16 A. (No Response)

17 Q. That was the letter that was certified?

18 A. Yes.

19 Q. It was returned at some point?

20 A. That is correct.

21 Q. And that's State's Exhibit 9. And why was it returned?

22 A. It is marked from the Postal Service "return to sender not
23 deliverable as addressed. Unable to forward."

24 Q. And this is the same address that's on the check?

25 A. Yes, ma'am, that's the same address that's on the check.

1 Q. The same ---

2 MS. SCOTT: Permission to publish to the jury.

3 THE COURT: Yes, ma'am.

4 MS. SCOTT: Thank you, Judge.

5 (Exhibit published to the jury.)

6 Q. (By Ms. Scott) The same check that has on it, "closed
7 account"?

8 A. Yes, ma'am. It's the same address that's listed on here for the
9 check that's marked, "closed account."

10 Q. The address, does it match with the certified mail — or excuse
11 me — the address on the check that the mail was certified to come back
12 undeliverable?

13 A. Yes, ma'am, that is correct.

14 Q. This check came back unable to be cashed?

15 A. Yes, ma'am, that is correct.

16 Q. This mis — this representation of a check was written on a
17 closed account?

18 A. Yes, ma'am, a closed account.

19 MS. SCOTT: All right. Permission to publish this to the
20 jury.

21 THE COURT: Yes, ma'am.

22 (Exhibit published to the jury.)

23 Q. (By Ms. Scott) Now, there was mention on the date of that
24 check — and I'm handing up for the jury — the witness, with Defense Counsel's
25 permission, I'm going to give her a plain copy for her to look at while she's —

1 while they have it.

2 **MS. LYLES:** Okay.

3 **Q.** What's the date on that check there?

4 **A.** The date on this check is 8/14/2011.

5 **Q.** And that's what was on the date -- on the actual date line?

6 **A.** Yes, ma'am. That's on the date line of this check.

7 **Q.** The 14th of August?

8 **A.** Uh-huh (affirmative), yes.

9 **Q.** Now, what's the date of this letter?

10 **A.** August the 29th of 2011.

11 **Q.** And where did you -- you mail this to him?

12 **A.** This goes out with the sheriff's office. It goes to their affidavit

13 and the sheriff's office sends that one out.

14 **Q.** And had he been arrested on this charge at that point?

15 **A.** To my knowledge, no, he had not been arrested.

16 **Q.** This was another attempt ----

17 **A.** Yes, ma'am ----

18 **Q.** -- to collect?

19 **A.** -- this is another attempt. This goes out before he's arrested.

20 **Q.** And why are you using this address?

21 **A.** Because that's the address that was on the check.

22 **MS. SCOTT:** Permission to publish this to the jury.

23 **THE COURT:** Yes, ma'am.

24 **(Exhibit published to the jury.)**

25 **Q.** (By Ms. Scott) But obviously -- and I think you can agree -- it's

1 after August 14th, 2011, on the check?

2 A. Yes, ma'am, that is after August the 14th.

3 Q. And you talked about the ways you contacted people on direct
4 — on cross examination. Excuse me. Do you also attempt to contact creditors
5 or actually I should say offenders via phone?

6 A. Yes, ma'am.

7 Q. Do you recall, from your notes and your system, if a call was
8 made to Mr. Marett or if a — a call was attempted to be made to Mr. Marett?

9 A. I think we attempted to call him, but we weren't able to get in
10 contact with him.

11 MS. SCOTT: All right. Please answer — you already
12 have, but she may have additional questions for you.

13 THE COURT: Anything, Ms. Lyles?

14 MS. LYLES: Just one additional question.

15 THE COURT: Sure.

16 **RECROSS EXAMINATION by MS. LYLES:** **11:15 A.M.**

17 Q. Although that date is after August 14th, it's clear that the address
18 you were sending was not a place where Mr. Marett lived?

19 A. We've sent many — well, we did send letters to the address
20 where he lives.

21 Q. After August the 14th, 2011?

22 A. After August 14th? I would have to check.

23 (Brief Pause)

24 A. I think the letter that we mailed on the 9th of August to that
25 address told him he had ten (10) days to make the check good. And we mailed it

1 to the add — his physical address where we knew he was living and to this
2 address also.

3 And so we gave him ten (10) days past the 9th of — of August.

4 And, then, we added an extra ten days also to give him some additional time to
5 get here, but he never attempted ----

6 Q. But no letters were mailed after that date?

7 A. To that address?

8 Q. Correct.

9 A. They would have gone out on the 29th I believe that was to him at
10 that address.

11 Q. To the incorrect address?

12 A. Yes, ma'am, to the address that was on the check.

13 MS. LYLES: Thank you.

14 THE COURT: Thank you, ma'am. Please step down and
15 watch your step.

16 A. Okay.

17 (The witness complied with the request.)

18 MS. SCOTT: Judge, I'm going to check outside for a
19 moment.

20 THE COURT: Okay.

21 (Pause while Ms. Scott stepped outside.)

22 MS. SCOTT: Judge, that's all of our witnesses.

23 THE COURT: Okay. Ladies and gentlemen, at — at this
24 point — has the State rested?

25 MS. SCOTT: Yes, sir.

1 **THE COURT:** Okay. At this point, there's going to be
2 some matters of law that I have told you about before that will be
3 necessary for me to take up and it would not be proper for you to be
4 here at this point.

5 So, Mr. Foreman, and ladies and gentlemen of the jury, I'm going
6 to ask you to go with our bailiffs back to your jury room. And we'll send
7 for you in a few moments.

8 **(The jury exited the courtroom at 11:19 a.m.)**

9 **THE COURT:** Any motions?

10 **MS. LYLES:** Yes, Your Honor.

11 **THE COURT:** Yes, ma'am?

12 **MS. LYLES:** At this time, I'd move for a directed verdict.

13 I don't believe the State has met its burden at this time. One of the
14 issues I believe is that we have not heard from anyone from Bank of
15 America.

16 Yes, we have a piece of paper that says it's a check, but we
17 have not heard that they're — it actually — we haven't heard anything
18 from Bank of America as to — you know, whether — anything in regards
19 to that issue;

20 You know, how it was cashed, where it went through, how it
21 came back from the bank. Whether or not it actually was a closed
22 account, anything to that issue. I believe they needed to have
23 someone from Bank of America as to that issue.

24 We also have not heard anything from the actual technician that
25 came out to the house to make any agreement with my client as to how

1 he was supposed to pay for this.

2 This is a — I know I'm not allowed to call it a check, but it is a
3 promise to pay. It's a post-dated check or a post-dated writing.

4 And as far as — they do offer financing. Both of them have said
5 that. Neither of these people were there at the time that this agreement
6 was struck. And I don't believe that they can say what happened at that
7 time.

8 And the State has produced no one that was there at the time
9 that my client had this work done, just people that were at the office that
10 later, you know, wrote something on a document. And I don't believe
11 that, that's enough to get past a directed verdict at this time.

12 **THE COURT:** Ms. Scott?

13 **MS. SCOTT:** Thank you, Your Honor. What was moved
14 into evidence was the copy — the direct copy of the check that was
15 mailed from the bank that was given in the testimony of both the
16 Ballengers along with the solicitor's check unit.

17 The actual copy that you saw before was not produced because
18 of the way it's printed front and back. But the yellow copy was sent
19 from the actual bank listed "closed account."

20 We do not have to have the bank, Your Honor, to testify that it
21 was a closed account. The document speaks for itself along with the
22 fact that the custodian of records, Ms. Kim Ballenger, received that
23 directly from the bank as — her bank actually as what the check was —
24 was written on a closed account.

25 Also, in relation to the actual technician, who was not present to

1 testify about the agreement, Your Honor, as to whether or not he
2 applied for Wells Fargo financing, the jury is left the decision to imply
3 that point in the fact at the point where we have presented to us
4 misrepresentation of a check which would infer that there is no Wells
5 Fargo financing; whether or not it was applied for and denied or whether
6 it was not applied for at all.

7 Both the company's representatives stated that, after the
8 completion of the — of the job, a check had — or excuse me — payment
9 had to be rendered.

10 They would not have started the actual project without knowing
11 that. And, when they did so, they received a payment.

12 Also, Kim Ballenger testified that, once that work order was —
13 Mr. Marett received a copy of it — a three-ply of some sort, that it was
14 directly, then, typed up and, then, sent back to Mr. Marett.

15 I do believe, in the light most favorable to the State, that we have
16 shown, Your Honor, that the check or the misrep — the
17 misrepresentation of the check was written on a closed account, and in
18 addition to the fact that, that was the agreement as payment for the
19 service that was completed at 646 Southern Street.

20 **THE COURT:** Anything further, Ms. Lyles?

21 **MS. LYLES:** No, Your Honor.

22 **THE COURT:** Okay. Thank you. Well, your motion is
23 denied for a directed verdict at this time. This Court is not in the
24 business of weighing the evidence.

25 This Court is — is merely to determine at this point, in the light

1 most favorable to the non-moving party, which is the State, whether or
2 not there is a scintilla of evidence which would send this to the jury.

3 That's a question of fact for the jury. And there is certainly amply
4 evidence, from the testimony of the custodian of records, as well as the
5 president of the company, that there were certain methods of payment,
6 how those were handled. And that none of those would have included
7 a promissory note being sent.

8 Again, it's not a check; it's a written instrument that purports to
9 be a promissory note. But the -- but there's some evidence in the
10 testimony that they would not have accepted that. So we'll let the jury
11 weigh that. Anything else?

12 **MS. LYLES:** No, Your Honor.

13 **THE COURT:** Okay. Are you ready to go forward?

14 **MS. LYLES:** I am, Your Honor. My witnesses are here.

15 **THE COURT:** Okay. All right. We'll have our jury back
16 then.

17 **(The jury is summoned.)**

18 **THE COURT:** Let me just say this while the jury is coming
19 in. Requested charge, we have requested charge in writing that you'd
20 like to submit. We're about half -- we're halfway through the case,
21 you want to get those to us over lunch if you have something?

22 **MS. LYLES:** I will get those to you over lunch, Your
23 Honor.

24 **THE COURT** If you want, you can send them to Trey on
25 email.

1 **MS. LYLES:** That would be great. Thanks.

2 **(The jury entered the courtroom at 11:25 a.m.)**

3 **THE COURT:** Mr. Foreman, ladies and gentlemen, any —
4 any issues with the jury?

5 **FOREMAN:** No, Your Honor.

6 **THE COURT:** All right. Thank you for your patience.
7 We're now ready to begin with the Defense's case. Ms. Lyles?

8 **MS. LYLES:** Thank you, Your Honor. The Defense calls
9 Boyce Bush.

10 **(The witness was summoned and stepped forward to be**
11 **sworn.)**

12 **(Off-the-Record Comments)**

13 (Whereupon,

14 **BOYCE BUSH**

15 first being duly sworn, testified as follows:)

16 **THE COURT:** Sir, if you would, state your name for the
17 record for my court reporter, please.

18 **THE WITNESS:** Okay, Boyce Ansel Bush, II (phonetic).

19 **THE COURT:** All right, sir.

20 **THE WITNESS:** Okay.

21 **THE COURT:** Answer Ms. Lyles' questions.

22 **THE WITNESS:** Okay.

23 **MS. LYLES:** Thank you, Your Honor.

24 **DIRECT EXAMINATION by MS. LYLES:** **11:26 A.M.**

25 **Q.** Mr. Bush, you go by Buddy, don't you?

1 A. Right.

2 Q. Okay.

3 A. That's my nickname, yeah.

4 Q. And would you, please, tell the jury where you work?

5 A. The City of Spartanburg, Building Inspections Department.

6 Q. And what do you do there?

7 A. I'm the building official. I'm — I'm the department head.

8 Q. And what type of things do you do for your department?

9 A. Oversee issuance of permits, oversee the inspectors that do
10 daily inspections; everything related to, you know, building inspections.

11 Q. Okay. And, as part of your job, do people come to you and apply
12 for permits for various things in the City of Spartanburg?

13 A. They do, yeah, daily.

14 Q. Okay. And do you have to go out to properties and make sure
15 that everything is in order to give permits?

16 A. Yes. We — we — we do inspections daily and — and make sure
17 they're in compliance with the building codes.

18 Q. And what would be the reason for this?

19 A. For life safety; basically for — for life safety to make sure the
20 structures and equipment is in a safe working manner.

21 Q. And is this a requirement in the City of Spartanburg?

22 A. It — it is. It's a — actually it comes all the way down from the
23 state level, which every city or municipality and county has to adopt the current
24 building codes. We're under the 2012 edition of the International Building,
25 Plumbing, Electrical, Mechanical, Fuel Gas, et cetera, all those codes. So, yes,

1 the City has to adopt it and enforce it.

2 Q. Okay. And, if you were getting a heat pump system, what type of
3 permit would that fall under?

4 A. We — we would call that a mechanical permit.

5 Q. Okay. And ----

6 MS. LYLES: May I approach the witness?

7 THE COURT: Yes, ma'am.

8 MS. LYLES: Thank you, Your Honor.

9 Q. (By Ms. Lyles) Does this look like a mechanical permit
10 application that your — that Spart — in the City of Spartanburg?

11 (Document handed to the witness.)

12 A. Actually this — this one — I mean, it resembles, but this is
13 actually a Spartanburg County ----

14 Q. Okay.

15 A. ---- application right here. Ours is a little bit different for the City.

16 Q. Okay. But this is basically what you're talking about that you do,
17 mechanical permits?

18 A. Yes, yes, that's — yeah, we have a form for each particular —
19 whether it be plumbing, mechanical, electrical, each type of application.

20 Q. Okay. And, if someone was going to get a new heat pump, they
21 would need to apply for a permit to do so?

22 A. Yes, they would.

23 Q. And, if they did not do so, what would be the problem? What
24 would happen?

25 A. Well, if we knew about it, we — we could issue them a -- a

1 summons to appear in court for a violation of the — the city ordinance. And we
2 could require, obviously, that they — they get a permit after that. And — and,
3 then, we, you know, do the proper inspections and rectify it if there are any
4 problems.

5 Q. Okay. And do you — by getting a permit, are you also protecting
6 the homeowner?

7 A. We are. I mean, that's the whole — that's the — the main
8 purpose of the building codes is to protect the public. And whether it be the
9 person that lives in the house now or the person that buys the house five years
10 from now,

11 Q. And are you making sure they get the right size and the right
12 equipment and the right safety equipment and things of that nature?

13 A. Yes, we do, absolutely.

14 Q. Okay.

15 A. That's all a part of it.

16 Q. And, in subpoenaing you to come here today, I had to look in
17 your records; is that correct?

18 A. You did, yes.

19 Q. And I had to look up a particular address; is that true?

20 A. Yes, yes.

21 Q. And I had you look up the address 646 Southern Street.

22 A. Correct.

23 Q. And, on the date of July 14th, 2011, was a permit issued for the
24 work done on the house?

25 A. No, there wasn't.

1 Q. And so, if someone did work on a heat pump that day at that
2 house, they did not get a permit to do that work?

3 A. No, sir. I don't find any record of a permit being applied for. And
4 obviously nor issued for that particular address.

5 Q. Okay. And you would be the person that can pull those records
6 for the City of Spartanburg?

7 A. I — I can. I can oversee it. I can do it myself or have a clerical
8 person do it.

9 Q. Okay. And you are the supervisor for this unit?

10 A. Yes, I am.

11 Q. And, by not pulling a permit, you said it's a violation of the city
12 ordinance?

13 A. Yes, it is.

14 Q. And it's a safety issue?

15 A. Absolutely.

16 Q. And it can cause other problems; you know, they could have
17 done the work poorly or improperly?

18 A. Sure. There could be some electrical issue. I mean, there's a
19 multitude of things that could occur. But, yes, I mean, a possibility it was done
20 wrong. And that's why we try to go out and inspect to ensue it's done right.

21 Q. So, at the address of 646 Southern Street in Spartanburg, South
22 Carolina, you could find no mechanical permit application ---

23 A. Not ----

24 Q. — in your file?

25 A. — not — no, not that date and time. There was — the only

1 permit that I could find related to 646 Southern Street dated all the way back to
2 2005.

3 Q. Which would have been the previous unit that was placed in the
4 house?

5 A. Yes. There was a mechanical permit taken out by Davis Heating
6 and Air back in 2005 that we did inspect and we did approve and final out at that
7 point in time.

8 MS. LYLES: Okay. Thank you. I don't have any other
9 questions.

10 THE COURT: Ms. Scott?

11 CROSS EXAMINATION by MS. SCOTT: 11:32 A.M.

12 Q. Mr. Bush ----

13 A. Yes?

14 Q. — you mentioned that the permit is — is received before work
15 gets started?

16 A. That's the — the procedure that we like for contractors to follow.

17 Q. And, then, an inspection happens after it's installed.

18 A. Yes.

19 Q. All right. Once a permit is applied for, do you all go to the site at
20 that point?

21 A. At the request of the — the contractor. They — after they install
22 the equipment, typically they'll contact our office and request an inspection over —
23 we — we use 24-hour notice.

24 And, then, we -- we typically, after a heat pump is installed, it's a
25 pretty quick turnaround time. So, yeah, usually after they're done, the next day or

1 so they — they call for an inspection.

2 Q. All right. And you mentioned that the application and the
3 inspections are two different times?

4 A. Well, the application is just an application.

5 Q. Yes, sir.

6 A. And — and we review it to make sure one, that the contractor
7 has a state license to do the work they're trying to do whether it be a mechanical
8 or electrical. They got to be licensed in that particular trade by the state.

9 The Residential Builder's Commission is — is under the arm of
10 the South — the SCLR (phonetic), labor licensing and regulation board. They
11 license contractors whether they be plumbing, electrical, mechanical, whatever.

12 And — and so we verify that information on the application to
13 make sure also that they have a current business license. That's another little
14 procedure.

15 And, then, after all of that, we do require — in this we require —
16 when this occurred, in January of this year, this — this obviously was prior to that,
17 but we require what we call a Manual J (phonetic) documentation that sizes the
18 equipment properly for the — the house size.

19 Q. And that was in January?

20 A. That — that was in January.

21 Q. 2013?

22 A. Pardon me?

23 Q. You mean 2013?

24 A. Yes.

25 Q. Okay.

1 A. Yeah.

2 Q. That was not in place July 2011?

3 A. We didn't require the submission of the Manual J after — until
4 January ----

5 Q. Yes, sir.

6 A. — because the code by letter says, you know, you shall submit
7 it. But what we — what was done, prior to that point, we — we would rely upon
8 the contractor to properly size the equipment based on the — and — and they
9 used to use a rule of thumb based on square footage and tonnage.

10 But contractors also have access to mechanical information from
11 the manufacturer which helps them size the equipment properly.

12 Q. All right. I want to talk about sizing equipment properly.

13 A. Okay.

14 Q. Well, first, don't be offended by this: How much do you know
15 about actual installation of heat pumps? Do you know --- do you know about
16 make and model?

17 A. Pardon?

18 Q. Do you know about make and models of heat pumps?

19 A. Well, I don't know what the verbiage of what you're talking about
20 make and models or ----

21 Q. Okay. Let me try — let me... Do you know the difference
22 between a heat pump that was in 2011 and the new heat pumps in 2013, the
23 difference?

24 A. Well — well, you look — well, I mean, obviously they have certain
25 dates on them.

1 **MS. LYLES:** Objection, Your Honor.

2 **THE COURT:** What's the objection?

3 **MS. LYLES:** Cross has gone way beyond the scope of
4 the direct. She's asking him to speak about things that are not within
5 his knowledge.

6 **THE COURT:** Well, I don't know that at all. At this time, it's
7 overruled. She's on cross, so ----

8 **MS. LYLES:** Okay.

9 **THE COURT:** — go ahead, Ms. Scott; make it relevant.

10 **MS. SCOTT:** Yes, sir.

11 **Q.** (By Ms. Scott) You mentioned that you inspect heat pumps — or
12 do you send people out? Do you actually send the people out or do you go out?

13 **A.** No, I'm — I'm certified in that too, but -- and I have looked at
14 heat pumps.

15 **Q.** Yes, sir.

16 **A.** But typically I have a mechanical inspector who does that for us
17 day in and day out.

18 **Q.** But could you have done so though?

19 **A.** I could have.

20 **Q.** Okay.

21 **A.** Sure.

22 **Q.** Okay. In 2011 you had that certification?

23 **A.** Oh, yeah.

24 **Q.** Now, you mentioned heat pumps that you know to be — that they
25 have to have a permit. Is that any size heat pump?

1 **A.** It's any size. When you put in a new condensing unit, which is
2 the — that's the unit outside, and not the fan unit, but it's the condensing unit
3 outside, that — we always require a permit for that.

4 And that's based on tonnage. That's how we charge for it.

5 **Q.** All right. So, if a — a unit was not completely replaced, but, for
6 example, a small portion of it like you're mentioning, the unit outside, that requires
7 a ----

8 **A.** A condensing unit. If it was just replaced, we would charge for
9 that. Sometimes they'll — they'll have a condensing unit outside and you'll have a
10 fan unit inside the house. And you have a line set that goes from the heat pump
11 outside into the unit inside where you have the blower.

12 And, you know, they'll replace both units. And we look for — you
13 know, whatever they're permitting, we'll look at the total of, you know, equipment
14 because you have a pan up under the unit in the house in case it drips. There's
15 requirements on that. And, then, you have condensate pipes that come out.

16 So, I mean, we're looking at that whole — you know, whatever
17 piece of equipment they're changing out. But typically they'll — they'll do the
18 condensing unit at the very least. And, then, sometimes they replace that and the
19 internal unit as well.

20 **Q.** If they only replace the internal music — unit, would they have to
21 have ----

22 **A.** Yes.

23 **Q.** ----- a permit?

24 **A.** Yes, they would.

25 **Q.** And what about the unit that's upstairs in the home, some sort of

1 dripping pans that were in the attic of the home? Would they have to request a
2 permit for that?

3 A. Well, I mean, if they put the — the blower unit up in — in — in the
4 attic, we would have looked — yes, we would permitted that; that's right.

5 Q. Okay.

6 A. If they're just repairing the unit, like putting a new motor in a
7 compressor, or ----

8 Q. When you say, "they," what ----

9 A. Well, a contractor.

10 Q. Yes, sir.

11 A. They would — they, the contractor, would — would — he can
12 repair a unit, take a piece of that unit apart and replace it with a new part. But, if
13 you replace the whole assembly, that's what I'm trying to say, condensing unit,
14 whether it be that or the blower unit up in the house, then, they've got to permit
15 that.

16 Q. And you mentioned there's sanctions that you all would impose
17 on a mechanic or a contractor that did some work without the City's permission.
18 Is 646 within the city limits?

19 A. It is. It's in the —

20 Q. Okay.

21 A. We have a 646 Southern Street, which is in Beaumont
22 (phonetic).

23 Q. Which is where?

24 A. Beaumont Village.

25 Q. Yes, sir.. Have you actually been to that address?

1 A. Myself?

2 Q. Yes, sir.

3 A. I've been by it.

4 Q. Okay. Now have you been actually to Mr. Tom Marett's house?

5 A. Not that I recall. I mean, I'm just saying I — I get — you know,
6 I've been throughout the whole city.

7 So I've — I've been by these residences and whatnot for one
8 reason or another. But, no, I haven't been to that particular residence.

9 Q. What type of sanctions are imposed on contractors who don't get
10 permits?

11 A. We — we would — one we would issue a summons telling them
12 to appear in court.

13 Q. Uh-huh (affirmative).

14 A. And beyond that, we would double fee them part of the permit.
15 We would make them pull the permit. I call it pulling, but it's purchasing the — the
16 permit.

17 And, then, we would — at that point, we would just go on and
18 make — make the request that they get an inspection and do the work. And —
19 and we would — you know, every time he's in violation, if he did it again, we
20 would issue a summons again to him.

21 And, ultimately, he could lose his state license as well. We can
22 do it or a home owner can do it. We can submit it to the Residential Builders
23 Commission and they can send an investigator up and, then, they could, you
24 know, basically take his license away from him for continuing to violate.

25 Q. So the permit — if there was a permit issued, it could be

1 remedied by going to the court and actually — you called it a double fee on that
2 contractor, but it could be remedied?

3 A. Yeah, it could be.

4 Q. And, if a permit wasn't pulled, or was delayed in being pulled,
5 would you have that inspector — I'm sorry — that contractor remove any unit?

6 A. (No Response)

7 Q. Would you ask them to remove a unit until they have the permit?

8 A. Remove the unit until they have a permit?

9 Q. Yes, sir. If you were made aware ----

10 A. No. No, we would — we would have them get the permit and go
11 out and inspect the unit.

12 Q. You wouldn't ask them to take all their work out?

13 A. Site unseen, no. We would go out and check it.

14 Q. Yes, sir. Also, would you have asked — in the case we're here
15 in, would you have asked the homeowner not to pay for the unit?

16 A. We don't get involved in that.

17 Q. The sanctions that you were talking about are doubling up the
18 fee on these mechanics and also ensuring that they eventually get this permit so it
19 can be inspected?

20 A. Yeah, if we know about it, that's right.

21 Q. Did you — are you aware of a Kingsley Park Drive? Is that in the
22 city limits of Spartanburg?

23 A. I'm not familiar with that street.

24 MS. SCOTT: Okay. Nothing further for this witness, Your
25 Honor.

1 **THE COURT:** Thank you. Ms. Lyles, anything?

2 **MS. LYLES:** I don't have anything further.

3 **THE COURT:** Sir, you may step down. And, please, be
4 careful where you step.

5 **THE WITNESS:** Okay. Thank you.

6 **THE COURT:** Yes, sir.

7 **(The witness complied with the request.)**

8 **MS. LYLES:** The Defense calls Michael Atkins.

9 **THE COURT:** All right.

10 **(The witness is summoned and stepped forward to be**
11 **sworn.)**

12 **THE COURT:** Come up, Mr. Atkins, and be sworn, please.

13 **FOREMAN:** All right.

14 **(The witness complied with the request.)**

15 (Whereupon, first being duly sworn,

16 **MICHAEL ATKINS**

17 testified as follows:)

18 **(Off-the-Record Comments)**

19 **THE COURT:** Mr. Atkins, please, be kind enough to give
20 my court reporter your full name, please.

21 **THE WITNESS:** Michael W. Atkins (phonetic).

22 **THE COURT:** Thank you. Please, answer any questions
23 Ms. Lyles may have, okay?

24 **MS. LYLES:** Thank you, Your Honor.

25 **DIRECT EXAMINATION by MS. LYLES:** **11:42 A.M.**

1 Q. Mr. Atkins, can you let the jury know where you work?

2 A. Yes, ma'am, At Your Service Heating and Air.

3 Q. And what do you do for At Your Service Heating and Air?

4 A. I'm the owner.

5 Q. Okay. And as the owner, can you tell me a little bit about your
6 business?

7 A. We do primarily residential and commercial -- light commercial
8 heating and air conditioning services, repairs, and new -- new installations.

9 Q. Okay. And does that include installation of heat pumps?

10 A. Yes, ma'am, it does.

11 Q. And can you tell me a little bit about heat pumps?

12 A. Yeah. They're an air conditioner, if you will, that will run in
13 reverse in the winter time, provides us both with cooling in the summer and heat
14 in the winter time. Different sizes from one and a half to five tons typically in the
15 residential market. Above that you get into commercial work.

16 Q. Okay. And the various sizes, are -- are those sizes for different
17 sized houses or different sized buildings?

18 A. That's correct, different applications.

19 Q. And, when you go to a house or a building, how do you
20 determine what size is needed for that space?

21 A. We run what's called a load calculation that takes into
22 consideration the insulation overhead, the walls, floors, doors, windows, that sort
23 of thing. And through that calculation, it tells you what size system that it needs.

24 Q. Okay. And did you have a chance to be called out to 646
25 Southern Street in Spartanburg, South Carolina?

1 A. Yes, ma'am.

2 Q. And, at that address, did you meet Mr. Marett?

3 A. I did.

4 Q. And what was the purpose of that call?

5 A. The — the first call we had from Mr. Marett, a service technician

6 was dispatched to check a — a unit noise and a high power bill. I have the ticket

7 here. And I talked to the technician and didn't find anything wrong with the unit.

8 They're made as such now sometimes, if they're not set real
9 level, they'll vibrate. The unit will vibrate and make a little bit of noise. If you
10 scoot the unit around, it'll quit making the noise.

11 It didn't explain the high power bill. He checked everything,
12 everything was running at — at capacity correct per manufacturer's specifications.

13 Q. Okay. And manufacturer's specifications for what?

14 A. For that particular system.

15 Q. Okay. And do — do you have notes as to what system that was?

16 A. The outside unit — let me think here. I may not have all the
17 notes. I do recall it's a two ton outside unit. And I believe it's a Payne (phonetic).

18 Q. Okay. And what was the date of that first call?

19 **(Brief Pause)**

20 A. Nine — I'm sorry, 4/9/13.

21 Q. Okay. And that was for high electricity?

22 A. Correct, for a high power bill in the months prior to that.

23 Q. Okay. And did he tell you that he had been having previous
24 problems with this unit?

25 A. Yes, ma'am. Richard, the technician went out, asked that I come

1 out, and — and speak with — with Mr. Marett about replacing the unit. And, when
2 I got there, I saw that there was a fairly new unit sitting there.

3 He explained to me that it had been replaced and asked me what
4 size it was. So I looked at the unit and it was a two-ton.

5 Q. Okay. And did you see any problems with it being a two-ton
6 unit?

7 A. In my opinion — I didn't run a load on the house, but in my
8 opinion it is too small for the house.

9 Q. Okay. Did you know, at the time that you told Mr. Marett that it
10 was a two-ton unit — was that a shock to Mr. Marett?

11 A. Yes, ma'am. Well, I don't know that it was a shock to him at that
12 time. I think my guy had already told him. Richard had already told him it was a
13 two-ton.

14 Q. A two-ton Payne unit?

15 A. Yes, ma'am.

16 Q. And why was that a shock?

17 A. It was my understanding, when he had it replaced, that he — that
18 he was — he paid for a two and a half ton.

19 Q. Okay. And, as a owner of a air-conditioning company, can you
20 tell me why there would be problems with having a two-ton unit when you paid for
21 a two and a half ton unit?

22 A. Well, obviously, money would be the biggest concern I would
23 have.

24 Q. Okay. Other than the fact that you were paying for a two and a
25 half ton unit, when you got a two-ton unit, tell the problems that you would have

1 within your house.

2 **A.** A two and a half ton unit produces 30,000 BTUs give or take a
3 couple of hundred. It depends on the manufacturer and how they're made. But
4 we'll say for the sake of simplicity 30,000 BTUs.

5 A two-ton produces 24 so we've lost six thousand (6,000) BTUs
6 of heat in the winter time. It's going to cause the unit to run longer, cause the unit
7 to bring the strip feed (phonetic) on quicker, cause you to have a higher power bill.

8 **Q.** Okay. Would it also cause it to be harder for the unit to heat your
9 house in the winter?

10 **A.** Absolutely.

11 **Q.** Your house would remain colder in the winter?

12 **A.** Yes, ma'am.

13 **Q.** And, in the summer, your house would remain warmer?

14 **A.** Yes, ma'am.

15 **Q.** And it would take much longer for your house to get cool?

16 **A.** That's correct.

17 **Q.** You would have some warm afternoons?

18 **A.** That's correct.

19 **Q.** And it would cause a very high power bill?

20 **A.** Yes, ma'am, because it's going to run longer.

21 **Q.** And you said this is because of the much lower BTUs in a two-
22 ton unit?

23 **A.** That's correct.

24 **Q.** Is that something easily you can explain to the Court, what a
25 BTU is, or is that something we just need to accept, that it's much lower?

1 A. Sure. BTU stands for British Thermal Unit. It's the amount of
2 heat required to raise one pound of water one degree farenhedt.

3 Q. Okay. So a 6,000 difference is a pretty substantial difference?

4 A. A 6,000 — remember the little window units? And — and some of
5 them even had little handles on them on top like little suitcases, that's 6,000
6 BTUs. The majority of those were — when they first came out years ago — and
7 I've been around a while — that was 6,000 BTUs. We'd put them in a bedroom.

8 Q. Okay. And so, when you came out, Mr. Marett was looking to
9 replace this unit or to fix the problem?

10 A. Well, he was looking to fix the problem I think.

11 Q. And it's not really something you can fix, changing a two-ton unit
12 into a two and a half ton unit, is it?

13 A. Not unless you, you know, replace it, take it out and put another
14 one back in.

15 Q. Okay. And how long is a heat pump generally supposed to last?

16 A. *Consumer Reports* says 12 to 15 years.

17 Q. So, if this one was placed, then, in 2011, he should not be
18 getting it replaced right now?

19 A. Well, I think — will it run? Yeah, yeah, I mean, it should run ten
20 more years or so. I mean, it's mechanical; it could break at any time, but
21 normally. The unit was only four or five years old or so, something like that.

22 Q. Right. But it'll run, but it's — it's going to run poorly, correct?

23 A. Yeah, correct.

24 Q. Okay. So Mr. Marett should not have to be looking to get his unit
25 replaced right now?

1 A. No, no, ma'am.

2 Q. Okay.

3 MS. LYLES: I don't think I have any other questions at
4 this time.

5 THE COURT: Thank you. Ms. Scott?

6 CROSS EXAMINATION by MS. SCOTT: 11:52 A.M.

7 Q. Mr. Atkins ----

8 A. Yes, ma'am?

9 Q. Okay. You mentioned that you got a call in April of 2013?

10 A. Yes, ma'am.

11 Q. And is it safe to say you didn't get a call in 2011 or '12?

12 A. No, ma'am., I didn't — I did not, not that I'm aware of. This is
13 the first time we had ever been there, yes.

14 Q. All right. Did you charge Mr. Marett for his services — for your —
15 I'm sorry — for your service to his house?

16 A. Yes, ma'am.

17 Q. Now, were you aware that the previous unit was in 2005?

18 A. (No Response)

19 Q. The previous unit that he had installed in 2005?

20 A. No, ma'am.. It wasn't there when I got there, so, I didn't get a
21 chance to look at it.

22 Q. Could you tell from the way the installation was done that he had
23 an older model that was upgraded?

24 (Brief Pause)

25 A. Yes. I think what I'm saying that she needs to hear is the heat

1 pump has two pieces.

2 Q. Yes, sir.

3 A. And — and most of the time, one is in the crawl space and one is
4 in the attic. And the other one sits outside. In — in his case, the other unit is in
5 the attic. And, yes, ma'am, it does — it was an older unit that was in the attic and
6 just the outside unit was replaced.

7 Q. I'm going to hand you — and this is not your work order, all
8 right?

9 A. Sure.

10 Q. It is an exhibit from Refrigeration Service. First of all, do you
11 know that company?

12 A. I've seen the name; don't know anything about it.

13 Q. Yes, sir. And that's the light copy so ----

14 A. Uh-huh (affirmative).

15 Q. — if you have a question about something says, we'll try to work
16 it out on that copy here. Something says R-22. Do you see that on the line —

17 A. Yes, ma'am.

18 Q. And there's also a model number?

19 A. (No Response)

20 Q. Do you see that? It starts with "T" ----

21 A. Yes, ma'am.

22 Q. ---- and a bunch of numbers?

23

24 A. Uh-huh (affirmative).

25 Q. Are you aware of that model number and what R-22 means?

1 A. Yes, ma'am.

2 Q. Could you tell the jury?

3 A. R-22 is -- is the shorten name of our refrigerant. That's what is
4 in -- was in older heat pumps for the past --- probably the past 30, 40, 50 years; I
5 never really thought about it. But it has been around forever.

6 Q. Yes, sir.

7 A. Our government says it depletes the ozone, so we're -- we're --
8 we're getting rid of it and putting some new stuff in now.

9 Q. Okay. A lot of things happen in the air conditioning world, right?

10 A. Oh, yeah, absolutely.

11 Q. Okay. If a customer refused to actually replace their whole old
12 system, would you, as a company -- I think you've been in place for what did you
13 say, 30 some years, right?

14 A. I've been around for a while.

15 Q. Yes, sir. Would you make arrangements to upgrade their older
16 system?

17 A. There are certain instances where it's fine to replace just that
18 outside unit.

19 Q. Okay.

20 A. A unit in an attic will like -- will last longer than one in a crawl
21 space will. A crawl space humidity, it's damp and they rust a lot quicker. A unit in
22 the attic is hot, but it's dry.

23 Q. Uh-huh (affirmative).

24 A. They'll last, you know, 15, 20 years up there, no problem. So, if
25 one is an issue, would I replace just an outside unit and not the entire thing? Yes,

1 ma'am, I would.

2 Q. You would stress to the client that you would advise a whole new
3 thing?

4 A. (No Response)

5 Q. Would you have stressed to the client what you would advise?

6 A. I like to talk to the client and see what they --- you know,
7 sometimes money is an issue. I want to sell you everything I got.

8 (Laughter)

9 Q. I got you.

10 A. But — but everybody can't afford that.

11 Q. I get it.

12 A. So we have to — we have to choose what works for a client and
13 what's affordable and what's — what's doable for them.

14 Q. And, after working with a client, you have upgraded the older
15 machine ----

16 A. Yeah.

17 Q. — based off the money? Now, you were paid for your
18 service —

19 A. Uh-huh (affirmative).

20 Q. ---- with Mr. Marett?

21 A. Yes.

22 MS. SCOTT: Okay. Nothing further for this witness, Your
23 Honor — oh, I'm sorry, Judge. Just one more.

24 THE COURT: Yes, ma'am. Go ahead.

25 Q. (By Ms. Scott) You mentioned earlier on direct examination that

1 you didn't do a load on the house. And I did not know what you were talking
2 about.

3 A. Right.

4 Q. What is that?

5 A. The load is a — is a calculation. If there's — if there's R-30 in the
6 walls — if this is our home and R-30 is in all the outside walls, then, R-30 has a u-
7 valve (phonetic), which is a multiplier.

8 So we take all of the running feet of the walls, the — the square
9 feet of the walls, the running feet. And we multiply it by that u-factor, and that
10 gives us a number, in the ceiling and in the floor.

11 And you add all those numbers up and that tells you 24,000
12 BTUs, 30,000, 36,000. That tells you the size of the unit that you need.

13 Q. Okay. And you say you didn't run that load, but based on your
14 experience, you kind of looked at the house and you thought you would know
15 what it would need?

16 A. Yes.

17 MS. SCOTT: Okay. That's it.

18 THE COURT: Thank you. Ms. Lyles?

19 MS. LYLES: Nothing further, Your Honor.

20 THE COURT: Sir, you may step down. Please watch your
21 step. And I'm going to ask you to remain in the courtroom just for a
22 minute.

23 THE WITNESS: Remain in the courtroom, sir?

24 THE COURT: Yes, sir.

25 THE WITNESS: Okay.

1 (The witness complied with the request.)

2 THE COURT: Let me see the lawyers, please.

3 (Whereupon, a bench conference was had with both
4 attorneys present.)

5 THE COURT: Okay. All right. Thank you. As you could
6 probably hear, I was inquiring of the lawyers here about the time frame
7 we needed here because it's right at 12 o'clock. Remember I told you I
8 didn't want anybody getting hungry. And I usually eat lunch about 12
9 o'clock.

10 So it's my understanding that I have a couple of matters to take
11 up with them, which would put us on into 12:30 or so. So I tell you what
12 we're going to do: We're going to have a long lunch today.

13 I don't think I've ever done this I don't think, two hours. You're
14 going to have two hours because I'm going to bring you back at 2:00.

15 And I don't think I've ever done that, but -- so we're going to --
16 we're going to break for lunch at this period of time; let you re-assemble
17 about 1:50, please; 1:45, 1:50, back in your jury room. Be ready to go
18 because we'll be here and ready to go certainly by 2:00.

19 And we'll resume this trial.

20 Again, I admonish you, please, don't say -- don't talk about this
21 case with each other or anybody else. Please don't do any research.
22 This case is not over and you don't know what else is going to be said;
23 neither do I. I'm hearing it for the first time myself.

24 So we'll ask you to go to lunch, have a good lunch, be back in
25 your room about 1:45, 1:50.

1 (The jury exited for lunch at 11:59 a.m.)

2 THE COURT: Anything from the State?

3 MS. SCOTT: No, sir.

4 THE COURT: Anything from the Defense?

5 MS. LYLES: No, Your Honor.

6 THE COURT: All right. We're going to be in recess until 2
7 o'clock. If the lawyers need me, I will be here. On top of that, you have
8 my email and my cell phone number as well.

9 Mr. Marett, again, I remind you that your bond was revoked, but
10 I'm allowing you to remain free and not be in custody. Your lawyer says
11 that you do a fine job of being wherever she asks you to be. I was glad
12 to hear that.

13 So, I'm going to allow you to be on your recognizance here.
14 But, please, understand, sir, that at 2:00 p.m. this trial will resume with
15 or without you. Do you understand?

16 THE DEFENDANT: I'll be here, Your Honor.

17 THE COURT: I know you will because you got a good
18 lawyer there. Okay. We'll be in recess until 2:00. And we're off the
19 record.

20 (Off-the-Record Discussion)

21 (Whereupon, a luncheon recess was taken from 12:00 p.m.
22 until 2:00 p.m.)

23 (Off-the-Record Comments)

24 MS. LYLES: And, Your Honor, I think before we bring the
25 jury in, I think maybe we should have a conversation with Mr. Marett.

1 **THE COURT:** Anything else, ma'am?

2 **MS. LYLES:** Well, Your Honor, I — I will be resting. If
3 you're requiring me to do that in front of the jury —

4 **THE COURT:** No, I'm not going to — if you want to rest at
5 this time, I — I will instruct the jury that you have now rested.

6 **MS. LYLES:** Okay. Your Honor ----

7 **THE COURT:** Or, if you would rather do it in front of the
8 jury, I'll do that.

9 **MS. LYLES:** No, that's fine. The Defense rests at this
10 time.

11 **THE COURT:** Okay.

12 **MS. LYLES:** And, at this time, I would like to renew my
13 motion for a directed verdict.

14 I further believe that the State has not met its burden to send this
15 case to the jury at this time. I would renew my earlier argument
16 regarding Bank of America.

17 I don't believe that the State has met its burden in producing the
18 — whether Mr. Marett had an account at Bank of America, when the
19 account was opened, when the account was closed; if they made a
20 mistake in refusing to honor this check.

21 None of that has been determined here today. So them putting
22 in a copy of the check that says, "closed," we don't know if that was a
23 mistake or not. No one has testified to that.

24 And I believe that, that's a necessary element in this case. And I
25 don't believe the State has met that burden.

1 And, furthermore, after our witnesses, I just — I know you're not
2 in a position to weigh the evidence; that's the job for the jury. I just
3 believe the State has not met its burden at this point.

4 **THE COURT:** Yes, ma'am, Ms. Scott?

5 **MS. SCOTT:** Yes, sir. I stated, when the motion was
6 made after I rested, Your Honor, the document itself as it states, is an
7 exhibit up in front of Your Honor.

8 We had Ms. Sheila Henderson testify to the actual legal bank
9 copy that was delivered to her from the bank. It was yellow in nature. It
10 had a front and back. The copy that was admitted into evidence is on a
11 white sheet of paper, but it's the same exact, Your Honor, a legal copy
12 stating that the account was closed.

13 That is for the jury to determine if the bank fraudulently stamped
14 a closed account on something or, at that point, if the account ever
15 existed. But they actually have with them an actual legal bank
16 document, Your Honor.

17 **THE COURT:** Okay.

18 **MS. SCOTT:** I don't believe the second portion of her — I
19 think that's it, Your Honor.

20 **THE COURT:** Well, thank you. But your motions are —
21 are denied and for the same reasons I said before. Again, this Court is
22 not in the business at this point of weighing evidence, whether or not
23 there is any scintilla of evidence.

24 And the Court finds that there is and that would be a question for
25 the finder of fact as to whether or not the State established, beyond a

1 reasonable doubt, each and every element of the offense.

2 Anything else?

3 **MS. LYLES:** Your Honor, I would also at this time, since
4 we are at the close of the case, I would renew my motion to dismiss
5 from — for the third time.

6 **THE COURT:** Yes, ma'am.

7 **MS. LYLES:** And, if you would like me to go over the
8 reasons —

9 **THE COURT:** You're certainly welcome to, but you're
10 protected on the record.

11 **MS. LYLES:** Okay. I would renew my motion —

12 **THE COURT:** Yes, ma'am.

13 **MS. LYLES:** ---- that I made at this time. And I would
14 ask Your Honor to reconsider our motion to dismiss at this time.

15 **THE COURT:** I have reconsidered, and at this time, I — I
16 find that the previous rulings were appropriate and proper.

17 **MS. LYLES:** Thank you, Your Honor.

18 **THE COURT:** You're protected on the record. Anything
19 from the State?

20 **MS. SCOTT:** No, sir.

21 **THE COURT:** Okay.

22 **(Off-the-record comments regarding the jury charge.)**

23 **THE COURT:** Anything else? We can bring the jury back
24 and he will fix that.

25 **MS. LYLES:** Oh, no, the jury instructions are fine.

1 **THE COURT:** Okay. All right. We ready for the jury
2 everybody?

3 **MS. SCOTT:** Yes, sir.

4 **THE COURT:** All right. If you'll bring our jury.

5 **(The jury was summoned and entered the courtroom at 2:29**
6 **p.m.)**

7 **THE COURT:** Mr. Foreman, ladies and gentlemen, any
8 issues for the jury?

9 **FOREMAN:** No, sir.

10 **THE COURT:** Okay. All right. We are at this point now
11 where the case has now ended, as far as all the testimony and
12 evidence, that's going to be presented to you.

13 The State rested previously and we took care of some legal
14 matters. And the State and the Defense has now rested as well. And
15 we've taken care of legal matters there.

16 So, once again, we've been kind of busy in your absence that did
17 not require your attention, but we do require your attention now. And,
18 so, at this point, we'll have our closing arguments from Counsel.

19 So pay your — please — please turn your attention to the — to
20 the ladies as they talk with you one-by-one. Yes, ma'am?

21 **MS. LYLES:** Thank you, Your Honor.

22 **(Brief Pause)**

23 **(Ms. Lyles' closing argument began at 2:31 p.m.)**

24 **MS. LYLES:** Good afternoon. Thanks, again, for being
25 with us today and bearing with us. We're almost through.

1 You've heard from a lot of people today. And, as I told you
2 earlier, you would need to consider that evidence.

3 I also told you that, in considering that evidence, we would like
4 you to consider whether — to look at the evidence, the conflicts in the
5 evidence, and the lack of evidence.

6 I'd like to kind of review some of the evidence that you've heard
7 today and go through some of those issues.

8 We started off today by you hearing from Kim Ballenger and
9 followed up with Greg Ballenger. Now these are two people that work
10 for RSI.

11 They both testified that they run advertisements on their — on
12 the radio and advertisements on their website. These advertisements
13 advertise such things as zero down, no interest for 12 months.

14 There was multiple other things that they advertise, but those
15 were just some of the things that they advertise as ways that people
16 can pay through financing for the machines and through their company.

17 Now, they also said people can pay through checks, credit cards,
18 cash, but financing was one of things that they push through the radio
19 advertise — on their website. I showed them multiple pages from their
20 website where they placed it in a bunch of different places.

21 We also heard them testify that a check was brought back to
22 their company. It was not taken by either one of them. Neither one of
23 them was at the place at 646 Southern Street when this work was done,
24 when the agreement was made for the service rendered.

25 They both stated that two other people, a salesman and an

1 actual technician, went out. So neither one of them were actually
2 present when this check was given to their company.

3 However, what you've seen and what was placed into evidence
4 was a work order that was actually done by a technician. And it states
5 multiple things on here.

6 It states what the sale was for. It states the different pieces that
7 they used. It states the client's name, the address, the job name and
8 number, as you can see. And it has Mr. Marett's signature at the
9 bottom.

10 As you can also see, which I went over with Kim Ballenger, what
11 was added later by someone in the office that said that it was "paid with
12 check number," and it doesn't have anything after that. But it was
13 clearly added afterwards.

14 This was not on this document at the time that Mr. Marett signed
15 it. All that was on here, when Mr. Marett and the technician did it, was
16 the light color writing.

17 Also, when the technician was present at Mr. Marett's house,
18 the technician or the salesman were not sure because neither Kim
19 Ballenger nor Greg Ballenger were actually present at Mr. Marett's
20 house. Both of them stated that.

21 Mrs. Ballenger works in accounts receivable. Mr. Ballenger,
22 Greg Ballenger, is the owner of the company. So he doesn't go to
23 people's houses. So neither of them were present when this check was
24 taken, but either a sales person or a service technician was.

25 What we have in evidence, which was State's Exhibit Number 3,

1 was this copy (indicating) of this check from Bank of America.

2 Everyone concurred today that the service was done on July
3 14th, 2011. However, it is clearly written on the top of the check a date
4 of August 14th, 2011. That is exactly one month after the service was
5 done.

6 Doesn't it make sense that some sort of agreement was made
7 about financing and this was given as collateral; a promise to pay in the
8 future?

9 To tell you the truth, we don't specifically know that right now
10 because Kim Ballenger and Greg Ballenger were not there to say
11 whether or not that happened.

12 There was a technician on the witness list that you heard during
13 jury selection. That technician that did go out to the house, that did
14 write up this invoice (indicating), that did take this check that's dated a
15 month after the actual service, was on the witness list, but did not testify
16 in front of you today. It brings up some questions.

17 I argue that this check was a promise to pay; a promise to pay on
18 August 14th. That was never made to happen because, as soon as this
19 promise to pay was taken into the office, Kim Ballenger, who had
20 nothing to do with the agreement, went ahead and placed it into a Bank
21 of America account.

22 She placed it into a Bank of America account on July 18th, 2011,
23 well before the date on the check. I argue that was never supposed to
24 happen. It was never supposed to be placed in this account.

25 We also have not heard today from a person from Bank of

1 America. A person from Bank of America was also on the witness list.
2 That person was also listed to you while we were in jury selection
3 earlier yesterday.

4 A person from Bank of America could have let you know when
5 an account was opened, if an account existed, how much money was in
6 that account, and any details about this.

7 We don't know that because they didn't come to testify. Leaves
8 a lot of questions, questions that are reasonable doubt.

9 **(Brief Pause)**

10 **MS. LYLES:** You heard from Greg Ballenger about his
11 work that he did. Again, you've all seen the receipts, multiple receipts,
12 that are for a Payne two point five ton unit. You'll get these back in
13 evidence and you can review them.

14 You heard him on the stand tell me multiple times that it was a
15 two and a half ton unit. And the reason that it was a two and a half ton
16 unit is because that's what Mr. Marett's house needed.

17 He also told you of the importance of having the correct size unit.
18 He told you how you determine how you need that unit. But also to
19 determine what size a house needs is by what they previously had.

20 He told you that the house previously had a two and a half ton
21 unit, which is why he was replacing it with a two and a half ton unit.

22 A few questions later, he changed his mind and said, "Well, no,
23 never mind, it wasn't a two and a half ton unit. It was actually a two-ton
24 unit, but it had the capacity of a two and a half ton unit." And he should
25 have been able to tell that (retrieves exhibits) by a long code of letters

1 and numbers.

2 That doesn't make any sense. It clearly says on the job invoice,
3 "Payne 2.5-ton package heat pump." That doesn't say a two-ton unit
4 that has the capacity of running as a two and a half ton unit.

5 Use your common sense. That — that doesn't make any sense.
6 What this company did is it put a two-ton unit, in Mr. Marett's house,
7 charged him for a two and a half ton unit, that they knew would never
8 work.

9 They knew it would always have to be serviced. It would have to
10 be replaced; basically a money pit that they could have to keep on
11 coming back and keep on coming back. I claim to you that, that is a
12 severe credibility issue.

13 We're talking about fraud and false pretenses in this case. Who
14 is actually committing fraud in this case?

15 We had Mr. Michael Atkins come from another heating and air
16 company. He was called from Mr. Marett to determine why his house
17 was so hot and why he had problems with extremely high electricity
18 bills.

19 Well, you heard Mr. Atkins tell you because he had a two-ton unit
20 in his house. Mr. Atkins did not tell you that it was a two-ton unit acting
21 as a two and a half ton unit because that doesn't make any sense.

22 There's no such thing as a two-ton unit acting as a two and a
23 half ton unit. It was a two-ton unit placed in Mr. Marett's home.

24 You also heard from Boyce Bush today from the permit office.

25 You heard that this company failed to get the proper permit, which is

1 against Spartanburg law.

2 They didn't apply for a permit, they didn't get a permit, which
3 causes not only safety concerns, but it completely takes away the step
4 that would have protected Mr. Marett in the fact that they would have
5 told this company they can't put faulty equipment in this house.

6 They can't put a two-ton unit where a two and a half ton unit is.
7 Or they can't charge him for a two and a half ton unit when they're
8 putting in a two-ton unit.

9 That's why people like Boyce Bush exist, to protect consumers
10 from people like Refrigeration Services, Incorporated.

11 **(Brief Pause)**

12 **MS. LYLES:** Now, taking all of this into account, I want
13 you to consider the fact that Boyce Bush and Michael Atkins have no
14 stake in this case. They came here today; they don't know my client
15 from Adam.

16 Boyce Bush works in the permit department for our county. He
17 came in and testified he pulled — looked up an address and he testified
18 truthfully here today.

19 Michael Atkins came in and testified. Yes, he came in and
20 inspected something, but he didn't get any work from it. He didn't
21 replace the unit. And he did testify very honestly that, although he
22 would like to, you know, charge people for an arm and a leg, get from
23 them whatever he can, but that's just not the appropriate thing. I
24 submit to you that these were extremely credible witnesses.

25 In contrast, we have the people that testified from Refrigeration

1 Services. We already know that they sold equipment that is not the
2 equipment that they put forward.

3 He testified to it himself, even though he's put out a bill for a two
4 and a half ton unit, he told you on the stand that's not what he put in,
5 after not admitting to that for a few minutes.

6 He also testified that — he also testified that they were not
7 present on the date that this happened. There has been no one here
8 that can tell you what actually happened on that date. Ladies and
9 gentlemen, that is reasonable doubt.

10 We, the Defense, do not have to prove anything in this case. As
11 he stands here today, and as the Judge will instruct you again, Mr.
12 Marett is innocent.

13 The State must prove, beyond and to the exclusive of all
14 reasonable doubt, that Mr. Marett committed an offense that he is
15 charged with today. I submit to you that they have not done so.

16 If you have any question in your mind as to any element of this
17 offense, that is reasonable doubt. I believe taking into account the
18 credibility of these witnesses, what they have done in this case; I also
19 believe that it really it needs to be taken into account the fact that this
20 check is written for one month after the service.

21 It makes a lot more sense that there was a deal in place for
22 financing to take place. But we don't know that because no one is here
23 to tell you what deal was made because they didn't come and testify
24 before you today.

25 And I do submit to you that RSI does have a significant stake in

1 this, the two people that testified. The only two people that showed up
2 were Kim Ballenger and Greg Ballenger, the owner and his wife.

3 Obviously, they want money from this situation. But I submit to
4 you that they have come to you with unclean hands today. That they
5 have been fraudulent in this situation and not Mr. Marett. And, for these
6 reasons, we ask that you find Mr. Marett not guilty. Thank you.

7 **THE COURT:** Ms. Scott?

8 **MS. SCOTT:** Thank you.

9 **(Ms. Scott's closing argument began at 2:48 p.m.)**

10 **MS. SCOTT:** Hello again. Your service here is
11 appreciated and your time and dedication to this case is appreciated.

12 I want to start off saying, when you get a service, we all know
13 you have to pay.

14 Now there's talk about credibility. I'm going to show you the
15 document, State's Exhibit 3, the false misrepresentation of a check.

16 We've heard testimony that the address, the billing address here
17 on this check, certified mail was sent, it got sent back. We see here it
18 was returned from the bank when presented. This account is not even
19 open.

20 Now, what we do know is that it says it's for a service, service of
21 a unit that we know is still in the house. I asked Refrigeration Services,
22 "Have you been paid for that unit?" "No." "Partially?" "No." July 2011;
23 and it's 2013.

24 If you recall, when did Mr. Atkins go to Mr. Marett's house about
25 these purported problems with the unit? April 2013, not an immediate

1 call.

2 He's already been arrested for this charge, a couple of years go
3 by, and, then, I'm going to call, "My unit is acting out. You all have to
4 look at it." Two years; hadn't paid for this unit. "I'm upset about this
5 unit. Come out and look at it."

6 Now, on direct examination of Mr. Atkins, who came out, he
7 stated everything was running correct from manufacturing
8 specifications. But the homeowner was complaining about a high
9 energy bill. They were there to inspect. Remember what he came out
10 there for also.

11 When the permit person came up, Mr. Bush, I asked him, "If a
12 permit wasn't pulled, do you tell the homeowner not to pay somebody?
13 Do you tell them to take that stuff out of there; you didn't get a permit?"

14 And what did he say? "We regulate it. We have them — we
15 double sanction the people. We make them pay twice the amount they
16 would pay for the permit. And, then, we do an inspection.

17 "We don't tell people they're not responsible. We don't get into
18 that," he said, or tell people, "Take it out of there. Don't pay those
19 people."

20 I'm going to keep saying this: You get a service, you have to pay.
21 Now, if you remember what Kim Ballenger and Greg Ballenger said,
22 they've had this company since the 1990s. They send people out.
23 They obviously can't go out to everybody's home and see it for
24 themselves. But they send people out, agents for their company.

25 And they say, "You install this, you take good care of them. And

1 you get payment upon completion of the work."

2 A check — I asked her how do you get this, check, cash, how do
3 you get this? "Cash, credit card, what do you do?" She talked about
4 people calling in, getting the numbers, running credit. Everything
5 seems to be in that respect you get that payment now.

6 We know what kind of world we live in. I — I put a cold unit in
7 your home and I'm walking away with a promise to pay? Let's talk
8 about this State's exhibit.

9 We've asked you to use your common sense. We always ask
10 jurors to do that. What does it look like when somebody gives you
11 something like this (indicating)?

12 This was presented to the company. They take it and they cash
13 it. Isn't it clever:, July 14th, 2011, then, all of a sudden 7 and 8?

14 Then, you present it. We usually present our checks quickly.
15 We present it July 18th, right after we had gotten it. And remember it's a
16 closed account so there's no funding.

17 The machine is still in the house. So, what did we do? We
18 made attempts. They make an attempt to figure out what's going on
19 with this payment.

20 Sheila Henderson, from the solicitor's check unit, testified about
21 the numerous attempts that were made to figure out what's going on
22 (retrieves exhibit) with no payment on this account.

23 You've already seen this. You'll get this back. This is at least
24 four letters here. We're grasping at straws here. We're sending it to
25 P.O. boxes. We're sending it to billing addresses that are listed on

1 these papers that purport to be checks.

2 And we're — we're sending it to the address of 646 Southern
3 Street where it's installed. "Hey, you need — you need to pay your bill."
4 No, no word from Mr. Marett.

5 At the initial part, when a check is given — or what is purported
6 to be the check, this misrepresentation of it, the address is already off.
7 It's on a closed account. All ready, there's problems.

8 Refrigeration Services tells Ms. Henderson where this check
9 went. They don't know anything about this post-dated check. "We
10 have no agreement to hold this check." Every attempt is made to
11 receive the payment before an arrest warrant is even signed.

12 You're talking about at least some months to get the money, to
13 do the right thing here. But I'm going to wait til 2013, I've been arrested
14 and I'm concerned.

15 And I'm going to say, "Something is wrong with my unit. My
16 electricity bill is been high for a few years. Come out and look at this
17 unit"; a unit you haven't even paid for. And you're asking to let that go
18 by.

19 Let that go by because, "I thought I was getting a two and a half
20 ton unit. And I think I was supposed to get a permit." You're just going
21 to walk away from something like that?

22 I asked specifically about that permit issue because I wanted to
23 know, would it have been remedied. And you think about when that
24 check was placed back to the Refrigeration Services in July 18th, 2011.
25 And you're trying to get payment. You still keep working for the money.

1 I have a saying that you've worked twice for money you've already
2 earned.

3 It's kind of silly, but that's what you got. You've got something
4 you've already done, put in that service. And now you're chasing
5 money that you've already earned.

6 You're having people send out letters. Then, you have to run to
7 the permit office and get a permit and inspect it paid almost — excuse
8 me — on a product that hasn't been paid for?

9 You get fed up. Customers are taking advantage of you. He
10 said, "Immediately, 6:00 a.m. I need somebody out there." That's what
11 Mr. Ballenger said, he needed somebody early. They came.

12 They stressed to him, "Hey, you got this older unit from 2005.
13 You need to really replace the unit." I think both of the heating and air
14 vac individuals stated you can't really get the customers, if you will, that
15 can't pay for a heat like — the best thing I could really understand, an
16 old car with a newer motor.

17 I mean, he said, "We tried to upgrade it." You all know about
18 energy efficiency — excuse me — appliances. He said that a 2005 unit,
19 if he would have put a 2011 it would have in good shape. He would
20 have been brought up to the same BTUs as before.

21 He made it compatible. He said, "We explained that to Mr.
22 Marett; explained to him why we have to do that because that your old
23 machine, when we put in the new stuff, they marry together and you get
24 exactly what you got because you can't afford — you tell us you can't
25 afford a brand new unit; we'll do what we can.

1 That was done. I have to stress 2013, "I've got a problem with
2 my unit. I haven't paid for it, but we're not going to talk about that. You
3 all come out and look at it."

4 You get the service, you pay for it. You don't get to call people
5 out to your house, they take time from their jobs and they put things into
6 your home. And you slip them something and hope they don't notice
7 that date, hope they don't notice that, that account isn't real; hope they
8 don't notice that the billing address isn't right.

9 I'll ignore every letter I can see. I'll just hope that it blows away.
10 Hey, they're a company that's been in business since 1995. What do
11 they care about? That is not how it works.

12 You want to talk about false pretenses. You want to talk about
13 lies. You want to talk about someone cheating. Well, Mr. Marett — Mr.
14 Marett knew what he was doing.

15 Refrigeration Services, they're not some big Home Depot
16 company and maybe they can do without \$2000.

17 Is it right what he did that day? It is not. And I ask you to find
18 him guilty of obtaining property under false pretenses. Thank you.

19 **THE COURT:** Thank you, ma'am.

20 **(Ms. Scott's closing argument ended at 2:58 p.m.)**

21

22

23

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25

JURY CHARGE

THE COURT: Now, Mr. Foreman and ladies and

gentlemen of the jury, you have seen and heard the evidence presented, as well as the arguments of Counsel. It is now my duty and obligation to instruct you on the law that is applicable in this case.

It will, then, be your solemn duty and obligation to begin your deliberations, through which process you will decide the facts, apply the law as I have instructed, and render a fair and impartial decision.

It is your exclusive duty to determine what the facts are in this case. You do that based on your own common sense and the evaluation of the testimony and other evidence received during the trial of this case.

You 12 jurors alone will decide what effect, value, and weight is to be given to any particular testimony or other evidence received. Quite simply, your ultimate goal is to find the truth in this case. And by doing so you will have fulfilled your obligation as jurors in giving both the State and the Defendant a fair and impartial trial based on the evidence presented and the law applicable to this case.

Now, the indictment charges the Defendant with the offense of obtaining property under false pretenses. Specifically it alleges that the Defendant did, in the County of Spartanburg, State of South Carolina, on or about July 14 of 2011, by a false pretense or representation, and with the intent of cheating and defrauding the victim, Refrigeration Services, by a written instrument or did obtain a -- from a person a chattel, money, valuable security, or other property in violation of the

1 law.

2 Now, I remind you that the fact that the Defendant was arrested
3 and was charged and indicted in this case is not evidence in this case
4 and cannot be considered by you as evidence of guilt in this case.

5 Nor does it create any presumption or inference of guilt. This
6 document (indicating) simply is the formal instruction which contains the
7 charge made against the Defendant. It is the formal document by
8 which this case is brought into this court.

9 The Defendant has pled not guilty to the indictment. And that
10 plea puts the burden on — on the State to prove the Defendant guilty.
11 A person charged with committing a criminal offense in South Carolina
12 is never required to prove himself innocent.

13 I charge you that it is a cardinal, important, and vital rule of law
14 that in a criminal trial, no matter what the seriousness of the charge
15 may be for which he stands charged, the Defendant will always be
16 presumed to be innocent of the crime for which the indictment was
17 issued unless guilt has been proven by evidence satisfying you of that
18 guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when you begin
20 your deliberations — does not begin — does not end when you begin
21 deliberations, but it accompanies the Defendant throughout the trial until
22 you reach a verdict of guilt, based on evidence satisfying you of that
23 guilt beyond a reasonable doubt.

24 The presumption of innocence is like a robe of innocence placed
25 about the shoulders of the Defendant, which remains with the

1 Defendant from the moment of his arrest and continues until it has been
2 stripped from his shoulders by evidence satisfying you of the
3 Defendant's guilt beyond a reasonable doubt.

4 The presumption of innocence is not mere legal theory. It is not
5 a legal phrase. It is a substantial right to which every Defendant is
6 entitled unless you 12 jurors are satisfied, from the evidence, of the
7 Defendant's guilt beyond a reasonable doubt.

8 I remind you that, during this try — during this trial, you and I
9 have certain dues to perform. As the trial Judge, it is my responsible to
10 preside over the trial of this case and also — and I also have the duty to
11 rule on the admissibility of evidence offered during this trial.

12 You are to consider only the competent evidenceⁿ before you. If
13 there were any testimony ordered stricken, from the record in this case
14 during the trial, you must disregard that testimony.

15 You are to consider only the testimony which has been
16 presented from this witness stand, any exhibits which have been made
17 a part of the record in this case, and any stipulations of Counsel.

18 I have the additional duty to charge you the law applicable to this
19 case. As presiding judge, I am the sole judge of the law in this case
20 and it is your duty as jurors to accept and apply the law as I now state it
21 to you.

22 If you already have any idea as to what the law is or what the law
23 ought to be, and it does not agree with what I now tell you the law is,
24 you must abandon this idea because you are sworn to accept the law
25 and apply the law exactly as I state it to you.

1 In every case tried in this court before a jury, the jury becomes
2 the sole and exclusive judge of the facts in a case. A trial judge cannot
3 intimate, state, comment on, or make any statement to a trial jury about
4 the facts in a case.

5 Since you, the jury, are the sole judge of the facts in the case,
6 you are not to infer from what I have said during the progress of this
7 trial, in ruling upon the admissibility of evidence or otherwise, or
8 anything that I say now during the course of this instruction to you, that I
9 have any opinion about the facts in this case.

10 The law does not allow me to have an opinion about the facts in
11 this case. This is a matter solely for you, the jury, to determine. As
12 jurors, it is your duty to determine the effect, value, weight, and truth of
13 the evidence produced during this trial.

14 The State has the burden of proving the Defendant guilty
15 beyond a reasonable doubt. Some of you may have served as jurors in
16 civil cases where you were told that it is only necessary to prove a fact
17 is more likely true than not, such as by the greater weight of the —
18 greater weight or preponderance of the evidence.

19 However, in criminal cases, the State's proof must be more
20 powerful than that. It must be beyond a reasonable doubt.

21 Now, ladies and gentlemen, proof beyond a reasonable doubt is
22 proof that leaves you firmly convinced of the Defendant's guilt.

23 There are very few things in this world that we know with
24 absolute certainty. And, in criminal cases, the law does not require
25 proof that overcomes every possible doubt.

1 A reasonable doubt may also be described as the kind of doubt
2 that would cause a reasonable person to hesitate to act. If you have
3 such a doubt, as to the guilt of the Defendant, then, he would be entitled
4 to a verdict of not guilty.

5 Reasonable doubt may arise from evidence which is in the case
6 or from the absence or lack of evidence in the case. If based on your
7 consideration of the evidence, you are firmly convinced that the
8 Defendant is guilty of the crime charged, you must find him guilty.

9 If, on the other hand, you think there's a real possibility that he is
10 not guilty, you must give him the benefit of the doubt and find him not
11 guilty. You alone must make the determination of whether or not
12 reasonable doubt exists as to the guilt of the Defendant.

13 There are two types of evidence which are generally presented
14 during a trial; direct evidence and circumstantial evidence. Direct
15 evidence is the testimony of a person who claims to have actual
16 knowledge of a fact, such as an eye witness. It is evidence which
17 immediately establishes the main fact to be proven.

18 Circumstantial evidence is proof of a chain of facts and
19 circumstances indicating the existence of a fact. It is evidence which
20 immediately establishes collateral facts from which the main fact may
21 be inferred.

22 Circumstantial evidence is based on inference and not on
23 personal knowledge or observation. The law makes no distinction
24 between the weight — the weight or value to be given to either direct or
25 circumstantial evidence. Nor is a greater degree of certainty required of

1 circumstantial evidence than of direct evidence.

2 You should weigh all the evidence in the case. After weighing all
3 the evidence, if you are not convinced of the guilt of the Defendant,
4 beyond a reasonable doubt, you must find him not guilty.

5 Now, under the Constitution of — of the State of South Carolina,
6 you are the finders of facts in this case. Necessarily you must
7 determine the credibility of witnesses who have testified in this case.

8 Credibility simply means believability. It becomes your duty as
9 jurors to analyze and to evaluate the evidence and determine which
10 evidence convinces you of its truth.

11 In determining the believability of witnesses who have testified in
12 this case, you may believe one witness over several witnesses or
13 several witnesses over one witness. You may believe a part of the
14 testimony of a witness and reject the remaining part of the testimony of
15 that same witness.

16 You may believe the testimony of a witness in its entirety or
17 reject the testimony of a witness in its entirety. You may consider
18 whether any witness has exhibited to you any interest, bias, prejudice,
19 or other motive in this case.

20 You may also consider the appearance and manner of a witness
21 while on the witness stand. Was the witness straightforward in
22 answering questions or hesitant in responding to questions? Simply
23 put, do you believe the witness was telling the truth?

24 You may consider how the witness came to know the facts to
25 which he or she testified and whether or not the witness had an

1 opportunity to hear, observe, or perceive a fact by means of their
2 senses.

3 Whatever your good judgment and common sense tells you is
4 the most believable testimony is the testimony that you should accept
5 and reject that testimony which you find not to be credible or believable.

6 I instruct you and emphasize that the fact that the Defendant did
7 not testify is not a factor to be considered by you in any way in your
8 deliberation and in your consideration on the question of the guilt or the
9 innocence of the Defendant.

10 It must not be considered by you in any matter whatsoever. A
11 Defendant has the constitutional right to remain silent. And the
12 assertion of that right must not be considered by you in your
13 deliberation.

14 I repeat, under your oath, you are to draw no conclusion
15 whatsoever from the fact that the Defendant in this case did not testify.
16 The fact that this Defendant did not testify should not even be
17 discussed in the jury room. The burden of proof, as I've stated to you,
18 is on the State.

19 The Defendant is not required to prove his innocence. The
20 burden of proof remains on the State through guilt beyond a reasonable
21 doubt.

22 Now, the same Constitution that makes you the finders of the
23 facts makes me the — the sole and only instructor in the law. You must
24 accept as correct the law that I charge and apply to the law the
25 evidence as — as you find it and reach your verdict.

1 Put aside any conceptions you may have had — may have or
2 have had as to the law before coming here today and accept the law as
3 I instruct it to be.

4 For the purposes of your duties as jurors today, you should not
5 be concerned — you should not be concerned about what the law ought
6 to be but what I charge you the law is in this state.

7 Criminal intent is a necessary element of each crime that must
8 be proved by the State beyond a reasonable doubt. Criminal intent is
9 always a matter that must be determined by the jury from the
10 circumstances surrounding the situation.

11 There is no way to prove intent to a mathematical certainty.
12 There is no way medical science can dissect a person's brain and
13 determine what he had in mind, but the law says that criminal intent
14 may be inferred from the circumstances shown to have existed.

15 This is how a jury makes a determination whether or not the
16 element requiring intent is present. Criminal intent is a state of mind
17 which operate — which operated jointly with an act is the commission of
18 a crime.

19 Criminal intent is a mental state, a conscience wrongdoing. So it
20 is up to you, the jury, to determine what the Defendant intended to do
21 based on the circumstances shown to have existed.

22 I tell you that the State must prove criminal intent beyond a
23 reasonable doubt, just as the State must prove every element beyond a
24 reasonable doubt as I previously explained to you.

25 It is not necessary to establish intent by direct and positive

1 evidence, but intent may be established by inference in the same way
2 as any other fact by taking into consideration the acts of the parties and
3 all the facts and circumstances of the case.

4 While the State may prove motive, it is unnecessary that the
5 State do so. However, the State must prove intent. .

6 I have instructed you that the Defendant is charged with the
7 offense known as obtaining property by false pretenses. And I will now
8 read to you in part Section 16-13 -240, of the South Carolina Code of
9 Laws, which says "A person who, by false pretense or representation,
10 obtains from another person any chattel, money, valuable security or
11 other property, real or personal, with intent to cheat and defraud that
12 person of that property is guilty."

13 A promise to do something in the future cannot constitute a basis
14 for prosecution for obtaining goods under false pretenses. It is a
15 question of fact for you, the jury, to determine whether the State's
16 Exhibit 3 is a promise to pay in the future.

17 Now, I will give you a copy of these instructions in written form.
18 During your deliberations, you may refer to the instructions to guide
19 your decision making.

20 You must consider these instructions as a whole and not follow
21 some and ignore others. Please return these instructions to the Court
22 at the time your verdict is rendered.

23 You have been selected as fair and impartial jurors sworn to
24 impartially try and determine the facts of his case. And, when you
25 comply with your oath to do so, then, no one will have a right to criticize

1 your verdict and you will have fully discharged your duty as jurors.

2 You are to decide this case according to the testimony that you
3 have heard from the lips of the sworn witnesses, along with the other
4 evidence introduced.

5 Now, ladies and gentlemen, your verdict must be a unanimous
6 one. Mr. Foreman, when the jury agrees on the verdict, you will write
7 the verdict on the verdict form that I will provide for you and sign your
8 name as the foreperson of the jury.

9 Then, please, knock on the door of the jury room and inform the
10 bailiff that you have reached a verdict. At that time, we will receive you
11 back into the courtroom.

12 At this time, I'm going to ask you that you return to your jury
13 room, but do not begin deliberations until you are told to do so by the
14 bailiff. There are some legal matters I must take up with the attorneys
15 before you begin your deliberations.

16 Also, when I instruct you to begin your deliberations, we will send
17 back to you all of the exhibits that have been placed into evidence that
18 are on this table. So, while you're out of the room here, we're going to
19 ask the lawyers to look at the exhibits and make sure everything is in
20 order because these documents belong to you. They are for your
21 consideration.

22 So, Mr. Foreman, if you would, take your jurors out and just give
23 us a few moments. Again, do not begin your deliberations.

24 **(The jury exited the courtroom at 3:13 p.m.)**

25 **THE COURT:** Anything from the State?

1 MS. SCOTT: No, sir.

2 THE COURT: Defense?

3 MS. LYLES: No, Your Honor.

4 (Whereupon, Court's Exhibit 1 was marked for identification
5 and admitted into evidence.)

6 THE COURT: If the lawyers would, come forward and look
7 at the exhibits and also look at the verdict form.

8 (Brief pause while the attorneys review the exhibits and the
9 verdict form.)

10 (Off-the-Record Comments)

11 THE COURT: Are the lawyers satisfied everything ----

12 MS. SCOTT: Yes, sir.

13 THE COURT: ---- is proper?

14 MS. LYLES: Yes, Your Honor.

15 THE COURT: Please ask them to begin deliberations.

16 (Off-the-Record Comments)

17 THE COURT: All right. We'll be in recess.

18 (The jury began deliberating at 3:16 p.m.)

19 THE COURT: Is everybody ready? I understand we have
20 a verdict. Is everybody ready?

21 MS. SCOTT: Yes, sir.

22 THE COURT: Okay. Bring our jury.

23 (A verdict was reached at 3:59 p.m. and the jury entered the
24 courtroom at 4:03 p.m.)

25 VERDICT 3:59 P.M.

1 **THE COURT:** Mr. Foreman, has the jury reached a
2 verdict?

3 **FOREMAN:** We have.

4 **THE COURT:** All right. Would you hand that up to my
5 bailiff, please?

6 **(The foreman complied with the Court's request.)**

7 **(The bailiff handed the verdict form to the Court.)**

8 **(Brief Pause while the Court reviews verdict form.)**

9 **THE COURT:** Okay.

10 **(Verdict form handed to the clerk of court to publish**
11 **verdict.)**

12 **MADAM CLERK:** "In the Court of General Sessions, case
13 number 2013-GS-42-1003, *The State of South Carolina vs. Thomas*
14 *Marett*, we, the jury, unanimously find the Defendant, Thomas Marett,
15 concerning the offense of obtaining property by false pretenses, guilty."
16 This is signed by the foreperson and dated today's date.

17 Ladies and gentlemen of the jury, if this is your verdict and still
18 your verdict, please, raise your right hand.

19 **(All jurors responded by raising their right hand.)**

20 **MADAM CLERK:** So say you all.

21 **THE COURT:** All right. Thank you. Ladies and gentlemen,
22 that concludes your service in this matter. Any matters from the State
23 at this point ----

24 **MS. SCOTT:** No, sir.

25 **THE COURT:** ---- for the jury? From the Defense?

1 **MS. LYLES:** No, Your Honor.

2 **THE COURT:** Okay. Mr. Foreman, ladies and gentlemen,
3 thank you for your service. I'm going to ask you — I'm sorry, I need —
4 where's my alternate?

5 **(Alternate not present.)**

6 **THE COURT:** Let me get my alternate back.

7 **(The bailiff stepped out to summon alternate back into the**
8 **courtroom.)**

9 **THE COURT:** Mr. Foreman, while we're waiting on the
10 alternate, if you would, we need you to sign the indictment. If you'll,
11 walk over here, we'll save a few minutes of your time. If you'll just sign
12 that.

13 **(The foreman complied with the Court's request.)**

14 **(Brief Pause)**

15 **(Alternate entered the courtroom.)**

16 **(Off-the-Record Comments)**

17 **THE COURT:** I'm just going to tell everybody thank you
18 and — and didn't want my alternate to miss out on this.

19 Mr. Foreman and ladies and gentlemen of the jury, thank you so
20 very much for your service. That concludes your service in this matter.

21 I'm going to ask — you're — you're free to go for the day. I'm
22 going to ask you to go with the bailiff. And I think they'll probably take
23 up badges. And, Madam Clerk, I think — tell me what the jury is
24 supposed to do.

25 **(Continued discussion regarding jurors reporting.)**

1 (The jury was excused and exited at 4:07 p.m.)

2 SENTENCING

3 THE COURT: Anything from the State?

4 MS. SCOTT: Yes, sir. We — we would like to put on the
5 record the Defense's — the Defendant's criminal history.

6 THE COURT: Yeah, we're going to do that in just a
7 moment.

8 MS. SCOTT: All right.

9 THE COURT: I'm asking if you have any motions or
10 anything?

11 MS. SCOTT: Oh, no, sir.

12 THE COURT: Motions from the Defense?

13 MS. LYLES: Your Honor, at this time, I would move for a
14 judgement notwithstanding the verdict based on the evidence presented
15 before you today and the motions that we filed and all of the
16 — I feel that the evidence presented was not enough to withstand the
17 jury's verdict today. And we would ask for a judgement notwithstanding
18 the verdict.

19 THE COURT: Okay. Are you — that is — that motion is
20 denied. Are you also asking for a directed — for a new trial?

21 MS. LYLES: Yes, Your Honor.

22 THE COURT: Okay. That motion is denied too. The jury
23 had ample evidence before them and they've considered that. And
24 you're protected on the record on your previous motions.

25 MS. LYLES: Thank you, Your Honor.

1 **THE COURT:** Anything else from the Defense?

2 **MS. LYLES:** Not at this time.

3 **THE COURT:** Okay. Thank you. All right. Let me get the
4 Solicitor to give us the criminal history. And do we need a —

5 **MADAM CLERK:** A sentencing sheet.

6 **THE COURT:** I'm sorry?

7 **MADAM CLERK:** A sentencing sheet.

8 **THE COURT:** You'll need sentencing sheets and so forth,
9 so, we'll take — we'll just be at ease for a moment.

10 **(Pause while sentencing sheets were filled out and signed.)**

11 **THE COURT:** Okay. Solicitor?

12 **MS. SCOTT:** Yes, Your Honor. Given the jury's verdict,
13 the State would like to present the Defendant's criminal history, along
14 with the time that he spent in jail before bonding out.

15 He — I apologize.

16 **(Off-the-Record Comments)**

17 **MS. SCOTT:** Judge, he was charged and arrested on
18 September 27th and he was released on September 29th, spending two
19 days in jail.

20 I have for some reason mention about time he spent time in jail
21 on the May 16th, 2012 and he released May 18th. And for some reason I
22 put two days on that.

23 There may be a total days of four days, at the very minimum two
24 days that he spent on these charges before bonding out, Judge.

25 His criminal history in 2001 was a fraudulent check, and breach

1 of trust in 2001; a fraudulent check in 2002. And, in 2010, ten counts of
2 a fraudulent check;

3 A petit larceny in 2010, a fraudulent check, two counts of those
4 — excuse me — in 2012, and a CDV in 2012. We are —

5 **THE COURT:** Okay.

6 **MS. SCOTT:** We don't have a recommendation in this
7 case, Your Honor. We are asking for an active type of sentence.

8 **THE COURT:** All right. Is there a probation issue in this
9 matter at all?

10 **MS. SCOTT:** Your Honor, one moment.

11 **(Off-the-Record Discussion)**

12 **MS. SCOTT:** Your Honor —

13 **(Off-the-Record Comments)**

14 **THE COURT:** Okay, okay. So there's no violation here
15 today?

16 **MS. SCOTT:** There is no violation.

17 **THE COURT:** Okay. All right. Yes, ma'am?

18 **MS. LYLES:** Thank you, Your Honor. Mr. Marett is 70
19 years old currently. He does live off of Social Security at this time.
20 However, he is able to slowly pay off his bills.

21 He, at the same time this happened, has placed on probation for
22 an unrelated offense. He is currently on probation and he is paying
23 restitution in that case.

24 He's had no violation as — to this date. He's doing well. He's
25 reporting. I've never had an issue with him reporting.

1 As Your Honor can see, we've been in this court multiple times.
2 He's not only been here, but he's been punctual. And we've had no
3 issues with him reporting.

4 There is an issue of money being owed in this case,
5 approximately between \$2,000 and \$2,500. We would request in this
6 case — we had a few offers in this case the State would have been
7 satisfied with prior to going to trial.

8 The first would have been paying off the check and this case
9 would have been dismissed. The second would have been placing him
10 on probation to pay off the check.

11 Now, I know that we're at a different stage right now, after having
12 a trial, a jury finding him guilty, but I'd like the Court to take that into
13 consideration of — you know, what the State and the victims would
14 have felt was an appropriate punishment and where we are today.

15 The maximum in this case is five (5) years. The maximum the
16 Court can place someone on probation is five (5) years. I think what
17 would be appropriate in the case is to place him on probation for a
18 period of five (5) years and make him pay these people what they're
19 owed.

20 I know you heard all the evidence in this case. I — I think there
21 were problems coming from both sides. And I do want Your Honor to
22 know that, you know, we had certain motions to be made. And, you
23 know, we took this to trial for a reason and not to waste the Court's
24 time.

25 Mr. Marett did not take that stand and lie to this Court in any

1 way. And, you know, he is prepared to pay back the company what the
2 company is owed.

3 I know that there were previous attempts, but from that you can
4 see that they were not given to Mr. Marett. They were returned service.

5 So I would appreciate if Your Honor would consider placing him
6 on probation with the entire five (5) years hanging over his head. And
7 allow him a chance to pay back this company what he owes them.

8 **THE COURT:** Sir, anything you want to say?

9 **(Brief Pause)**

10 **MS. LYLES:** Is there anything you would like to say to the
11 Court?

12 **THE DEFENDANT:** Your Honor, I feel like this trial was a
13 clarification. And so, at this point, the clarification is that I need to pay
14 this. And they didn't find the issue of not properly working or
15 undersized, so that point is moot now. So I'm ready to go forward, get
16 on with my life.

17 In this other case that she mentioned, I didn't have any
18 restitution. The only thing I had to pay was court costs. And so -- and
19 the public defender's fund.

20 And I have done well there. And, as a matter of fact, they are
21 now talking pay-up or P-Tup or something like that because I have
22 made such an effort to get on with my life.

23 And this happened a long time ago. I apologize. And I should
24 have exercised more scrutiny before I hired these people.

25 I should have insisted on a city permit and a lot of other things,

1 but that's hindsight. That's 20/20; that's gone. So we'll just get on with
2 our lives. Slowly but surely I can pay them out of my Social Security.

3 **THE COURT:** Thank you. Give me a minute.

4 **(Brief pause while the Court fills out paperwork.)**

5 **THE COURT:** Mr. Marett, you — you have quite a criminal
6 history that — and that concerns this Court; bad checks, fraudulent acts,
7 okay? These people are going to be paid every penny that they're
8 owed, all right, sir?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Every penny. Now, the sentence of the
11 Court is, on indictment 2013-1003, you be confined to the State
12 Department of Corrections for a period of five (5) years, provided upon
13 the service of six (6) months, the balance of that sentence is suspended
14 with probation for five (5) years; credit for time pursuant to the statute.
15 They'll calculate the time.

16 Restitution has been order by the Court of twenty-three hundred,
17 twenty-one dollars and forty cents (\$2,321.40) to Refrigeration Services,
18 five hundred dollars (\$500) to the public defense fund.

19 And you may P-Tup that, which means you may terminate that
20 probation when you pay these folks twenty-three hundred, twenty-one
21 dollars, and forty cents (\$2,321.40). You understand?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Now, sir —

24 **THE DEFENDANT:** Yes, sir?

25 **THE COURT:** — you have five (5) years hanging over

1 your head. If you violate your probation, bring a toothbrush. I'm not
2 directing that just at you; I tell everybody that. Your lawyer will tell you
3 that, okay? Do not violate your probation.

4 **THE DEFENDANT:** I will not, Your Honor.

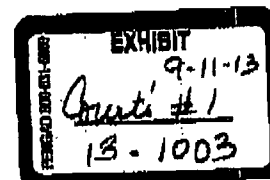
5 **THE COURT:** All right, sir. Thank you.

6 **MS. LYLES:** Thank you, Your Honor.

7 **(Off-the-Record Comments)**

8 **(Whereupon, the proceeding concluded.)**

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GENERAL CHARGE

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, YOU HAVE SEEN AND HEARD THE EVIDENCE PRESENTED AS WELL AS THE ARGUMENTS OF COUNSEL. IT IS NOW MY DUTY AND OBLIGATION TO INSTRUCT YOU ON THE LAW THAT IS APPLICABLE IN THIS CASE. IT WILL THEN BE YOUR SOLEMN DUTY AND OBLIGATION TO BEGIN YOUR DELIBERATIONS THROUGH WHICH PROCESS YOU WILL DECIDE THE FACTS, APPLY THE LAW AS I HAVE INSTRUCTED AND RENDER A FAIR AND IMPARTIAL DECISION.

IT IS YOUR EXCLUSIVE DUTY TO DETERMINE WHAT THE FACTS ARE IN THIS CASE. YOU DO THAT BASED ON YOUR OWN COMMON SENSE EXAMINATION AND EVALUATION OF THE TESTIMONY AND OTHER EVIDENCE RECEIVED DURING THE TRIAL OF THIS CASE.

YOU TWELVE JURORS ALONE WILL DECIDE WHAT EFFECT, VALUE AND WEIGHT IS TO BE GIVEN TO ANY PARTICULAR TESTIMONY OR OTHER EVIDENCE RECEIVED. QUITE SIMPLY, YOUR ULTIMATE GOAL IS TO FIND THE TRUTH IN THIS CASE AND BY DOING SO YOU WILL HAVE FULFILLED YOUR OBLIGATIONS AS JURORS IN GIVING BOTH THE STATE AND THE DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE PRESENTED AND THE LAW APPLICABLE TO THIS CASE.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENT CHARGES THE DEFENDANT WITH THE OFFENSE OF OBTAINING PROPERTY UNDER FALSE PRETENSES. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED,

CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS A CARDINAL, IMPORTANT AND VITAL RULE OF LAW THAT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE FOR WHICH HE/SHE STANDS CHARGED, THE DEFENDANT WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF INNOCENCE PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT FROM THE MOMENT OF HIS ARREST AND CONTINUES UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT'S SHOULDERS BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU TWELVE JURORS ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW

APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

BEYOND A REASONABLE DOUBT

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THE FACT IS MORE LIKELY TRUE THAN NOT, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. HOWEVER, IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

LADIES AND GENTLEMEN, PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY. AND IN CRIMINAL CASES, THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.

A REASONABLE DOUBT MAY ALSO BE DESCRIBED AS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. IF YOU HAVE SUCH A DOUBT AS TO THE GUILT OF THE DEFENDANT, THEN HE WOULD BE ENTITLED TO A VERDICT OF NOT GUILTY. REASONABLE DOUBT MAY ARISE FROM EVIDENCE WHICH IS IN THE CASE, OR FROM THE ABSENCE OR LACK OF EVIDENCE IN THE CASE.

IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT

GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

YOU ALONE MUST MAKE THE DETERMINATION OF WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.¹

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.²

¹State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001).

²State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001).

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY.³

CREDIBILITY OF WITNESSES

UNDER THE CONSTITUTION OF SOUTH CAROLINA, YOU ARE THE FINDER OF THE FACTS IN THIS CASE. NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A

³State v. Grippon, 327 S.C. 79, 83-84, 489 S.E.2d 462, 464 (1997). NOTE: In State v. Cherry, 361 S.C. 588, 608 S.E.2d 476 (2004), the Supreme Court held that the charge approved in Grippon is the sole remaining charge to be used in instructing juries in cases relying, in whole or in part, on circumstantial evidence.

WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND. WAS THE WITNESS STRAIGHTFORWARD IN ANSWERING QUESTIONS OR HESITANT IN RESPONDING TO QUESTIONS? SIMPLY PUT, DO YOU BELIEVE THE WITNESS WAS TELLING THE TRUTH? YOU MAY CONSIDER HOW THE WITNESS CAME TO KNOW THE FACTS TO WHICH HE/SHE TESTIFIED AND WHETHER OR NOT THE WITNESS HAD AN OPPORTUNITY TO HEAR, OBSERVE OR PERCEIVE A FACT BY MEANS OF THEIR SENSES.

WHATEVER YOUR GOOD JUDGMENT AND COMMON SENSE TELLS YOU IS THE MOST BELIEVABLE TESTIMONY IS THE TESTIMONY THAT YOU SHOULD ACCEPT AND REJECT THAT TESTIMONY WHICH YOU FIND NOT TO BE CREDIBLE OR BELIEVABLE.

FAILURE OF DEFENDANT TO TESTIFY

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION

OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS [HER] INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

THE COURT—INSTRUCTOR IN THE LAW

NOW, BY THE SAME CONSTITUTION THAT MAKES YOU THE FINDERS OF THE FACTS, I AM THE SOLE AND ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW THAT I CHARGE AND APPLY TO THE LAW THE EVIDENCE AS FIND IT, AND REACH YOUR VERDICT. PUT ASIDE ANY CONCEPTIONS YOU MAY HAVE HAD AS TO THE LAW BEFORE COMING HERE TODAY AND ACCEPT THE LAW AS I INSTRUCT IT TO BE. YOU, FOR PURPOSES OF YOUR DUTY AS JURORS TODAY, SHOULD NOT BE CONCERNED ABOUT THE LAW OUGHT TO BE, BUT WHAT I CHARGE YOU THE LAW IS NOW IN THIS STATE.

INTENT

CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH CRIME THAT MUST BE PROVED BY THE STATE BEYOND A REASONABLE DOUBT.

CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE

DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE HAD IN MIND. SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW JURY MAKES A DETERMINATION WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT.

CRIMINAL INTENT IS A STATE OF MIND WHICH OPERATED JOINTLY WITH AN ACT IS THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING SO IT IS UP TO YOU THE JURY TO DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. I TELL YOU THAT THE STATE MUST PROVE CRIMINAL INTENT BEYOND A REASONABLE DOUBT JUST AS THE STATE MUST PROVE EVERY ELEMENT BEYOND A REASONABLE DOUBT AS I PREVIOUSLY EXPLAINED TO YOU.

"IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE." WHILE THE STATE MAY PROVE MOTIVE, IT IS UNNECESSARY THAT THE STATE DO SO. HOWEVER, THE STATE MUST PROVE INTENT.

STATUTE

I HAVE INSTRUCTED YOU THAT THE DEFENDANT IS CHARGED WITH THE OFFENSE KNOWN AS OBTAINING PROPERTY BY FALSE PRETENSES. I WILL NOW READ TO YOU, IN PART, SECTION 16-13-240 OF THE SOUTH CAROLINA CODE OF LAWS:

A person who by false pretense or representation obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty.

A PROMISE TO DO SOMETHING IN THE FUTURE CANNOT CONSTITUTE A BASIS FOR PROSECUTION FOR OBTAINING GOODS UNDER FALSE PRETENSES. IT IS A QUESTION OF FACT FOR YOU, THE JURY, TO DETERMINE WHETHER THE STATE'S EXHIBIT THREE IS A PROMISE TO PAY IN THE FUTURE.

COPY OF CHARGE IN THE JURY ROOM

I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS IN WRITTEN FORM. DURING YOUR DELIBERATIONS, YOU MAY REFER TO THE INSTRUCTIONS TO GUIDE YOUR DECISION-MAKING. YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND NOT FOLLOW SOME AND IGNORE OTHERS. PLEASE RETURN THE INSTRUCTIONS TO THE COURT AT THE TIME YOUR VERDICT IS RENDERED.

JURORS: FAIR AND IMPARTIAL

YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN

NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES, ALONG WITH OTHER EVIDENCE INTRODUCED.

JURY VERDICT

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE. MISTER FOREPERSON, WHEN THE JURY AGREES ON THE VERDICT, YOU WILL WRITE THE VERDICT ON THE BACK OF THE VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

185

P. O. Box 2533 • Greer, SC 29652
(864) 292-0092 • Fax (864) 292-0611

WORK ORDER / INVOICE

DATE OF ORDER 7-14-11	ORDER TAKEN BY	99771
PHONE		
JOB NAME/NUMBER A/C		
MODEL NUMBER	SERIAL NUMBER	
BEGINNING MILEAGE 114	ENDING MILEAGE 31156	
TRAVEL TIME IN 1:45 AM	TRAVEL TIME OUT 6:45 AM	
WORK TIME IN 6:45 AM	WORK TIME OUT 9:15 AM	
WORK TIME IN	WORK TIME OUT	

To: Tom M. 1001 Job Complete
1001 Southern St. Job Incomplete
San Antonio, TX
Chick DAY WORK ☒ WEEKEND ☐ OTHER ☐
 Service Technician

WORK DESCRIPTION: Sump & Installation of 2.5 Ton Freon R-22 West pump
for floor unit. C-22

QTY.	PART NO.	PART DESCRIPTION	UNIT PRICE	AMOUNT
		LABOR-TECH		
		LABOR-HELPER		
		TRUCK CHARGE		
		RECOVERY USAGE		
		SOLDER SUPPLY		
		LEAK DETECTOR		
		VAC PUMP USAGE		
		PAID OUTSIDE UNIT		
		PAID R1# PITTSBURGH		
		CAN # 1011 x 75454		
		2-22		
		30 x 30 x 3		
		2x 1/2" 2" dia. contactor		
		PAID w/ check #		
TERMS: TOTAL DUE UPON RECEIPT. 1.5% SERVICE CHARGE WILL BE ADDED TO ALL PAST DUE BALANCES.			TAX	
CUSTOMER SIGNATURE <u>THOMAS R. M. [Signature]</u>			FREIGHT	
I hereby acknowledge the satisfactory completion of the above described work			TOTAL	→ 2,321.40

186

STATE'S EX. # 2

JOB INVOICE

RSI

Refrigeration Services, Inc.

P.O. Box 2533

Spartanburg, SC 29652

(864) 292-0092 Fax (864) 292-0611

DATE

7/14/2011

INVOICE NO.

99771

CUSTOMER ORDER NO.

2235-99771

SOLD TO:

Tom Marett

Spartanburg, SC 29369-8921

SOLD TO:

Tom Marett

Spartanburg, SC 29303

WORK DESCRIPTION

Leak and installation of 2.5 ton Payne (R-22) heat pump, outdoor unit.

Paid w/check 177

QTY.	MATERIAL	UNIT PRICE	AMOUNT	OTHER CHARGES			AMOUNT
1.00	Payne 2.5 ton package heat pump	2321.40	2321.40				
6.00	R-22 refrigerant	0.00	0.00				
1.00	36"36"3 condensor pad	0.00	0.00				
1.00	30 amp 2 pole contactor	0.00	0.00				
				TOTAL OTHER ▶			
				LABOR	HRS.	RATE	AMOUNT
				Tech Labor	2.50		0.00
				TOTAL LABOR ▶			
				TOTAL MATERIALS			2321.40
				TOTAL OTHER			0.00
				TOTAL LABOR			0.00
				TAX			0.00
TOTAL MATERIALS ▶			2321.40				

STATE'S EX. # ?

187

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

RETURN REASON-D
CLOSED ACCOUNT

1002071020 07/18/2011 2433401

CLOSED ACCOUNT

THOMAS R. MARETT		03-05	177
MOORE, SC 29369-8721		Date <u>08/19/11</u>	67-411533 SC 3104
Pay to the Order of <u>BT</u>		\$ <u>2621.40</u>	
<u>Two Thousand, Three Hundred, Twenty One, and 40/100</u>		Dollars	
Bank of America			
AG111VT055094101			
For <u>James</u>		<u>T. Roy B. Marett</u>	

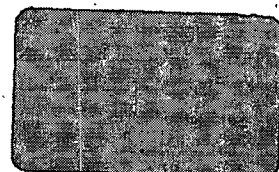
0038566150 0031 14/3011 000 >001100606<

061201592< 07/18/2011 1083348

PAY TO THE ORDER OF
NBSC
TAYLORS, SC 29687
FOR DEPOSIT ONLY
REFRIGERATION SERVICES INC
1003327440

061201592 07/18/2011
1083348 RR - D

Do not endorse or write below this line



REFRIGERANT USE/STATUS REPORT

Technician: Tom Marett Work Order #: 99771 Date of event: 7-14-11
 City & State: Spartanburg, SC
 Contact Person: _____

1: LEAK IDENTIFICATION/REPORT

Unit / Rack #: _____ Mod. & Ser. # PIT13NR02400G
 Specific location of leak: ser # 18147545Y
 Was leak repaired: Yes _____ No _____ Comments: _____
 Explain why leak not repaired: _____

2: REFRIGERANT USE REPORT

Unit / Rack: outdoor unit Refrigerant Type: R-22 Pounds of refrigerant added to system: 60-0 lbs
 Source / Supplier of refrigerant: RSI
 Explain why refrigerant was added to system: initial charge / startup

3: UNINTENTIONAL VENTING / LEAK REPORT

Refrigerant Type: _____

IDENT EXPLAINED IN SECTION ONE

4: REFRIGERANT RECOVERY REPORT

Refrigerant Type: _____ Amount recovered: _____ Reinstalled into systems: Yes _____ No _____
 System refrigerant removed from: _____
 If not installed, list disposition of refrigerant: _____

5: CUSTOMER NOTIFICATION/CONTRACTOR ACKNOWLEDGMENT

If deficiencies/discrepancies noted are not corrected, you may be in violation of Federal / State Regulations.

Contractor information

Company: RSI Carolina
 Service Technician: Justin Ballenger
 Signature: [Signature]

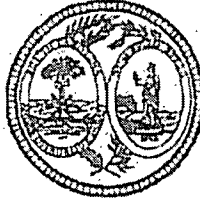
Store Management Acknowledgment:

Name: Thomas R. Marett
 Signature: [Signature]
 Date: 7-14-11

STATE'S EX. # 5

Solicitor's Worthless Check Unit
7th Judicial Circuit

Cherokee County Court House
 Floyd Baker Blvd.
 Caffney, SC 29340
 Phone (864) 487-2576
 Fax (864) 487-2753



Spartanburg County
 Court House
 180 Magnolia Street
 Spartanburg, SC 29306
 Phone (864) 596-2575
 Fax (864) 596-2959

Barry J. Bannette
 Solicitor

August 29, 2011

Thomas R. Maret
 [REDACTED]

Moore, SC

If you would like to have this matter disposed of prior to your court date, please comply with the following terms:

Bring a Money Order or Cashier's Check payable to the Solicitor's Check Unit in the amount of \$ 2,542.40 to the Spartanburg County Solicitor's Office, third floor of the Spartanburg County Judicial Center at 180 Magnolia Street.

If you have any additional questions, please contact Sheila Henderson or Todd Wilson at (864) 596-2575.

Sincerely,

Todd Wilson
 Administrator

General Sessions Court

190

STATE'S EX. # 6

Solicitor's Worthless Check Unit 7th Judicial Circuit

Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306
Phone (864) 596-2233
Fax (864) 596-2386



Barry J. Barnette
Solicitor

August 09, 2011

FINAL NOTICE

Cherokee County Courthouse
Floyd Baker Blvd.
Gaffney, SC 29340
Phone (864) 487-2576
Fax (864) 487-2753

Thomas R. Marcil

Moore, SC 29369-8921

CERTIFIED MAIL

You are hereby notified that a check, draft, or instrument numbered 177, issued by you on July 14, 2011, drawn upon Bank of America and payable to Refrigeration Services, Inc. dba RSI in the amount of \$2,321.40 has been dishonored. Pursuant to South Carolina law (Section 34-11-70), you have ten (10) days from the date this notice was mailed to tender payment of the full amount of the check or instrument plus a service charge of thirty dollars.

Additionally, R.294, H4800, Proviso 46.6 of Act 310 of 2008, provides for the payment of a processing fee of \$150.00 plus a cost of \$41.00. The total amount due is \$2,542.40. A MONEY ORDER or BANK CASHIER'S CHECK for the total amount due must be made payable to the Solicitor's Check Unit and mailed to the Solicitor's Check Unit, 180 Magnolia Street, Spartanburg, SC 29306 no later than 8/19/2011. You have failed to pay the total amount as requested in my letter to you dated 7/27/2011. This is your final notice.

Do NOT contact the Payee or Merchant who took this check about this check. You MUST handle this matter through the Solicitor's Worthless Check Program. Attempts to intimidate or influence the payee may result in additional Felony Charges.

Unless this amount is paid in full by the specified time above, a warrant will be issued for your arrest. The dishonored check and all other available information relating to this incident will be used for criminal prosecution.

Sincerely,

/s/ Barry J. Barnette
Barry J. Barnette, Solicitor

Total Due:	\$2,542.40
Due By:	8/19/2011
Case #:	S- 18115

Certification of Mailing

I hereby certify that a notice was deposited in the United States mail, sent by certified mail with postage prepaid, on 8/9/2011 to an address given on the dishonored check, draft, or instrument.

SDHENDERSON

Person who Sent the Letter

Person ID #: 3252

Solicitor's Case #: S- 18115

91 7108 2133 3937 3543 2936

STATE'S EX. # 7

Solicitor's Worthless Check Unit

7th Judicial Circuit

Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306
Phone (864) 596-2233
Fax (864) 596-2386



Cherokee County Courthouse
Floyd Baker Blvd.
Gaffney, SC 29340
Phone (864) 487-2576
Fax (864) 487-2753

Barry J. Barnette
Solicitor

July 27, 2011

Thomas R. Marett

Spartanburg, SC 29303

NOTICE OF WORTHLESS CHECK

ARREST AND CRIMINAL PROSECUTION

Your check, draft or instrument number 177, drawn on Bank of America and issued on July 14, 2011 to Refrigeration Services, Inc. dba RSI in the amount of \$2,321.40 has been dishonored.

In order to avoid arrest and criminal prosecution, you must now pay the amount of the check, plus collection charges provided by law before August 6, 2011. The total amount now due is \$2,542.40.

Payment in the form of a MONEY ORDER OR BANK CASHIER'S CHECK must be made payable to SOLICITOR'S CHECK UNIT and mailed or brought to the Solicitor's Check Unit, 180 Magnolia Street, Spartanburg, SC 29306.

Do NOT contact the Payee or Merchant who took this check about this check. You MUST handle this matter through the Solicitor's Worthless Check Program. Attempts to intimidate or influence the payee may result in additional Felony Charges.

It is in your best interest to take care of this matter immediately.

Barry J. Barnette
/s/ Barry J. Barnette
Solicitor

COPY

Detach and Return with Payment - Money Order or Bank Cashier's Check

Name: Thomas R. Marett Case #: S-18115
Check payable to Solicitor's Check Unit for \$2,542.40

Send a stamped self-addressed envelope with payment in order to have a receipt returned to you by mail.

Person ID #: 3252

Spartanburg County

Mail or Bring to

Solicitor's Check Unit
180 Magnolia St
Spartanburg, SC 29306

NO Personal Checks
NO Cash

Solicitor's Case #: S-18115

192

STATE'S EX. # 8

Solicitor's Worthless Check Unit

7th Judicial Circuit

Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, SC 29306
Phone (864) 596-2233
Fax (864) 596-2385



Barry J. Barnette
Solicitor

July 27, 2011

Cherokee County Courthouse
Floyd Baker Blvd.
Gaffney, SC 29340
Phone (864) 487-2576
Fax (864) 487-2753

Thomas R. Marett

Spartanburg, SC 29304

NOTICE OF WORTHLESS CHECK

ARREST AND CRIMINAL PROSECUTION

Your check, draft or instrument number 177, drawn on Bank of America and issued on July 14, 2011 to Refrigeration Services, Inc. dba RSI in the amount of \$2,321.40 has been dishonored.

In order to avoid arrest and criminal prosecution, you must now pay the amount of the check, plus collection charges provided by law before August 6, 2011. The total amount now due is \$2,542.40.

Payment in the form of a MONEY ORDER OR BANK CASHIER'S CHECK must be made payable to SOLICITOR'S CHECK UNIT and mailed or brought to the Solicitor's Check Unit, 180 Magnolia Street, Spartanburg, SC 29306.

Do NOT contact the Payee or Merchant who took this check about this check. You MUST handle this matter through the Solicitor's Worthless Check Program. Attempts to intimidate or influence the payee may result in additional Felony Charges.

It is in your best interest to take care of this matter immediately.

Barry J. Barnette
/s/ Barry J. Barnette
Solicitor

COPY

Detach and Return with Payment - Money Order or Bank Cashier's Check

Name: Thomas R. Marett Case #: S-18115

Make payable to Solicitor's Check Unit for \$2,542.40

Send a stamped self-addressed envelope with payment in order to have a receipt returned to you by mail.

Person ID #: 3252

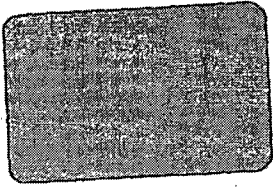
Spartanburg County

Mail or Bring to

Solicitor's Check Unit
180 Magnolia St
Spartanburg, SC 29306

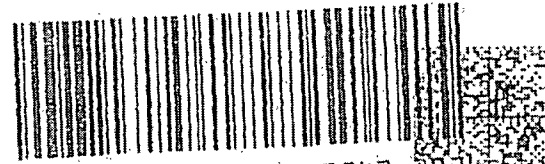
NO Personal Checks
NO Cash

Solicitor's Case #: S-18115



Solicitor's Worthless Check Unit
7th Judicial Circuit
180 Magnolia Street
Spartanburg, SC 29306

CERTIFIED MAIL



91 7108 2133 3937 3543

UNITED STATES POSTAGE
\$ 04.44⁰
0006556657 AUG 09 2011
MAILED FROM ZIP CODE 29306

CERTIFIED MAIL

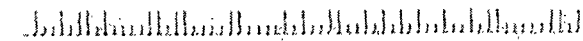
Thomas R. Marett
Re: Solicitor's Office Case #: S- 18115
[REDACTED]
Moore, SC 29369-8921

AUG 10 2011

NIXIE 296 SE 1 00 09/11/11
RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

SC: 293062935900 *2954-02250-09-40

29369-8921



STATE'S EX # 9

WITNESSES

Spartanburg County Sheriff's Office

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

FEB 22 2013

VERDICT

Guilty

Foreperson of Petit Jury
Date:

9/11/13

DOCKET NO.

13-GS-42 1003

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

FEB 22 2013

TERM

THE STATE
vs.

Thomas Marett

Indictment for
OBTAINING PROPERTY BY
FALSE PRETENSESSC Code: 16-13-0240 (2)
CDR Code: 3470
Class Fel/FFILED
CLERK OF COURT
SPARTANBURG COUNTY

2013 MAR -1 PM 4:08

M. HOPE BLACKLEY

SEP 20 2013

SC COURT OF APPEALS

OK

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

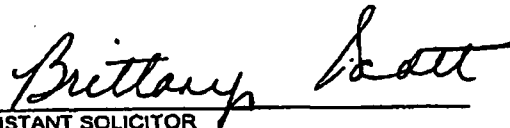
INDICTMENT

At a Court of General Sessions, convened on FEB 22 2013, the
Grand Jurors of Spartanburg County present upon their oath:

OBTAINING SIGNATURE OR PROPERTY BY FALSE PRETENSES

That Thomas Marett did in Spartanburg County on or about July 14, 2011, by false pretense or representation and with the intent of cheating and defrauding the victim, Refrigeration Services, obtain a signature of a person to a written instrument or did obtain from a person a chattel, money, valuable security, or other property (real or personal) valued at more than \$2,000 but less than \$10,000, in violation of §16-13-240(2), *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Thomas Marett

AKA:

Race: W Sex: M Age: 70

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City/State: Spartanburg, SC 29303

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Breach / Obtain signature or prop. under false pretenses, value more than \$2,000 but less than \$10,000 (0-5 yrs or disct. fine)

in violation of § 16-13-0240 of the S.C. Code of Laws, bearing CDR Code # 3470

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Brittany Scott 78989 SC Bar# [REDACTED] Defendant NEWMALL 100383
SCOTT, BRITTANY D SC Bar# [REDACTED] Attorney for Defendant SC Bar# [REDACTED]WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 years

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

Total: \$ 2321.40 plus 20% fee: \$ _____

Payment Terms:

☒ Set by SCDPPPS

Recipient: Refrigeration Services

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (DUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 16.90

TOTAL \$ 1618.90

Clerk of Court/ Deputy Clerk

Court Reporter: [REDACTED]

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS4201003

A/W#: 2013GS4201003 - DI

Date of Offense: 7/14/2011

S.C. Code § 16-13-0240

CDR Code #: 3470

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

10-5 yrs or disct. fine

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

(defendant's initials)

☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.NEWMALL 100383
SCOTT, BRITTANY D SC Bar# [REDACTED] Attorney for Defendant SC Bar# [REDACTED]☐ County Detention Center,☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 years

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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SPECIAL CONDITIONS:

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Payment Terms:

☒ Set by SCDPPPS

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TOTAL \$ 1618.90

Presiding Judge

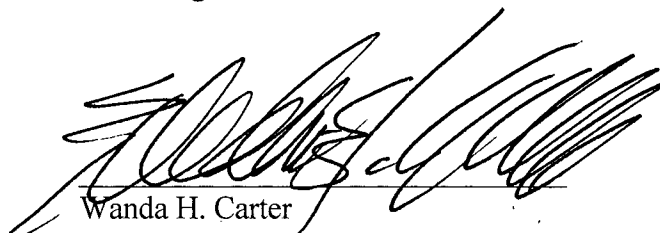
Judge Code: [REDACTED]

Sentence Date: 11 September 2013

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 6th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

RECEIVED

OCT 06 2014

SC Court of Appeals

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

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

R. Keith Kelly, Circuit Court Judge

RECEIVED

OCT 06 2014

THE STATE,

RESPONDENT, SC Court of Appeals

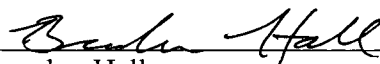
V.

THOMAS RAYNES MARETT,

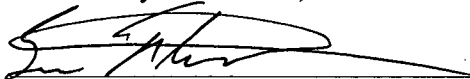
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 6th day of October, 2014.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of October, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022