

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**ORIGINAL**

Appeal from Marlboro County  
William H. Seals, Jr., Circuit Court Judge

**RECEIVED**

NOV 19 2015

SC Court of Appeals  
RESPONDENT,

THE STATE,

V.

PHYLLIS LANE,

APPELLANT.

Appellate Case No. 2015-000708

**MOTION TO REMAND  
FOR RECORD RECONSTRUCTION**

Appellant Phyllis Lane respectfully moves this Court for an order placing her appeal in abeyance, remanding this case to the Marlboro County Court of General Sessions for a reconstruction hearing of certain portions of her trial on March 16 and 17, 2015, and appointing counsel to represent Appellant for the reconstruction hearing.

BACKGROUND

On February 3, 2015, the Marlboro County Grand Jury indicted Appellant for breach of trust, value more than \$2,000 but less than \$10,000. (Exh. A). On March 16, 2015, Appellant proceeded to trial before The Honorable William H. Seals, Jr. and a jury. Julie Swilley represented Appellant, and Mia David and Elizabeth Munnerlyn represented the State. (Exh. B).

At the close of the State's evidence, Appellant moved for a directed verdict on grounds that the State failed to adduce evidence sufficient to prove beyond a reasonable doubt that Appellant had a trust relationship with State's First Witness. The trial judge ruled sufficient evidence of probative value existed to find a trust relationship and denied the motion. (Exh. B, p. 51, line 18—p. 61, line 24. The jury later found Appellant guilty as charged. (Exh. B, p. 111, lines 14-17).

The certified court reporter did not translate the following portions of the record due to "equipment failure":

- a. Court's introductory remarks (Exh. B, p. 29);
- b. State's opening statement (Exh. B, p. 30);
- c. Appellant's opening statement (Exh. B, p. 31);
- d. State's direct examination of State's First Witness (Exh. B, p. 33);
- e. Appellant's cross-examination of State's First Witness (Exh. B, p. 33);
- f. State's direction examination of State's Second Witness (Exh. B, p. 35).

Counsel for Appellant confirmed with the certified court reporter that these portions of the record were not transcribable. (Exh. C). Counsel discussed the missing portions of the transcript with Appellant and trial counsel, who stated that testimonies of both State's First Witness and State's Second Witness involved evidence relevant to whether or not a trust relationship existed between Appellant and State's First Witness.

#### ARGUMENT

This Court should remand Appellant's case for a hearing to reconstruct the direct and cross examinations of State's First Witness and the direct examination of State's Second Witness. This Court has the authority to remand a case for a reconstruction

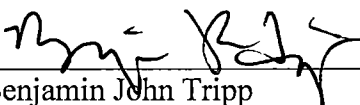
hearing where a transcript has been lost or destroyed. Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). Remand for record reconstruction is appropriate in instances where “a reconstructed record on appeal would allow for meaningful appellate review.” State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (internal quotations omitted).

In this case, Appellant’s primary defense was arguing through a directed verdict motion the State’s failure to adduce probative evidence sufficient to support a finding of the crime charged. The trial judge denied the motion after reviewing testimony from the State’s witnesses. State’s First Witness and Second Witness gave testimony relevant to whether or not a trust relationship existed. In order to meaningfully review the trial judge’s analysis and ruling, this Court must fully and independently review the probative evidence contained in their testimonies.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court remand place her appeal in abeyance, remand her case to the Marlboro County Court of General Sessions for a hearing to reconstruct the direct and cross examinations of State’s First Witness and the direct examination of State’s Second Witness, and appoint counsel to represent her for the reconstruction hearing.

Respectfully submitted,

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR PETITIONER

November 19, 2015

EXHIBIT A

WITNESSES

Heath Williams *HT*

Mccoll Police Department

Law Enforcement Case #:

284

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

ARREST WARRANT NUMBER  
2014A3420300131

ARRESTED ON: 2014-12-17

ACTION OF GRAND JURY

*True Bill*

*Rosa Moore*

Grand Jury Foreperson

*02/03/15*

Date

VERDICT

Petit Jury Foreperson

Date

MARLBORO COUNTY, S.C.  
CLERK OF COURT  
WILLIAM B. FUNDENBERG

2015 FEB 3 PM 1 00

DOCKET NUMBER:  
2015-GS-34-0028

The State of South Carolina

County of Marlboro

COURT OF GENERAL SESSIONS

Term:  
February 2015

THE STATE

vs.

Phyllis A Lane

INDICTMENT FOR

Breach/Breach of Trust with fraudulent intent,  
value more than \$2,000 but less than \$10,000;  
Penalty Statute 16-13-0230(B)(2); Felony Class  
F

§16-13-0230(A)

CDR Code: 3423

A CERTIFIED  
TRUE COPY

*William B. Fundenberg*

CLERK OF COURT  
MARLBORO COUNTY

William B. Rogers, Jr., Solicitor

FILED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF MARLBORO )

INDICTMENT FOR

Breach/Breach of Trust with fraudulent intent, value more than \$2,000 but less than \$10,000; Penalty Statute 16-13-0230(B)(2); Felony Class F

§16-13-0230(A)

At a Court of General Sessions, convened on February 3, 2015, the Grand Jurors of Marlboro County present upon their oath:

BREACH OF TRUST WITH FRAUDULENT INTENT  
(VALUE: OVER \$2,000 UP TO \$10,000)

CDR: 3423 16-13-0230(A)

That Phyllis A Lane did in Marlboro County on or about November 5, 2013, having been entrusted by the owner of Mildred Gause with the care, keeping, and possession of a MONIES IN THE AMOUNT OF 4700.00 valued at more than two thousand (\$2,000.00) dollars, but less than ten thousand (\$10,000.00) dollars, did feloniously convert and appropriate such property to his/her own use and purposes, with intent to deprive the owner thereof, in violation of Section 16-13-0230(B)(2), S. C. Code of Laws, 1976, as amended.

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



WILLIAM B. ROGERS, JR.  
SOLICITOR

EXHIBIT B

STATE OF SOUTH CAROLINA )  
 ) COURT OF GENERAL SESSION  
COUNTY OF MARLBORO ) 2015-GS-34-00028

STATE OF SOUTH CAROLINA )  
 PLAINTIFF )  
 vs. ) TRANSCRIPT OF RECORD  
 )  
 PHYLLIS A. LANE )  
 DEFENDANT )

March 16-17, 2015  
Bennettsville, South Carolina  
VOLUME 02 OF 02

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE; and a jury.

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

ELIZABETH MUNNERLYN, ASSISTANT SOLICITOR  
Attorney for the State

MIA DAVID, ASSISTANT SOLICITOR  
Attorney for the State

JULIE SWILLEY, PUBLIC DEFENDER  
Attorney for the Defendant

MILDRED GAUSE,  
CINDY SUNDERLAND,  
TOMMY LANGLEY, McColl Police Department/Chief  
HEATH WILLIAMS,

HARVEY GAUSE,  
HOPE SMITH,  
BUDDY SMITH,

HATTIE O. GORDON  
Circuit Court Reporter

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COLLOQUY

(WHEREUPON, State's Exhibit Nos. 1 AND 2 were marked for identification only.)

THE COURT: Ready to go?

MS. MUNNERLYN: Yes, Your Honor. In reference to timeframe I just want to make sure we're on the same page. We were running some records for my witnesses. I don't have the Defense's -- rap sheet for her witnesses yet. I think that she has an impeachable crime within the ten year timeframe. And so I just want us to be on the same page before the jury comes out and before we get started.

MS. SWILLEY: If the Solicitor is saying that crimes of dishonesty are not within the ten year time period.

MS. MUNNERLYN: I would make that argument. Yes.

THE COURT: What's that again?

MS. MUNNERLYN: I have several convictions for Ms. Mildred Gause for shoplifting, which is a crime of dishonesty, and therefore exempt from the ten year time period.

THE COURT: Correct.

MS. MUNNERLYN: Your Honor, of course, if that is the ruling, of course, our client if she takes the stand, also has some convictions for shoplifting more than ten years old.

MS. SWILLEY: Your Honor, at that time I would like

1 to make an argument at the close of the State's case for a  
2 403 analysis as regards to my client as she has greater  
3 weight than a witness in terms of impeachment.

4 THE COURT: When we get to that bridge, when we get  
5 there just remind me.

6 MS. SWILLEY: Thank you, Your Honor.

7 THE COURT: Anything else?

8 MS. MUNNERLYN: Not at this time. I have marked two  
9 exhibits, the bank exhibits which you have a copies of  
10 right there. I think it's just the contract and the two  
11 deposit slips.

12 MS. SWILLEY: Can I have mine pre-marked at this  
13 time, too?

14 (WHEREUPON, Defendant's Exhibit Nos. 1, 2 AND 3 were  
15 marked for identification only.)

16 THE COURT: All right. Let me think about what --  
17 about what you just stated. She had -- someone's witness  
18 that has a shoplifting, the offense is greater than ten  
19 years old?

20 MS. MUNNERLYN: Oh, there are two witnesses that have  
21 a shoplifting offense that is more than -- actually, it's  
22 closer to 20 years old.

23 THE COURT: All right. And then the defendant over  
24 hear has a shoplifting offense ---

25 MS. SWILLEY: That's 18 years old.

1 THE COURT: --- that's 18 years old.

2 MS. SWILLEY: The Defendant would argue, Your Honor,  
3 has a separate right from a mere witness in that she is on  
4 trial, and therefore, she has added protection under a 403  
5 analysis where it is more prejudicial than it is  
6 probative. I would argue her 18 year old shoplifting  
7 conviction would not be admitted.

8 THE COURT: And I agree with you in that regard.

9 MS. SWILLEY: Thank you.

10 THE COURT: Now, let me hear from you in regard to  
11 yours.

12 MS. MUNNERLYN: Of course, Your Honor, my witness is  
13 the one that -- one does have one that is within the ten  
14 year timeframe, but two of them have convictions that are  
15 20 or so years old for shoplifting or something of that  
16 nature. And I would just argue that it has been such a  
17 length of time without any other convictions that it would  
18 not be appropriate to allow impeachment of that witness on  
19 the basis of simply shoplifting charges that are of that  
20 age.

21 MS. SWILLEY: Specifically, this is a crime of  
22 dishonesty. The only testimony that the State is going to  
23 offer at this trial is the testimony of the witness and  
24 her creditability is at issue. Therefore, the Defense has  
25 a right to impeach her based on her credibility.

1           THE COURT: What does the rule say about time? The  
2 time for crimes of dishonesty?

3           MS. MUNNERLYN: It just has a time limit of  
4 Subsection B, Your Honor. Time limit, "Evidence of a  
5 conviction under this rule is not admissible if a period  
6 of more than ten years has elapsed since the date of the  
7 conviction or release of the witness from the confinement  
8 imposed for that conviction, whichever is the later date,  
9 unless the Court determines in the interest of justice  
10 that the probative value of the conviction supported by  
11 specific facts and circumstances substantially outweighs  
12 its prejudicial effect."

13           MS. SWILLEY: I would also like to point out case law  
14 specifically State v. Cheeseborough, 346 SC 526. It's a  
15 2001 decision. It has to do with crimes which are  
16 probative truthfulness within the ten year conviction and  
17 also crimes involving dishonesty or false statements.

18           I would note that State v. Al-Amin, A-L A-M-I-N, is a  
19 2003 case. It says, "Crimes involving dishonesty are  
20 admissible for impeachment purposes but that are Court  
21 required. It balances between the probative value and the  
22 prejudicial effect." And that's generally against the  
23 defendant. What I would say is the only evidence the  
24 State is going to present to establish the crime is the  
25 testimony of witnesses. Witness credibility is at issue

1 here.

2 MS. MUNNERLYN: As in every case, Your Honor. I  
3 mean, obviously, we have some physical evidence as well as  
4 far as exhibits, but obviously, the creditability of the  
5 witness comes into play just like in any other case.

6 We feel like convictions that are nearly 20 years old  
7 and there hasn't been any subsequent convictions is itself  
8 more prejudicial than anything in this particular witness.  
9 And in this case one of those is my victim.

10 MS. SWILLEY: My client tells me that six years ago  
11 her mother had a conviction for shoplifting in Laurinburg,  
12 North Carolina. She knows because she took picture of her  
13 in the jail. It's not on N.C.I.C. The N.C.I.C. was  
14 provided to me by the Solicitor 30 minutes ago.  
15 Therefore, I didn't have an opportunity to go and get  
16 certification from Laurinburg. She does have a  
17 shopliftings that are not listed here.

18 THE COURT: You need this checked out or somebody in  
19 your office if it's not on her ---

20 MS. MUNNERLYN: I would object to anything outside of  
21 the -- I mean we ran N.C.I.C. for each witness and run the  
22 same N.C.I.C. for her witnesses that she gave us.

23 THE COURT: It just doesn't seem fair, and I'm not  
24 going to allow the crime of dishonesty from the defendant,  
25 but I'm going to allow you to impeach the State on crimes

1 dishonesty for something 20 years old. I'm find that the  
2 prejudicial effect is substantially outweighed by the  
3 probative value. I think it didn't need to come in. If  
4 you need to check out any kind -- whatever you find on  
5 her, that's fine. If it's not on that N.C.I.C. it doesn't  
6 need to be brought up.

7 MS. SWILLEY: Could I have just one moment, please?  
8 I would move to sequester the witnesses. Again, the  
9 evidence is based solely on ---

10 MS. MUNNERLYN: I don't have any objection, Your  
11 Honor.

12 THE COURT: Let's do it. As long as it's for both  
13 sides. Let's do that. All right. Anything else?

14 MS. SWILLEY: Nothing from the Defense.

15 THE COURT: Go ahead and bring in the jury.

16 (WHEREUPON, the jury panel enters the courtroom at  
17 9:48 a.m.).

18 THE COURT: All right. Good morning. Go ahead and  
19 swear the jury.

20 (WHEREUPON, the jury panel was sworn in at 9:49 a.m.)

21 THE COURT: All right. Thank you, Miss Clerk. All  
22 right, ladies and gentlemen of the jury, we're getting  
23 ready to start this case now. But before we actually  
24 begin I want to go over a few things with you just to give  
25 you a little bit of a working knowledge before we begin.

1           The first thing that I want to tell you is the State  
2 of South Carolina has burden of proof of proving the  
3 defendant guilty beyond a reasonable doubt.

4           (WHEREUPON, equipment failure occurred. Was not able  
5 to translate this portion of the record and is not  
6 included in this record.)

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OPENING STATEMENT BY MS. MUNNERLYN

MS. MUNNERLYN:

(WHEREUPON, equipment failure occurred. Was not able to translate this portion of the record and is not included in this record.)

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THE COURT: Thank you. Defense is recognized.

PROSPECTIVE JUROR: Thank you, Your Honor.

OPENING STATEMENT BY MS. SWILLEY

MS. SWILLEY:

(WHEREUPON, equipment failure occurred. Was not able to translate this portion of the record and is not included in this record.)

1 THE COURT: Thank you. State, call your first  
2 witness.

3 MS. MUNNERLYN: Thank you, Your Honor. The State  
4 calls Mildred Gause.

5 MILDRED GAUSE, after being duly sworn, testified  
6 as follows:

7 THE WITNESS: G-A-U-S-E.

8 DIRECT EXAMINATION

9 BY MS. MUNNERLYN:

10 Q. Okay. Ms. Gause, I'm going to ask you a few  
11 questions, and if you can't hear me you just need to say  
12 so. I'm trying to talk out loud, but you need to talk  
13 into the microphone because everybody needs to hear what  
14 you're saying, okay?

15 A. Okay.

16 Q. All right. And where do you live, Mildred?

17 A. 108 East Drive in McColl.

18 Q. Okay. And who lived with you there at your house?

19 A. Well, Phyllis was there, stayed there and my  
20 grandson.

21 Q. What's your grandson's name?

22 A. Larry Gause.

23 Q. Larry Gause?

24 A. Yes.

25 Q. And was Phyllis, the defendant, living with you?

1 A. Yes.

2 Q. Okay. And how was Phyllis Lane related to you? How  
3 is Phyllis related to you?

4 A. She's my daughter.

5 (WHEREUPON, equipment failure occurred. Was not able  
6 to translate this portion of the record and is not  
7 included in this record.)

8 MS. SWILLEY: Okay. That's all I have. Thank you.

9 THE COURT: All right. Any redirect?

10 MS. MUNNERLYN: No, Your Honor.

11 THE COURT: All right. You may step down. Go ahead  
12 and call your next witness.

13 MS. MUNNERLYN: We next call Tommy Langley.

14 TOMMY LANGLEY, after being duly sworn, testified  
15 as follows:

16 THE WITNESS: My name is Tommy Langley.

17 DIRECT EXAMINATION

18 BY MS. MUNNERLYN: .

19 Q. Tommy, you are the Chief of Police in McColl; is that  
20 correct?

21 A. Yes, ma'am, that's correct.

22 Q. Okay. And are you familiar with the parties in this  
23 action, Mildred Gause and Phyllis Lane?

24 A. Yes, ma'am. I know both parties.

25 Q. Okay. You've been in McColl for a good long while,

1 haven't you?

2 A. About 20 years.

3 Q. Okay. And you meet a lot of people in the community  
4 over there, don't you?

5 A. Yes, ma'am.

6 Q. Tell us about the end of last year. In November or  
7 December did you get a call from Mildred Gause in regards  
8 to her or some problem she was having with her daughter,  
9 Phyllis?

10 A. Yes, ma'am.

11 Q. Ms. Gause had called me and said she had been ---

12 MS. SWILLEY: Objection.

13 THE COURT: Sustained.

14 THE WITNESS: She said ---

15 MS. SWILLEY: Objection.

16 THE COURT: You're not supposed to say what somebody  
17 else said.

18 BY MS. MUNNERLYN:

19 Q. Okay. As a result of the call from Ms. Gause what  
20 did you do?

21 A. I was asked if I would call Ms. Lane and asked her  
22 about the combination to her safe.

23 Q. Okay. And did you call the defendant, Phyllis Lane?

24 A. Yes, ma'am. I was given Ms. Lane's cell phone  
25 number, and I called it.

1 (WHEREUPON, equipment failure occurred. Was not able  
2 to translate this portion of the record and is not  
3 included in this record.)

4 CROSS-EXAMINATION

5 BY MS. SWILLEY:

6 Q. Did y'all go in the house?

7 A. No, ma'am.

8 Q. You didn't go in the house?

9 A. No, ma'am.

10 Q. What stopped you from going in the house?

11 A. Mostly that the property that Miss Lane -- excuse me.  
12 Miss Lane was supposed to have. Mrs. Gause has it in a  
13 building on the corner of the house.

14 Q. You never went into her house?

15 A. I went to Mrs. Gause's house.

16 Q. No.

17 A. I knocked on the door, but never went in there to get  
18 anything out of the home. No, ma'am.

19 Q. So your only interaction is you knew the combination  
20 from Ms. Lane which she knew you and going out to her  
21 house?

22 A. Yes, ma'am.

23 Q. Thank you very much.

24 MS. MUNNERLYN: Nothing further, Your Honor.

25 THE COURT: You have a good day.

1 THE WITNESS: Thank you.

2 THE COURT: Go ahead and call your next witness.

3 MS. MUNNERLYN: The State next calls Heath Williams.  
4 I would ask that this witness be excused.

5 THE COURT: You're excused.

6 HEATH WILLIAMS, after being duly sworn,  
7 testified as follows:

8 CLERK OF COURT: Be seated and state your full name  
9 for the Court, please.

10 THE WITNESS: My name is Heath Edward Williams.  
11 Sergeant at the McColl Police Department.

12 DIRECT EXAMINATION

13 BY MS. MUNNERLYN:

14 Q. Officer Williams, how long have you been at the  
15 McColl Police Department?

16 A. Been in about eight years.

17 Q. Okay. And were you working back in December when a  
18 report was made by Mildred Gause?

19 A. Yes, I was.

20 Q. Okay. And that was in regard to some money that was  
21 missing at her home?

22 A. Yes, it was.

23 Q. Okay. And did you receive some documents relative to  
24 that money?

25 A. I did.

1 Q. Okay. I'm showing you State's Exhibits One and Two.  
2 You recognize those two documents?

3 A. I do.

4 Q. Okay. Those were the documents that you received  
5 regarding the money and where it went?

6 A. Yes.

7 Q. All right. And you made the report, and subsequently  
8 there was an arrest warrant issued for the Defendant,  
9 Phyllis Lane; is that right?

10 A. That's right.

11 Q. The Defendant [sic], Mildred Gause, she came up to  
12 the police department to report this?

13 A. Yes, she did.

14 Q. And that's where you met with her?

15 A. Yes, it was.

16 Q. And made the report?

17 A. Yes, it was.

18 Q. To your knowledge has the money ever been returned to  
19 Mrs. Gause?

20 A. Not to my knowledge, no, ma'am.

21 Q. Okay. All right. I don't have any further  
22 questions. If you would answer any questions Ms. Swilley  
23 has.

24 MS. SWILLEY: Thank you very much.

25 CROSS-EXAMINATION

1 BY MS. SWILLEY:

2 Q. Sergeant Williams, how are you today?

3 A. All right.

4 Q. Do you happen to have your incident report with you?

5 A. Yes, I do.

6 Q. I'll ask you a few questions from that?

7 A. All right.

8 Q. You might want to reference that if you need to. In  
9 your report you said that Ms. Gause forgot the combination  
10 to her safe; is that right?

11 A. Yeah, that's what she stated. Yes, ma'am.

12 Q. She told you she forgot the combination?

13 A. Um hum.

14 Q. Okay. And then Chief Langley got involved?

15 A. Yes.

16 Q. And then subsequent to that when documents were  
17 produced to you you got an arrest warrant for my client?

18 A. Yes, I did.

19 Q. Did you happen to have any interviews or  
20 conversations with Mrs. Lane?

21 A. I had two conversations with -- maybe I believe over  
22 the phone. I contacted her about the money, and every  
23 time I called her she denied that she had the money all  
24 the time I talked to her.

25 Q. She denied she'd stole money?

1 A. Yes, she did.

2 Q. Never changed her story?

3 A. No, she didn't.

4 Q. Okay. And you were going to serve a warrant on her  
5 did you have to go out and find her?

6 A. No, she actually came up to Court one day to my  
7 recollection and the warrant was served and bond was set  
8 right then and she was taken to the Marlboro County  
9 Detention Center.

10 Q. So she didn't run? You didn't have any trouble?

11 A. No, ma'am.

12 Q. Thank you. Okay.

13 MS. MUNNERLYN: Just one second, Your Honor.

14 BY MS. SWILLEY:

15 Q. You were the investigating officer for this case,  
16 correct?

17 A. That is correct.

18 Q. Okay. Have you ever been contacted by Ms. Cindy  
19 Sunderland to make a statement?

20 A. No, ma'am.

21 Q. Have you ever been contacted by Harvey June Gause to  
22 make a statement?

23 A. No, ma'am.

24 Q. Have you ever been contacted by anyone to make a  
25 statement in this case other than Mildred Gause, Phyllis?

1 A. That's it.

2 Q. They're not hard to find?

3 A. No.

4 Q. You know them?

5 A. Yes.

6 MS. SWILLEY: Thank you very much.

7 MS. MUNNERLYN: I just have a couple of questions,  
8 Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. MUNNERLYN:

11 Q. Office Williams, you have several things in you  
12 report, but you do reference that Chief Langley was  
13 involved in getting the combination from the defendant,  
14 Phyllis Lane?

15 A. That is correct.

16 Q. Okay. You were not involved in getting the  
17 combination?

18 A. No, I wasn't.

19 Q. That would have all been done by Chief Langley?

20 A. To my recollection it was.

21 Q. Okay. And you reference all those phone calls back  
22 and forth, and subsequently you get the victim, Ms. Gause?

23 A. Yes.

24 Q. All right?

25 MS. MUNNERLYN: I don't have any further questions,

1 Your Honor.

2 THE COURT: All right. Anything further?

3 MS. SWILLEY: Not from the Defense, Your Honor.

4 THE COURT: You have a good day.

5 THE WITNESS: Thank you.

6 THE COURT: Call your next witness.

7 MS. MUNNERLYN: Harvey June Gause. Your Honor, can  
8 this witness be excused?

9 MS. SWILLEY: No objection.

10 THE COURT: You're excused.

11 HARVEY GAUSE, after being duly sworn, testified  
12 as follows:

13 THE WITNESS: Harvey June Gause.

14 DIRECT EXAMINATION

15 BY MS. MUNNERLYN:

16 Q. You go by Harvey or June?

17 A. Both are all right?

18 Q. Okay. How are you related to Mildred Gause?

19 A. That's my grandmother.

20 Q. She's your grandmother?

21 A. Yes, ma'am.

22 Q. And you live with her?

23 A. Yes, ma'am.

24 Q. Okay. How long have you lived with her?

25 A. Since the age of seven.

- 1 Q. Since you were seven years old?
- 2 A. Yes, ma'am.
- 3 Q. Okay. And what is the reason you live with her?
- 4 A. My mother passed away.
- 5 Q. Your mother passed away. Your mother was
- 6 Miss Gause's daughter?
- 7 A. Yes, ma'am.
- 8 Q. So you've resided with her since your mother's death?
- 9 A. Yes, ma'am.
- 10 Q. Okay. All right. And that is in the Town of McColl,
- 11 correct?
- 12 A. Yes, ma'am.
- 13 Q. Okay. All right. Now, do you recall last fall when
- 14 your grandmother, Ms. Gause, got -- she fell and had to go
- 15 to the hospital?
- 16 A. Yes, ma'am.
- 17 Q. Okay. Did you go with her to the hospital?
- 18 A. Yes, ma'am.
- 19 Q. Okay. And did you stay with her at the hospital or
- 20 did you go?
- 21 A. The whole time.
- 22 Q. You stayed with her the whole time at the hospital?
- 23 A. Yes, ma'am.
- 24 Q. Okay. Now, who all was living at Ms. Gause's house
- 25 then?

1 A. Me, grandma and Phyllis.

2 Q. Okay. Phyllis. When you say, 'Phyllis' who are you  
3 referring to?

4 A. Phyllis Lane.

5 Q. Phyllis Lane, the defendant?

6 A. Yes, ma'am.

7 Q. Okay. So the three of y'all were living together at  
8 your grandmother's home at that time?

9 A. Yes, ma'am.

10 Q. And when your grandmother fell and was at the  
11 hospital you were with her the entire time?

12 A. Yes, ma'am.

13 Q. Okay. And where was Phyllis?

14 A. Goes home. She did come over there, you know.

15 Q. She did come over there?

16 A. Yeah.

17 Q. But she was back and forth to the house?

18 A. Yes, ma'am.

19 Q. Okay. All right. And do you know what -- do you  
20 know anything about the money, your grandmother's money,  
21 in the safe?

22 A. I just know she had some money. I know she had she  
23 had money put up she had been saving.

24 Q. Okay. And do you know anything? Did Phyllis ever  
25 make any statements to you about that?

- 1 A. She come to the hospital and she had grandma's  
2 pocketbook and she had told grandma that her money and  
3 stuff was in her pocketbook. She said that she had all of  
4 grandma's stuff was in the pocketbook. All grandma's  
5 stuff and money in there, too.
- 6 Q. She told your grandmother that she had her -- all of  
7 her money and everything in her pocketbook?
- 8 A. Yes, ma'am.
- 9 Q. Okay. And ---
- 10 A. She had an extra pocketbook.
- 11 Q. Her extra pocketbook?
- 12 A. It was grandma's pocketbook.
- 13 Q. I got you. So she told Phyllis to take care of it?  
14 What did she say?
- 15 A. I guess she was in the hospital, you know, she was  
16 just to hold on to it, I remember.
- 17 Q. Hold on to it?
- 18 A. Or hold on to it.
- 19 Q. And that's really you know about that?
- 20 A. In general.
- 21 Q. Okay. Now, you're still living with your  
22 grandmother, aren't you?
- 23 A. Yes, sir.
- 24 Q. Are you working?
- 25 A. Not at this time.

1 Q. Okay. You do odd jobs?

2 A. Yes, ma'am.

3 Q. You make money here and there?

4 A. Yep.

5 Q. Now, you have a previous conviction for shoplifting;

6 isn't that right?

7 A. Right.

8 Q. And that was about 20 years ago?

9 A. Something like that.

10 Q. Okay. All right. And you just paid the fine and

11 handled that?

12 A. Yes, I did.

13 Q. Okay.

14 A. I pled guilty to it.

15 Q. You hadn't had any other convictions since then?

16 A. No, ma'am.

17 Q. Okay. Do you know anything else about your

18 grandmother's money and what happened to it?

19 A. First, I do not. I mean ---

20 MS. SWILLEY: Objection. She needs to be more

21 specific where he's going with this.

22 THE COURT: She asked if he knew where the money was.

23 BY MS. MUNNERLYN:

24 Q. Do you know where the money is?

25 A. I mean I heard people say that Phyllis had it. I

1 heard people say ---

2 MS. SWILLEY: Objection. It was told to him.

3 THE COURT: Sustained.

4 THE WITNESS: --- she got her stuff.

5 BY MS. MUNNERLYN:

6 Q. You can't tell me what other people told you, okay?

7 All right? But you haven't seen the money?

8 A. No, ma'am.

9 Q. Okay. And do you know whether or not Phyllis has  
10 made any attempt to return the money to your grandmother?

11 A. No, ma'am.

12 Q. Okay.

13 MS. MUNNERLYN: I don't have any further questions.

14 MS. SWILLEY: Thank you very much, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. SWILLEY:

17 Q. Mr. Gause?

18 A. Yes, ma'am.

19 Q. How old are you?

20 A. Twenty-three.

21 Q. Twenty-three?

22 A. Twenty-four.

23 Q. Okay. So let's talk about you testified that Phyllis  
24 came to the hospital and brought your grandma's pocketbook  
25 with her?

1 A. She had it with her.

2 Q. She said, "I got your stuff and your money?"

3 A. She didn't bring it and give it to her. She still  
4 had it.

5 Q. Did she say, "I've got your \$4,700 in your purse?"

6 A. No. She just said she brung it.

7 Q. So did your grandma have a billfold in her purse?

8 A. I don't know what was in her purse.

9 Q. But you don't know -- sorry. Let me finish. You can  
10 testify to whether or not you saw money in her billfold or  
11 \$4,700 in cash, right? You have no idea?

12 A. I don't know. She just said she had her money and  
13 her stuff in her pocketbook.

14 Q. Thank you.

15 MS. SWILLEY: That's all the questions I have.

16 THE COURT: Any redirect?

17 MS. MUNNERLYN: No, Your Honor.

18 THE COURT: You may step down. Call your next  
19 witness.

20 MS. MUNNERLYN: May we approach, Your Honor?

21 THE COURT: Yes.

22 (WHEREUPON, a bench conference was held off the  
23 record in the presence of the jury, but out of the  
24 hearing of the jury.)

25 THE COURT: All right. Members of the jury, let's

1 take a 15 minute break and get something to eat, but do  
2 not discuss the case.

3 (WHEREUPON, the jury panel was excused from the  
4 courtroom at 10:49 a.m.)

5 THE COURT: Let's take a 15 minute break. Let me  
6 know when the witness gets here.

7 MS. MUNNERLYN: Thank you, Your Honor.

8 (WHEREUPON, Court was in recess at 10:49 a.m. and  
9 reconvened at 11:15 a.m.)

10 THE COURT: Go ahead and bring out the jury.

11 (WHEREUPON, the jury panel enters the courtroom at  
12 11:15 a.m.)

13 THE COURT: Go ahead and call your next witness.

14 MS. MUNNERLYN: Thank you, Your Honor. I call Hope  
15 Smith.

16 HOPE SMITH, after being duly sworn, testified as  
17 follows:

18 CLERK OF COURT: Please be seated in this seat right  
19 here and state your full name for the record.

20 THE WITNESS: Hope Smith.

21 DIRECT EXAMINATION

22 BY MS. MUNNERLYN:

23 Q. Where are you employed?

24 A. First Citizens Bank.

25 Q. In McCol?

1 A. In McColl.

2 Q. Okay. And were you working -- well, I tell you what.  
3 I'm going to show you State's Exhibits One and Two and see  
4 if you recognize those two items?

5 A. Yes, ma'am, I do.

6 Q. Okay. Let's look first at State's Exhibit One.  
7 First of all, were you working on November 5th of 2014  
8 over at the bank, First Citizens in McColl?

9 A. I was.

10 Q. Okay. And did you have an opportunity to open an  
11 account on that day for Phyllis Lane?

12 A. I did.

13 Q. Okay. And how does State's Exhibit One reference  
14 that account?

15 A. Not sure what you're asking.

16 Q. Okay.

17 A. Well, it's just talking about names, it has Phyllis  
18 Ann Lane, and it was opened by me on November 5th 2014.

19 Q. Okay. And it's got the account number on that form  
20 as well?

21 A. It does. It has the account number.

22 Q. And it ends in the number 7609, I believe?

23 A. Correct.

24 Q. And on the day that you opened that account for Ms.  
25 Lane did you make a deposit to that account for her?

1 A. Actually, any time we open up a new account we take  
2 the deposit, and yes, she did make a deposit that day.

3 Q. Okay. And is that referenced as State's Exhibit Two?

4 A. It is. Yes, ma'am.

5 Q. Okay. So the deposit made to that account on that  
6 day, the day that you opened it, on November the 5th, how  
7 much was that?

8 A. It's showing \$2,705.

9 Q. Okay. And there was a subsequent deposit made to  
10 that account a few days later; is that right?

11 A. That would be Exhibit Two. Yes, ma'am.

12 Q. Okay. And there is a second deposit slip on the back  
13 of State's Exhibit Two, and what is that date of that  
14 second deposit?

15 A. 11-12-14.

16 Q. Okay. So on November the 12th, just 7 days after the  
17 account was opened there was a second deposit of -- how  
18 much was the second deposit?

19 A. \$2,000.

20 Q. Okay. So the first one was \$2,705 and the second one  
21 was \$2,000?

22 A. Yes, ma'am.

23 Q. Okay. And those are bank records that are normally  
24 used in your bank, First Citizens Bank?

25 A. Correct.

1 Q. Okay.

2 MS. MUNNERLYN: That's all I would have, Your Honor.

3 THE COURT: Yes, ma'am.

4 MS. SWILLEY: Thank you. I have no questions for  
5 this witness.

6 THE COURT: Okay. You may step down. Have a good  
7 day.

8 MS. MUNNERLYN: Your Honor, I would ask that this  
9 witness be excused.

10 MS. SWILLEY: No Objection.

11 THE COURT: She can have a good day. Why don't we  
12 take a five minute break, and take up motions real quick.  
13 Don't discuss the case. You may return to the jury room.  
14 We'll be back with you in five minutes.

15 (WHEREUPON, the jury panel was excused from the  
16 courtroom at 11:18 a.m.)

17 COLLOQUY

18 THE COURT: All right. Any motions from the Defense?

19 MS. SWILLEY: Yes, Your Honor. I'd like to hand up a  
20 case. Specifically, what I've handed up to the Court is a  
21 State v. Curtis Jackson. And in that the trial court was  
22 reversed because they failed to issue a directed verdict.  
23 At this time I would like to move for directed verdict as  
24 a matter of law. Specifically, the State has the burden  
25 to prove each and every element of every charge alleged.

1           At issue here is breach of trust as in the case law  
2 right here. The elements which constitute breach of  
3 trust, and I'm reading from the bottom of the second page,  
4 Your Honor. The elements that constitute breach of trust  
5 with fraudulent intent are not outlined in the statute  
6 governing this defense. However, the crime has been  
7 defined through development of case law. A breach of  
8 trust with fraudulent intent is larceny after trust which  
9 includes all the elements of larceny or in the common  
10 parlance, stealing, except the unlawful taking in the  
11 beginning."

12           What's very important in our case here is the trust,  
13 the actual establishment of the a trust relationship. The  
14 next page, Page Three, it says, second paragraph, The  
15 trust is an arrangement whereby the property is  
16 transferred with the intention that it be administered by  
17 trustee for another's benefit. The transferor of the  
18 property must intend that the trustee will act for the  
19 transferor's benefit instead of on his own behalf."

20           I'll skip down to the fourth paragraph. It's way  
21 down. "To sustain a conviction for breach of trust the  
22 State must prove the exact trust which has been breached."  
23 And in the second to last paragraph, "Absent the manifest  
24 intent to create a trust there can be no trust or trust  
25 relationship breached."

1 I'd like to apply the facts to the testimony this  
2 morning. On direct examination when Ms. Munnerlyn asked  
3 if she created a power of attorney for Ms. Phyllis Lane.  
4 She said absolutely not. She had no intention of doing  
5 that. And then on cross-examination I wanted to be very  
6 clear about this element as to creating a trust  
7 relationship. So I asked her specifically, "Did you ever  
8 give this money, \$4,700, to Phyllis Lane?" And she said,  
9 "No, I did not."

10 I said, "Even for a short time did you give this  
11 money to Phyllis Lane?" She said, "No, I did not." I  
12 said, "Did you ask her to hold on to it for you?" She  
13 said, "No, I did not." Specifically, the State failed to  
14 prove the elements of a trust relationship. Therefore,  
15 breach of trust.

16 Realistically, the allegations of grand larceny which  
17 is not a breach of trust. Therefore, as a matter of law a  
18 directed verdict must be issued.

19 THE COURT: All right. Any reply from the State?

20 MS. MUNNERLYN: Your Honor, of course, there has been  
21 testimony that my client was hospitalized. She was given  
22 control of the house. Obviously, her daughter was living  
23 in the household with her. She knew about the money. The  
24 fact is she came to the hospital with her pocketbook. She  
25 indicated that she had her money and she was going to take

1 care of it.

2 So she was in control of the household. She was in  
3 control of the safe. Clearly, she knew the safe's  
4 combination because she provided it to Chief Langley that  
5 my client could ultimately get back into it after the  
6 money was missing. Clearly there was a trust relationship  
7 there that was created between my client and her daughter  
8 allowing her to live and stay in the residence; to have  
9 full access to all of her property and cared for it while  
10 she was in the hospital. She entrusted her to do so.

11 In answering the question, 'did you give her the  
12 money', when she was asking the questions, 'did you give  
13 her', it's like me saying, you know, give a child a  
14 lollipop. I mean she -- her -- she is simply a witness, a  
15 lay witness, sitting on the stand. She asked her did she  
16 give her her money. She never gave her the \$4,700.

17 I mean the clear understanding to a lay person is if  
18 you give somebody money you give them that money with the  
19 intention that they just have it and never want it back.  
20 I mean that would be her understanding of that question.  
21 I mean I think, clearly, the evidence show that there was  
22 a trust relationship shared between the defendant and her  
23 mother and her property that was in the house while she  
24 was hospitalized.

25 She was clearly taking care of it. She knew the

1 combination to the safe where the money was and had  
2 complete access and control of all of that. That was  
3 confirmed by the conversation that she had when she went  
4 to the hospital and had her pocketbook with her and  
5 confirmed, 'I got it. I'm going to take care of it'.

6 So I think, clearly, we have reached a threshold and  
7 I think we are beyond direct verdict at this point, Your  
8 Honor.

9 THE COURT: Brief reply?

10 MS. SWILLEY: Yes, Your Honor. Essentially looking  
11 at the case law that is on point. The trust must be  
12 created by Mildred Gause. She must have, and I'm quoting  
13 here, "transferred property with the intent that it be  
14 administered by the trustee for another's benefit."

15 I asked her, 'Did you give her the money? Did you  
16 tell her to hold on to it even for a short period of time?  
17 I asked her specifically about the money because a trust  
18 relationship is not do you trust your daughter. It is did  
19 you establish a trust relationship. A trust almost always  
20 does benefit the business or of the transaction between  
21 two parties or companies. I asked the question directly.  
22 The State should have, perhaps, elicited testimony as to  
23 creating a specific trust as to this money which is at  
24 issue the essential element of the crime. They have not  
25 even provided evidence of it, and matter of law it must be

1 granted a directed verdict.

2 THE COURT: We'll take a short break. I'll read the  
3 case law and I'll get back to you.

4 (WHEREUPON, a short break was taken.)

5 THE COURT: If you would play the victim's testimony  
6 for me if you don't mind. It wasn't about 20 minutes. I  
7 just want to hear everything she has said. Any objection  
8 to sending the jury to lunch for an hour?

9 MS. MUNNERLYN: Okay.

10 THE COURT: All right. Bring the jury out and I'll  
11 instruct them real quick. We'll listen carefully and see.

12 (WHEREUPON, the jury panel enters the courtroom at  
13 11:39 a.m.)

14 THE COURT: All right. Members of the jury, I'm  
15 going to send you to lunch. I'm going to ask you to come  
16 back at one o'clock. We're going to do work and get other  
17 things done. When you go to lunch do not discuss this  
18 case with anybody or amongst yourselves. If you would  
19 just come back at one o'clock and we'll take it up from  
20 there. All right. You are excused.

21 (WHEREUPON, the jury panel was excused from the  
22 courtroom at 11:45 a.m.)

23 (WHEREUPON, equipment failure occurred. Was not able  
24 to translate this portion of the record and is not  
25 included in this record.)

1           THE COURT: I'm just looking at trying to analyze  
2 this thing and look at the case law and the charge when  
3 give the charge first thing it says defendant the charge  
4 with breach of trust with fraudulent intent. The State  
5 must prove beyond a reasonable doubt that the property was  
6 put in the defendant's possession as a trust.

7           It concerns me a little bit. It was still in the  
8 victim's house, and the defendant just happened to be in  
9 the victim's house. I'm not sure.

10           (WHEREUPON, equipment failure occurred. Was not able  
11 to translate this portion of the record and is not  
12 included in this record.)

13           MS. MUNNERLYN: Just in the first part of her  
14 testimony she did say that Phyllis came to help take care  
15 of me. She did come to help take care of me. Then when  
16 we were talking about her being in the hospital she said  
17 Phyllis was taking care of the house. And, obviously,  
18 this was further sured up by the fact that she actually  
19 changed the combination on the safe. And they weren't  
20 able to get it open until they called the defendant and  
21 got the appropriate combination.

22           So she had, obviously, access to the safe. She was  
23 able to change the combination. She had access to all  
24 this stuff, and I will just point out, Your Honor, there  
25 is a case. And it is different than the one that she

1 handed up. The facts are just completely different.  
2 There is an older, it's a 1978 case, McFadder v. Leek.  
3 And that -- in that particular case the Court, and this  
4 was another breach of trust case.

5 The Court found that although the victim lending of  
6 his car to the defendant created no fiduciary obligation.  
7 The defendant's possession of the victim's car,  
8 nonetheless, created a trust. And that's the argument I'm  
9 making here, Your Honor. Just the -- she was in the  
10 hospital. There was a relationship between them,  
11 obviously, of mother and daughter. There was a  
12 relationship of trust. She was at the house. She was  
13 taking care of the house.

14 There was even testimony from another witness that  
15 she came to the hospital one day when she was in there and  
16 had her mother's pocketbook and further confirmed I'm  
17 taking care of your stuff. So there was a trust  
18 relationship created simply by the fact of the -- and the  
19 possession was simply by the fact that she was at the  
20 house with all of her stuff while my client was sick with  
21 a broken collar bone in the hospital.

22 She had -- she was entrusted with this stuff, and  
23 some of that is just simply inferred by the actions of the  
24 parties. She had complete access to everything. She  
25 obviously had her pocketbook on the occasion when she came

1 to the hospital and indicated those statements in the  
2 presence of her grandson.

3 So I think even though there is no real fiduciary  
4 obligation created. There was some discuss about whether  
5 there was a power of attorney. I don't think any of that  
6 is necessary. It's the relationship between the two and  
7 whether there was an understanding that she was going to  
8 care for her stuff, and obviously, there was. She had  
9 complete access to everything.

10 Obviously, to the safe as well because she changed  
11 the combination to the only way they were able to get into  
12 it was by calling the defendant and getting the  
13 combination from her.

14 THE COURT: Let me hear from you.

15 MS. SWILLEY: Thank you very much, Your Honor. The  
16 fact that the Solicitor is describing in the testimony  
17 that was elicited would amount to a larceny but not a  
18 breach of trust. Specifically as Your Honor noted when he  
19 came out there has to be a specific intention to put  
20 something in a trust for the benefit of another person.

21 It has to be specific. A specific thing or specific  
22 set of things. The money, during the testimony, her read  
23 back, I wrote it down when she said it; "Did you and  
24 Phyllis ever discuss the money in the safe?" Answer,  
25 "No." Specifically, there was never a trust obligation.

1           And further in my cross-examine testimony, if we were  
2 to read it, which I don't think is necessary, I asked her,  
3 "Did you ever give the money to Phyllis? Did you ever  
4 have her hold it even for a short period of time?" The  
5 answer is, "No." They're describing a larceny not a  
6 breach of trust.

7           The State has failed to meet its burden, therefore,  
8 it must be acquitted as a matter of law.

9           THE COURT: All right. Give me about five minutes.

10          MS. SWILLEY: Thank you.

11          MS. MUNNERLYN: Your Honor, if I could just say, of  
12 course, at this stage I'm not at my beyond a reasonable  
13 doubt stage. I only have to present sufficient evidence  
14 to get beyond the directed verdict stage. And I think  
15 there is clearly some evidence there that there was some  
16 sort of a trust created between these two regarding her  
17 property.

18          THE COURT: Give me about five minutes.

19          (WHEREUPON, a short break was taken.)

20          THE COURT: All right. I tell you what. Of course,  
21 Ms. Swilley, you have to understand I have to view the  
22 directed verdict in a light most favorable to the State,  
23 and in listening to the victim's testimony again she did  
24 say, "She was there to help take care of me. When she  
25 went into the hospital she was back and forth and she was

1 taking care of my house." The safe is in the house and  
2 the money is in the safe.

3 I don't know what happened but it went missing, and  
4 it ended up, apparently, in a First Citizen's bank account  
5 in the defendant's name. I think there is enough to get  
6 it to a jury. You can argue it to high heaven and I'm  
7 wrong, I'm wrong. But it appears there is some sort of  
8 trust relationship here regarding the house and the money  
9 in the house.

10 Not everybody in the public had access to the safe.  
11 Not everybody in the public had the combination to the  
12 safe. Her daughter obviously did. She obviously trusted  
13 this daughter, and trust her in her house when she was in  
14 the hospital. And then I think there were more testimony  
15 where I heard the defendant was bringing her money to her  
16 purse or whatever was in it to the hospital which again  
17 leads me to believe that there was some sort of trusting  
18 relationship.

19 She said that she is taking care of my money and my  
20 purse and my belongings while I'm in the hospital. Said  
21 she brought it to her to try to take care of it and this  
22 money went missing. So right, wrong or in between, I'm  
23 going to deny the directed verdict. But I appreciate your  
24 bringing that to my attention.

25 All right. We've got time for lunch. Why don't we

1     come back at one o'clock and wrap it up.

2             MS. MUNNERLYN: Thank you, Your Honor.

3             (WHEREUPON, Court was in recess at 12:05 p.m. and  
4             reconvenes at 1:05 p.m.)

5             THE COURT: All right. Ms. Lane, stand for a moment,  
6     please. I want to let you know as you get ready to start  
7     your side of the case that you to have the right to  
8     testify if you would. You can come over here. You can be  
9     sworn in and get on the witness stand and you can testify.

10            However, I do want you to understand that if you do  
11    testify you may be cross examined on any and all relevant  
12    issues in connection with your case. Furthermore, if you  
13    have a criminal record that involves crimes of dishonesty  
14    or false statements or crimes that carry a punishment of  
15    more than one year and the Court finds that the probative  
16    value of admitting same outweighs the prejudicial effect  
17    then your criminal record may be introduced. Do you  
18    understand that.

19            MS. LANE: Yes, sir.

20            THE COURT: However, I do want you to understand that  
21    you do not have to testify and nobody can make you testify  
22    because you have the constitutional right to remain  
23    silent. I want you to understand that if you exercise  
24    that right I will tell the jury that they cannot use  
25    against you in any way. I will even tell the jury that

1 they cannot even discuss that fact in the jury room. Do  
2 you understand that?

3 MS. LANE: Yes, sir.

4 THE COURT: All right. Do you have any questions for  
5 me about your right to remain silent or your right to  
6 testify?

7 MS. LANE: No, sir.

8 THE COURT: All right. Have you talked with your  
9 lawyer about that?

10 MS. LANE: Yes, sir.

11 THE COURT: And do you want to testify or not?

12 THE WITNESS: Yes, sir, I want to testify.

13 THE COURT: Thank you. I'll make a finding that she  
14 made her decision freely, voluntary and very competently.  
15 Thank you very much. All right. Go ahead and bring out  
16 the jury.

17 (WHEREUPON, the jury panel enters the courtroom at  
18 1:06 p.m.)

19 THE COURT: All right. Defense, call your first  
20 witness.

21 MS. SWILLEY: Thank you, Your Honor. At this time  
22 the Defense would like to call Phyllis Lane.

23 PHYLLIS LANE, after being duly sworn, testified  
24 as follows:

25 CLERK OF COURT: Thank you. Please be seated and

1 state your full name for the record.

2 THE WITNESS: My name is Phyllis Ann Lane.

3 DIRECT EXAMINATION

4 BY MS. SWILLEY:

5 Q. Hi, Ms. Lane. Good afternoon.

6 A. Good afternoon.

7 Q. How are you doing today?

8 A. Good.

9 Q. Where do you currently live?

10 A. In Wallace.

11 Q. And where did you live in the fall of last year,  
12 2014?

13 A. In McColl with my mother. 408 East Drive.

14 Q. Okay. Was this the first time you had lived with  
15 her?

16 A. No. It was the second time.

17 Q. When was the first time you lived there?

18 A. The first time I lived with her was early in 2013.

19 Might be March I moved in with her or -- it was right

20 before Christmas I moved in with her because she was

21 having problems. She had to have surgery, and I was

22 living with my uncle and she asked me if I would move in

23 with her and help her out cause she couldn't cook. She

24 couldn't wash her clothes. She couldn't do anything in

25 the house, and I said, yes. A few months later she asked

1 me to leave. I asked why, and she said that she wanted to  
2 be by herself.

3 Q. That was 2013?

4 A. Yes.

5 Q. The first time. Let's talk about the second time you  
6 lived with her. In 2014 you lived with her from when to  
7 when?

8 A. In 2014 I think I moved back in about maybe July  
9 until the first part of December.

10 Q. And you left because?

11 A. She asked me to leave again.

12 Q. Okay. And when she asked you to leave did you give  
13 her any trouble?

14 A. No. I just left.

15 Q. You left some of your belongings behind?

16 A. Yes.

17 Q. How long after you left did she accuse you of  
18 stealing?

19 A. It was a couple of weeks. The Chief called me and  
20 asked me for the combination to the safe. I thought maybe  
21 she forgot it where she put hers cause we both had copies.

22 Q. Wait one second. We'll get there.

23 A. Okay.

24 Q. So you said the Chief called you?

25 A. Yes.

- 1 Q. And he asked for what?
- 2 A. The combination to the safe.
- 3 Q. And did you give it to him?
- 4 A. Yes.
- 5 Q. Immediately?
- 6 A. Yes.
- 7 Q. You didn't have anything to hide?
- 8 A. No.
- 9 Q. Okay. So now, specifically, let's talk about the  
10 money?
- 11 A. Okay.
- 12 Q. There's been a lot of testimony earlier about the  
13 fact that they're alleging that you changed the  
14 combination on the safe. Did you change the combination  
15 on the?
- 16 A. Yes.
- 17 Q. Why did you change the combination to the safe?
- 18 A. When I moved in with her the second time we changed  
19 the combination to the safe because my nephew, Harvey, had  
20 been in there and took money out.
- 21 Q. Okay. So she was aware you changed the combination?
- 22 A. Yes. Me and her changed it together cause we had to  
23 read the directions cause we didn't know how to do it.
- 24 Q. Okay. So let's talk about the \$4,700. Was this your  
25 money or was this your mother's money?

1 A. It was my money.

2 Q. Did you steal it from your mother?

3 A. No.

4 Q. Okay. Specifically, I'm going --

5 MS. SWILLEY: May I approach, Your Honor?

6 THE COURT: Sure.

7 BY MS. SWILLEY:

8 Q. I'm going to show you something that has been marked  
9 as Defense Exhibit Three. And I don't want you to  
10 describe it just yet. Just look at it, okay. Miss Lane,  
11 do you recognize that document?

12 A. Yes, ma'am.

13 Q. Can you tell me what it is in your hand?

14 A. It's my tax return from 2013.

15 Q. You remember when you filed your tax return in 2013?

16 A. It was January. The 1st of February.

17 Q. Of 2014?

18 A. Yep.

19 Q. Okay. And did you owe money that year or did you get  
20 money back?

21 A. I got money back.

22 Q. Can you tell me how much money you got back?

23 A. \$7,719.

24 Q. Thank you.

25 MS. SWILLEY: Your Honor, at this time I'd like to

1 move to have this admitted into evidence.

2 THE COURT: Any objections?

3 MS. MUNNERLYN: No objection, Your Honor.

4 THE COURT: Okay. Defense Exhibit Three in evidence  
5 without objection.

6 (WHEREUPON, Defendant's Exhibit No. 3 was admitted  
7 into evidence.)

8 BY MS. SWILLEY:

9 Q. There is a second document that I'm going to give  
10 you, and again, don't talk about it until I ask you, okay?

11 A. Okay.

12 Q. Take a look at that. That's been marked Defense  
13 Exhibit Two. Do you recognize that document?

14 A. Yes, ma'am.

15 Q. And what is that?

16 A. It's my W2 from where I got sick pay in 2013.

17 Q. When did you collect that money?

18 A. I collected it through 20 -- it was 2013 when I  
19 started and it went through February of 2014.

20 Q. What is the amount listed on there?

21 A. \$1,020.

22 Q. Okay. Thank you very much.

23 MS. SWILLEY: At this time, I'd like to have this  
24 admitted into evidence?

25 THE COURT: All right. Any objection?

1 MS. MUNNERLYN: No objection.

2 THE COURT: All right. Defense Exhibit 2 in evidence  
3 without objection.

4 (WHEREUPON, Defendant's Exhibit No. 2 was admitted  
5 into evidence.)

6 BY MS. SWILLEY:

7 Q. These two items were not your only source of income,  
8 were they?

9 A. No.

10 Q. Tell me specifically how else you got money last  
11 year?

12 A. Well, I got rent money every month from my trailer  
13 that I got. And I went and cleaned up for my Uncle Buddy  
14 every week. I got money every week there.

15 Q. Slow down. You have rent on the trailer? \$250 a  
16 month?

17 A. Right.

18 Q. And you also said you did what for your Uncle Buddy?

19 A. I cleaned his house every week for \$40 a week.

20 Q. Cleaned his house for \$40 a week. When you were  
21 living with your mother did you have to pay bills?

22 A. No.

23 Q. Okay. What was the purpose of you saving your money?

24 A. I was saving my money because I had a worker's comp  
25 case, and I had a car that I owed a lot of money on. And

1 I was afraid that if I lost the case I would lose my car.  
2 This lawyer told me the case didn't look good so I started  
3 saving everything I could putting it back.

4 Q. And how much had you managed to save?

5 A. I saved it in my pocketbook. I had \$2,705.

6 Q. Okay. You said you saved \$2,705 in your pocketbook?

7 A. Right.

8 Q. Now, let's talk about your tax return?

9 A. Right.

10 Q. When you got your money back from your tax return  
11 what you you do with that money?

12 A. I took -- I left most of it in the bank. I took  
13 \$2,500 and put it in an envelope and took it to my uncle  
14 and asked him to put it in the safe for me because I knew  
15 that as long as it was in the bank I would end up spending  
16 it. You know, using it.

17 Q. So let's talk about two different sets of money. One  
18 set of money is from your tax return; that's the \$2,500  
19 you gave to your Uncle Buddy to put in a safe? That's not  
20 her safe?

21 A. No.

22 Q. Whose safe is it?

23 A. My Uncle Buddy's in Wallace.

24 Q. He doesn't live with her?

25 A. No.

1 Q. You gave your Uncle Buddy money to hold on to?

2 A. Yes.

3 Q. And you also saved money on your own?

4 A. Yes.

5 Q. Okay. So let's talk about the deposit you made.

6 You've already heard testimony given today about two

7 deposit slips made into a First Citizens checking account;

8 is that right?

9 A. Um hum.

10 Q. And one was in the amount of \$2,000 and one was in

11 the amount of \$2,705?

12 A. Yes.

13 Q. Can you tell me, that \$2,000 deposit, where you got

14 that money from?

15 A. I got the \$2,500 from my Uncle Buddy. I kept \$500

16 out for Christmas, and I put the other \$2,000 in the bank.

17 Q. And the 1,705 was?

18 A. That's the money that I had been saving in my

19 pocketbook. I had an envelope that I would put it in in

20 the back. I just kept putting money back every time I get

21 some extra.

22 Q. Did you happen -- you said you were saving for a car.

23 Did you buy the car?

24 A. I ended up -- I didn't buy the car I wanted because

25 they took my, the care I had, so I had to go ahead and get

1 what I could.

2 Q. What did you got?

3 A. I got a 2003 Trail Blazer.

4 Q. Is that the car you're driving today?

5 A. Yes, ma'am.

6 Q. Okay. So you did spend the money on a car?

7 A. Yes.

8 Q. Okay. So when you made your deposits into the First  
9 Citizens Bank what did you do with the deposit slips?

10 A. I put them in momma's safe because that's where we  
11 kept all her paperwork, and that's where we kept paperwork  
12 that was important. There was never no money kept in the  
13 safe. So I put my paperwork in there even my debit card  
14 so it couldn't get stole and it wouldn't go nowhere. It  
15 would be safe.

16 Q. So you put the deposit slips in her safe?

17 A. Yes.

18 Q. Have you ever known your mother to accuse other  
19 people of stealing money?

20 A. Yes.

21 MS. MUNNERLYN: Your Honor, I would object as to  
22 relevance.

23 THE COURT: What was the question again?

24 MS. SWILLEY: Have you ever known your mother to  
25 accuse other people with stealing money?

1 THE COURT: Have you ever known your mother to what?

2 MS. SWILLEY: Accuse other people of stealing money.

3 THE COURT: I'll overrule it. Go ahead.

4 BY MS. SWILLEY:

5 Q. Yes, ma'am. Have you ever known your mother to  
6 accuse other people of stealing money?

7 A. Yes.

8 Q. Who else has she accused that you know of?

9 A. The summer before I went to live with her she told me  
10 that my sister and her son had stole \$5,000 from her out  
11 of her safe.

12 Q. But you're the only one she's ever called the law on,  
13 correct?

14 A. Right.

15 Q. When the police told you that they had a warrant out  
16 on you did they have to track you down?

17 A. No.

18 Q. What did you do?

19 A. I went to the judge's office and let them serve the  
20 warrant on me.

21 Q. And you talked to the police about this, right?

22 A. Yes, I talked to them.

23 Q. And you always maintained your innocence?

24 A. Yes.

25 Q. Did you tell them where you got the money from?

1 A. Yes.

2 MS. MUNNERLYN: Your Honor, I object to the leading  
3 nature of her examination.

4 THE COURT: Sustained on the leading.

5 BY MS. SWILLEY:

6 Q. Let me ask it again. Do you love your mother?

7 A. Yes, I do.

8 Q. Is this very painful for you?

9 A. Yes.

10 Q. Did you steal money from your mother?

11 MS. MUNNERLYN: Your Honor, continuing to be leading.  
12 I would just ask her to ask a question.

13 THE COURT: Sustained.

14 BY MS. SWILLEY:

15 Q. Earlier you heard testimony that you had a court  
16 action with your mother in January?

17 A. Yes.

18 Q. What court action was that?

19 A. When I left she wouldn't let me have my clothes. I  
20 went back several times with the police and she wouldn't  
21 open the door and let me get my clothes. So the officers  
22 told me to go have the claim and delivery ---

23 MS. MUNNERLYN: Objection as to hearsay.

24 THE COURT: Sustained.

25 BY MS. SWILLEY:

1 Q. Don't talk about what anyone said?

2 A. Claim and delivery papers taken out. We went to  
3 court, and the judge ruled that I could get my clothes.  
4 So that's how I got them.

5 Q. Okay. So you went with the officer back to her  
6 house. The officer was with you. He testified to that,  
7 and you got some of your belongings?

8 A. Yes.

9 Q. Okay. Those are all the questions I have right now.  
10 Please answer any questions Ms. Munnerlyn might have for  
11 you.

12 CROSS-EXAMINATION

13 BY MS. MUNNERLYN:

14 Q. You said that when you left that your mother wouldn't  
15 let you get your clothes?

16 A. Yes, ma'am.

17 Q. So you filed this action. But you said you went to  
18 the house with the officers and nobody would come to the  
19 door?

20 A. Right. Two or three different times.

21 Q. Okay. Was it that your mother was answering the door  
22 and saying, 'you can't have them'? It's just there was  
23 nobody answering the door?

24 A. She wouldn't open the door. She would look out the  
25 window, but wouldn't open the door.

- 1 Q. And so you did get your clothing?
- 2 A. I got part -- some of my clothes and some shoes.
- 3 Q. Okay. And the cat?
- 4 A. And the cat.
- 5 Q. Okay. Now, you're talking about -- what kind of car  
6 did you have before?
- 7 A. It was a Grand Pree.
- 8 Q. It was a what?
- 9 A. A 2008 Grand Pree.
- 10 Q. 2008 Grand Pree?
- 11 A. Yes, ma'am.
- 12 Q. And did you make monthly payments on that?
- 13 A. I had been making monthly payments on it trying to  
14 hold on to it. It was like \$260 a month.
- 15 Q. \$260 a month?
- 16 A. Yes, ma'am.
- 17 Q. Okay. And how long had you had that?
- 18 A. Maybe a year. Maybe a year if not quite a year.
- 19 Q. Okay. Now, when did you lose that car?
- 20 A. After Christmas. Right after Christmas.
- 21 Q. This past Christmas?
- 22 A. Right.
- 23 Q. So in December of 20 14?
- 24 A. Yeah.
- 25 Q. Okay. And you were -- up until then you were making

- 1 monthly payments?
- 2 A. No. I stopped making monthly payments when my lawyer
- 3 told me that it didn't look good on the Workman's Comp
- 4 case. I owed is \$11,000 on the car, and I know I would be
- 5 able to hold on to it if I didn't win the case.
- 6 Q. So you just stopped making the payments?
- 7 A. I started saving my money so I could get a car that I
- 8 could afford. Yes, ma'am, I stopped making payments.
- 9 Q. So when did you stop making payments?
- 10 A. I can't tell you exactly when.
- 11 Q. Have you settled your Worker's Comp case?
- 12 A. It didn't win. The lawyer didn't win. It didn't
- 13 even go through.
- 14 Q. So it's over with and you didn't get any money?
- 15 A. Right.
- 16 Q. Okay. So you got -- in 2013 you got a refund of \$7
- 17 700?
- 18 A. Yes, ma'am.
- 19 Q. And also this \$1,900 that you made in 2014 was from a
- 20 lien of benefits. That was from some kind of sick pay?
- 21 A. Yes, ma'am. That's where I hurt my arm at work and
- 22 had surgery.
- 23 Q. So you didn't have any reportable taxable income for
- 24 2014?
- 25 A. No.

1 Q. Other than what's reported on this W2 for 2014?

2 A. Yes.

3 Q. And you got that money at the beginning of 2014?

4 A. Also I got the \$7,000 ---

5 Q. Right?

6 A. --- at the beginning.

7 Q. For the refund from 2013. And in 2013 you made  
8 \$17,597?

9 A. Yes, ma'am.

10 Q. Okay. But in 2014 you weren't working?

11 A. No, ma'am.

12 Q. Other than you were cleaning your uncle's house?

13 A. And I was getting the sick pay. I got sick pay in  
14 2013. That's just showing what I got in 2014. I was  
15 getting sick pay in 2014, too.

16 Q. So part of ---

17 A. Three hundred something dollars a week.

18 Q. So part of what you reported on your income tax  
19 return, the \$17,597, was sick pay?

20 A. No.

21 Q. You didn't report that on your income tax return?

22 A. Yes, ma'am. But the paper you have that's showing  
23 you that I got this sick pay in 2013 or 2014

24 Q. Lien of benefit?

25 A. Right.

- 1 Q. \$1,920?
- 2 A. Yeah, I got money in 2013, too. I was getting a  
3 check that went over to 2014.
- 4 Q. And that's what this is for?
- 5 A. Yes, ma'am.
- 6 Q. But my question is you doesn't have any other income  
7 other than in 2014 other than working for your -- cleaning  
8 your Uncle Buddy's house?
- 9 A. And I got rent money.
- 10 Q. Now, what is that rent money from?
- 11 A. It's from my mobile home that I own in McColl.
- 12 Q. In McColl?
- 13 A. Yes, ma'am.
- 14 Q. And you rent it for \$250 a month?
- 15 A. Yes, ma'am.
- 16 Q. And how long has it been rented?
- 17 A. About ten years now.
- 18 Q. Okay. And you say you make \$40 a week?
- 19 A. That's what I was making with my Uncle Buddy.
- 20 Q. We were you making? You're not working for him  
21 anymore?
- 22 A. No, ma'am.
- 23 Q. When did you quit working for him?
- 24 A. Right after I went to stay with momma. Well, I was  
25 still working for him when I went to stay with her, and

1 later on I stopped because my hand hurting so bad.

2 Q. Okay. And you went to stay with her in July of 2014?

3 A. Yes, ma'am.

4 Q. And stayed all way till December?

5 A. Right.

6 Q. And you weren't paying any bills at her house?

7 A. No, I wasn't. I was doing all the cleaning and  
8 cooking and washing clothes and running errants. Whatever  
9 she needed.

10 Q. Whatever she needed, you were helping her with  
11 whatever she needed around the house?

12 A. Um hum. Taking her to the doctor.

13 Q. Okay. And you had access to the safe, too?

14 A. Yes.

15 Q. In fact you have admitted that you put these  
16 documents in the safe?

17 A. Yes, ma'am.

18 Q. So who was buying your groceries and that sort of  
19 thing?

20 A. Momma was buying groceries so I ate.

21 Q. You just ate at your momma's?

22 A. Right.

23 Q. Whatever she had. You weren't contributing any  
24 groceries or anything?

25 A. No.

- 1 Q. And how much did you pay for your 2003 Trail Blazer?
- 2 A. That was \$3,700.
- 3 Q. And who did you buy it from?
- 4 A. I bought in from Cheraw. From a Mr. Windham. I
- 5 think it was Windham.
- 6 Q. And when you did you purchase that?
- 7 A. I want to say the end of December.
- 8 Q. I'm sorry?
- 9 A. I want to say the end of December. I don't know
- 10 exactly.
- 11 Q. And how long were you without a vehicle? You said
- 12 you Grand Pree was a repossessed at the end of December,
- 13 didn't you?
- 14 A. No. I wasn't without one long.
- 15 Q. Okay.
- 16 A. When they took it I went and got a car.
- 17 Q. Soon as you lost that one you went and bought a car?
- 18 A. Yes, ma'am.
- 19 Q. How did you pay for it?
- 20 A. With the money that I had in the bank that I had
- 21 saved.
- 22 Q. Okay. In what bank?
- 23 A. The Bank of McColl.
- 24 Q. The account ---
- 25 A. Yes, that's ---

1 Q. --- that you opened with Hope Smith in November of  
2 2014?

3 A. Yes, ma'am.

4 Q. So how much money you got left in that account right  
5 now?

6 A. None right now.

7 Q. So you spent -- you bought a car for \$3,700, and you  
8 spent the other \$1,000 on something else?

9 A. Yes, ma'am. I put -- changed the oil in the car. I  
10 put insurance, the tag, and paid the tax and stuff like  
11 that.

12 Q. And where are you living now?

13 A. With a friend in Wallace.

14 Q. And you're not cleaning for your Uncle Buddy anymore  
15 so you don't have a any income right now?

16 A. Not right now except for the rent. I get the rent  
17 money.

18 Q. \$250 a month?

19 A. Yes, ma'am.

20 MS. MUNNERLYN: Court's indulgence just one moment.

21 No further questions, Your Honor.

22 THE COURT: Anything further.

23 MS. SWILLEY: Last question.

24 REDIRECT EXAMINATION

25 BY MS. SWILLEY:

1 Q. And was this your money or was this your mother's  
2 money?

3 A. It was my money.

4 Q. Thank you very much.

5 THE COURT: You may step down. All right. If you  
6 will call your next witness.

7 MS. SWILLEY: Your Honor, at this time I would like  
8 to call Buddy Smith.

9 BUDDY QUICK, after being duly sworn, testified  
10 as follows:

11 CLERK OF COURT: Please be seated right here in this  
12 seat and state your full name for the record.

13 DIRECT EXAMINATION

14 BY MS. SWILLEY:

15 Q. Would you state your full name for the record?

16 A. Buddy Lee Quick.

17 Q. Mr. Quick, you're having trouble hearing; is that  
18 right?

19 A. Yes, ma'am.

20 Q. So I'm going to talk kind of loud, okay? If you  
21 don't understand me just stop me, okay?

22 A. Okay.

23 Q. What relationship are you with Ms. Mildred Gause?

24 A. Brother.

25 Q. Okay. And what relationship are you with Ms. Phyllis

1 Lane?

2 A. Uncle.

3 Q. Do you remember receiving any kind of money from  
4 Phyllis Lane last year?

5 A. Yes. She come to me with an envelope and it had some  
6 money in it and give it to me.

7 Q. Okay.

8 A. \$2,500 in it.

9 Q. Do you remember about what time of the year this was  
10 that she gave it?

11 A. It was right after tax time.

12 Q. Okay. Right after tax time. Do you remember why she  
13 gave you this money.

14 A. She told me that she wanted me to take it and put it  
15 up for her so she wouldn't spend it. She was going to  
16 save it up.

17 Q. Do you know why she was saving it?

18 A. To get her an automobile.

19 Q. Okay. And several months later you gave it back to  
20 her?

21 A. Yes.

22 Q. About November?

23 A. Yes, it was around November.

24 Q. Okay. I'm sorry. You don't remember the exact day,  
25 do you, that you give it back to her?

1. A. No, I don't, the exact date.
- 2 Q. Did you give her back her envelope full of money?
- 3 You gave her back her envelope?
- 4 A. Right.
- 5 Q. Okay. Did you see inside the envelope?
- 6 A. Yes, it wasn't sealed. It had a rubberband around
- 7 it. I opened it and looked in it. There was some a
- 8 hundred -- 25 \$100 bills.
- 9 Q. How much -- how big would you say this envelope is?
- 10 A. I'd say about like that.
- 11 Q. Okay. Now, Buddy, she has testified -- I'm sorry.
- 12 Has she ever done any work for you?
- 13 A. Yes.
- 14 Q. What has she done?
- 15 A. Used to clean every Thursday for me.
- 16 Q. Did you pay her for this?
- 17 A. Yes, give her \$40 every Thursday.
- 18 Q. Okay. And she did this up until when.
- 19 A. To about the same time she went back to McColl to
- 20 stay.
- 21 Q. Okay. Are you close with your sister?
- 22 A. Well, we all right.
- 23 Q. Do you talk to her a lot?
- 24 A. No.
- 25 Q. Have you ever known your sister to accuse people of

1 stealing money?

2 MS. MUNNERLYN: Objection, Your Honor. If he knows  
3 of his own personal knowledge. Not hearsay.

4 MS. SWILLEY: That's what I'm asking for.

5 BY MS. SWILLEY:

6 Q. Do you personally know that she has accused people of  
7 stealing money?

8 A. Yes.

9 Q. Who has she accused of stealing money?

10 A. Well, she accused her other daughters, Cindy, one  
11 time of stealing something.

12 Q. Do you remember how much?

13 A. \$5,000.

14 Q. Okay. Anybody else?

15 A. She accused Buddy Allen of breaking into her safe and  
16 stealing some money.

17 Q. Okay.

18 A. And she accused her other daughter, the one that is  
19 deceased, her of stealing something.

20 Q. Did she ever accuse you of stealing?

21 A. No.

22 Q. Okay. Would you lie for Phyllis Lane?

23 A. No, I wouldn't.

24 Q. Would you lie for Mildred Gause?

25 A. No, I wouldn't.

1 Q. Okay. So you're sure Phyllis gave you money and you  
2 held on to it?

3 A. I'm absolutely sure.

4 Q. And you gave it back to her?

5 A. I gave it back to her.

6 Q. Thank you very much. Please answer any questions  
7 that Ms. Munnerlyn might have, okay?

8 A. Okay.

9 CROSS-EXAMINATION

10 BY MS. MUNNERLYN:

11 Q. Mr. Quick, you and your sister have not gotten along  
12 in years, have you?

13 A. Ma'am?

14 Q. You and Ms. Gause haven't gotten along in years, have  
15 you?

16 A. No, we haven't.

17 Q. Y'all didn't see eye to eye on how you came to see  
18 your mother when she was dying; is that right? Did y'all  
19 disagree about the treatment of your mother at the time  
20 of -- before she died?

21 A. No. It wasn't about our mother.

22 Q. And in fact y'all later had a disagreement. You  
23 didn't want her to raise her grandchildren after her  
24 daughter died, did you?

25 A. I didn't care about raising them.

1 Q. You and she -- you haven't talked to her in years,  
2 have you?

3 A. I'm sorry. I didn't ---

4 Q. You didn't talk with your sister in years, have you?

5 A. About six years.

6 Q. So you really don't know what goes on at her house,  
7 do you?

8 A. No, I don't.

9 Q. Okay.

10 MS. MUNNERLYN: No further questions, Your Honor.

11 THE COURT: Anything further?

12 MS. SWILLEY: Nothing from us.

13 THE COURT: All right. You may step down. You may  
14 call your next witness.

15 MS. SWILLEY: At this time, Your Honor, the Defense  
16 rests.

17 THE COURT: All right. Members of the jury, we have  
18 to take up some matters of law. If you would step into  
19 the jury room for just a few minutes. We'll take these  
20 up. We'll bring you back, and we'll finish this trial.  
21 Do not discuss the case.

22 (WHEREUPON, the jury panel was excused from the  
23 courtroom at 1:34 p.m.)

24 COLLOQUY

25 THE COURT: All right. Any motions?

1 MS. MUNNERLYN: Your Honor, I'm sorry. I should have  
2 caught you before all that happened, but actually would  
3 have a reply witness in regards to the acquisitions that  
4 were just made.

5 THE COURT: That's fine. Let's go ahead and take up  
6 motion.

7 MS. SWILLEY: At this time, Your Honor, I would like  
8 to renew my motion, directed verdict motion, and to  
9 preserve the record. I do not feel the State has met  
10 their burden as to every element of the offense. At this  
11 time I am renewing my directed verdict motion.

12 THE COURT: All right. I'm going to deny those  
13 motions. Let's go ahead and bring the jury back out.

14 (WHEREUPON, the jury panel enters the courtroom at  
15 1:35 p.m.)

16 THE COURT: All right. Does the State have a reply  
17 witness?

18 MS. MUNNERLYN: Yes, Your Honor. I recall Mildred  
19 Gause to the stand.

20 MS. SWILLEY: And, Your Honor, I object to this  
21 witness being recalled. She already testified.

22 THE COURT: I'm gong to overrule that.

23 MILDRED GAUSE, after being duly sworn, testified  
24 as follows:

25

DIRECT EXAMINATION

1 BY MS. MUNNERLYN:

2 Q. Ms. Gause, just a couple of questions. Have you ever  
3 accused a Buddy Adams of stealing money from you?

4 A. No.

5 Q. Okay. Who is Buddy Adams?

6 A. He was a guy that she probably went with about a year  
7 I guess.

8 Q. Okay.

9 A. They went out to California. They were out there  
10 most of the time. It was just me and my daughter staying  
11 there, my baby daughter.

12 Q. Okay. Who is now deceased?

13 A. Yes.

14 Q. Okay. Have you ever accused your other daughter,  
15 Cindy Sunderland, and her son of taking \$5,000 out of your  
16 safe?

17 A. No.

18 Q. Okay. Ever accused anybody else of stealing money  
19 from you?

20 A. No, ma'am.

21 MS. MUNNERLYN: No further questions.

22 THE COURT: Cross?

23 MS. SWILLEY: No further questions.

24 THE COURT: All right. You may step down. You can  
25 have a seat.

1 MS. MUNNERLYN: Cindy Sunderland.

2 CINDY SUNDERLAND, after being duly sworn,  
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MUNNERLYN:

6 Q. Ms. Sunderland, you have heard the testimony that has  
7 be elicited from the Defense witnesses?

8 A. Yes.

9 Q. Has your mother ever accused you or your son, any of  
10 your sons, of taking \$5,000 out of her safe?

11 A. No, she hadn't. That's the first I heard of it.

12 Q. Okay. All right. Has she ever accused you of  
13 stealing anything?

14 A. No.

15 Q. Okay. Has she ever accused Buddy Adams of stealing  
16 anything?

17 A. Not that I know of.

18 Q. Okay.

19 MS. MUNNERLYN: I don't have any further questions?

20 MS. SWILLEY: No further questions.

21 THE COURT: All right. You may step down. Any other  
22 witnesses in reply?

23 MS. MUNNERLYN: That's all, Your Honor.

24 THE COURT: All right. Members of the jury, this  
25 will be the last time. If you will step back into the

1 jury room. We have to take up a couple of matters, and we  
2 will be back with you.

3 (WHEREUPON, the jury panel was excused from the  
4 courtroom at 1:49 p.m.)

5 THE COURT: Y'all want to come up here and look at my  
6 charge real quick and see if it suits you? All right.  
7 Any objection from the State?

8 MS. MUNNERLYN: No objection to the verdict form.

9 THE COURT: The Defense?

10 MS. SWILLEY: No, Your Honor.

11 THE COURT: We're going stow proceed with the State,  
12 the Defense and then me. Y'all ready?

13 MS. MUNNERLYN: Ready, Your Honor.

14 MS. SWILLEY: We're ready, Your Honor.

15 (WHEREUPON, the jury panel enters the courtroom at  
16 1:44 p.m.)

17 THE COURT: All right. I recognize the Defense for  
18 your closing statement.

19 MS. SWILLEY: Thank you very much, Your Honor.

20 CLOSING STATEMENT BY MS. SWILLEY

21 MS. SWILLEY: Ms. Munnerlyn, ladies and gentlemen,  
22 you heard all the evidence. You heard from all the  
23 witnesses. You heard both sides of the story. I would  
24 like for y'all to recall several key points of  
25 information. I'm not going to like regurgitate it all to

1 you because you already heard it you sat through the same  
2 thing.

3 You heard from the State's witnesses. You heard from  
4 Mildred Gause who says her daughter took \$4,700 in cash  
5 out of her safe. And you heard from Phyllis Lane who says  
6 it was her money she was saving for a car. And the  
7 difference, of course, is that Phyllis Lane bought you  
8 evidence which you're going to take back with you to the  
9 jury room where she got this money.

10 She also gave you another witness who testified,  
11 Mr. Buddy Quick, that he was entrusted with \$2,500 out of  
12 her tax return to save it for her so she could use it for  
13 a car. You heard all this evidence. What you have from  
14 the Government and the State is an allegation that she  
15 took my money. Without any real follow up behind it.

16 You have Miss Mildred Gause, who is admitted on the  
17 stand that she defrauds the federal government because she  
18 withholds money. If you believe her she holds cash in a  
19 safe so she doesn't have to report it to the government.  
20 And if you're a tax payer she's defrauding each and every  
21 one of you today if you believe her.

22 This is very simple. This is very cut and dry. Is  
23 this Phyllis Lane's money or is this Mildred Gause's?  
24 Phyllis Lane doesn't have to prove anything to you.  
25 That's the point of a criminal trial. We can remain

1 silent. We don't have to cross examine any witnesses. We  
2 can remain absolutely still because the State has the  
3 exclusive burden of proving that she is guilty beyond a  
4 reasonable doubt. That's a high burden.

5 Beyond a reasonable doubt is greater than the  
6 standard used in family court to take away your kids.  
7 It's the highest burden of proof, and that's what makes  
8 America the best country in the world because you can't  
9 send people, innocent people, to jail unless you have  
10 proven it beyond a reasonable doubt each and every  
11 element.

12 So I ask you use your common sense. Use your  
13 experience. Use what you brought with you here today  
14 because you are the people that get to determine the  
15 facts. You're the only ones in here that get to determine  
16 what the facts are. So I ask you to remember all of the  
17 witness statements that you have heard from and determine  
18 who you're going to believe. But more importantly ask  
19 yourself did the State prove beyond a reasonable doubt  
20 that she, Phyllis Lane, is guilty of this crime.

21 Beyond a reasonable doubt, the Judge is going to  
22 instruct you on what that is. It is a very specific legal  
23 term. I didn't quite understand it when I was in law  
24 school to be fair with you. I didn't understand it until  
25 I got out in the world and started practicing. Beyond a

1 reasonable doubt is that doubt which makes you pause.  
2 Which makes a reasonable man hesitate to act I believe is  
3 what the Judge the going to tell you.

4 What that means in normal language is if you're  
5 thinking about something and you're working it over in  
6 your head reasonable doubt is that moment when you go wait  
7 a minute. Something doesn't sound right. Something is a  
8 little off. And if you feel that right now you must find  
9 her not guilty because that is reasonable doubt. Don't  
10 look back on this years from now and wonder what you might  
11 should have done. If you have doubts have them now  
12 because today is the day that Phyllis Lane has her freedom  
13 on the line.

14 Consider the facts. Consider what you heard. Go  
15 over all the testimony. Buddy Quick holding money for  
16 her, her tax returns, her sick leave pay. You will have  
17 all that back in jury room with you. Think about all  
18 these things. What person would steal money from their  
19 mother and then put the bank receipt back in the safe that  
20 her mother has access to. Who would do that? Does that  
21 sound like a reasonable person who is stealing?

22 And furthermore, if she stole \$4,700 in cash from her  
23 mother why did she make two separate bank deposits. Why  
24 wouldn't she just put it all in at the same time. But  
25 more importantly why would she leave evidence behind of a

1 crime that she allegedly committed. It doesn't make  
2 sense. So I challenge every one of you to remember what  
3 you heard here today and come to the verdict of not guilty  
4 for Phyllis Lane. Thank you very much.

5 THE COURT: All right. The State is recognized.

6 MS. MUNNERLYN: Thank you, Your Honor. Please the  
7 Court.

8 CLOSING STATEMENT BY MS. MUNNERLYN

9 MS. MUNNERLYN: Ms. Swilley. Ladies and gentlemen of  
10 the jury, well, we said it would be short and it could  
11 have been shorter, but sometimes we have to take up and  
12 you have to go back and forth and I apologize for that,  
13 but this will be it. So you're going to be done today.  
14 This is about to be in your hands, and it will be your  
15 decision and your decision only. And you have heard the  
16 case. You have heard from the witness stand all the  
17 evidence that we have. You have heard each witness as  
18 they have testified, and you're going to see each of these  
19 exhibits. These are to come back with you in the jury  
20 room and you can examine them. And I encourage you to  
21 talk about everything. All the State's witnesses and all  
22 the Defense witnesses.

23 And, again, think about it. It's a puzzle and you  
24 have to put it together. And how does it best fit  
25 together. And the Court has told you and they're going to

1 charge you once again on what the law is. And it is my  
2 burden of proof. The State's burden to prove beyond a  
3 reasonable doubt that this defendant committed this crime.

4 And as you have been told this case is about breach  
5 of trust with fraudulent intent. Okay. What the breach  
6 of trust with fraudulent intent? That is when someone has  
7 lawful possession of the goods of someone else. That  
8 means that they have been given the goods or somehow had  
9 them in their possession lawfully, okay.

10 We're talk about the goods of Mildred Gause here.  
11 Specifically, money that was in her safe, and you will  
12 recall that she testified and many of the witnesses  
13 testified that she was in the hospital. And while she was  
14 in the hospital her daughter was, of course, living with  
15 her, was at the house and was taking care of everything at  
16 the house. In fact while she was in the hospital she even  
17 came to visit her and had her pocket -- the victim's  
18 pocketbook with her. Momma, I got your stuff. Don't you  
19 worry. I've got everything taken care of. But she's got  
20 her momma's property. All of her property is entrusted to  
21 her.

22 That's the first element. You have lawful possession  
23 entrusted to you, the defendant, by the victim, and in  
24 this case it was. She was in the hospital. She entrusted  
25 it. In fact she had given her the combination to the

1 safe. Admitted she knew how to get in the safe.

2 Third, conversion of the goods by the defendant. She  
3 has to convert that property to her own with the intention  
4 to deprive the owner thereof. Okay. So she had to take  
5 that money. She has possession of it lawfully. She's  
6 already in the house. She has access to it. We know  
7 that. They have this trust relationship, mother and  
8 daughter. She's allowed her to stay there and look over  
9 everything and trusting that she's doing what she supposed  
10 to with her stuff.

11 But she converted it to her own when she deposited  
12 it. She opened an account, okay. Just happened to open  
13 an account. When the money was taken with -- and within  
14 seven days deposit the full amount which was taken from  
15 her mother's safe. Okay. So she converted it. Put into  
16 her own by putting it into an account that she could only  
17 access. It was wasn't in her mother's name. It was in  
18 her name. She went to the bank in McColl, got it all set  
19 up there, okay.

20 And she intended to deprive her permanently of it.  
21 She never returned it. Okay. Now, she wants to sit here  
22 and tell you she doesn't have any income other than that  
23 one point when she was making \$40 a week. She was making  
24 it cleaning houses, but she somehow got thousands of  
25 dollars just sitting in cash. But she's living with other

1 people and they're buying her groceries and everything  
2 else.

3 She gets this -- she gets her tax return in the  
4 spring of 2014, but yet she doesn't even set this bank  
5 account up until November when the money was taken. So  
6 she's going to carry around a bunch of money in cash until  
7 November and then set up an account. That doesn't even  
8 make much sense.

9 Think about it. You've got to put it all together.  
10 I mean, look at these things. They verify that, yes, she  
11 had money in 2013. She was making some money, but she  
12 didn't have any in 2014. She admitted she went to live  
13 with her mother in July. She lived with her mother for  
14 several months. She didn't contribute to the bills.  
15 She's eating her momma's groceries. Where did she come up  
16 with thousand? I mean she's still got thousands of  
17 dollars is cash sitting around. It didn't make sense.

18 She's the only one that had the combination. In fact  
19 they couldn't get in there without her having -- she's  
20 calling her to get the combination so they could get back  
21 in there. So what makes sense. What makes sense.

22 It's for all of you to determine and for you to hash  
23 out. But think about everything that they said and why  
24 would these people have a reason to say what they're  
25 saying, okay. Why would a mother accuse her own daughter

1 of stealing her money unless she stole the money. It  
2 doesn't make sense. But look at all the records. Think  
3 about all the testimony. If you need to rehear testimony  
4 I'm sure the Judge will allow you to do so.

5 But think about it all. Have I met my burden and my  
6 burden again, yes, it's beyond a reasonable doubt but  
7 that's not any doubt. So I don't have to answer every  
8 doubt in your mind, okay. It's beyond a reasonable doubt  
9 and that is a doubt to which you can assign a reason.  
10 Okay.

11 If you are firmly convinced of something then I have  
12 convinced you beyond a reasonable doubt, okay. So then,  
13 yes, it's a high burden. It's not the burden of any  
14 doubt, but a reasonable doubt, okay. There is Mildred  
15 Gause's day, and you have heard from her. She is out of  
16 this money, and she firmly believes that her daughter has  
17 stolen it and refuses to return it. We have submitted the  
18 documents where she opened an account in McColl while at  
19 the same time the money became missing.

20 Amazingly the same amount gets deposited. Certainly  
21 raises some questions. So I ask you to examine it closely  
22 and to think about everything that everybody said and the  
23 statements that were made. Why would Phyllis say to her  
24 sister, "Tell your momma -- your momma cause she's mad  
25 with her, I'm bringing her money in a little bit." if she

1 didn't have her money. It doesn't make any sense.

2 And these families got along together before. She  
3 lived with her momma for six months up until this  
4 happened. She lived with her the years before that for  
5 several months, too. Think about it. What makes the most  
6 sense. And I think once you do that and review all of the  
7 evidence and you thoroughly hash it out between the 12 of  
8 you you will be convinced that this defendant is guilty of  
9 breach of trust was fraudulent intent. Thank you.

10 CHARGE OF THE COURT

11 THE COURT: Members of the jury, it is now my duty to  
12 instruct you on the law applicable to this case, and it is  
13 your duty as jurors to accept and apply the law as I now  
14 give it to you. Furthermore, it is your exclusive duty to  
15 decide all the issues of fact in this case and to  
16 determine the effect, value, weight and truth of the  
17 evidence. Both the State and the Defendant have the right  
18 to expect that you will carefully consider and evaluate  
19 the evidence and apply the law of the case to it so that  
20 in the end both the State of South Carolina and this  
21 defendant will have received a fair and impartial trial.

22 I want to you to understand that when I use the word,  
23 'defendant', I refer to Ms. Phyllis Lane. In this case  
24 the State of South Carolina charges the defendant with the  
25 offense known as breach of trust with fraudulent intent.

1 To this charge the defendant has entered a plea of not  
2 guilty. This plea of not guilty places the burden of  
3 proof on the State to prove the guilt of the defendant to  
4 you beyond a reasonable doubt.

5 It is vital to understand that the defendant is  
6 presumed under the law to be innocent of the charge. It  
7 is a fundamental rule of our law that a defendant,  
8 regardless of the seriousness of the charge against him,  
9 is always presume innocent of the crime for which she is  
10 charged until and until her guilt has been proven by  
11 evidence which satisfies you beyond a reasonable doubt.

12 The presumption of innocence is not a mere legal  
13 theory. It's not just a legal phrase. The presumption of  
14 innocence is very important and you need understand that  
15 this presumption accompanies the defendant from the time  
16 of her arrest and appearance in this court and continues  
17 with the defendant even after you retire to the jury room  
18 to deliberate.

19 In other words, the defendant receives the benefit of  
20 the presumption of innocence until the very end of this  
21 trial. When you, the jury, will deliberate upon the  
22 evidence and decide whether the State has proved her guilt  
23 beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof that leaves  
25 you firmly convinced of the defendant's guilt. There are

1 few things in this world that we know with absolute  
2 certainty. So even in criminal cases the law does not  
3 require proof that overcomes every possible doubt.

4       However, if based on your consideration of the  
5 evidence you are firmly convinced that the defendant is  
6 guilty of the crime charged you must find her guilty. If  
7 on the other hand you find that there is a real  
8 possibility that she is not guilty you must find -- you  
9 must give her the benefit of the doubt and find her not  
10 guilty. Please understand that reasonable doubt may arise  
11 from evidence which has been presented in the case or from  
12 the lack of evidence in the case. It is your  
13 responsibility to determine whether or not reasonable  
14 doubt exists as to the guilt of this defendant.

15       During this trial you and I have separate duties to  
16 perform. As the trial judge it is my responsibility to  
17 preside over this trial. Therefore, I also have the duty  
18 to rule on the admissibility of the evidence offered  
19 during the trial. In that regard you are to consider only  
20 the evidence before you. Thus, you are to consider only  
21 the testimony which has been presented from this witness  
22 stand together with any exhibits admitted in the record of  
23 the case.

24       Furthermore, I have the additional duty to charge you  
25 the law applicable to this case. And in that regard and

1 it is your duty as jurors to accept and apply the law as I  
2 now state it to you. If you have any preconceived ideas  
3 as to what the law is or what the law ought to be and it  
4 does not agree with what I now tell you the law is then  
5 you are obligated under your oath to abandon these  
6 preconceptions and accept the law as I now state it to  
7 you.

8 In charge you that the defendant is entitled to every  
9 reasonable doubt arising in the whole case. If upon any  
10 issues of fact essential to conviction and a verdict of  
11 guilty you have a reasonable doubt as to how that issue  
12 should be resolved it would be your duty to resolve that  
13 reasonable doubt in favor of the defendant.

14 Thus, in summary, it is important to understand that  
15 a defendant is not required to prove her innocence.  
16 Instead, the State is required by law to prove every  
17 essential element of the charge against the defendant by  
18 evidence which satisfies you of her guilt beyond a  
19 reasonable doubt. Only then can you convict the defendant  
20 and find her guilty.

21 In this trial you are the sole and exclusive judge of  
22 the facts, and I am the judge of the law. Do not infer  
23 that I have any opinion about the facts in this case from  
24 anything I have said during the course of this trial. In  
25 this regard the law simply does not permit me to have an

1 opinion about the facts. As jurors it is your duty alone  
2 to determine the effect, value, weight and truth of the  
3 evidence presented during the course of this trial.

4 Furthermore, it is your job as jurors to determine  
5 the credibility and believability of the witnesses who  
6 have testified in this case. You must evaluate the  
7 evidence and determine which evidence convinces you of its  
8 truth.

9 In determining the believability of witnesses who  
10 have testified in this trial you. You may believe one  
11 witness over many or many over one. You may believe a  
12 part of the testimony of a witness and reject the  
13 remaining part.

14 You may believe the testimony of a witness in its  
15 entirety or reject it in full. You may consider whether  
16 the witness has an interest in the result of the trial,  
17 whether the witness is prejudiced toward either party, the  
18 opportunity for the witness to have seen the matters and  
19 things about which the witness may testify and the way the  
20 witness acts on the witness stand.

21 Evidence may be direct and circumstantial -- or  
22 circumstantial. Direct evidence is testimony by a witness  
23 about what the witness personally saw or heard or did.  
24 Circumstantial evidence is indirect evidence; that is it  
25 is proof of one or more facts from which one can find

1 another fact.

2       You are to consider both direct and circumstantial  
3 evidence. The law permits you to give equal weight to  
4 both, but it is for you to decide how much weight you give  
5 to any evidence.

6       The defendant is charged with breach of trust with  
7 fraudulent intent. The State must prove beyond a  
8 reasonable doubt that personal property was put in the  
9 defendant's possession as a trust. A trust is a holding  
10 of property subject to a duty of using it or applying its  
11 proceeds according to directions given by the person who  
12 put the property in trust.

13       The State must also prove beyond a reasonable doubt a  
14 breach of trust. There must be a use of the property by  
15 the defendant for some purpose other than that for which  
16 it was put in trust.

17       Finally, the State must prove beyond a reasonable  
18 doubt that the defendant had a fraudulent intent in  
19 breaching the trust. The State must prove that the  
20 property was converted by the defendant with the  
21 fraudulent intention of using it as her own or of  
22 permanently depriving the owner of the use or possession  
23 of the property.

24       Fraudulent intent is a mental state, a conscious  
25 wrong doing. It is up to you to determine what the

1 defendant intended to do bases on the circumstances shown  
2 to have existed. Intent may be shown by acts and conduct  
3 of the defendant and other circumstances for which you may  
4 naturally and reasonably show intent.

5 The difference between breach of trust and larceny or  
6 what is commonly known as stealing is the possession of  
7 property stolen is obtained unlawfully. In a breach of  
8 trust the possession of the property is obtained  
9 lawfully, and the property is then converted for the  
10 fraudulent intent.

11 Ladies and gentlemen, I'm now drawing near the end of  
12 my charge, and again, I want you to clearly understand  
13 that you are not partisans or advocates for the State or  
14 the Defendant. You do not serve as jurors to reward your  
15 friends or punish your enemies. In this regard you have  
16 been selected by both the State and this defendant to be  
17 fair and impartial jurors.

18 It is your duty by your joint deliberations to  
19 determine the truth in this case giving to this defendant  
20 the benefit of the doubt on each and every issue. Then to  
21 the facts which you determine to be true you must take and  
22 apply the law which has been given to you by this Court  
23 and thus arrive at a verdict which speaks the truth in  
24 this case.

25 In fact the word, 'verdict' which as a Latin

1 derivative means a true saying. Thus, when you have  
2 accomplished these responsibilities you will have  
3 satisfied your oath as jurors and you will have discharged  
4 your duty to this Court.

5 Hand Madam Forelady the verdict form. Ma'am, Miss  
6 Forelady, I have handed you the verdict form. When you  
7 arrive at a verdict in this case write your verdict on the  
8 form. For the charge if the State has failed to prove the  
9 guilt of the defendant beyond a reasonable doubt your  
10 verdict would be two words, 'not guilty'. However, should  
11 the State have proved their case against the defendant  
12 beyond a reasonable doubt then your verdict would be one  
13 word, 'guilty'.

14 Ms. Forelady, once a decision has been made check  
15 whatever choice is your verdict and sign the verdict form.  
16 Also, please, understand that the verdict that you render  
17 in this case must be the verdict of each and every juror.  
18 It must be your unanimous verdict. All 12 jurors must  
19 agree on the verdict which you authorize the Foreperson to  
20 write for the jury.

21 Miss Forelady and members of the jury, I want you to  
22 further understand that the order in which the verdicts  
23 appear on the verdict form are not subjective of any  
24 verdict on the part of this Court. The verdict in this  
25 case is to be determined by you and not the Court.

1           Furthermore, ladies and gentlemen, please understand  
2 that even though I have given the verdict form to the  
3 Forelady it is not her verdict along. It is the verdict  
4 of all 12 of you. And I emphasize again that it must be  
5 unanimous.

6           Now you will retire to the jury room. However, I  
7 would ask that you do not begin your deliberations at this  
8 time. The law requires that I now consult with the  
9 attorneys first. After I have done so the bailiff will  
10 bring the items of evidence and instruct you to begin your  
11 deliberations.

12           Also, should you have any questions during your  
13 deliberations you must put them in writing and send them  
14 to me by way of the bailiff. The Court bailiff will be  
15 placed immediately outside of the jury room door to  
16 provide security and assistance for you during your  
17 deliberations. Once you have reached your verdict please  
18 knock on the jury room door and ask the bailiff to advise  
19 the Court that you have reached a verdict and we will  
20 return to the courtroom as promptly as possible  
21 thereafter.

22           Thank you. Would may return to the jury room.  
23 Again, do not begin your deliberations until told to do  
24 so.

25           (WHEREUPON, the jury panel was excused from the

1 courtroom at 12:05 p.m.)

2 THE COURT: All right. Any objections to the charge  
3 from the State.

4 MS. MUNNERLYN: No, Your Honor.

5 THE COURT: Any objections from the Defense?

6 MS. SWILLEY: No, Your Honor.

7 THE COURT: All right. Come take a look at the items  
8 which are in evidence which I think are State's One and  
9 Two and Defendant's?

10 MS. SWILLEY: Your Honor, it has come to my attention  
11 that one of my exhibits contains Social Security numbers  
12 of parties, and I need to redact that before we send them  
13 back to the jurors.

14 THE COURT: Any objection from the State?

15 MS. MUNNERLYN: No, Your Honor.

16 THE COURT: All right. Why don't you do that in her  
17 presence. Bring the alternate back out.

18 (WHEREUPON, the jury panel was excused from the  
19 courtroom to begin deliberations at 2:12 p.m.)

20 THE COURT: I just want to let you know that your  
21 duties are complete, and you can go if you would like.  
22 However, you need to call back in tonight after 6:00 to  
23 see if there are any further instructions. You have a  
24 good day.

25 All right. We'll be at ease until something happens

1 (WHEREUPON, Court was in recess at 2:15 p.m. and  
2 reconvened at 3:45 p.m.)

3 VERDICT OF THE JURY

4 THE COURT: Go ahead and bring them out.

5 (WHEREUPON, the jury panel enters the courtroom at  
6 the 3:45 p.m.)

7 THE COURT: All right. Miss Forelady, has the jury  
8 reached a verdict.

9 JURY FOREPERSON: Yes.

10 THE COURT: If you would hand it to the bailiff,  
11 ma'am. Thank you. I find that the verdict form in order  
12 and is signed and properly dated. I'm going to ask Madam  
13 Clerk to publish it.

14 CLERK OF COURT: Indictment 2015-GS-34-0028. The  
15 State v. Phyllis A. Lane. As to the charge of breach of  
16 trust was fraudulent intent we the jury unanimously find  
17 the defendant guilty, Phyllis A. Lane, guilty. Signed the  
18 Forelady, Mary Alford. March 17th 2015. Is this your  
19 verdict so say you all by raising your right hand.

20 THE COURT: All right. I we need any further poling,  
21 from the Defense.

22 MS. SWILLEY: No, Your Honor.

23 THE COURT: Members of the jury, you are excused for  
24 the day, but you should call back in after 6:00 to see if  
25 there are any further instructions for you. But thank you

1 very much. I appreciate what you do and you have a very  
2 good rest of the afternoon.

3 (WHEREUPON, the jury panel was excused from the  
4 courtroom at 3:48 p.m.)

5 THE COURT: All right. Any motions from the Defense?

6 MS. SWILLEY: I just renew all of my previous motions  
7 at this time.

8 THE COURT: Thank you. I'm ready whenever you are.

9 MS. MUNNERLYN: Thank you, Your Honor. I think you  
10 have heard the evidence. Basically, I don't know what my  
11 client, the victim's position is at this point, but she  
12 can certainly address the court. Obviously, this is her  
13 daughter. So I thought it would be appropriate to say,  
14 too, what she would like to happen.

15 MS. GAUSE: I'd like to see her give me my money. I  
16 don't want her to be sent off. All I would like is my  
17 money back and forget it.

18 THE COURT: She said don't want her sent off is what  
19 you said?

20 MS. GAUSE: I don't want her to go to the  
21 penitentiary.

22 THE COURT: I understand. You got the sentencing  
23 sheet? Go ahead and go from there. Anything you'd like  
24 to put on the record, Ms. Swilley?

25 MS. SWILLEY: Your Honor, my client, Phyllis Lane, is

1 50 years old. She's the daughter of the defendant. Jer  
2 last criminal charge against her was 18 years ago. Of  
3 course, our position was we maintain our innocence, but  
4 the jury found otherwise. We ask Your Honor, please, give  
5 her -- the offer before trial was probation. The victim  
6 wants her money back. That's her number one concern. So  
7 we ask Your Honor to please give probation for her.

8 THE COURT: And this carries up to five years?

9 MS. MUNNERLYN: It does, Your Honor.

10 THE COURT: And if I remember restitution was \$4,700.

11 MS. MUNNERLYN: Yes, Your Honor.

12 SENTENCE OF THE COURT

13 THE COURT: Tell you what I'll do. Sentence of the  
14 Court is five years. I'll suspend it to five years  
15 probation. Restitution is ordered in the amount of \$4,700  
16 and I'll P.T.U.P. if she should pay it.

17 MS. SWILLEY: Thank you, Your Honor.

18 THE COURT: Thank you.

19 . END OF TRANSCRIPT OF RECORD

20

21

22

23

24

25



EXHIBIT C

## Benjamin J. Tripp

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**From:** Paula Murdoch  
**Sent:** Monday, October 12, 2015 8:07 AM  
**To:** Benjamin J. Tripp; Chris S. Swenski  
**Subject:** FW: State v. Phyllis Lane

Paula Murdoch

Commission on Indigent Defense

Division of Appellate Defense

Phone # 803-734-1330

Fax # 803-737-1397

-----Original Message-----

**From:** Gordon, Hattie O. [<mailto:HGordon@sccourts.org>]  
**Sent:** Sunday, October 11, 2015 9:04 PM  
**To:** Paula Murdoch  
**Subject:** RE: State v. Phyllis Lane

Hi Paula.....

During the trial something happened with the sound system and a high pitched squeal replaced the verbiage and then it would stop and the audio would play fine. after a while it would do it again. I have not experienced this problem prior to this incident.

I estimate that i am not able to reproduce approximately 26 pages of the transcript where it was noted.

I hope this helps. sorry it took so long.

Hattie O. Gordon  
Resident Circuit Court Reporter  
Fourth Judicial Circuit  
Post Office Box 597  
Wallace, South Carolina 29596-0597

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**From:** Paula Murdoch [[pmurdoch@sccid.sc.gov](mailto:pmurdoch@sccid.sc.gov)]  
**Sent:** Wednesday, October 7, 2015 9:01 AM  
**To:** Gordon, Hattie O.  
**Subject:** RE: State v. Phyllis Lane

Hi, Hattie,  
Thank you.  
I hope all is well with you and your family.

Paula Murdoch

Commission on Indigent Defense

Division of Appellate Defense

Phone # 803-734-1330

Fax # 803-737-1397

-----Original Message-----

From: Gordon, Hattie O. [mailto:HGordon@sccourts.org]

Sent: Tuesday, September 29, 2015 10:00 PM

To: Paula Murdoch

Subject: RE: State v. Phyllis Lane

hi .... I was on vacation and am just getting to respond. I will go back and check my records and be able to give you a better answer.

will be back with you soon.

Hattie O. Gordon

Resident Circuit Court Reporter

Fourth Judicial Circuit

Post Office Box 597

Wallace, South Carolina 29596-0597

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From: Paula Murdoch [pmurdoch@sccid.sc.gov]

Sent: Monday, September 14, 2015 2:55 PM

To: Gordon, Hattie O.

Cc: Chris S. Swenski

Subject: State v. Phyllis Lane

Good afternoon, Ms. Gordon

We are in receipt of the transcript of March 16-17, 2015 in the above case.

On page 33, during the direct examination of Mildred Gause, the equipment failed and you were not able to transcribe a portion of the transcript.

Are you able to reproduce that portion of the transcript? Do you know how many pages were not transcribed?

If you are able to reproduce that portion, we will send you a request.

I appreciate your assistance in this matter.

Paula Murdoch

Commission on Indigent Defense

Division of Appellate Defense

Phone # 803-734-1330

Fax # 803-737-1397

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**RECEIVED**

NOV 19 2015

SC Court of Appeals

\_\_\_\_\_  
Appeal from Marlboro County

William H. Seals, Jr., Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

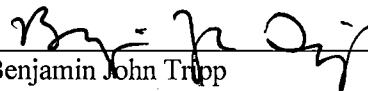
PHYLLIS LANE,

APPELLANT

APPELLATE CASE NO. 2015-000708

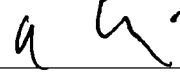
\_\_\_\_\_  
CERTIFICATE OF SERVICE  
\_\_\_\_\_

The undersigned attorney hereby certifies that a true copy of the motion to remand for record reconstruction in the above-entitled case has been served upon Salley W. Elliott, Esquire, this 19th day of November, 2015.

  
Benjamin John Trapp  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 19th day  
of November, 2015.

 (L.S.)  
Notary Public for South Carolina

My Commission Expires: May 12, 2025.